The EU's Impact on Managing Levels of Corruption in the Post-Communist World

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The EU’s Impact on Managing Levels of Corruption in the Post-Communist World

A Dissertation

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Abstract

This study examines the role of the European Union (EU) in the process of managing corruption in the post-communist world. Throughout the post-communist transitions, which began in 1989, the EU has been consistent in putting a strong emphasis on the problem of corruption. As part of the transitions, there were many attempts at abating corruption domestically, most of which were expressed in the creation of institutions and legislation. Yet such attempts had varying effectiveness, and outcomes were not always expected nor predicted by scholars and policy-makers. Internationally, the EU expected that conditionality, which offered EU membership in exchange for compliance with EU-promoted anti-corruption norms, to be an effective mechanism to address high levels of corruption in the post-communist world. Yet, evidence demonstrates that membership incentive did not always correlate with strong performance. Countries such as Georgia, without the prospect of membership, often outperformed countries that had a membership incentive in addition to strong sanctions and conditions. This study sets out to explain these puzzles and to identify the conditions under which the EU had the most leverage over domestic anti-corruption reforms.
Based on a comparison of EU’s efforts of three countries – Bulgaria, Georgia, and Montenegro – and employing a combination of qualitative and quantitative data gathering techniques, the study makes two arguments. First, anti-corruption institutions were more successful in managing corruption where civil society was included in the process of institution-building, and later in the process of monitoring and reforming these institutions.

Second, the study argues that the EU had more leverage over domestic anti-corruption reforms where it engaged non-state actors (non-governmental agencies) in a political dialogue and where a process of social learning started before membership conditionality. When this condition was present, the EU created a like-minded domestic partner capable of championing EU-promoted norms and supplying the EU with feedback and knowledge necessary to adapt conditions, incentives, and sanction to the local context and better address domestic corruption.

The study contributes to our broader knowledge of post-communist transitions, Europeanization, and the scope and limits of international organizations’ impact on domestic politics. In examining the development of civil society, it explains the role that civil society played in post-communist transitions. In examining the interaction of domestic civil society and international organizations, it contributes to the general understanding of the mechanisms and extent to which external actors can impact complex domestic issues.
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On a more personal note, I will be forever indebted to my parents who instilled in me a refusal to give up. Words are not enough to express my gratitude to my husband Lloyd Hilaiel – the software engineer who now knows more about post-communist transition than some PhD students. Thank you for the endless discussions, the incredible amount of proofreading, and for having the courage to be vocal about my mistakes. Malliga Och and Emilia Zankina are probably not even aware of the support that they provided. Thank you both for being there to discuss equally enthusiastically my emotional state and my methodological problems. To all, this dissertation is as much yours as it is mine.
# Table of Contents

Abstract ........................................................................................................................................ ii

Acknowledgements ...................................................................................................................... iv

List of Figures ............................................................................................................................... viii

Introduction .................................................................................................................................... 1

Chapter One - Theory and Methodology .................................................................................... 9

1. Theory ........................................................................................................................................ 9
  1.1 Domestic Ownership of Externally-Promoted Reforms: A Necessary Condition .................. 11
  1.2 Domestic Ownership Through Socialization ........................................................................ 20
  1.3 Implications of Successful Socialization .............................................................................. 23
    1.3.1 Civil Society – State relations ..................................................................................... 24
    1.3.2 Civil Society Organizations (CSOs) as a Channel for norm diffusion ...................... 26
    1.3.3 The EU’s Flexible Conditionality .............................................................................. 27
  1.4 Propositions ............................................................................................................................ 29
  1.5 Theoretical Implications ......................................................................................................... 30

2. Methodology ............................................................................................................................... 33

  2.1 Methodological Challenges .................................................................................................. 33
  2.2 Proposed Solutions .............................................................................................................. 38
    2.2.1 Domestic Institutions and Their Functioning ........................................................... 41
    2.2.2 The Influence of the EU ............................................................................................ 44
    2.2.3 The Influence of Civil Society ................................................................................... 45
  2.3 Case Selection ......................................................................................................................... 49

3. Alternative Explanations ............................................................................................................ 54

  3.1 Domestic versus International Drivers of Anti-corruption Reforms .................................. 55
  3.2 Socialization versus Conditionality ...................................................................................... 57
  3.3 Civil Society .......................................................................................................................... 60

Chapter Two – Different Types and Levels of Corruption ......................................................... 64

1. Bulgaria ...................................................................................................................................... 81
Chapter Three – The Effects of Conditionality .................................................. 131
  1. Bulgaria ........................................................................................................... 138
  2. Georgia ........................................................................................................... 157
  3. Montenegro ..................................................................................................... 171
      3.1 Focus on Implementation and Track Record ............................................. 174
      3.2 Domestic context considered ................................................................. 178
  4. Conclusion ......................................................................................................... 183

Chapter Four – The EU and Domestic Civil Society ............................................ 185
  1. Employing a Social Network Analysis ............................................................. 189
  2. Characterizing Civil Society ............................................................................ 194
      2.1 Bulgaria ....................................................................................................... 196
      2.2 Georgia ...................................................................................................... 201
      2.3 Montenegro ................................................................................................ 205
  3. Explaining the State of Civil Society ............................................................... 208
      3.1 Intensity of EU Involvement ..................................................................... 217
      3.2 Timing of EU Involvement ....................................................................... 223
          3.2.1 Late Involvement of the EU in Bulgaria ............................................. 224
          3.2.2 Interrupted Involvement in Georgia ............................................... 226
          3.2.3 Early Involvement in Montenegro ................................................. 229
      3.3 Kind of Cooperation Between EU and Civil Society .................................. 230
          3.3.1 Partnership of the EU and Domestic Civil Society in Montenegro ...... 232
          3.3.2 Domination of the EU in Bulgaria ................................................... 238
          3.3.3 Georgia - Building on a Broken Civil Society ................................... 243
  4. Conclusion ......................................................................................................... 246

Chapter Five – Synergy .......................................................................................... 248
  1. Variation in Types of EU Conditionality across Cases ..................................... 251
      1.1 Cross-country Variation in the Focus of Conditionality ........................... 252
      1.2 Cross-country Variation in the Flexibility of Conditionality .................... 255
  2. The Impact of the EU’s Varied Interactions with Domestic Actors on Anti-
     corruption Institutions .................................................................................. 258
      2.1 Bulgaria’s Disconnected Civil Society in the Context of Strict Conditionality 260
          2.1.1 Disunited Civil Society ...................................................................... 260
2.1.2 Gap between the CSOs and Citizens.......................................................... 262
2.1.3 CSOs Insufficient Feedback to the EU ....................................................... 266
2.1.4 The EU’s Impact on State - CSO Relations in Bulgaria ................................. 267
2.2 Montenegro’s Complete Circle of Interaction............................................... 269
  2.2.1 United Civil Society.................................................................................. 270
  2.2.2 Norm Diffusion to Citizens....................................................................... 272
  2.2.3 CSO’s Strong Relationship with the EU.................................................... 275
  2.2.4 EU’s Impact on State -Society Relations in Montenegro............................. 278
2.3 Georgia’s Weak Civil Society and the EU’s Approval of Saakashvili’s Policies..... 281
  2.3.1 Interrupted Civil Society Development..................................................... 282
  2.3.2 Weak Connection with Citizens............................................................... 283
  2.3.3 A Lack of Trust between the EU and CSOs ............................................. 285
  2.3.4 The Hourglass Problem in State-Civil Society Relations............................. 286
3. Conclusion ........................................................................................................ 287

Chapter Six - Conclusions..................................................................................... 290
1. Puzzles and Arguments....................................................................................... 291
  1.1 Review of the Propositions........................................................................... 294
    1.1.1 Socialization Proposition......................................................................... 294
    1.1.2 Conditionality Proposition ...................................................................... 296
2. Alternative Explanations.................................................................................... 297
  2.1 Conditionality versus Socialization............................................................... 298
    2.1.1 Conditionality.......................................................................................... 298
    2.1.2 Socialization............................................................................................ 306
  2.2 Domestic Politics............................................................................................ 312
    2.2.1 Political Competition............................................................................... 313
    2.2.2 Civil Society............................................................................................. 316
3. Extending the Argument...................................................................................... 320
  3.1 How Equipped is a Social Network Analysis (SNA) to Address the Issue?.... 320
  3.2 Is the Study Replicable in Other Countries?.................................................. 321
  3.3 Is the Study Replicable on Other Issues?...................................................... 323
  3.4 Are all International Organizations the Same?.............................................. 326
4. Implications of the Study..................................................................................... 328

Bibliography ........................................................................................................... 333

Appendix A: List of Interviews.............................................................................. 362
List of Figures

Graph 1: Density of Bulgaria NGO Networks in 2003, 2007, and 2013 .................. 200
Graph 2: Density of NGO Networks in Georgia .................................................. 204
Graph 3: Density of NGO networks in Montenegro in 2013 ............................... 206
Graph 4: Centrality ($\lambda$) of the EU in Bulgaria’s NGOs’ Networks in 2003, 2007, 2013 219
Graph 5: Centrality ($\lambda$) of the EU in Montenegro’s NGOs networks in 2013 ............ 220
Graph 6: Centrality of the EU in Georgia’s NGO network in 2003, 2007, and 2013 .... 222
Graph 5.1 Interaction between domestic civil society, state, and the EU .................... 250
Introduction

Despite differing definitions and methodologies, governance indices report high levels of corruption in all post-communist countries. Why is corruption so prominent in this part of the world and why has it spread to all sectors of society, politics and economies?

Many have convincingly shown the detrimental effects of corruption on economic development (Mauro 1995, 1997, Knack and Keefer 1996, Tanzi and Davoodi 1997, Rose-Ackerman 1998, Gupta et al. 2002). In the post-communist world, corruption has an even larger and more negative impact on democracy and democratization (Johnston 1997, Rose-Ackerman 1999). By providing privileged access to power and by decreasing accountability (Sandholtz and Koetzle 2000), it undermines two of the most fundamental principles of democracy - equality and the rule of law. Most importantly, in states such as the ones from the former Eastern Bloc, where democracy is new and fragile, and norms of transparency and accountability are not yet fully internalized by political elites and citizens, corruption creates distrust in office holders, institutions and consequently, in democracy itself. For reasons linked to development and democracy, the European Union and other international organizations have been eager to understand and root out corruption.
Corruption is not specific to the former communist countries, but it has a particularly pernicious character in this part of the world. Scholars and policy-makers agree that corruption in the post-communist world is systemic.¹ According to Leiken “in most developed countries, corruption remains a violation of the rules of the game, in many developing and post-socialist countries it is the game itself.”² Thus corruption in the former Eastern Bloc is worth studying not only because of its high levels but also because of the way in which, in select cases, it has encompassed all segments of society, politics, and economies. Corruption is something that guides the everyday actions of citizens and it often affects the level of political participation. In 2013 in Bulgaria, for example, corruption was the main grievance behind mass protests that lasted for a record period of 390 days. In 2003 in Georgia, high levels of corruption sparked the Rose Revolution. In the former communist countries, corruption control is often a component of politicians’ platforms and has a daily impact on business and politics.

Scholars and policy-makers alike often discuss corruption in the post-communist world as a phenomenon with the same properties in all countries. Similarly, international entities, such as the EU, consistently employ a uniform approach to fighting corruption in these countries. However, corruption is not the same everywhere in Eastern Europe and Central Asia and each country exhibits its own corruption particularities and

¹ Hellman et al. (2000) define state capture as “shaping the formation of the basic rules of the game (i.e. laws, rules, decrees and regulations) through illicit and non-transparent private payments to public officials”. See also Steves 2005

² Leiken, R. (1996), Controlling the Global Corruption Epidemic, Foreign Policy, No. 105 p. 55-63
understanding the nature of corruption in each country is the first step to identifying its causes, to evaluating its consequences, and to creating a systematic approach to managing it. Georgia, for instance has indeed almost fully eradicated petty corruption. This certainly is not to say that high-level political corruption is not present. In fact, it may have been even worsened by the same reforms that allowed the radical prosecution of petty corruption. In contrast, in Bulgaria corruption continuous to be omnipresent and endemic even after numerous reforms by successive governments, with plenty of external support from the international organizations and foreign actors.

The last twenty-five years saw a myriad of domestic anti-corruption reforms in the post-communist world, the majority of which were created under the guidance of international entities among which the European Union (EU). As some have suggested, while “domestic factors were important in regards to the way Eastern European countries developed in the post-1989 period, international actors are able to influence the transitions as well.”3 Indeed, the EU increased its engagement in the region prior to the collapse of the communist regimes in the late 1980s. In the beginning of the 1990s the EU fully realized that both political and economic factors demanded its presence in the new democracies from the East: From a political standpoint, the EU understood that being surrounded by a circle of non-democratic states could have a detrimental impact on its own functioning (Bini Smaghi and Gros 2001). Uncertain transitions, such as the one in Bulgaria, and the quick return to power of seemingly reformed communist successor

parties, made the EU also aware of the real possibility that the new democracies could reverse their transitions to democracy and/or fall back into Russia’s sphere of influence. From an economic perspective, the EU saw an opportunity for new markets and an expanded labor force (Moravscik and Vachudova, 2003). In light of this newly created situation, the EU set out to engage post-communist countries in political and economic interdependence and thus became actively involved in their transitions from the very beginning.

Ever since this moment, the EU has been consistent in putting a strong emphasis on the problem of corruption. It has stressed the necessity to address high levels of public office abuse, such as misappropriation of funds and bribery, both through membership conditionality and outside of it. To facilitate the process of achieving political and economic transparency, the EU offered post-communist states a deeper and broader relationship as a reward for speedy and effective anti-corruption actions. The EU embarked on the logic of conditionality and began rewarding those that performed well and sanctioning under-performers. This approach of the EU was based on the premise that a strong and credible incentive would persuade domestic actors to start complying with EU recommendations. In addition to this main approach, the EU also attempted to socialize domestic actors into norms of transparency, accountability, and political participation. Conferences, meetings, workshops, and mutual projects served as channels through which the EU transported different norms and attempted to change the status quo left from the almost half century long communist rule. Yet, the results in all areas, and especially in fighting corruption, vary drastically: while starting from the highest levels
of corruption among the Central Eastern European countries (CEEC), Estonia and Slovenia have had the most success in fighting corruption. Bulgaria and Romania, members of the EU since 2007, have been consistently singled out as slow to make progress in fighting corruption, and have been excluded from certain privileges normally associated with EU membership as a consequence. Georgia, which has no prospect of EU membership, has shown significant improvement in the last few years, at least according to sources such as Transparency International. Montenegro, despite statehood issues, is steadily reducing corruption and creating functional institutions, thus performing better in terms of corruption control than some of the new member states.

Research Question

In this study, I set out to shed light on the puzzling results that EU efforts to fight corruption produce. Despite all countries’ conditionality-based relationship with the EU (Kelley 2006, Grabbe 2002) and the strong legacies left by former communist regimes, countries vary significantly in their anti-corruption progress.

More specifically, I ask: Why have the EU’s efforts to fight corruption produced varying results across countries? Why has Bulgaria, with the most attention and conditionality from the EU and already an EU member, done worse in addressing

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4 The conditionality logic of the ENP is visible in the language of the ENP Strategy Paper: “The level of the EU’s ambition in developing links with each partner through the ENP will take into account the extent to which these values are effectively shared.” The paper continues: “The ambition and the pace of development of the EU’s relationship with each partner country will depend on its degree of commitment to common values, as well as its will and capacity to implement agreed priorities.”
corruption than Georgia and Montenegro, which have a very distant, EU membership prospects or none?

I make two arguments. First, the EU is most effective in introducing anti-corruption reforms when it engages in socializing civil society outside of the context of membership negotiations. In this case the EU’s leverage over national governments increases because the EU can establish a partnership with domestic civil society through cooperation. Where such partnerships took place, domestic civil society was equipped to provide the EU with feedback that was not influenced by the agenda of a particular political party. In turn, such feedback allowed the EU to alter its conditions, incentives, and sanctions to address specific domestic problems which sustained corruption and hindered its management. Additionally, a partnership between domestic civil society organizations (CSOs) and the EU allowed CSOs to better internalize the norms underpinning EU anti-corruption regulations and champion them in the given society. Thus the ability of civil society to apply bottom – up pressure on governments was increased.

Second, I argue that a process of socialization alters not only domestic actors’ interests and behavior but also the EU’s actions and preferences. Where such mutually – reinforcing processes took place, the EU became equipped with the necessary tools to provide adequate recommendations and to adjusts the sanctions and incentives to countries in order to elicit the intended effect - in this case the institutional advancement of control over corruption. Under conditions of mutual learning, the EU was also equipped to better assess domestic situations and progress toward democracy, thus
adjusting its strategy regarding if, when, and how it will deepen its relationship with a particular state.

To test these arguments, I compare the experience and the results in the area of managing corruption in three countries - Bulgaria, Montenegro, and Georgia. The study is organized into six chapters. In the first chapter I present a comprehensive way of understanding the conditions under which the EU is most successful in introducing norms of transparency and accountability and seeing their implementation in enforced policies. The goal of chapter two is to compare the institutional anti-corruption arrangements of the three case studies. The chapter compares the anti-corruption institutions based on measures of independence, specialization, and capacity and determines how civil society aided or obstructed the creation and the functioning of these institutions. Chapter three discusses the response of governments, such as policy formulation, establishment of institutions, and introduction of new legislation in line with the EU’s conditionality. It shows, contrary to much of the existing literature, that conditionality by itself rarely has a meaningful effect and that in some countries conditionality’s impact is actually negative. In chapter four, I analyze whether and how the EU assisted the development of civil society, not only in the context of enlargement conditionality, but prior to it as well. Chapter five brings together the results of the preceding empirical chapters. Here I establish the causal relationship between the efforts of the EU to socialize civil society and civil society’s ability to actively and effectively participate in the decision-making process in the area of anti-corruption. Chapter six concludes. In it I discuss alternative
explanations for the variable effects of the EU’s corruption control efforts and suggest questions for further research.
Chapter One - Theory and Methodology

In this chapter, I first present a theoretical framework for understanding the conditions under which the European Union (EU) is most effective in persuading national actors to introduce, implement, and enforce effective anti-corruption reforms. I then discuss the methodological challenges faced by most of the research on corruption and propose a way to overcome them. I also explain the rationale behind the three chosen cases. Finally, I evaluate my theory’s ability to explain variation in managing corruption in the post-communist world and the role of the EU in that management, vis-à-vis existing explanations.

1. Theory

I begin by proposing a theoretical framework for understanding variation in anti-corruption progress in the post-communist world and the role of the EU in assisting with that progress. My theory posits that the EU’s membership conditionality is a necessary but insufficient condition for successfully persuading governments to introduce and implement meaningful reforms in the area of corruption management. In countries where EU actions managed to secure domestic ownership of externally promoted anti-corruption reforms, the EU was successful in increasing its leverage over national governments and in successfully persuading them to manage levels of corruption.
Such securing of domestic ownership required not only conditionality, but also socialization of domestic actors in norms of transparency, accountability, and political participation. In turn, socialization assisted domestic state and non-state actors in understanding and performing their role and in championing EU-promoted policies.

I identify two conditions under which the EU’s attempts at socializing domestic actors in norms of transparency, accountability, and political participation have resulted in domestic ownership of anti-corruption reforms. The first condition occurred when the EU engaged in a political dialogue with state and non-state actors outside of the context of membership conditionality. Over the years, the EU traditionally worked primarily with government institutions. It was slow to involve non-state actors, such as civil society and business organizations (Börzel and Buzogany 2010), partially because the *acquis communautaire* – the legislation and the guiding principles of the EU - lacked a chapter on civil society which to require the EU and domestic actors to include civil society in the decision-making process. In cases where the EU involved domestic non-state actors it used them as a channel to transfer ideas and socialized them into norms of transparency, accountability, and political participation. The second condition was the establishment of a functional relationship between the EU and domestic non-state actors. Where such relationship was present, it allowed the EU to receive unbiased and neutral feedback and, in turn, to adjust its conditions, incentives, and sanctions in order to more effectively persuade governments to engage in institutional reform to control corruption.

10
Taken together, where present, these two conditions contributed to domestic ownership of the reforms promoted by the EU. The presence of the two conditions increased the EU’s leverage over domestic policy makers and consequently the chances for the successful implementation and enforcement of meaningful anti-corruption reforms. In the absence of these two conditions, EU efforts were not only ineffective but in some cases had a negative impact in the longer term. For instance, in some countries, such as Georgia, the EU’s actions led to situations that allowed the government to select only some policies or parts of policies suggested by the EU in order to extract rents (Schuelnus 2009, Noutcheva and Duzgit 2012, Yilmaz 2011, Börzel and van Hullen 2011).

1.1 Domestic Ownership of Externally-Promoted Reforms: A Necessary Condition

Domestic ownership of corruption control is a necessary condition for any reform to be successful, especially reforms that are guided by external actors. Domestic ownership has been analyzed in depth in the literature on foreign assistance to developing countries. Authors offer different definitions, ranging from ownership of resources (Edgren 2003), to ownership of outcomes, to ownership of ideas and strategies (Lopes and Theisohn 2003). The World Bank’s Comprehensive Development Network, for instance, defines ownership by placing a special emphasis on the participation of the top political leadership and representative institutions in the decision-making process (World
Despite differences among scholars, there exists a general agreement that domestic ownership is crucial for the success of reforms.

In the context of post-communist transitions and specifically in relation to anti-corruption policies, I define domestic ownership as ownership of ideas and strategies. This definition is the most appropriate one because it allows for examination of the way in which the EU influences the preferences of domestic actors. As a result of the scholarly debate on capacity building, which moved from implementation in the 1960s and the 1970s, to political will and commitment in the 1980s, we now understand that the ownership of ideas is necessary in order to achieve change.

With respect to anti-corruption reforms in the post-communist world, domestic ownership of ideas is crucial for two reasons. First, its presence presupposes that more actors, who are directly impacted by a particular policy or reform, are involved in its creation, and that the final product is not perceived as externally imposed. Indeed, when domestic ownership was present, actors were more willing to compromise and endure any negative effects of the newly created policies. Second, when a policy enjoys high levels of domestic ownership, it is more likely that people respect it because they are guided by a logic of appropriateness and follow the rules because they perceive these rules as “natural, rightful, expected, and legitimate.”

organizations’ prescriptions then becomes the result of identity-driven conceptions of appropriateness and the desire to fulfill a role acquired by the virtue of belonging to a community, instead of a product of conscious cost-benefit analysis (Scott 1976, Lefort 1988).

Furthermore, in contrast to other definitions of ownership, ownership of ideas presupposes a certain amount of specific knowledge. Simply put, in order to comply with EU-promoted anti-corruption policies, domestic actors need to know why and how ideas of transparency and accountability underpin such policies. Domestic actors also need to believe in the legitimacy and the appropriateness of such ideas.

Knowledge, however, can rarely be simply transferred (Lopes and Theisohn 2003), and the way it is delivered to its recipient matters tremendously for whether it is indeed internalized. Thus, in the post-communist world domestic actors had to acquire, learn, and reinvent knowledge regarding transparency, accountability and anti-corruption mechanisms. After the collapse of the Berlin Wall, former communist countries were acquiring such knowledge from the Western European countries and the EU. How the EU and other international entities presented it determined the ability of domestic actors to internalize it. In countries where new knowledge built on existing local understandings and preserved patterns, it was well internalized and long lasting. In contrast, where knowledge was transferred through a rapid change in the social context and an abrupt break with the past, it was never embedded in domestic social practices and values.

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\ldots \text{encompasses both the deep pool of local understanding that is the very foundation of learning, and the wealth of global information that can be reconceived to meet local needs. When adaptation fails to happen, however, there is no ownership and likely no lasting capacity development.}^6
\]

In the beginning of the 1990s, due to the legacies from the communist regimes, almost all post-communist countries lacked the necessary knowledge needed to establish the domestic ownership of anti-corruption policies. While corruption was well known to the communist regimes and almost all such regimes attempted to fight the phenomenon, these attempts were unsuccessful. The unsuccessful fight against corruption in the final years of the Eastern Bloc left legacies, such as a distrust in state institutions (Aslund 1994). Coupled with weak civil society (Howard 2003) and persisting endemic corruption (Stefes 2006), these legacies hindered post-communist states in their attempts to fight corruption after 1989. Therefore, in the years following the transitions, corruption in post-communist societies had an endemic nature that needed to be considered when new anti-corruption mechanisms were established. In contrast to Western societies, corruption in transitioning countries was not only endemic (it had become the norm rather than the exception) but systemic as well (anti-corruption agencies had become corrupt themselves).\(^7\)

\(^{6}\) Lopes, C., T. Theisohn (2003), Ownership, Leadership, and Transformation: Can We Do Better for Development Capacity? EARTHS

\(^{7}\) For more on systemic corruption see Klitgaard 2004, Stefes 2005, Karklins 2005.
The necessity of domestic ownership of externally-promoted reforms was further increased by the strong cultural predisposition to corruption of post-communist societies. This predisposition to high levels of corruption was due to both cultural and structural legacies left by communist regimes which created opportunities for rent extraction during the transitions, to a various degrees in the different countries. Structural factors, such as centralized decision-making, lack of party competition, and a practically non-existent civil society during the communist regimes, created an environment characterized by bribes, practices of nepotism and clientelism (Schoenman 2014). Cultural factors, or the disposition to act in a corrupt way were also created during the communist regimes. As Rose et al. argued in *Democracy and its alternatives: understanding post-communist societies* (1998), corruption “was normal in communist societies.” According to some authors, a combination of the above mentioned structural factors and “culturally embedded” corrupt practices hampered development (Hutchcroft 1997, 657). For instance, immediately after the collapse of the communist regimes, centralization of power, the presence of a single authority that dictated rules, and a general lack of civil control over the government led to a lack of participation in the decision-making process and no expectation of political accountability.

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The abrupt reforms that were undertaken at the beginning of the 1990s did not establish domestic ownership over corruption control and were not guided by the necessity of knowledge transfer and culture change. As a result, these reforms not only failed to begin a process of managing corruption, but in some cases they increased levels of corruption. The reason for this was that the reforms did not eliminate the structure of opportunities for corruption, but simply altered them and enabled new types of corrupt practices (Heywood 1997, 430). To be clear, culture is not static and it can change. According to Eckstein (1988) cultural change may occur in one of two ways: first, culture changes when there is a necessity to adapt to a new social environment. In this case, change is slow, and it aims at preserving and maintaining existing cultural patterns. Second, culture changes when contextual changes are so rapid that it is impossible to maintain existing patterns. In this case, cultural change takes the form of a discontinuity or abrupt break from the past, and changes are often “formless and incoherent in individuals and fragmented in aggregates.”

The changes in the post-communist world in the late 1980s and early 1990s were indeed rapid, and they proved to be insufficient to promote cultural change that is well entrenched in domestic social practices (Keen 2000). Instead, the collapse of the regimes in the late 1980s and early 1990s, abruptly changed the political and economic order and did not automatically instill norms of participation, accountability, transparency, and respect for the rule of law. The lack of such norms made possible Hellman’s partial reform equilibrium (Hellman 1998, 204) in which some actors

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block the advances in the reform process that eliminate these actors’ opportunities for gains.

The above-mentioned particularities of corruption in the post-communist world demanded a new conceptualization of corruption as well as new mechanisms for managing corruption. Thus, I argue, corruption in the former communist states is more fruitfully analyzed as a symptom of an underlying problem of an undemocratic culture and fighting it requires the creation of domestic ownership over ideas of transparency, accountability and popular participation in the decision-making process. This conceptualization of corruption is consistent with the approach of Persson et al. (2013) and distinguishes corruption from its analogue in Western Europe, where corruption manifests itself as occasional deviations from established norms of transparency and accountability. In a similar manner, other scholars have made the argument that corruption in Eastern Europe is a problem of social organization (Stefes 2006, L. Miller et al. 2001, Karklins 2005, Mungiu-Pippidi 2006, William and Miller 2006). In a study of Romania and Bulgaria, Mungiu – Pippidi (2006) juxtaposed corruption in the Balkans and corruption in the West. She found that in the former case corruption was a form of distribution of goods, whereas in the latter it represented individual cases of breached integrity. Accordingly, corruption in the Balkans is driven by particularism and is defined as “a mode of social organization characterized by the regular distribution of public
goods on a nonuniversalistic basis that mirrors the vicious distribution of power within such societies.”

In a study of corruption in Africa, Persson et al. (2013) determined that where corruption is endemic and where it is a problem of social organization, it is more fruitful to analyze it as a collective action problem rather than as a principle-agent problem. In a situation where corruption is the expected behavior, traditional instruments such as monitoring devices and punishment regimes, would be highly ineffective, simply because actors don’t have an incentive to enforce them (Persson et al. 2013). Instead, authors have suggested that managing corruption in transitioning countries requires the involvement of international actors such as the EU (Médard 2002, Mungiu-Pippidi 2006). More specifically, it requires international actors to distribute knowledge regarding a comprehensive social change, instead of merely dictating behavior through conditionality. In this sense, one of the main roles of the EU was to build domestic ownership for externally-promoted reforms through knowledge and norms diffusion.

Table 1.1 shows the level of corruption and the progress made by all post-communist countries in the period since the beginning of their transitions to democracy and market economy.

### Table 1.1: Perception of corruption per country per year

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**Note:** The WGI is a comprehensive composite index of governance. It is calculated using data from a large number of enterprise, citizen, and expert survey respondents in industrial and developing countries. The index is based on five broad indicators of governance: voice and accountability, political stability, government effectiveness, regulatory quality, and rule of law. The Transparency International Bribe Payers Index (BEEPS) is a nationally representative survey of businesses assessing corruption and other problems faced by businesses in the ECA region. It is sponsored by the European Bank for Reconstruction and Development (EBRD) and the World Bank. The Corruption Perceptions Index (CPI) is a nationally representative survey of business firms assessing corruption and other problems faced by businesses in the ECA region. It is sponsored by the European Bank for Reconstruction and Development (EBRD) and the World Bank. The Corruption Perceptions Index (CPI) is a nationally representative survey of business firms assessing corruption and other problems faced by businesses in the ECA region. It is sponsored by the European Bank for Reconstruction and Development (EBRD) and the World Bank.
1.2 Domestic Ownership Through Socialization

After establishing the necessity of domestic ownership for the success of anti-corruption reforms in the post-communist world, I turn to discussing the role of the EU in the process of creating such ownership. As the literature on norm diffusion advises, the interaction between international actors on the one hand and domestic state and non-state actors on the other inevitably changes domestic preferences and alters the culture of domestic actors. Therefore, the extent and manner in which the EU focused on developing domestic actors in the period before membership conditionality proved to be essential for the future success of anti-corruption reforms. Domestic actors include political elites on which the EU focused, mostly through conditionality. However, they also include civil society actors which in some countries played a major role in applying bottom-up pressure on governments and made anti-corruption reforms sustainable in the absence of EU pressure. Therefore, the extent to which the EU socialized civil society was tremendously important for establishing domestic anti-corruption institutions with a sense of domestic ownership.

I argue that the EU managed to create the necessary domestic ownership, only in countries where it supplemented its conditionality with normative pressure and persuasion to developing of civil society (Manners 2002). In these countries, it diffused norms of participation, shared responsibility, and transparency, and consequently it addressed the underlying cause of corruption. In contrast, where the EU addressed corruption directly through a conditionality approach, it achieved some institutional and
legislative change, but it did not achieve behavioral change. In those cases, the EU treated the symptom rather than the cause of corruption.

Such persuasion and normative pressure took place only where the EU attempted to socialize domestic non-state actors (civil society) in norms of transparency, accountability, and participation in the decision-making process. There are two characteristics of socialization that are fundamental to my theory. First, successful socialization has been discussed in the academic literature as an outcome (Sedelmeier 2006, 2011, Checkel 2005). However, in order to encompass all possible implications of socialization, I propose to treat it as a process. For socialization efforts to imbue externally promoted reforms with domestic ownership, reforms must be the result of the mutual effort of external and domestic actors instead of being imposed by an external actor. Domestic and international organizations alike learn principles and practices from each other by participating in joint activities. Learning, in this sense, is a cognitive process by which actors find solutions and transfer information. Such transfer can occur through both direct and indirect network linkages (Graber 2003). It is important to stress that such learning processes cannot be successful when linkages are unidirectional. Shared meanings are only established when both actors learn from each other and thus consequent reforms are imbued with domestic ownership. In this sense, socialization is a process because it is iterative and knowledge is constantly altered and augmented. Second, In contrast to conditionality-based relationships, bidirectional learning processes require that the EU and domestic actors act as partners. Only where partnership between the EU and domestic non-state actors was present, did the EU received feedback that is
not biased to the agenda of a particular political party but one that furthers the anti-corruption agenda.

Partnership denotes a horizontal relationship among relative equals. The main idea behind partnership is that neither of the participants dictates the terms of the relationship, nor does it diffuse norms unidirectionally. Instead partnership means that actors, in this case the EU and domestic civil society, work on the basis of shared values and joint ownership of policies (European Commission 2004). In this, sense bidirectional learning processes are different from a conditionality-based relationship in that conditionality denotes a hierarchy. It represents a one-way process in which the EU is placed above domestic actors and through which EU values and policies are transferred to the domestic level.

My emphasis on partnership is consistent with a general tendency toward the decentralization of modern governance in various national (Goldsmith and Eggers 2004) and international settings (Fowler 1998), as well as inside the EU itself (Sabel and Zeitlin 2010). The EU itself adopted the principle of partnership as one of its fundamental principles. The logic was that with respect to corruption and anti-corruption, consultation and participation were to secure the fundamental conditions for the rule of law: on the one hand, citizens’ participation would lead to higher transparency, as citizens better understood how their government performed, and, on the other hand, the processes of decision-making were to be the subject of direct public control.
Furthermore, through the participation of domestic non-state actors, the EU received feedback that was unbiased vis-à-vis any political party’s agenda. The EU’s learning about the domestic context as part of the socialization process would not be successful unless the EU adopted principles and ideas from the countries with which it engaged, as much as those countries themselves accepted EU prescriptions.

In sum, my theory posits that socialization leads to successful establishment of EU-promoted policies only when socialization represents an iterative process and when it is based on partnership between the EU and domestic actors. The next paragraphs detail the mechanism by which such socialization is more likely to lead to successful anti-corruption efforts.

1.3 Implications of Successful Socialization

When a relationship was present in which the EU and civil society were partners, and when the EU received feedback that was not biased to the agenda of a particular political party from domestic Civil Society Organizations (CSOs), it was more likely that domestic ownership of reforms was established. There were three reasons for this. First, it was more likely that civil society became capable of monitoring anti-corruption endeavors, but also of cooperating with government in producing effective anti-corruption policies. Second, civil society was better equipped to diffuse norms among citizens. And third, the EU possessed a channel through which it acquired the knowledge necessary for altering conditions, incentives and sanctions, in order to make them more
successful in directly addressing specific domestic problems which underpinned corruption.

1.3.1 Civil Society – State relations

By engaging in a political dialogue with both the state and civil society, the EU was more likely to move state-society relations away from their authoritarian character and toward productive cooperation and anti-corruption reforms that enjoy domestic ownership. This process was possible because in contrast to what Finnemore and Sikkik (1998) called unidirectional teaching of norms, a dialogue in which both actors were equal participants was more conducive to learning. In turn, civil society was capable of learning its domestic role for the functioning of democracy\textsuperscript{12} and was able to internalize its role as both an auditor of the state and as an entity that cooperates with the state by relating popular grievance.

With respect to the nature of corruption and anti-corruption reforms in the post-communist world, civil society’s role in auditing, monitoring, and pressuring the state was essential for the successful management of corruption. In addition to important vertical (electoral) and horizontal (intergovernmental) accountability, in some countries civil society participation contributed by making diagonal (societal) accountability possible. Diagonal accountability refers to the ability of society not only to demand answers but also to hold politicians accountable and to be able to enforce the law.

\textsuperscript{12} For the role of civil society in democracies see Bratton 1989, Diamond 1994, Garrison 2000
(Schedler 1999, Goetz and Jerkins 2001, Bovens 2007). Diagonal accountability then is both similar to and different from vertical accountability: It is similar in that it involves the population as a whole, and it is different because of its lack of regulation by electoral laws. More importantly, diagonal accountability is not restricted to regular elections. Instead, it is constant and thus when present, it has the ability to actively shape anti-corruption measures, their implementation, and enforcement. Certainly, the existence and the effectiveness of diagonal accountability is subject to numerous contextual factors (Grimes 2013, Johnston 2005, Lee 2007, Peruzzotti and Smulovitz 2006), such as capacity, political regime, and economic status, and the ability to create and execute a strategy.

In the post-communist world, to hold institutions accountable, civil society needed to be able to unite in an anti-corruption agenda and to create a unified strategy to apply bottom-up pressure on governments. Where civil society was united, it served to coordinate, collaborate with, and elaborate anti-corruption activities between state and citizens. The potential of civil society to effectively serve as citizens’ representative to the state was well depicted by the words of Marwell and Oliver (1993): “Olson’s ‘large group’ problem is often resolved by a ‘small group’ solution.” In other words, the involvement of civil society contributes to the establishment of domestic ownership by diversifying and expanding the actors that participate in the creation of a policy, who

perceive anti-corruption policies as being in their interest, and who are committed to their implementation.

1.3.2 Civil Society Organizations (CSOs) as a Channel for norm diffusion

To ensure that knowledge regarding the norms that underpin EU-promoted anti-corruption policies is domestically re-invented and internalized, civil society needs to establish a relationship with the EU that is based on mutual trust. Where the EU actively worked to prioritize the anti-corruption agenda in civil society, it also increased its leverage over domestic governments. The EU could in these cases employ civil society as a domestic actor with a shared understanding of anti-corruption endeavors. Where such shared understandings were present (Epstein 2008, Risse 2000), civil society was willing and able to apply bottom-up pressure on policy and lawmakers and to champion EU norms of transparency and accountability among citizens.

The ability to use civil society as a channel for norm diffusion also allowed the EU to minimize the gap between the EU and citizens. The presence of such a gap was detrimental to the success of anti-corruption initiatives because it negatively impacted the establishment of domestic ownership over EU-promoted anti-corruption reforms. In cases where this gap was significant, it left space for incorrect interpretations of actions and messages. On the one hand, citizens’ misinterpretation of the EU’s actions and signals led to unwanted and unintended consequences of EU’s efforts. Chapter three will discuss in detail the way in which misinterpreted signals from the EU led to inappropriate legislation, dysfunctional institutions, and the inability to enforce anti-corruption laws in
two of the case studies (Bulgaria and Georgia). On the other hand, the EU’s misinterpretation of domestic actions also led to counterproductive recommendations and advice, which supported ineffective domestic anti-corruption policies. In this scenario, even if domestic elites were pressured by the power of sanctions and incentives to comply, EU-promoted policies were at best ineffective and at worst outright negative. Therefore, anti-corruption reforms enjoyed domestic ownership only where civil society organizations served as EU’s key vehicles for norm diffusion (Hadenius and Uggla 1996).

1.3.3 The EU’s Flexible Conditionality

Finally, where the EU and domestic non-state actors were partners and where the EU received feedback that was not biased to the agenda of a particular political party or interest group, the ability of the EU to secure domestic ownership of anti-corruption reforms increased. The reason for this was that the EU had the opportunity to learn about domestic preferences and establish contextual knowledge with respect to the environment in which reforms were taking place. The EU had thus had sufficient information to alter its own preferences and to adjust its actions.

Two important implications for securing domestic ownership of anti-corruption reforms stemmed from the ability of civil society to provide the EU with unbiased feedback (Wendt 1994, Joerges et al 2001, Jacoby 2006, Héritier et al 1996, Cowles, et al 2001, Radaelli 2004). First, such feedback allowed the EU to adjust its recommendations, incentives, and sanctions so that they addressed specific problems. At the same time the
EU acquired the knowledge that was necessary to repeatedly make adjustments based on a clearer understanding of what was possible in a particular country. For example, in Bulgaria, the EU was never able to establish the channels necessary to acquire such knowledge and its recommendations were consistently focused on the mere harmonization of domestic law with EU law. This hindered corruption control in Bulgaria. In contrast, in Montenegro, the EU consistently received unbiased feedback, and therefore it was able to establish clear implementation criteria which guided its consequent recommendations contributing to institutional reform.

Second, where the ability of civil society to provide the EU with feedback was high, EU recommendations and the resulting policies became the product of mutual efforts between the EU and domestic actors. Thus, instead of being domestically perceived as imposed, often illogical, and even in someone else’s interest, the EU’s policy suggestions were perceived by domestic actors as their own.

In sum, the theory presented here claims that a pre-existing process of socialization creates an environment which facilitates the EU’s shaping of the prevailing domestic norms and values of post-communist states. When the EU is deeply familiar with, or even participates in the creation of domestic norms it can support the implementation of policies and behaviors rather than just encouraging formal institutions and legislation. In this sense, it is not only the tools that the EU uses in order to persuade domestic actors to behave in a certain way that are important, but also the informal modes of communication and interaction. In addition, the fact that the EU changes its requirements
in an iterative process shows a change in EU’s interests. For instance, the EU granted Bulgaria membership based only on the harmonization of the country’s law with EU law. Later, in Montenegro, by contrast, the EU’s requirements included the implementation and enforcement of the law – not just legal harmonization.

1.4 Propositions

In order to test the theory that under conditions of EU engagement in a political dialogue with domestic civil society the EU is capable of influencing domestic actors to introduce, implement, and enforce effective reforms that lead to better management of corruption, I present one proposition. This proposition is anchored in the argument that successful reform in any area requires domestic ownership, especially in an area like anti-corruption where a fundamental normative shift is required. This proposition is focused on the EU’s engagement with civil society prior to membership conditionality and on the EU’s engagement of multiple stakeholders in political dialogue concerning anti-corruption policies. Variation in these factors determines variation in the institutional and legal framework of anti-corruption policies, as well as variation in the type of corruption that becomes predominant.

I propose that the EU is most effective in persuading domestic elites to introduce, implement, and enforce meaningful anti-corruption reforms when it engages civil society in a process of social learning. I propose that this process is successful under the following conditions:
1. When the EU and domestic civil society establish a relationship based on partnership rather than hierarchy; and

2. When the EU receives unbiased feedback from domestic civil society.

Where these conditions are present the likelihood of the following results increases:

(1) It is more likely that domestic civil society and the EU establish shared understandings.

(2) It is more likely that civil society serves as a channel for diffusing the norms of transparency and accountability domestically.

(3) It is more likely that the EU alters the conditions, incentives, and sanctions that it presents to domestic governments and makes them more compatible with the domestic context.

(4) It is more likely that domestic civil society follows the EU’s principle of partnership and cooperates with the government instead of serving as an informal opposition.

1.5 Theoretical Implications

The first theoretical implication of this study furthers our understanding on socialization and social learning. While many studies are preoccupied with the outcome of socialization in terms of internalization of norms (Checkel 2001), I propose that

\footnote{14 For such studies see Hoogh 2005, Ghieciu 2005}
focusing on the process of socialization is more fruitful. The reason for this is that the social learning process is slow, and results are generally seen only over a long term (Batori 2012). Considering the initial normative discrepancy between the EU and post-communist countries and the countries’ focus on their collapsed economies, it is unreasonable to believe that in the short periods after the transitions began, socialization efforts would lead to actual observable changes (Gheciu 2005). In contrast, when discussing socialization as a process one is provided with the tools to capture the development of norms and values over time and to identify the specific factors that aid or impede the internalization of norms by domestic actors.

Discussing socialization as a process also suggests that both post-communist countries and the EU are constantly being shaped with respect to their preferences and behavior. All of the EU’s relationships with post-communist countries were initially based on conditions, incentives, and sanctions. However the credibility and the size of these incentives and sanction, as well as the nature of conditions varied according to the relationship that the EU had with domestic actors. Therefore, the extent to which the EU involved domestic civil society in continuous political dialogue from the very beginning of the transitions created a different social context in each country. This variation limited the types of incentives and sanctions that the EU could use effectively. A pre-existing process of socialization allowed the EU to leverage strategies such as naming and shaming, because they were effective only under certain conditions. According to one author:
Shaming possibilities will thus vary with the difference in the levels of public opprobrium against the offending behaviour in question, ranging from ‘moral panic’ to there-but-for-the-grace-of-god (e.g. speeding). We need to discover the prevailing norms and values operating around the social problem and how formidably they gather in support of shaming sanctions.15

Second, in order for the process of social learning to be successful, it must take the form of a bidirectional political dialogue and constant interaction between domestic actors and the EU. This interaction is intended to provide an alternative interpretation and “affect[s] a person’s tendency to support or reject the system as a whole, [and] shape[s] his determination to engage in political activity” (Heater 1974). Social learning, therefore, occurs only when the parties in the process communicate ideological positions on the same issue in a continuous, iterative, and interactive manner (Heater 1974, Almond and Verba 1963, Dawson et al. 1977). Clearly, this process can target not only political parties and government officials but also civil society groups. In other words, socialization can occur either top-down (Kavalski 2004) or bottom-up (Warleigh 2001). Without rejecting the importance of elite socialization, I focus on the socialization of civil society and its ability to spread anti-corruption norms and apply pressure to governments from below. The reason for this is that a focus on civil society rather than political elites allows me to better understand how institutional transformation can occur without a corresponding behavioral change. The point here is that the EU often dealt solely with

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domestic political elites, which led to a normative discrepancy between elites and citizens (Kavalski 2004, Ganev 2001, Pridham 2000).

2. Methodology

This research is a most similar systems design comparative study of three countries – Bulgaria, Georgia, and Montenegro. I use a triangulation approach, which combines interviews, analysis of institutions and documents, and a Social Network Analysis (SNA).

2.1 Methodological Challenges

Two sets of challenges face all research that aims to understand corruption and ways to fight it in the post-communist world. These challenges are related to defining corruption on the one hand and to measuring and observing corruption on the other.

The first challenge of studying corruption is that definitions of corruption usually suffer from oversimplification: narrowing the concept down to bribery or simply trading favors for money. However, this understanding excludes many forms of corruption such as nepotism and clientelism. The question of precisely which acts constitute corruption has engaged many scholars (Heidenheimer 1970, Philp 1997, 2002, Johnston 2005b, Holmes 2006) and many definitions have been produced. Over the years, scholars have made progress on the subject, and some consensus over what constitutes corruption has been reached. The operational definition of corruption today postulates that corruption is
“the abuse of public office for private gain”. This definition is made universal by the virtue of its inclusion in the United Nation Convention Against Corruption (UNCAC)\textsuperscript{16}. In the last 10 years the text of the convention has been ratified by all post-communist countries and has become a part of their legal definition of what constitutes an act of corruption\textsuperscript{17}. Despite this theoretical success the definition remains vague and insufficient for understanding the phenomenon in question.

A number of scholars have challenged the possibility and the effectiveness of having a universal definition because of perception discrepancies: understandings of “abuse,” “public,” and “private” are often subject to cultural perceptions and therefore difficult to compare. For instance, analyzing corruption in Uzbekistan, Urinboyve and Svensson (2013) come to the conclusion that what would seem as a clear instance of corruption to a western observer, for the local population is simply a matter of demonstrating social status or an act of genuine support to the other party. I conclude, that while, indeed, the understanding of corruption in general is a subject of cultural predispositions, culture is altered through interaction and so are understanding and definitions.

\textsuperscript{16} The UNCAC was approved by an Ad Hoc Committee and was adopted by the General Assembly with resolution 58/4 of 31 October 2003. In accordance with article 68 (1) of resolution 58/4, the United Nations Convention against Corruption entered into force on 14 December 2005.

\textsuperscript{17} All post-communist countries have ratified UNCAC in the years following the disintegration of the authoritarian regimes there.
The abuse of public power for private gain can be also understood in a legalistic way. In this case corruption would be operationalized through a clear line of what actions the law forbids explicitly and what actions are allowed. While this reading seems to be more rigorous, it again has shortcomings. The most important of them is the narrowing of the concept to bribery and omission of some forms of corruption such as nepotism and clientelism.

To account for problems of conceptual and operational definitions of corruption, scholars have created numerous typologies of corruption. Acknowledging the endemic character of corruption in the former communist countries, Karklins (2002) has created a typology of corruption that is specific to this region. Her typology is based on concrete acts and on the level of the administration on which they occur. Thus, Karklins (2005) suggests three main types of corruption – low level administrative corruption, assets stripping by officials, and state capture\(^{18}\) by corrupt officials who act to advance the interests of a specific group instead of the public interest. While this typology is indeed very descriptive and encompasses all types of corruption in the post-communist countries, it fails to address the extent to which corruption is managed. For instance, in the three countries subject to this study, all corruption types from Karklins’ typology existed to various extents. However, this is not to say that corruption manifested itself in the same way in all three of them: In contrast to Bulgaria, in Montenegro instances of corruption were almost immediately identified and acted upon by different state and non-

\(^{18}\) For more on state capture see Helman et al, 2000. They define state capture as a situation in which firms shape and affect formulation of rules of the game through private payments to public officials and politicians.
state actors. In Georgia, only some public officials but not non-state actors had access to sufficient resources to identify and address instances of corruption. This variation in the actors that had access to the process of anti-corruption policy-making created variation in the way in which corruption was managed. It also altered the way in which corruption affected public life: for instance in Georgia, because of the complete elimination of petty corruption, the topic has lost its salience, while in Bulgaria corruption is inevitably present in the electoral campaigns of each and every political party.

Finally, Stefes (2006) offers a typology of corruption which is based on the nature of corrupt networks. He differentiates between non-systemic and systemic corruption and claims that corruption in the post-communist world is systemic. Systemic corruption, in turn, may be centralized or decentralized. Where corruption is centralized, government officials control the structures of corruption and limit corruption at the lowest levels of the bureaucracy. Where corruption is decentralized, the political leadership does not act as a unified actor and does not have control over the lower levels of bureaucracy. I employ Stefes’ typology because it best describes the differences between Bulgaria and Georgia – two of the case studies where corruption is indeed pervasive.

Conceptual and operational challenges of corruption naturally lead to problems of measuring and observing corruption. Corruption is said to be a victimless crime, or a crime in which both sides are guilty. Indeed most of the former communist countries that criminalized corruption, defined the criminal act as offering, soliciting, and accepting bribes. This characteristic makes corruption not only more puzzling, but also more
challenging to study because it leaves acts of corruption often underreported. In the 1990s and the early 2000s, issues in measuring corruption led many to rely on perceptions. Transparency International’s *Corruption Perception Index* is the index that has been consistently and overwhelmingly used by scholars and policy makers alike. However, it merely reports current perceptions of corruption (and often the perception of foreign instead of domestic actors), instead of actual levels of corruption. Perceptions are problematic because they are easily altered by recent events, including corruption-related scandals, media publications, election campaigns, or changes of political power (Stefes 2011).

In the beginning of the 2000s an increased interest in the causes and effects of corruption resulted in an increased number of indices as well as in their methodological improvement. Currently we can position the existing indices in three general categories: based on surveys, based on experts’ opinion, and mixed. There is no scope for a detailed discussion of these methodologies here, but a word about the effectiveness and usage of these indices is necessary. While they are all useful for comparing perceptions of corruption at a specific moment in time, they can rarely say much in a comparative manner and over time. The problem with over-time comparison is that perception often changes based on media coverage or a recent corruption scandal (Stefes 2011).

Applied to post-communist societies, all these indices have one important characteristic in common: while they all encompass respective levels of corruption, they all fail to address types of corruption. For instance none of the indices specifies what the
predominant form of corruption is. If Rasma Karklins is right about the importance of different types of corruption, then an index differentiating between state capture, low-level administrative corruption, and assets stripping by officials should be more informative for understanding corruption and finding ways to manage it. The three case studies here demonstrate existing problems with corruption indices well: Countries, such as Georgia, where centralization of institutions allows for high level political corruption, has been rated high on Transparency International Corruption Perception Index (CPI), precisely because of the inability of corruption indices to break down corruption levels by type. Similarly, Bulgaria has been performing increasingly better according to CPI, yet high levels of corruption sparked national protests in 2013. It is difficult and often meaningless to claim that one country has made more or less progress than another. A more precise measuring of anti-corruption progress would speak not only to perceived levels of corruption, but would also show different types of corruption.

2.2 Proposed Solutions

To better account for which acts constitute corruption and how one can best measure corruption, I analyze the phenomenon by examining anti-corruption institutions. By focusing on the institutional environment and its propensity to aid or impede corruption, I use anti-corruption institutions as a proxy to levels of corruption. This approach also allows me to shed light not only on the levels of corruption but also on the type of corruption that is most prominent in each country. There are three main points with respect to this approach that need to be explained.
First, while I use the general definition of abuse of power for private gain, I do not narrow it down to financial rent extraction only, as most international institutions do. I operationalize the concept of private gain not only as extraction of financial rent, but also as trading of political influence. I also define power not only in terms of public office but as social capital as well. This means that a person who does not hold public office can manipulate their financial or social influence in order to benefit personally or on behalf of someone else. This benefit does not need to take the form of financial rents. I consider the increase of one’s political and social influence to be a benefit as well. In this sense, conflict of interest becomes a type of corruption. This understanding of corruption allows me to fully analyze not only instances of corruption where public office-holders benefit from their position, but also where private citizens with social capital at their disposal receive private gain.

Second, the illicit character of corruption renders measuring levels and types of corruption difficult, and existing indices become insufficient to clearly identify which types of corruption lack control mechanisms. I propose that the institutional environment that aids or impedes corruption is more informative for understanding the nature of corruption in each country. While corruption remains my dependent variable, I use the institutional environment as a proxy to determine the level and the type of corruption. Bardhan (1997) for instance finds that corruption is almost always a direct consequence of the nature of government interventions. Similarly, Lederman et al. (2005) claim that opportunities for rent extraction and asymmetrical distribution of information, the two prerequisites for rising corruption, depend on the institutional design.
Finally, political accountability has been long established as central for the successful management of corruption (Fackler and Lin 1995, Linz and Stepan 1996, Nas et al. 1986, Bailey and Valenzuela 1997, Persson et al. 1997, Rose-Ackerman 1999, Djankov et al. 2001, Laffont and Meleu 2001). The degree of political accountability, in turn, depends on institutional arrangements and the extent to which they provide for transparency and a system of checks and balances.\(^\text{19}\) The assumption here is that if anti-corruption institutions are not equipped to prevent and adequately react to instances of corruption, then abuse of power will take place. This is especially true for transitioning societies and in particular for post-communist countries where cultural predispositions to corruption (see previous section) make the creation of anti-corruption institutions a process that requires societal normative change. I emphasize the work and the interaction of different institutions engaged in corruption monitoring, punishment of corrupt acts, as well as the creation and distribution of anti-corruption policies. To evaluate the work and effectiveness of anti-corruption institutions, I compare the main anti-corruption bodies in each country.

The study combines the comparative method with process tracing (DellaPorta et al. 2009). I specifically trace the process by which the EU influenced the creation of particular anti-corruption institutions. Three types of data inform my study: First, I establish the current state of anti-corruption institutions with a specific focus on whether

\(^{19}\) For more on checks and balances see McGovern (1997), Persson et al. (1997), Rose-Ackerman (1999), and Laffont and Meleu (2001)
they aid or impede an environment in which corruption thrives. Second, I examine the influence of the EU on the creation of these institutions, through means informed by the logic of conditionality. Third, I analyze the EU’s attempts to socialize domestic actors by using civil society (defined as NGOs) as a means to transfer norms of transparency, accountability and political participation.

2.2.1 Domestic Institutions and Their Functioning

In order to identify variation on the dependent variable – an institutional environment which aids or impedes corruption – I rely heavily on an approach used by the OECD and compare anti-corruption institutions in the three countries based on their specialization, independence, and administrative capacity. I add to this approach the work of civil society in establishing and controlling anti-corruption institutions.

In relationship to the specialization of anti-corruption institutions, the post-communist world provides a spectrum of institutions. On one end of the spectrum are law enforcement institutions. In this model anti-corruption institutions are specialized in detection, investigation, and prosecution bodies. Specialized anti-corruption detection, investigation and prosecution may also be combined in a single body. On the other end of the spectrum are preventive, policy development, and coordinating institutions. In this type of specialization, institutions have predominantly corruption-prevention functions. They are responsible for research, risk assessment, and monitoring. They also coordinate the implementation of anti-corruption strategies and action plans and facilitate international cooperation and cooperation with civil society. None of the post-communist
countries’ models are to be found at the ends of the spectrum. They all opted for mixed models and created country-specific specialization of institutions. To compare them, I examine variation in the models.

The second characteristic of an anti-corruption institutional framework is independence of institutions. Regardless of the model, the independence of anti-corruption institutions is crucial especially for eradicating grand corruption. Prosecution of petty corruption may not always require an institution specifically shielded from undue political influence. However, managing the type of corruption that can destroy the proper functioning of the judicial system or systemic corruption in a country with a good governance deficit, demands special protection of the independence of anti-corruption institutions (OECD).

As part of evaluating the independence of anti-corruption institutions I compare the three case studies’ institutional frameworks in terms of administrative capacity. Funding and trained personnel are necessities for the proper functioning of institutions. Based on interviews and actual budgets, I assess whether anti-corruption bodies in Bulgaria, Georgia, and Montenegro are funded sufficiently to execute their tasks. I also examine whether their administration is trained and the level to which political appointments or mismanagement of the administration impedes the performance of the institution.

Finally, in order to conclude whether anti-corruption institutions create or hinder an environment in which corruption thrives, I evaluate the role of civil society. In this part I
am interested in whether civil society was provided with the opportunity to contribute to the policy-making and policy-implementation process by serving as a channel for transmitting citizens’ grievances to the government. For instance, where clear legal provisions for civil society participation in the work of different institutions were established, or where the law required policy-making institutions to accommodate suggestions and reports from civil society, I conclude that anti-corruption institutions have a high degree of independence.

I interpret high levels of institutional independence, specializations, and civil society access and participation to create an environment for a high level of political accountability. In turn, where an institutional environment for strong political accountability is present, corruption is reduced because it allows for punishing politicians who make inappropriate policies (Faukler and Lin 1995, Linz and Stepan 1996, Nas et al. 1996, Bailey and Valenzuela 1997, Laffont and Meleu 2001).

Semi-structured interviews (George and Bennett 2005) with key officials responsible for the creation, implementation, and oversight of anti-corruption institutions shed light on the actual performance of the institutions, as well as on the motivation for their creation. Interviews with selected employees from government institution were conducted. The guiding principle for interviewee selection was employees’ involvement in all levels of government bureaucracy, either in the relevant institution in the periods of introducing a strategy or passing a law, or in a crucial period for the implementation of the strategy.
2.2.2 The Influence of the EU

In this study, I aim to specify the role of the EU in the introduction of certain laws and institutions and the extent to which the EU can influence proper functioning of these institutions through socialization or material incentives and sanctions. Through document analysis and interviews, I establish the level at which the EU applies pressure and the mechanisms by which it does so. I use interviews to understand the motivation of the EU in choosing the bureaucratic levels and the tools for applying pressure. Interview questions are oriented toward establishing EU representatives’ perception of the domestic actors with whom they interact: do they see the domestic actors as willing to change their behavior for instrumental purposes, or were these actors seen as seeking to understand and implement the EU recommendations even when these recommendations do not benefit them immediately? Furthermore, through interviews I assess the level of trust between EU negotiators and domestic actors, as well as domestic actors’ perception of EU actions. This information is crucial for understanding the extent to which domestic actors and the EU operate based on shared understandings. In all interviews I inquired about the tools that the EU used. The questions that I address in the interviews include asking why in some instances the EU used shaming mechanisms and in others they did not, as well as inquiring about the expected and the actual reaction from the state, and why the state reacted in the way it did.

In order to determine the actual influence of the EU, I also examined the political debate surrounding the creation of anti-corruption strategies. I emphasize the periods both
before and after EU conditionality peaked and focus on whether or not strategies were created in order to satisfy EU requirements. I also examine whether the need to fight corruption was a salient issue at the moment of creation of the relevant institutions, and what influence negative EU reports had on amending relevant legislation. I also search for political dialogue between the EU and government representatives regarding issues of corruption.

2.2.3 The Influence of Civil Society

The main argument of the study is that where the EU engaged in a process of social learning of civil society, its influence on domestic management of corruption is increased. In light of the systemic character of corruption in Eastern Europe, the proper functioning of institutions only shows part of the picture. Corruption is not only a result of dysfunctional institutions but also of cultural norms and predominant value systems. These norms and values are flexible and can be changed through a socialization process (Sedelmeier 2006, Checkel 2005). The attitudes and tendencies exhibited by civil society therefore become a major component of the story. For this, I rely on interviews with NGO representatives, in which they detail their understanding of major problems created by high levels of corruption and their perception of the role and ability of civil society to influence the status quo.

Civil society is a broad concept that is often used to denote all actors in the public sphere that are different from the state. I build on Larry Diamond’s definition of civil society:
“the realm of organized social life that is voluntary, self-generating, (largely) self-supporting, autonomous from the state, and bounded by a legal order or set of shared rules.”

This definition presupposes that civil society is institutionalized, that is, its fate is not contingent upon a single organization; instead civil society represents a network of social organizations. This network, in turn ensures the existence of social capital which Putnam defines as “features of social organization, such as networks, norms and trust, that facilitate coordination and cooperation or mutual benefit.”

This definition of civil society naturally includes business organizations, media outlets, faith-based organizations, churches, NGOs, trade unions and even political parties. However, I use a narrower operational definition of civil society. While the diversity of civil society actors is important for the functioning of democracy, when the discussion is focused on a specific issue, such as the EU’s influence on managing corruption in the post-communist countries, a narrower definition of civil society is better suited for three reasons: First, NGOs are by definition not supposed to be related to political parties, in the sense that they do not directly seek political power. Second, NGOs are non-profit –oriented – they do not attempt to gain profit for their members. Third,

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NGOs strive to achieve public benefit. A narrower definition of civil society is crucial in post-communist societies because as previously discussed corruption there is endemic and part of every citizens’ life.

In order to shed light on whether and how the EU has been socializing civil society actors, I use a triangulation approach. I first perform an analysis of the EU’s efforts to develop civil society and to ensure the ability to use it as a channel for diffusing norms of transparency and good governance domestically. Here, I study the mechanism by which the EU distributes funds to non-governmental organizations (NGOs). While funding is not a mechanism by which socialization takes place, it could be seen as a form of manipulative persuasion, because it often sets the agenda of non-state actors. Thus by discussing the mechanism by which the EU provided funding for civil society, I address the possibility that social learning through agenda-setting took place. Where I find that the majority of funds was distributed directly from the EU to NGOs, I conclude that a direct relationship existed and see this relationship as a sign of dialogue and therefore socialization. In contrast, where the EU funded civil society development projects primarily indirectly – through various governmental institutions – I conclude that the relationship and dialogue between the EU and NGOs was nonexistent and thus socialization did not occur. However, socialization does not take place only through funding. Therefore, I also look at the specificity of various civil society development programs – whether or not they were specifically targeting the role of civil society in managing corruption and whether they are sector specific. Lastly I attempt to determine whether civil society development programs emphasized civil society in the capacity of a
service provider, an advocacy-based organization, or something else. The analysis is supplemented by semi-structured interviews (George and Bennett 2005) with NGO representatives, which establish the NGOs understanding of their function in society.

Finally, in two of the countries (Georgia and Bulgaria), I perform a Social Network Analysis (SNA) (Scott 1987, 2005) at three critical junctures (2003, 2007, and 2013). This analysis is based on three disciplines: from psychology it takes sociometric analysis, from sociology it borrows interpersonal relations, and from anthropology it builds on structures of 'community' relations. Applied to civil society in the post-communist world and its interaction with the EU, this allows me to determine whether political dialogue in which both sides are learning occurs, or whether the relationship is unidirectional – from the EU to domestic civil society only.22 Where I find a high density of relations, I conclude that the EU and domestic civil society organizations are partners, which exchange knowledge, and thus learn from each other. In contrast, determining centralization around the EU is interpreted as conditionality-based relationship, in which the EU diffuses norms but does not receive feedback. I focus on the period of 2001 to 2003. In Bulgaria, this period is important because this is when the EU was most active in sponsoring and working with civil society. In Georgia, this period is very significant because it came right before the Rose Revolution, which resulted in Saakashvili’s government, otherwise known as the “NGO government.”23

22 For more on networking versus conditionality see Cardwell 2011, Kochenov 2011, Korosteleva 2011

23 Author’s interview with Gia Nodia, CIPDD
Unfortunately, data limitations do not allow a SNA analysis to be performed in Montenegro for 2003 and 2007. Therefore, I use it as a supplemental tool for two of the case studies.

2.3 Case Selection

The choice of the case-studies – Bulgaria, Montenegro, and Georgia – is based on the independent variables – EU’s relationship with domestic state and non-state actors. In regards to anti-corruption activities, the three countries exhibited variation in the process of interaction between the EU, domestic civil society, and state institutions in the period before official membership conditionality began and, more specifically, variation in the extent to which the EU attempted to socialize civil society. As discussed above, in some places this process was the one where the EU served as a teacher of norms (Finnemore 1993, see also Sasse 2008, Batory 2012, Lavenex 2008, Tyler 1990, Sedelmeier 2006, Checkel 2005), while in others the EU emphasized material conditionality.

From the new member states, Bulgaria was the country that received the most conditionality: EU froze funds on three occasions, it postponed membership, and introduced the Cooperation and Verification Mechanism after accession. Based on the literature on conditionality, Bulgaria is expected to comply the most with EU anti-corruption norms because its membership depended on compliance. However, in comparison to other EU members, the country remains the most corrupt one. Similarly in
comparison to Montenegro and Georgia, Bulgaria’s progress is the slowest and the most difficult to identify (see table 1.1).

The countries varied with respect to EU’s engagement with civil society as well. From the very beginning of the involvement of the EU in Bulgaria, the EU embarked on an interaction with state officials rather than with civil society. Specifically, in the area of anti-corruption, it did not fully engage non-state actors before 2001. However, strong and credible sanctioning as well as receiving the ultimate reward – EU membership – should have meant, according to some scholars, that the country has at least shown stable progress in the fight against corruption. Yet, Bulgaria remains the EU member with the most consistently high levels of corruption. On the other hand, the EU has not sanctioned Montenegro nearly as much as Bulgaria, but it has been consistently engaging its civil society since before the country received independence. Thus, one might not expect high levels of compliance in Montenegro, and relative to Bulgaria, one should see fewer results in the fight against corruption. Yet, I find higher levels of compliance in Montenegro in comparison to Bulgaria.

Finally, the case of Georgia is no less puzzling: the country had no membership perspective, and thus the EU’s leverage in terms of offering rewards and sanctioning was not as strong as in the other two cases. Georgia was also torn by civil war in the early 1990s. On two occasions the country was involved in an armed conflict with powerful Russia. The conflicts from the early 1990s (Abhazia) and 2008 (South Ossetia) both effectively shrank Georgia’s territory and reduced the priority of fighting corruption. In
terms of engaging civil society, the EU did not do so until the Rose revolution in 2003. After Saakashvili took power and formed what is known as the NGO government, the EU gave him its almost unconditional support.

Based on the strength of conditionality that was applied in each, the EU expected that relative to Bulgaria and Montenegro, Georgia would make rather slow progress in the fight against corruption. Yet, in 2003, high levels of endemic corruption sparked the Rose Revolution and, according to all existing indices from 2005 to 2011, Georgia consistently performed unexpectedly well in managing corruption. In 2010 Transparency International’s Global Corruption Barometer ranked Georgia first in the world with respect to relative reduction in the levels of corruption. Some have claimed that Georgia’s progress is solely a function of domestic factors: Saakashvili introduced harsh reforms from the very beginning in his term in office. However, in 2008, immediately prior to his second term in office, mass protests triggered by the often undemocratic methods that he used shook the country. At this point threatened with a loss of power, Saakashvili resorted to the EU’s positive feedback in order to legitimize his approach to fighting corruption.

The three countries also show variation in the manner in which civil society is involved in the decision-making process with regards to anti-corruption policies. In the period before 2001, there did not exist in Bulgaria an institutionalized way for civil

society to provide active input into the process of decision-making. To be fair, in 2001 Bulgaria’s first National Anti-Corruption Strategy was the result of a document produced by a think-tank, called Coalition 2000 which represented a coalition of NGOs. This raised the hopes of many that civil society would be allowed to actively participate in the fight against corruption. However, these hopes did not materialize until 2009 when a law establishing civic councils was introduced. In Georgia, as a result of the Rose Revolution, civil society was left out of the decision-making process. Though technically involved, its relationship with state institutions resembles an hourglass relationship in which the gap between civil society and state institutions is large and hinders the ability of civil society to influence policy-making (Muskhlelishvili 2009, 2011). In contrast, Montenegrin civil society enjoys participation in most anti-corruption decisions made in the country. Despite the discontent that this arrangement often brings to government officials, civil society participates in all working groups during EU negotiations and also has a representative in each anti-corruption institution.

The final variation, exhibited by the three countries, is in the relationship between civil society and the EU. While in all three countries the EU uses the feedback that civil society provides, this feedback comes in different forms. In Bulgaria this feedback comes from individual experts more often than from organized civil society. Thus while the EU certainly enjoys a relationship with individual representatives of civil society, it hardly has well-established cooperation with Bulgaria’s civil society as a whole. In Georgia, the EU engages with some NGOs but not others. In addition to the problem of this method, creating an artificial divide in the third sector, the EU also received biased feedback.
Finally, in Montenegro civil society enjoys a strong relationship with the EU delegation (though this is sometimes denied by the Commission in Brussels). While political divides have weakened the opposition and one party (in different coalitions) has been in power for the last twenty-three years, the EU sees civil society in Montenegro as a stable and trustworthy partner.

To be clear, the selected countries also exhibit variation on the dependent variable – the institutional configuration that encourages or hinders particular types of corruption. Georgia shows high levels of grand corruption and very low levels of petty corruption. High levels of both petty and grand corruption characterize Bulgaria. Finally, in Montenegro corruption is indeed high but also managed. What is more important, though, is that the three case studies are also similar on the dependent variable. All types of corruption are underpinned by the original state capture which took place in all three countries. Selecting on the independent variable allows me to show why a particular type of interaction of civil society, the EU, and domestic state actors addresses state capture.

In this study I focus on domestic anti-corruption institutions (including the judiciary) which were designed to prevent and investigate corruption and in some cases punish public officials accused of abusing public office. With few exceptions these institutions are not sector specific, instead they operate across economic and social areas. Therefore they exemplify the specific issues that permit corruption. Furthermore, identifying the problems of anti-corruption institutional frameworks allows me to shed light on what types of corruption are predominant in each of the case studies. In
discussing anti-corruption institutions I also show their interaction with domestic and international non-state actors. I can thus draw conclusions about the impact of such interaction in the area of anti-corruption reforms.

Though I don’t focus on specific policy areas, I provide examples from the areas of healthcare and education because they are policy realms that have an immediate impact on citizens’ everyday lives and exhibit high levels of public involvement.

3. Alternative Explanations

The theory presented here builds on the argument that certain types of interaction between international institutions and domestic actors are necessary in order to make externally promoted policies appear appropriate and desirable (Epstein 2008). Where present these interactions alter the domestic context and allow for the country in question to introduce institutions that are capable of managing corruption. I also extend the argument claiming that a process of socialization changes domestic actors. The degree to which such process is present alters not only the preferences of domestic actors, but also the mode of conditionality applied by the EU. In turn, the mode of conditionality affects the EU’s capabilities to control corruption in the post-communist world. In contrast to the majority of literature on democratization, post-communist transition, and Europeanization, the emphasis is not on the role of different actors but on the process of interaction between these actors. In the following pages I identify and position my study vis-a-vis three major debates in existing scholarship.
3.1 Domestic versus International Drivers of Anti-corruption Reforms

This debate positions domestic factors against international ones in the search for the true drivers of democratic transitions and more specifically the creation of meaningful anti-corruption policies. While I borrow from both camps, I also distinguish my study from claims that only international or only domestic factors drive the variation in anti-corruption policies across countries from the post-communist bloc. Those skeptical of the ability of international institutions to alter domestic politics argue that the EU has very limited influence to control corruption in Eastern Europe and claim that the impact of the EU depends more on domestic factors. Specifically, the argument is that the EU’s ability to effectively control corruption depends on the presence of pro-western political parties which the EU can use as a platform to further its agenda (Vachudova 2005). Where these political parties are not present, it is argued, the EU is not capable of producing effective change. Variation in compliance vis-à-vis anti-corruption prescriptions is then explained by domestic elites’ presence or lack of political will. Some have extended this line of thinking not only to political elites but to non-state actors as well (Levin & Satarov 2000, Fritzen 2005, Mungiu-Pippidi 2006). Accordingly, in places where those domestic state and non-state actors who benefit the most from corruption are not willing to take steps toward eradicating the phenomenon, no substantial domestic efforts are made. Thus, according to these findings, the EU is not in a position to fight corruption.

While I agree that domestic actors affect the impact the EU has, I claim that the role of the EU is underestimated and misunderstood: existing literature consistently overlooks how EU actions in the early years of the transitions shaped domestic actors.
The point here is that the influence of the EU in the early stages of post-communist transitions informed the way in which domestic actors were shaped and were shaping the EU policies toward them.

Scholars often focus on the period after the EU officially commenced its conditionality approach in post-communist states. They fail to consider the fact that the EU was involved, albeit in an often informal way, in the transitions that began at the collapse of the Berlin Wall. Vachudova (2005) differentiates between passive and active leverage of the EU. In her view, in some countries the EU indeed applied “passive leverage” in the early 1990s, and it was beneficial. However it was the “active leverage” (conditionality) that served as a decisive factor for the level of success in introducing democratic institutions. While Vachudova (2005) does claim that passive leverage was important in Poland, Hungary, and the Czech Republic, she misses the fact that, during the communist regimes, civil society was significantly stronger in these countries when compared to Bulgaria, Montenegro, and Georgia.

For instance, it is unclear how influential passive leverage would have been in Poland if Solidarity were not a well-established movement even before the collapse of the Berlin Wall (Ost 2005) or if the Prague Spring had not taken place in 1968 (Kieran Williams 1997). Nonetheless, I agree that active leverage is crucial, but my proposition remains different: I argue that the presence or absence and the type of passive leverage determined the chances of success of the active leverage as well as the shape the active leverage took. EU influence, or in Vachudova’s terms “passive leverage,” was different in
different countries: in some, the EU was engaged in socializing political parties and non-state actors in democratic norms (Montenegro), while in others it was concerned primarily with stopping the violence (the collapse of former Yugoslavia and Georgia). Nonetheless, the mere presence of the EU was shaping the domestic political landscape and the type of domestic actors that were present before the beginning of conditionality.

This influence is evident from the fact that virtually every post-communist state declared an ever-deeper relationship with the EU to be one of their major foreign policy goals. Domestic political parties and civil society representatives alike have been using the EU as a point of legitimization since the collapse of communist governments and continue to do so. The influence is also logical because after the end of the Cold War, the EU quickly understood the potentially detrimental effect on its own functioning politically and economically unstable neighbors could have. Thus, in 1990 the EU declared: “Peace and security in Europe depend on the success of [the Eastern European] effort.”25 Despite my strong acknowledgement of the important role of the EU, I disagree with claims that the EU is solely responsible for the success (or lack thereof) of the fight against corruption and that domestic actors are completely malleable. Instead, I argue that the interaction between the EU and domestic state and non-state actors determines how successful anti-corruption efforts are.

3.2 Socialization versus Conditionality

It is evident that both socialization and conditionality occur during post-communist transitions. The question is whether these processes are parallel or if they influence each other and, if they do, how this influence manifests itself. My emphasis on the interaction, rather than simply the actions of different players, challenges literature which argues that only post-communist countries are being transformed in the process. International relations scholars operating from a constructivist perspective rightfully claim that interaction between two actors changes the interests and the behavior of both (Wendt 1999). Thus the processes by which the behavior of both the EU and the individual post-communist countries was shaped cannot be overlooked. The proposed study places a special emphasis on the way interaction that preceded conditionality influenced not only domestic actors but also the EU. Based on this interaction, the EU chose to employ certain incentives and sanctions and not others and chose to emphasize certain conditions, thus altering the level of influence it could exert on the post-communist countries’ fight against corruption.

I argue that both socialization and conditionality affect the influence the EU has in a particular case and perhaps more importantly, that both processes influence each other. On the one hand how EU conditions, incentives, and sanctions are perceived domestically depends on the presence (or the lack thereof) of social learning which creates shared meanings. On the other, the type of incentives, sanctions, and conditions the EU chooses to employ is a function of the domestic reaction to previous EU’s actions. My argument differs from the claim that conditionality has been successful when a parallel process of socialization existed (Kelley 2004) or that determining the type of motivation that is
stronger in each country should be seen as an empirical question (Batori 2012). My assumption here is in line with constructivist thinking and I suggest that two simultaneously occurring processes, whose final goal is the same, influence and alter each other (Epstein 2008). Therefore when a process of social learning is present, it inevitably changes the way incentives and sanctions are perceived and acted upon domestically. It also changes the pool of incentives and sanctions the EU can effectively use and the type of conditions the EU can impose. This argument relies heavily on constructivist assumptions. It insists that in order for a domestic cost-benefit analysis that leads to successful anti-corruption efforts to exist, states need to learn to place higher value on political and economic transparency (Tyler 1990, Sedelmeier 2006, Checkel 2005).

Thus the theory presented here builds on the conjecture that compliance with EU anti-corruption regulation occurs when citizens believe that “the law is just”\textsuperscript{26} or that “the authority enforcing the law has the right to dictate behavior.”\textsuperscript{27} Social trust in the fairness of the law on the part of the citizens would indicate such a process of socialization (Levi 1997, Feldman 2011). Achieving this level of social trust can happen through a process of interaction between domestic actors and EU representatives in which the former learn to choose the right thing to do even when this will bring them fewer material rewards (March and Olsen 1975, 1989, Checkel 2005, Sedelmeier 2006, Levin and Satarov 2000). However, the EU’s extensive reliance on conditionality renders the

\textsuperscript{26} Tyler, T. (1990) \textit{Why People Obey the Law}, Yale University Press, p. 4

\textsuperscript{27} ibid
influence of material incentives and sanctions important. When discussing the various outcomes of the EU’s actions, overlooking this significant aspect of EU’s contribution to combating corruption in the post-communist world would provide us with a partial account. Thus I consider the effects of conditionality, but more importantly I consider the mode of conditionality.

Accordingly, my argument is in direct opposition to scholars who claim that no matter what political actors are present domestically, the economic and political incentives offered by the EU will alter the domestic cost-benefit analysis leading to compliance and that "a state adopts EU rules if the benefits of EU rewards exceed the domestic adoption costs."\(^{28}\) Thus these scholars make the adoption of rules contingent upon the determinacy of conditions, the size and speed of rewards, the credibility of threats and promises, and the size of adoption costs, but not on the type of domestic actors and their level of socialization in EU norms. As explained above, the failure of rationalist thinking has been exemplified not only by the failure of EU members to comply (Bulgaria and Romania), but also by the fact that more compliance and more aggressive lowering of levels of corruption are observed in countries where membership is not a possibility (Georgia, Montenegro).

3.3 Civil Society

In its attempt to promote democratic norms in the post-communist world, the EU has traditionally worked with national governments and has left civil society cooperation behind. In turn this situation has left the scholarly debate on relations between civil society and the EU lagging behind as well. It is only recently that scholars have truly engaged in analyzing the results of the interaction between the EU and domestic non-state actors. Some authors have argued that while the EU declares its commitment to domestic multi-level governance, as accession approaches its position usually shifts to ensuring that the funds are absorbed on time, even in cases where this requires central management through national ministries (Leonardi 2005). For instance, a study by Bailey and De Propris (2002) demonstrates this in five CEE countries and identifies national government to be ‘gatekeepers’ that are ‘firmly in control’ of subnational actors. A similar point was made by Hooghe (1996). In this case civil society was still able to participate but its chances of influencing the policy-making process were severely decreased.

In contrast, a range of studies claims that domestic civil society often uses the EU in order to legitimize itself locally and to further its agenda. In research examining how social practices determine the logic of European integration, Woll and Jacquot (2010) show how NGOs use the EU in cognitive, strategic and legitimizing ways in order to strengthen their positions in the policy-making process.\(^2^9\)

\(^{29}\) For EU usage see also Greenwood and Ronit (1994) and Reising (1998)
In my view, all scenarios are plausible. However, I examine the interaction of the EU with civil society as a process instead of an outcome. I claim that which scenario will materialize depends on an early interaction between state, civil society and the EU. This interaction is constantly evolving and though it may start as an instrument usage of resources, with time it equally alters political actors and the environment they operate in: In some cases, norms of transparency, accountability, and participation in the decision-making process are being instilled in the society and levels of corruption are decreasing. In others, long lasting legacies from the previous regimes, such as the centralization of power, remain. Coupled with quick structural changes demanded by the EU, these legacies often lead to increasing levels of corruption. Therefore, whether the EU’s social, cultural and political ideas will be transmitted not only by formal institutions but increasingly by civil society groups through processes of decentralized political socialization (O’Dowd and Dimitrova 2011), or whether civil society’s participation will be strictly regulated by governments, depends on the relationship civil society has with the EU. I build here on what Romain Pasquier et al. (2002, 2004, 2007) have called a bottom-up perspective on European studies. This approach emphasizes local actors and the ways in which they use and interpret European rules and opportunities. Many in this tradition have concentrated on collective action and the constitution of transnational networks between domestic and European NGOs (Chabanet 2001, Guiraudon 2001, Weisbein 2001, 2003, Balme et al. 2002) or citizenship and the identification of citizens with European ideals (Duchesne and Frognier 2002, Strudel 2002, Sauger et al. 2007). In contrast, I focus on the interaction between EU institutions, such as the Commission, and domestic non-state actors. The main concern is to understand how civil society actors
interpret the EU as a political actor and how the EU affects their activities and their self-perception of their role.
Chapter Two – Different Types and Levels of Corruption

In this chapter, I examine the variation in levels and types of corruption among Eastern European countries. I show that types and levels of corruption in the post-communist world contradicted the EU’s assumption that strong conditionality would produce compliance with EU suggested anti-corruption policies and consequently would lower levels of corruption. The three cases analyzed in this study evidence the failure of conditionality. My claim is that because of the clandestine nature of corruption, indices data on corruption is not reliable. Instead, it is more fruitful to analyze the institutional environment and the extent to which it is conducive to corruption. Before I do this though, I take some time to depict the progress of anti-corruption efforts in the three countries.

Bulgaria enjoyed the most conditionality and the most attention from the EU and it should be expected that the country complies the most with EU suggested reforms and is effective and efficient in managing corruption. Yet Bulgaria shows little progress over time, especially before and after EU’s involvement.

In Bulgaria in the period between 1993 and 2013 both administrative (petty) and political (grand) corruption was high. Petty corruption affected the everyday lives of
citizens, especially in areas that saw significant levels of interaction between citizens and administrative providers. One such area was healthcare, where sociological surveys showed that corruption had been consistently increasing. For instance, a study by Vitosha Research found that between 2002 and 2008 the percentage of respondents that identified corruption in the healthcare sector as being the most widespread relative to other economic sectors. Corruption in healthcare increased from 20.6% in 2002 to 39.6% in 2008.\(^{30}\)

The most corrupt practices in healthcare involved payments beyond official fees or receiving services that are otherwise provided by healthcare plans, such as referrals to a specialist, obtaining referral for tests by a specialty doctor, having a surgery performed, and birth delivery assisted by a physician. In addition, the required payments were large relative to the living standards of patients. According to a 2006 report by Transparency International\(^ {31}\), unofficial payments ranged between $50 and $1100. The same report showed that these numbers saw a tremendous increase from 9% of an average yearly salary in 1991 to 21% in 1997\(^ {32}\). These numbers continued to grow over the next ten years. By 2006, the average amount requested for a surgery was about 80% of an average salary. Therefore, much needed care was directed not toward those with need, but rather toward those with the means of paying.

\(^{30}\) Data from Vitosha Research. Available at: http://www.vitosha-research.com/index.php?id=677

\(^{31}\) Corruption in health: Global corruption report 2006 www.transparency.org

\(^{32}\) ibid
Extraction of funds by physicians took place through the prescription of unnecessary procedures and treatments. In this case, physicians extracted funds not directly from the patient, but indirectly through the National Health Insurance Fund (NHIF), a government agency funded through the national budget. According to the Fund, the period 2010-2013 saw a trend in which doctors submitted reports and received reimbursement for treatments that never took place. The problem in these cases was the lack of a system that was accessible to both patients and the NHIF, which could show discrepancies in the received treatment and charges made to the NHIF. Corrupt practices in the healthcare sector that fall under petty corruption were also observed in the trade of medicines. One such practice was when distributors give commissions (i.e. bribes) to physicians in order to have them prescribe their medicines.

Such practices made the system increasingly less effective. Most importantly, since healthcare was an area where people are more willing to give bribes, such practices led to the gradual impoverishment of the population. Finally, bribes created a lack of trust in the healthcare system, and the last years saw an increasing search for foreign healthcare services by citizens that had the means to pay for them.

Grand corruption in the country also remained high, and the state was traditionally captured by networks that spread across business and politics (Konstadinova 2012). Such circles of firms surrounding the political elite of the country and using the process of

33 Author’s interview with the Head of the NHIF, Bulgaria
policy-making and state agencies for narrow corporate ends dated as far back as the late 1980s when Zhivkov (the then President and the General Secretary of the Communist Party) introduced changes in the banking sector. The first example of such a group was Multigroup. The organization was believed to be guided by Andrei Lukanov (a Prime Minister of Bulgaria in the period between 1990-1991) and Ognian Doinov (a former member of the Politbureau of the Communist Party) (Barnes 2007). According to some investigators, immediately prior to the collapse of the regime, Lukanov and Doinov were both very active in introducing a degree of liberalization, which would allow the channeling of profits into the hands of party leadership. Consequently, they used Multigroup in order to transfer money out of the country and to later invest them as private capital (Roth 2008, p. 251). As a result, Multigroup became extremely powerful in the period when Lukanov was a Prime Minister, and, according to Ganev (2007), the holding managed to take advantage of various sources of enrichment in the public sector, such as their entry into the market of natural gas. This engagement drove Bulgarian gas prices higher than anywhere else in Europe, and was extremely profitable for Multigroup (Ganev 2007, Kostadinova 2012).

This trend of business groups and political elites being intertwined continued until the time of this research between 2013-2014. After the collapse of Zhan Videnov’s government in 1997 and the victory of the United Democratic Forces (UDF) in the following elections, Multigroup lost their political protections and a group surrounding the new party in power took hold. Olymp was created as a result of a meeting of businesses supporting UDF and leaders of the party, which took place in 1996 (Zlatkov
One of the companies associated with Olymp was Balkanstroi Engineering, who won one of the most profitable public contracts for reconstruction of Sofia Airport, despite well documented conflict of interest described by Peev (2000) and Zlatkov (2008). Slavcho Hristov, one of the leaders of Olymp, was also involved in the crash of the banking sector in Bulgaria in 1997 through the payment of 80 million levs to the creditors of Commercial Bank (Kostadinova 2012, Ganev 2006).

The UDF loss in the 2001 election led to the formation of yet another powerful economic formation, this time associated with the new party in power – the National Movement Simeon Saxkoburggotski. The new group was registered as a non-profit organization and included prominent bankers, a chairman of a strong insurance company, the founder of the largest Press Group in Bulgaria, as well as Ilya Pavlov, the former President of Multigroup (Kostadinova 2012). Through Dimitar Kalchev, then a minister of the state administration and a member of Multigroup, the non-profit organization managed to create the Council for Economic Growth, which became a consultative body to the Prime Minister of Economic Affairs (Peeva 2002).

In a very similar manner, both of GERB’s governments (2009 and 2013) were linked to the media mogul and former director of the lottery Irena Krusteva and her son Delian Peevski. In fact, the longest mass protest in Bulgaria after the country’s post-communist transition began, was as a result of Delian Peevski assuming the position of a head of the National Security Agency in June 2013. In sum, despite strong EU conditionality, both petty and grand corruption remained high in Bulgaria.
In contrast to Bulgaria, Georgia did not have a membership perspective and therefore the country should have not be expected to comply with EU suggested anti-corruption policies. Yet, after the Rose Revolution in 2004, Georgia has performed tremendously well on lowering petty corruption.

Corruption in Georgia underwent a significant transformation in the period since the country’s post-communist transition. This transformation of corruption was often mistaken for progress and was often praised by politicians, scholars, and policy-makers alike. Instead, corruption in Georgia transformed from endemic to grand.

During the Shevarnadze’s regime, corruption was present at every level of the administration, as well as in the policy-making institutions. While party pluralism and somewhat free media were present in Georgia, the interests of Shevardnadze’s clans were met by ratified laws in their favor, nontransparent political institutions, the absence of the rule of law, manipulated courts, and the imposition of state control (Christophe 2004). The proclaimed attempts of Shevarnadze to move the country from autocracy to democracy were superficial and worked in favor of the political elite and business groups that were associated with the elite. The executive and judicial branches of power were interdependent with politics and conducive to bribery (Stefes 2006). Informal institutions, or clans, remained a source of illegal income for politicians, while benefiting from a *krisha* (roof or patron) provided by these same politicians. Therefore, by influencing policy-making, certain individuals and business groups captured the state and acquired
astonishing wealth, while the state budget suffered from a constantly increasing deficit (Theisen 2000).

Corruption was also present in public services, most of which were captured by crony networks with poor provision (Antadze et al. 2005). While corruption in education and healthcare surpassed its soviet manifestations (Rostiashvili 2004), the truly unbearable corruption was in the police forces and more specifically in the traffic police. In an interview with the National Public Radio (NPR) in 2005, Saakashvili summarized the manner in which traffic police in Georgia operated as follows:

Basically, we had one of the most corrupt police forces. And the way it functioned was very simple. Government told the policemen, ‘You are supposed to be out there, keep order. You need to have some kind of cars, but we are not going to buy for you any cars. We are not going to put in any gasoline in that car, so you have to get money for it yourselves. You need to wear some kind of uniforms. We don’t care where you get them from. And you also should sustain yourself, I mean, of course, because we are not even going to pay you because the payment was pretty symbolic. And not only do you have to take bribes from the people but you also have to share part of your corrupt income with your superiors - I mean, with the government that appointed you. 

After the Rose Revolution, as Stefes (2006) predicted, Saakashvili could go two ways: He could indeed work to make institutions transparent and accountable, or he could transform corruption from systemic and decentralized, to systemic and centralized. Saakashvili chose the latter. Immediately after assuming the office of the President,

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Saakashvili signaled his approach to corruption clearly: centralization of power in the hands of the President was secured through the Constitutional amendments from 2004. These amendments provided the President with authority in making legislative initiatives, dismissing Parliament, and appointing and dismissing PM and government members, thus giving him practically unbounded power.

Such power was to be secured with a police reform, which made the police practically dependent on the President. The police reform indeed strengthened the police force in Georgia and reduced petty corruption, but it also made the police dependent on the President and allowed him to misuse police forces in order to protect his own power. Aleko Kupatadze documented numerous abuses against government critics and opposition politicians, which included the use of intimidation, improper surveillance and arrests. This type of enforcing anti-corruptions measures was not democratic and reforms were introduced solely for the purpose of increasing the incumbent’s power and to counteract his opposition.

The protection of government officials by the police was clearly shown in many cases. One of these cases was the murder of Girgvliani. In 2006, top banker Sandro Girgvliani was found dead near Tbilisi. Four low level officers of the Department of Constitutional Security in the MoI were arrested, convicted, and sentenced to prison. However, the officers’ claim was that they were acting under the directions of high level political officials in MoI. Despite the general public’s discontent with the court decision, no investigation was conducted in order to determine the validity of such accusations.
Furthermore, police forces and police violence was used during the opposition demonstration in November 2007. This signaled that the police and MoI protect the governing party rather than citizens and that the police was used to pressure the opposition (Kubny 2009, Whitmore 2009).

Finally, some scholars have suggested that countries comply the most with EU-promoted policies immediately prior to their accession to the EU. Indeed, this hypothesis could explain the high levels of compliance in Montenegro when the country began membership negotiations in 2012. However, Montenegro was making a slow but steady progress in the area of anti-corruption since the beginning of its transition immediately after the Yugoslav Wars in the 1990s.

Just as with Bulgaria and Georgia, Montenegro began its post-communist transition with corruption that was equally present on administrative and political levels. Corruption became exceptionally problematic in the area of border control. In the context of the Yugoslav embargo in the early 1990s, Montenegro turned into the premier source of cigarette smuggling in the region. Traffickers capitalized on an ineffective justice system, public sector corruption, and the lack of specialized equipment and training.

Tobacco trafficking was not specific to citizens from border regions only, but involved high level officials, including Prime Minister Djukanovic. In fact, Italian prosecutors placed the prime minister at the center of a conspiracy by Montenegrin
officials and the Italian Mafia that allegedly smuggled huge quantities of cigarettes for about 10 years, starting in the 1990s.

Djukanovic and his circle of friends and family benefited from the privatization of coastal properties as well. As late as July 2008, Parliament, controlled by Djukanović’s party, passed a law declaring five-star hotels to be in the national interest of Montenegro. The law allowed private companies to confiscate surrounding land using eminent domain. The new law also loosened the rules for larger developments which could force small landowners to give up land to neighbors with larger lots and houses.

The increased cooperation between the EU and domestic NGOs that intensified after 2000 began a gradual reversal of the situation. This is not to say that Montenegro completely eliminated corruption, but arrests of public officials after 2008 showed steady progress. The Zavallia case was originally brought to the anti-corruption officials’ attention by a group of NGOs in 2007. The case was related to the illegal construction of tourist complexes, and NGOs’ investigation revealed a complex network of related persons and companies that comprised a construction cartel with the ability to eliminate competition, and to pressure institutions into ignoring violations of the law. In 2013, Podgorica’s High Court jailed eleven indictees, including Rajko Kuljaca, former mayor of the coastal resort, and Dragan Marovic, his deputy. These individuals were found guilty of abuse of office for the benefit of a private company, Zavala Invest, and for the abuse of the municipal budget, of more than 800,000 euros.
Later in 2013, the Montenegrin state prosecutor charged ex-mayor Lazar Radjenovic and several other officials from the resort town of Budva with abuse of office. They were accused of committing fraud during the construction of installations for the purification of wastewater, in a deal between the municipality of Budva and the Montenegrin branch of the German-based company WTE Wassertechnik GmbH.

Finally, in 2015 another arrest was made in relation to the case in Budva. This time the arrested was none other than the chairman of the political council of the ruling Democratic Party of Socialists (DPS) – Svetozar Marovic. This was the highest ranking Montenegrin official to be arrested in connection to corruption claims. According to the special prosecutor for organized crime, Milivoje Katnic, Marovic identified key participants of the organized crime group in Budva and the prosecution had enough evidence necessary to expand their investigation.

Such arrests of public officials in Montenegro revealed the progress that the country was making in the fight against corruption. This progress was in contrast to Georgia, where arrest of the representatives of the opposition served as a political strategy for Saakashvili. It was also in contrast to Bulgaria, where Prime Minister Borisov’s alleged attempts at curbing corruption amounted to the dismissal of office of three magistrates, and disciplinary sanctions for fifteen others (European Commission 2010a, 5). The only significant sentencing was received by a businessman (Mario Nikolov) and was driven by Borisov’s political ambitions. Nikolov had previously supported Prime Minister Sergey Stanishev (a fierce rival of then Sofia’s mayor Borisov)
by contributing more than 200,000 leva to Stanishev's Socialist Party. After Borisov’s victory in the 2009 election, Nikolov was charged of fraud and embezzling 7.5m of EU funding and sentenced in May 2010 to 12 years in prison.

As it was mentioned above, existing corruption indices, indeed, confirm variations in type and levels of corruption and serve as a starting point for this research. However, I am skeptical about their applicability to understanding corruption in the post-communist world. My main skepticism of corruption indices is that the data provided by them is misused by academics. Academic research and various reports of international organizations build on corruption indices data and suggest ways to improve and augment the corruption and anti-corruption knowledge pool. However, indices merely supply information regarding perception of corruption, which proves insufficient for a complete understanding of the phenomenon. For instance, corruption indices are not a sufficient basis for understanding variation across countries in the types of corruption nor do they provide the information necessary to establish which type of corruption is prevalent in each country (see chapter one). In order to account for this insufficiency, I examine corruption in the three case studies by analyzing the institutional environment and the extent to which it aids or impedes corruption.

By 2013, all countries in the former Eastern Bloc had revised their institutional structure to be in line with the democratic principles of transparency, accountability, and the rule of law, yet in some countries corruption levels remained high. The desire for an ever-closer relationship with the West and a radical separation from practices typical for
the communist regime led post-communist countries to drastically change their institutional and legal systems. The rule of law and anti-corruption reforms remained a high priority from the beginning of the transitions. By 2006, post-communist states had ratified almost all major international anti-corruption documents and had become members of various international and regional anti-corruption initiatives (see table 2.1). In addition, participation in international conventions and domestic pressure persuaded national policy makers to introduce new institutional mechanisms for securing the rule of law.

By the time of this research, there existed a spectrum of institutional frameworks designed to combat corruption in the post-communist world. On one end of the spectrum were the Lithuanian\(^{35}\) and Latvian\(^{36}\) model of law enforcement institutions. They combined prosecutorial, investigative, preventive and educational functions. Modeled after Hong Kong’s and New South Wales’ anti-corruption bodies, these institutions were fairly independent from the government and had significant power to address levels of corruption (Smilov 2010). At the other end of the spectrum were preventive and coordinative powers. These institutions had less power in terms of investigating and penalizing corruption (Albania, Macedonia, Bulgaria, Bosnia). No countries (with the exception of the

\(^{35}\) Lithuanian Special Investigative Service (STT)

\(^{36}\) Corruption Prevention and Combating Bureau (KNAB)
### Table 2.1 Ratification of International Conventions by year by country

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<tbody>
<tr>
<td>Georgia</td>
<td>4-Nov-2008</td>
<td></td>
<td>5-Sen-2006</td>
<td>1-Mav-2008</td>
<td>22-Mav-2003</td>
</tr>
<tr>
<td>Armenia</td>
<td>8-Mar-2007</td>
<td></td>
<td>1-Jul-2003</td>
<td>9-Jan-2006</td>
<td>7-Jan-2005</td>
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<tr>
<td>Kazakhstan</td>
<td>18-Jun-2008</td>
<td></td>
<td>31-Jul-2008</td>
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<tr>
<td>Kuvratistan</td>
<td>16-Sep-2005</td>
<td></td>
<td>2-Oct-2003</td>
<td></td>
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<tr>
<td>Taiikistan</td>
<td>25-Sep-2006</td>
<td></td>
<td></td>
<td>8-Jul-2002</td>
<td></td>
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<tr>
<td>Turkmenistan</td>
<td>28-Mar-2005</td>
<td></td>
<td></td>
<td>28-Mar-2005</td>
<td></td>
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<tr>
<td>Uzbekistan</td>
<td>29-Jul-2008</td>
<td></td>
<td></td>
<td>12-Sep-2003</td>
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Source: OECD International Convention against Corruption
Baltic states) were to be found at the extremes of the spectrum. For the most part, countries borrowed from both models and created their own institutional structure. However, the vast majority of post-communist states opted out of law enforcement institutions. This was partially due to the fear of placing too much power in one agency, and thus returning to the highly centralized power structures that were typical of their communist past. It was also due to the political nature of corruption. As Smilov (2010) argued, preventive and coordinative models allowed governments to use the mobilizing force of the discourse on corruption without great risks of finding themselves at the receiving end of investigations and trials.

Despite cross-country variation in anti-corruption institutional frameworks, all institutions have two prerequisites in order to function as intended: first, the models required political independence of anti-corruption institutions to be secured (Tisne and Smilov 2004) and second a clearly defined and stable relationship between institutions was necessary. Therefore, in order to evaluate the potential for corruption to thrive in Bulgaria, Montenegro and Georgia, I compare the legal framework that regulates anti-corruption institutions in the three countries.
Table 2.2: Anti-corruption institutions by country

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<thead>
<tr>
<th>Bulgaria</th>
<th>Georgia</th>
<th>Montenegro</th>
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<tbody>
<tr>
<td>BORKOR</td>
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<td>DACI</td>
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<tr>
<td>CPACI</td>
<td></td>
<td>CPCI</td>
</tr>
<tr>
<td>SANS</td>
<td>Investigative Division of the Prosecution Service of Georgia</td>
<td>Police Directorate (special section for combating Corruption, organized crime and terrorism)</td>
</tr>
<tr>
<td>Parliamentary committee</td>
<td></td>
<td>Anti-Corruption Committee</td>
</tr>
<tr>
<td>CPCC (Ministry Inspectorate)</td>
<td>Anti-Corruption Interagency Council – policy making</td>
<td></td>
</tr>
<tr>
<td>National Audit Office</td>
<td>State Audit Office of Georgia</td>
<td>State Audit institution</td>
</tr>
<tr>
<td>Prosecutor General</td>
<td>Department for the Procedural Supervision of Investigations (Office of the Chief Prosecutor)</td>
<td>Prosecution - Special Department for suppression of organized crime, corruption, terrorism and war crime</td>
</tr>
</tbody>
</table>

A comparative analysis of anti-corruption institutions allows me to gain an understanding of the overall ability of anti-corruption policies to create an environment that is not conducive to corruption. The approach does not directly speak to levels of corruption, since the nature of the phenomenon makes direct measurement unreliable. Instead, I draw conclusions about the independence, specialization, and the potential for cooperation within each anti-corruption model, and focus on gaps within the institutional contexts of each country. This approach allows me to not only discuss levels of corruption, but also types of corruption. In this chapter, I show that cross-country variation in the institutional gaps created variation in how corruption was managed, and thus variation in the manner in which corruption manifested. For instance, where
mechanisms for cooperation between institutions were vaguely defined and responsibilities were unclear and often overlapping, corruption could thrive on all societal and bureaucratic levels. Where there was a clear hierarchy of institutions and a well-defined system of checks and balances, I concluded that the anti-corruption system was prepared to cope with instances of corruption.

In addition to legal provisions for horizontal cooperation between state institutions and political independence, the functioning of anti-corruption models in the post-communist world also required accountable institutions. Accountability can be horizontal, vertical (Diamond and Morlino 2005), or societal (Grimes 2012). In societies where democracy was weak and corruption was endemic, societal accountability was essential because it had the potential to prevent a gap between citizens and political elites. In order to assess whether societal accountability was present, I examine the opportunities that civil society organizations (CSOs) had for participation in the decision-making process and whether and how CSOs used these opportunities.

CSO participation is a key factor in the extent to which anti-corruption institutions aid or impede corruption. In all three cases examined in this study, CSOs were included in the institutional design of various anti-corruption institutions. Theoretically, the inclusion of CSOs was motivated by the necessity of domestic actors to relate citizens’ grievances to the state and by the ability of CSOs to monitor the work of anti-corruption institutions. Though civil society organizations alone could not affect corruption, they were an essential element of successful reforms. Indeed, in this chapter, I show that the
effects that CSOs had varied by country. In some countries, such as Montenegro, CSOs managed to establish the high level of domestic ownership necessary to increase political accountability and to strengthen institutional restraints (see chapter one).

1. **Bulgaria**

1.1 **Overlapping Responsibilities of Anti-corruption Institutions**

In the period between 1993-2013, the system of anti-corruption institutions in Bulgaria was characterized by unclear and often overlapping responsibility of anti-corruption bodies. For instance, the State Agency for National Security (SANS) was one of the main anti-corruption institutions in Bulgaria and its responsibility overlapped with the responsibilities of the Ministry of Interior Affairs. SANS was tasked with, among other things, the investigation and monitoring of high-level political corruption. Its establishment in 2008 moved the anti-corruption model in Bulgaria away from preventive and coordinative institutions, toward law enforcement institutions (Smilov 2010), thus more closely resembling the models of Lithuania and Latvia.

Shortly after its creation, Bulgaria’s Parliament introduced changes in order to secure the independence of SANS. Until 2009, the head of SANS was elected by Parliament upon a suggestion by the Council of Ministers. To secure the independence

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37 Закон за Държавна Агенция "Национална Сигурност" член 4, точка 4 (Law on the State Agency for National Security, article 4 (4) Author’s Translation

38 An amendment in the law from March 2015 shifted power over the head of SANS appointment to the President.
of SANS, the law prescribed that SANS was responsible to both the executive and the legislator: it was sending reports simultaneously to the Prime Minister, the President, and Parliament. The activities of SANS were then discussed in a Parliamentary Committee created specifically for exercising control over SANS.

The initial excitement from the creation of SANS was shortly after clouded by its reduced focus on corruption and frequent shifting of responsibilities. In 2009, only a year after its creation, SANS underwent structural reforms, which included a reorganization of the Agency's priorities. The reform limited the work of the agency to national security, and to respond to threats to critical infrastructure. In terms of anti-corruption and combating organized crime, one of the main original priorities, was transferred back to the Ministry of Interior and a new unit (Chief Directorate Combating Organized Crime) was established. This Directorate was again moved to SANS in 2013,\(^ {39} \) which effectively restored SANS’ powers to conduct investigations. Therefore, for the majority of the time the agency existed, its responsibilities were unclear and there was an overlap of responsibilities with the Ministry of Interior. As a result, a number of high profile investigations were delayed. Due to this confusion, instead of fighting corruption in the

\(^ {39} \) Предходни и заключители разпоредби в Закона за ДАНС § 13 (1) Служебните правоотношения на държавните служители от Главна дирекция "Борба с организираната престъпност" в Министерството на вътрешните работи преминават в служебни правоотношения с Държавна агенция "Национална сигурност", когато отговарят на изискванията за работа в нея. Transitional and final provisions of the Law on the SANS Article 13 (1): The responsibilities of the state employees in the Directorate “Fight against organized crime” in the Ministry of Interior Affairs shall be moved to the responsibilities of the state employees of SANS when they are compliant with the requirements for the work of the agency (Author’s translation)
high echelons of power, SANS has sustained an institutional environment in which corruption thrives. The shifting of responsibilities, coupled with a widely publicized scandal that surrounded the appointment of a controversial MP for head of SANS in 2013, confirmed initial fears that the changes have been carried out to appease specific political interests and in turn its perceived legitimacy suffered.

A similar fate met the Commission for Prevention and Ascertainment of Conflict of Interest (CPACI). CPACI’s goal was to identify instances of conflict of interests and to prevent it. In the case of CPACI, the challenges were bureaucratic in nature. The legal framework regulating CPACI’s operations required the consensus of four distinct courts in order to close a single case. In an environment where courts were highly corrupt, this rendered the agency dysfunctional and left many instances unaddressed.40

Just as with SANS, CPACI was also the subject of political scandal. According to the Law on Conflict of Interest, CPACI consisted of five members: three (among which is the head of the Commission) elected by Parliament, one appointed by the President, and one appointed by the Council of Ministers.41 Only six months after the establishment of CPACI, its head - Philip Zlatanov - was accused of a conflict of interest when his notebook was made public and revealed his manipulation of documents for purposes of political racketeering and the discrediting of public figures. In April 2014, Zlatanov was

40 As of July 2014, CPACI had closed only two cases and had another twenty in progress
41 Закон за Предотвратяване и Установяване на Конфликта на Интереси Law on Prevention and Ascertainment of the Conflict of Interest article 22(a), 2

83
effectively sentenced on two counts - one of which was the cover-up of a complaint against the current president Pnevneliev. Zlatanov was removed from his position immediately after his notebook became public. Shortly after, another member of CPACI was removed and given the office of a deputy minister of Justice in the controversial government of Plamen Oresharski. This left CPACI with three members only, which was simultaneously the quorum for a meeting and the minimum for decision-making. Since Zlatanov and Sapundjieva were both elected by Parliament, the three members left represented the Council of Ministers, Parliament, and the President. This damaged the CPACI’s ability to make decisions and required that one of the main tasks of Parliament to be the election of two more members, including a head of CPACI. As of October 2015, Parliament had not yet done so, despite the fact that the law provided a month for this replacement to take place.42

Bulgaria’s main policy making institution in the area of anti-corruption was the Commission for Prevention and Counteracting of Corruption (CPCC) and it lacked clearly defined responsibilities as well. CPCC was created in 2006 and operated under the auspices of the Council of Ministers. Upon its creation, it was tasked with developing priorities for national anti-corruption policies, proposing legislative changes with respect to anti-corruption, and organizing the monitoring of the implementation of anti-

42 Закон за предотвратяване и установяване на конфликт на интереси Чл. 22в (2)
При смърт или предсрочно прекратяване на пълномощията на председателя или на
член на комисията в едномесечен срок се избира, съответно назначава нов член,
който довършва мандата. The Law on Prevention and Ascertainment of Conflict of
Interest article 22c (2). (In case of death or early termination of power of the head or
member of the commission, there shall be elected a substitute within a month. The
substitute shall finish the term.)
corruption reforms. Similarly to Georgia’s Interagency Council for Anti-corruption, the Commission did not have its own administration. Instead, its activities were supported by the General Inspectorate within the Council of Ministers. In contrast to Georgia, the General inspectorate in Bulgaria was directly responsible to the Prime Minister and it was fully dedicated to assisting the Commission. One of the main functions of the General Inspectorate was to investigate instances of corruption and other violations of executive power among state employees in leading positions.\(^{43}\) To the extent that such violations were considered high level political corruption, this function overlapped with the responsibilities of SANS and created another gap in the anti-corruption institutional framework. Furthermore, the law postulates that the Inspectorate assumes these responsibilities “when necessary,” but further clarification of when this was the case were not provided.

Finally, the General Inspectorate coordinated the activities of anti-corruption inspectorates located in each ministry, but it was unclear to who the individual inspectorates were accountable. Individual inspectorates had their own methodological guidelines, which were coordinated with the General Inspectorate and were very specific to the ministry in which they operate. The main function of the inspectorates was to elaborate a report on the evaluation of the risk of corruption. This report was subject to approval by the Minister, who also prescribed actions for minimizing the risk and the Inspectorate was responsible for the implementation of the measures. In this sense, the individual inspectorates were subordinated to the respected Ministry. The relationship of

\(^{43}\) Rules of Conduct of the General Inspectorate Section II, article 92b (4)
the individual inspectorates with the General inspectorate was specified in their bi-laws as “cooperation,” but it remained unclear whether individual inspectorates were accountable to the Minister or the General Inspectorate.

Interviews with employees of the Inspectorate in the Ministry of Education and in the Ministry of Health suggested that inspectorates rarely had a functional relationship with other institutions such as CPACI. One interviewee insisted on mentioning that in the last months the inspectorate’s communication with the CPACI had been very productive and attributed this to a new liaison in CPACI that “goes out of her way in order to make sure that we [the inspectorate and CPACI] communicate” When asked to elaborate on this situation, she pointed to two factors: First, the law did not require the inspectorate and CPACI to coordinate efforts, and second, with respect to insufficiency in administrative capacity, it is abnormal for employees to volunteer additional efforts. Therefore, the productive relationship that she referred to was not a product of the institutional set up, but rather of significant efforts of one particular bureaucrat.

In sum, the incapacitation of anti-corruption institutions in Bulgaria came in two forms which were often combined. The first source of friction was a legal framework

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44 See Вътрешни правила за дейността на Инспектората на Министерството на образованието и науката, утвърдени със заповед РД 09-1075 от 18.07.2014 г. на министъра на образованието и науката (Internal Rules for the Work of the Inspectorate in the Ministry of Education and Science, established with a decree RD 09-1075 from 18.07.2014 from the Minister of Education and Science)

45 Author’s interview with a representative of the Anti-corruption Inspectorate in the Ministry of Education, Bulgaria
which muddled institutional responsibilities or created administrative obstacles. The
second source were political scandals which often accompanied the establishment of
institutions. The two sources combined had a detrimental effect on anti-corruption efforts
in Bulgaria: first it was unclear who did what and how, and second institutions rarely
enjoyed high perceived legitimacy because of political scandals, which became an
inevitable part of institutional history.

In addition to the lack of clarity with respect to anti-corruption institutions’
responsibility and the political scandals that seem to be characteristic of each institution,
the management of corruption in Bulgaria was hindered by problems in the judiciary. The
independence of the Bulgarian judiciary was guaranteed by the Constitution of Bulgaria:
Article 177 (2) states, “The judiciary shall be independent. In the performance of their
functions, all judges, court assessors, prosecutors and investigating magistrates shall be
subservient only to the law.”\(^\text{46}\) Indeed, the judiciary possessed all necessary mechanisms
to be independent: SJC controls the appointments, promotions, dismissals and transfers of
judges\(^\text{47}\) (Shetreet 1985, Domingo 2000, Chavez 2004). Judges had life tenure guarantees
and the judiciary drafted and controlled its own budget.

Despite all the existing mechanisms to establish an institutionally independent
judiciary, the possibility of political influence due to informal relationships between the
executive and the judiciary was not addressed (Popova 2012). For instance, though the

\(^{46}\) Constitution of the Republic of Bulgaria, Article 177 (2)

\(^{47}\) Constitution of the Republic of Bulgaria Article 129 (1)
Prosecutor-General was appointed by the President, it was always upon a nomination by the SJC. This arrangement placed the power of election completely in the hands of the judiciary and removed all incentives for accountability on the part of this institution. The lack of clear mechanisms for accountability and control, such as election by Parliament, was also one of the reasons why judges often perceived their independence as complete impunity. Statements from different Prosecutor-Generals supported this perception. The first post-communist Bulgarian Prosecutor-General Tatarchev became famous with his statement in 1992 that “Only God is above me.”\textsuperscript{48} The fact that this situation had not improved much by 2013 was evident in a statement of the current Prosecutor-General Tsatsarov who declared: “The Prosecutor does not owe an explanation to anyone.”\textsuperscript{49} These statements spoke to the self-perception of Prosecutor-Generals in Bulgaria. Perhaps more importantly, the similarity of these statements separated by twenty years, confirmed, as Leiken suggested, that a lack of accountability was still very much the norm in Bulgaria.

This lack of accountability left the judiciary vulnerable to informal influences, such as personal connections and social networks of judges. Evidence of these types of relationships were abundant in Bulgaria, the most striking being the response of then Minister of Interior Tzvetanov to a question regarding his close relationship with the

\textsuperscript{48} Главният прокурор: шест месеца по-късно (The Prosecutor General: six months latter) CSD, July 2013, Author’s translation

\textsuperscript{49} ibid
newly appointed chair of Sofia City Court, Vladimira Kaneva. Tzvetanov said: “I do not see anything wrong with this; this is my milieu.”50

Therefore, in an environment where corruption was endemic, formal institutional improvements aiming to secure independence of the judiciary had unintended consequences (Popova 2014). Such consequences deepened the very problem reforms set out to resolve. A telling example of such consequences is the Special Criminal Court (SCC). The SCC began its operations in 2012 with jurisdiction over the entire territory of the country.51 The intent was a new court that specialized in organized crime and corruption. It was scoped by the set of crimes it may try, rather than the set of persons that may be tried before it,52 thus targeting one particular problem. In March 2013, the first annual report on the functioning of the SCC was issued.53 The report compiled the numbers of cases opened, dismissed, and closed by the SCC. The total number of cases that were introduced or transferred was 2294.54 In comparison, the Sofia Regional Court

50 “Цветанов не се притеснява от отношенията си с Янева – такава му била средата” Дневник (June 1, 2011), Tsvetanov Is Not Worried About His Relationship with Yaneva—“This Is His Milieu”, Author’s translation

51 Закон за съдебната власт, Раздел VIa и VIIa, обн. ДВ, бр. 1 от 2011 г., в сила от 4.01.2011 г. Law on Judiciary, Sections VIa and VIIa, State Gazette No1, 2011, Author’s translation

52 Art. 411a(4) of the Criminal Procedural Code

53 Georgi Ushev, Доклад за Дейността на Специализираната Наказателен Съд През 202 Година, Report on the Activity of the Specialized Criminal Court in 2012, March 22, 2013, Author’s translation. Available at http://spcc.bg/news/%D0%BD%D0%BE%D0%B2%D0%B8%D0%BD%D0%B0-36/.
heard over 15,000 cases falling within similar sections of the Criminal Code in 2012.\textsuperscript{55} The report stated that 125 out of 185 cases (69.19\%) opened under the “common” procedure were closed during 2012, and the court issued 22 sentences (15 convictions, and 7 acquittals). Perhaps more importantly the remaining 2109 cases were transferred or opened under the “individual” procedure.\textsuperscript{56}

These results of the courts’ first year of operations sparked a debate regarding its ability to address major shortcomings in the Bulgarian judicial system. Defendants of the court justified its existence in its present shape under the pretext that it was efficient. However, approximately (70\%) of the total cases heard by the Court had been transferred to the Court in January 2012 after their lengthy pre-trial phase had already been completed. In 2013, though, smaller than in 2012, the percent of transferred cases is still significant (57\%).\textsuperscript{57} Therefore, despite the court’s specialization, it was not able to overcome one of the overwhelming delays in trial and pre-trial procedures.

\textit{1.2 Unclear Channels of Civil Society Participation}

With respect to participation of civil society in the anti-corruption policy formulation, implementation, and enforcement, the rules in Bulgaria in the period

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\item \textsuperscript{54} Ibid
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between 1993-2013 were unclear and demotivating for CSOs. In an attempt to make both the judiciary and various anti-corruption agencies accountable to the citizens, Bulgaria attempted to embed civil society participation in the agencies’ institutional design. After Bulgaria’s accession to the EU, a few legal changes with respect to participation and partnership were introduced. The goal of these changes was to move Bulgaria away from a communist style centralized decision-making process toward a Western-style democracy. However, the changes were often superficial and their effects almost non-existent.

The legal framework that regulated the participation of NGOs in the process of policy making in Bulgaria was often superficial and laws were often contradictory. Two laws secured the inclusion of civil society in the creation and implementation of anti-corruption strategy. The Law on Legislative Act (LLA) stipulated that a public debate needed to take place before new legislation or an amendment to an existing law was introduced. As of 2007, the same law also introduced mandatory publication of proposed legal bills and amendments to legislation on the websites of the respective institutions. Similar provisions for citizens’ participation were also provided in the Administrative-procedural codex (APC). Combined, these two laws provided the basis for citizens’ participation in the decision-making process.

What was problematic with these laws was that they also contradicted each other. These contradictions demonstrated the lack of attention given to civil society participation and left many CSOs demotivated. According to the LLA, parties interested
in contributing were given fourteen days in order to familiarize themselves with the proposed legislation and to comment on it, while the APC granted a month\textsuperscript{58} for the same activities. Seemingly unimportant, this contradiction spoke to the rigor with which participation was addressed in Bulgaria. It demonstrated that the issue of public participation was addressed superficially and the EU norm of participation effectively remained an “empty shell.”\textsuperscript{59} Interviews with NGOs representatives confirm these findings.\textsuperscript{60}

The unclear language used in the legal framework that regulated civic participation also hindered CSOs in their attempts to assist government institutions in creating and implementing anti-corruption policies. The Law on the Administration provided for two types of citizens participation - a public debate, including a meeting with the officials proposing the bill, and sending of opinions. The two forms of participation were, however, vague and the document did not contain further specification as of the content of participation. Instead, these specifications were distributed into different primary or secondary legislation, and sometimes they were only specified at the level of rules of operation for each individual institution.

\textsuperscript{58} Administrative Procedural Code of Bulgaria Article 69 (2)


\textsuperscript{60} Author’s interviews with various NGOs
The Supreme Judicial Council (SJC) and its civic council represented a telling example of why the vagueness of rules regulating the cooperation between the judiciary and CSOs created room for interpretations that could further corruption instead of addressing it. A civic council consisting of fifteen NGOs supported the work of the SJC. The role of the civic council as well as the mechanism for electing NGOs were supposed to be specified in a document entitled “Regulation on the Organization of the Work of the Supreme Judicial Council and its Administration”. It read:

The Civic Council to the SJC is formed to guarantee the transparent and effective participation of civic and professional organizations in the formulation of strategies for reforming the judiciary as well as for securing objectivity in the monitoring of these reforms.\(^{61}\)

With respect to transparency and accountability of the SJC, this unclear formulation creates two problems related to selection of NGOs and to their precise role. First, the method of selecting participating NGOs is unclear. In an attempt at transparency, the SJC announced an open invitation and consequently accepted everyone that was willing to participate. This arrangement prevented any censoring of the NGOs participating in the civic council and made possible the participation of illegitimate NGOs, or even NGOs created to further political agendas. Second, the regulations were extremely unclear on the role of the council. Article 4 of the rules of operation of the civic council details the

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responsibilities of the council: responsibilities ranged from “supporting the SJC in creating and implementing policies” to “producing opinions for discussion of legislation changes.”62 However, this left important questions, such as the definition of support and weight given to opinions, open. The SJC and its civic council were not an exception, and the situation in other agencies responsible for anti-corruption and the rule of law and their cooperation with civil society, was similar.

The combination of unclear selection procedures and the vaguely defined role of civic councils prevented the establishment of uniform minimal standards for information distribution, consulting, and joint decision-making. It also left institutions legally entitled to completely ignore the work of civic councils, or any other input they may have received from citizens or NGOs. None of the general laws explicitly required institutions to consider the opinions of civic councils, nor did they specify the way in which institutions should respond to suggestions and comments from the civic councils. For instance, the LNA did not stipulate discussion of the opinions, and publishing of the changes in legal bills resulting from the civic council’s opinions and proposals.

In sum, the legal framework had a twofold negative impact on the participation of civil society. First, it left institutions at liberty to proceed as they choose with regards to participation of civil society, and discouraged civil society representatives to seek participation. In such an environment, the “illusion of inclusion” of various stakeholders became obvious (Center for the Study of Democracy 2009, 2010, Harvey 2004, Hristova-

Second, this framework significantly diminished civil society’s ability to participate in the decision-making process not only morally but legally as well.

To be fair, one anti-corruption institution made an attempt to incorporate civil society in its work yet this cooperation was not fruitful. The agency that was created in order to establish the Centre for Prevention and Countering Corruption and Organized Crime (CPCCOC) - known under the Bulgarian acronym BORKOR - followed the concept of project partnership and collaborated with non-governmental and industry organizations. In 2013, following the "Solution Model in the Field of Public Procurement” assigned by the Consultative Council, BORKOR reached out to a selected group of non-state actors. In April 2013, the leadership of CPCCOC met with representatives of NGOs. The goal of the meeting was for BORKOR to present the decisions made by the Interdepartmental Working group regarding a schedule of urgent measures and actions of government and judicial bodies to meet the benchmarks of progress in the area of a judicial reform, combating corruption and organized crime. The same year, the new management of CPCCOC announced that it was prioritizing the

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64 This collaboration included Representatives of the Construction Chamber in Bulgaria, Institute for Legal Analysis and Research, Chamber of Commerce were included in the interdepartmental group to prepare a plan for the implementation of measures of the CPCCOC in public procurement. Participants from the German-Bulgarian Chamber of Industry and Commerce were attracted as well as Austrian and Swiss businessmen.

65 The NGOs were The Centre for the Study of Democracy, the Institute for Public Environment Development, Risk Monitor, the Institute for Legal Analysis and Research, the Association Transparency International
development of non-governmental and branch organizations. The partnership was institutionalized through the signing of bilateral cooperation agreements for joint actions to reduce corruption practices. Indeed, BORKOR followed up and in the beginning of 2014 it signed memoranda of cooperation with a number of NGOs and professional organizations. However, BORKOR was an analytical unit with no power to investigate or penalize instances of corruption, and thus its cooperation with NGOs resembles cooperation between think-tanks more than an effort to develop a functional state-society relationship.

In summary, the institutional arrangement in Bulgaria was characterized by unclear responsibilities of institutions and often overlapping priorities of different agencies. In turn, such institutional arrangement hindered horizontal accountability and delayed adequate reactions to instances of corruption, conflict of interest, nepotism and clientelism. In terms of societal accountability, the participation of NGOs was not well regulated and NGOs involvement in the decision-making process was consistently superficial. While reports by some think tanks exposed specific problems related to abuse of power, these organizations did not have the necessary legal framework, nor did they have the internal capacity to effectively apply pressure to the government. This consistent lack of participation not only hindered good governance, but also sustained an environment conducive to the abuse of power because for a long time citizens and civil society alike were passive in resisting certain acts of the ruling elites. As Ganev (2014)

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66 Some of the professional organizations were the Institute for Legal Analysis and Research (ILAR), Construction Chamber in Bulgaria (CCB)
puts it with respect to Peevski’s long rise to power, “if no one resists when the hooligans start to make forays beyond the stadium, they will openly try to take over the city.”67

2. Georgia

2.1 Political Influence on Regulatory and Policy-making Institutions

In the years between 2010 and 2013, many reports produced by the EU and some international NGOs praised the success of anti-corruption reforms in Georgia. Yet a closer look at the country’s anti-corruption arrangements showed that while service agencies were indeed transparent, policy-making institutions were consistently the subject of political and parties’ interests. In this section, I evaluate the independence of anti-corruption institutions and show that the system in which Georgian policy-making anti-corruption institutions operated, as well as the legal framework directing their activities, rendered these institutions susceptible to influence from a small elite group. More specifically, I show that the executive had strong control over all key institutions, which created an environment where high level political corruption could thrive.

It is indeed undeniable that with respect to service institutions that dealt with low-level petty corruption, Georgia did outstandingly well. The creation of the Public Service Hall eliminated almost completely petty corruption. Many domestic and international reports attested to this. According to the Global Corruption Barometer in 2013, only 4%

of Georgians were asked for a bribe\textsuperscript{68}, and the World Bank declared Georgia the post-communist country that fought against corruption most effectively and made the most progress in a short period of time.

However, in creating the Public Service Hall, Georgia’s President Michail Saakashvili took one specific path to fighting corruption, which addressed petty corruption and took the public’s attention away from grand corruption. To be fair, Saakashvili made moves to address grand (political) corruption as well, however the arrest of allegedly corrupt officials seemed to be primarily politically motivated. The only officials that were arrested were opposing Saakashvili, and the ones that were supporting him remained in office (Shelley et. al 2007). Televised arrests of public officials by masked and heavily armed police officers appeared almost daily and were meant to show Saakashvili’s commitment to fighting corruption. However, true reforms required structural changes which would prevent slipping back into the old corrupt system. I now proceed to show that such structural changes in the period between 2004-2013 only increased the centralization of power in the hands of the president and transformed corruption from endemic into grand.

The reforms that addressed petty corruption then allowed Saakashvili to completely capture the creation and implementation of anti-corruption policies and to concentrate in his hands authority over anti-corruption institutions which are responsible for high level political corruption. The main anti-corruption agencies in Georgia were the Interagency

\textsuperscript{68} Global Corruption Barometer, 2013
Coordination Council for Combating Corruption (the Council), the State Audit of Georgia, the Civic Service Bureau, and the Public Service Hall. The Office of the Chief Prosecutor was also equipped with a Department for the Procedural Supervision of Investigations and an Investigative Division of the Prosecution Services of Georgia.

The institution that merited the most attention was the primary anti-corruption body of Georgia - the Interagency Coordinating Council for Combating Corruption – the Council. It was established in 2008\(^69\) and as the name suggested its purpose was to coordinate the efforts of Georgian anti-corruption bodies. The Council’s activities were stated in Article 12.1 of the Law on Conflict of Interest and Corruption in Public Service. Its responsibilities included formulating the general state policy for combating corruption; developing and updating the national anti-corruption strategy and the relevant action plan and monitoring their implementation; coordinating interagency activities in order to facilitate the implementation of the strategy and the action plan; ensuring implementation of recommendations by international organizations regarding the fight against corruption, and producing relevant reports. The Council consisted of thirty-eight members\(^70\) that were representative of the legislative, the executive, and the judiciary.

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\(^69\) Order #622 of the President of Georgia on the Approval of the Composition and the Charter of the Interagency Coordinating Council for Combating Corruption, 26 December 2008.

\(^70\) Members were Minister of Justice, Deputy Minister of Justice, Head of the Analytical Department, Head of Investigation Unit, Head of Chancellery of the Government, Deputy of Minister of Internal Affairs, Deputy Minister of Defense, Deputy Minister of Finance, Head of the Investigation Unit of the Ministry of Finance, Head of Revenue Service, Deputy Minister of Economy and Sustainable Development, First Deputy Minister of Regional Development and Infrastructure, representative of the State Audit Office, President of the National Bank, Had of Civil Service Bureau, Head of Financial
powers of Georgia. It also included several representatives of international bodies and to ensure even wider participation in the creation and implementation of anti-corruption policies, representatives from several NGOs\textsuperscript{71} were also members of the Council.

Despite mechanisms that should have secured the good standing of the Council, its status was poorly established in the law that regulated the Council’s activities. This poor regulation created a lack of administrative capacity, as well as decreased political independence. In fact, the Council was chaired by the Minister of Justice, and its members were determined by the President of Georgia\textsuperscript{72}. The Council was not a full-fledged institution but rather served as a forum for discussions of anti-corruption policies of Georgia. It was also not equipped with its own administration. Instead, a subdivision of the Ministry of Justice - Analytical Unit - served as its Secretariat. This arrangement compromised both the capacity and the independence of the Council. The Analytical Department consisted of six employees and, in addition to coordinating and ensuring the organizational issues of the Council, the Analytical Unit was tasked with many other unrelated responsibilities. Naturally, this impeded the work not only of the Analytical Unit but also of the Council. After the 2010 Anti-Corruption Strategy was deemed

\textsuperscript{71} The NGOs represented in the Council are TI, GYLA, Open Society, Business Association, IDFI, Peace, Democracy, and Development Institute, Research Center of Election and Political Technologies, Georgian Foundation for Strategic and International Studies and the Economy Policy Research Center.

\textsuperscript{72} The Law of Georgia on Conflict of Interest and Corruption in the Public Service, Art 12.1 (3)
inappropriate, the Analytical Unit was delegated to create a new strategy in 2013. At the time when this research was performed in March 2014, the new anti-corruption strategy was not yet a reality, however a general seven page action plan was put together. The head of the Unit justified the delay by the fact that the Analytical Unit had been tasked with too many responsibilities and time was an issue: “we need the support of all members and Analytical Unit has been tasked with too many responsibilities.”\textsuperscript{73}

More importantly, the compromise of the independence of the Council is entrenched in the law. Article 12.1 (4) from the Law of Georgia on Conflict of Interest and Corruption in the Public Service postulated that “authority and other organizational issues are determined by the Council Statute, which is approved by the President of Georgia,”\textsuperscript{74} thus giving additional power to the president. Furthermore, the employees of the Analytical Unit were subordinated to the Minister, and the members of the Council were directly appointed by the President and could be dismissed by him at any point. This organizational arrangement hindered the productivity of the agency and predisposed it to political influence from the President of Georgia. The complete dependence of the Council on the President made the Council simply a subdivision of the Ministry of Justice, rather than an independent anti-corruption agency. Even more, the agency was

\textsuperscript{73} Author’s Interview with Rusudan Mikhalidze, Head of the Analytical Unit of the Ministry of Justice, Georgia, March 7th, 2014

\textsuperscript{74} The Law of Georgia on Conflict of Interest and Corruption in the Public Service, Art 12.1 (4)
practically dysfunctional because it took orders from the executive. In this sense, it was predisposed to be used by the executive to sustain or increase power.\footnote{Author’s interview with Erekle Urushadze Transparency International Georgia, March 2014}

Managing grand political corruption in Georgia was also in the scope of the Civic Service bureau’s (hereafter the Bureau) work. According to the Law of Georgia on Civil Service, some of its responsibilities included facilitating the elaboration of a unified state policy in the field of civil service, the coordination of relevant actions, and to provide organizational, material, and technical assistance for the activities of the Civil Service Council and its members. The Bureau consisted of three departments and one of them was dedicated entirely to managing public officials’ asset declarations. The role of the department for assets declarations was established in Article 129 of the Law of Georgia on Civil Service. It stated: “The Civil Service Bureau is a legal entity of public law established in order [...] to receive asset declarations of officials, to ensure publicity and to control timely submission of asset declarations of officials.”\footnote{Law of Georgia on Civil Service, Art 129 (1)} The powers of the Bureau were established in its Statute. It postulated that the “Bureau shall not be responsible for the completeness and accuracy of the information provided in the submitted Asset Declaration of public officials.”\footnote{Statute of the Civil Service Bureau, Article 3 (2)} In other words, the Bureau served to merely gather assets declarations, but it did not have the authority nor the capacity to
investigate and penalize those who failed to submit declarations or submitted misleading information.

The independence of the Civil Service Bureau was also questionable. The Bureau by-laws, structure, and staff were approved by the Government of Georgia\textsuperscript{78}, and the Minister of Finance had exclusive authority over the activities of the Bureau\textsuperscript{79}. As a result, public officials indeed submitted their asset declarations to the Civil Service Bureau and the Bureau made them available to the public within 24 hours of submission. However, a mechanism to verify the asset declarations did not exist and no routine checks were carried out by a designated agency. In this sense, both the capacity and the independence of the Civil Service Bureau were compromised and similarly to the Council and the Chamber, the Bureau was practically under the control of the executive. Furthermore, some scholars suggested that the ruling party had blocked investigations brought before Parliament by the Bureau on more than one occasion. What enabled such blocking of investigations was the fact that the Bureau’s chairperson lacked an independent power base and was therefore finding it hard to push forward any investigations that were unpopular with the ruling party.\textsuperscript{80}

\textsuperscript{78} Article 129 (2) Law on Civil Service of Georgia

\textsuperscript{79} The activities of the Civil Service Bureau shall be controlled only by the Ministry of Finance pursuant to subparagraphs “b” and “c” of paragraph 1 and paragraph 2 of article 12 of the Law of Georgia on Legal Entities of Public Law Article 129 (3)

The last Georgian institution engaged in anti-corruption policy-making was the Chamber of Control. This agency was responsible for supervising the use of state funds and resources, and its activities were managed under the Constitution as well as under the Law on the Chamber of Control of Georgia (adopted in 2008). According to it, the Chamber was the supreme body of state financial and economic control, which conducts audits\(^81\) and was responsible for examining the activity of other state bodies of fiscal and economic control, submitting proposals on improving tax legislation to the Parliament.\(^82\)

Similarly to the Bureau and the Council, the Chamber of Control was also the subject of political influence. In general, such institutions are usually designed to play a major role in preventing and penalizing high level corruption and they require complete political independence. In Georgia, however, this was not the case. The independence of the Chamber was established by the Constitution of Georgia. Article 97 (2) stated that:

> The Chamber of Control shall be independent in its activity. It shall be accountable to the Parliament. The President of the Chamber of Control shall be elected for a term of five years by the Parliament of Georgia by the majority of the number of the members of the Parliament on the current nominal list upon the submission of the President of

\(^{81}\) Constitution of the Republic of Georgia Article 97 (1)

\(^{82}\) ibid
Georgia. The grounds and a procedure of his/her dismissal shall be prescribed by the Constitution and law.\textsuperscript{83}

However, at the same time, the law did not provide the Chamber’s staff with sufficient protection against arbitrary dismissal. For instance, potential reasons for dismissal were not specified in the law, which left decisions for dismissal entirely in the hands of the President of the Chamber of Control. In turn, this created an environment in which political pressure over auditors was possible, and auditors were self-conscious with respect to auditing powerful political players.

In 2004, Parliament adopted a measure which increased the accountability of the Chamber of Control before the Parliament. This move theoretically represented a step in the right direction with respect to the independence of the Chamber, but the political reality of Georgia in this period rendered it instead a change which strengthened the legitimacy of the incumbent. When the measure was adopted in 2004, one party controlled all branches of the government and Georgia was a presidential republic. The power of the President over Parliament extended to veto power over all decisions made by Parliament in the rare cases where Parliament was not promoting Saakashvili’s agenda. Thus, adopting the measure served simply as a mechanism to further centralize power in the hands of the President. Indeed, in 2012 Saakashvili’s party unexpectedly lost the Parliamentary elections and only time will show what the new government will

\textsuperscript{83} Constitution of the republic of Georgia, Article 97 (2)
do. However, as of 2013 it had not amended the law regulating the SAO, signaling that the status quo will be preserved.

2.2 Civil Society’s Weak Leverage on Policy-Makers

In addition to a strong executive, Georgia’s anti-corruption institutions were hindered in their independence by a weak civil society. In the following paragraphs, I show the level of cooperation between civil society and state institutions in the area of anti-corruption and the inability of civil society to effectively serve as a watchdog or to cooperate with the government in the anti-corruption decision-making process.

In general, there exist many mechanisms by which civil society can aid the fight against corruption, and the ones adopted in Georgia proved insufficient and unclear. In some countries NGOs were incorporated in the structure of anti-corruption bodies, in others they serve as watchdogs, and in third occasions they cooperate with the government in the establishment of anti-corruption institutions and legislations to ensure public debate and approval of the institution in question. In contrast to Bulgaria and Montenegro, Georgia did not have special legislation establishing the participation of civil society in the decision-making process. Instead, such activities were regulated by ad hoc presidential decrees or occasional memoranda of cooperation between individual state bodies and NGOs. The most recent example of such a memorandum was signed in January 2015 between the Civil Society Institute - one of the oldest Georgian NGOs - and
Saburtalo District Local Administration. Its purpose was to create three public councils which will facilitate citizens’ participation in local self-governance.\textsuperscript{84}

The low degree of CSO participation in anti-corruption institution-building and implementation, and the manner in which they did so, also showed the low level of independence of the institutions themselves. NGOs in Georgia were incorporated in the most essential anti-corruption body - the Council. The Council had on its board representatives from most of the leading anti-corruption NGOs in Georgia, but the result of their work remained superficial and unproductive. This superficiality seemed to be of concern to both the Council and the participating NGOs. On the one hand, the Council was not satisfied with the participation of NGOs in the meetings. In an interview, the head of the Council’s Analytical Unit emphasized the lack of willingness of NGOs to attend meetings and propose policies. In her words, “NGOs need to stop being so critical to everything we do and start cooperating with us.”\textsuperscript{85} On the other hand, NGOs felt deprived of timely information that was required for them to make valuable contributions to anti-corruption policies that were being shaped by the Council. Said an expert at GYLA: “We are unable to read a 3000 page document in four hours, let alone form an opinion on it and provide constructive criticism.”\textsuperscript{86} An interviewee from Transparency International (TI) agreed that the civil society representatives of the Council were rarely

\textsuperscript{84} Civil Society Institute report available at: http://www.civilin.org/Eng/viewtopic.php?id=147

\textsuperscript{85} Authors interview with Rusudan Mikhalidze head of the Council, March 2014

\textsuperscript{86} ibid.
notified on time about the Council’s plans. One of the representatives of TI in the Council explained that “a draft of the 2010 Action Plan was presented without warning or participation by CSOs, and CSOs were not provided adequate time for comment.”

The way NGOs explained their cooperation with government agencies was that their participation was on paper only, and thus highly demotivating. A clear measurement of NGOs participation did not exist and none of the interviewed NGOs had a record of the number of their propositions that had been accepted and included in a law bill or anti-corruption strategy. However, all fifteen interviewed NGOs reported no more than one or two of their proposals being considered. This situation served as a highly demotivating factor for civil society organizations to participate in the decision-making process. As a result, NGOs participated in less than one third of the meetings of the Council in 2013, and rarely were all of the NGOs that were part of the Council present at a meeting at the same time.

Two major problems erode the ability of CSOs to participate constructively in the work of strategy making and implementing bodies: a lack of a culture of cooperation between state and civil society, and an inability of civil society to form a united anti-corruption agenda and strategy. On the one hand, a culture of cooperation between the government and the NGO sector was not established after the collapse of the communist regime in 1990. This remnant of Soviet style governance by which power was centralized

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87 Author’s interview Erekele Urushadze, Transparency International Georgia, October 2014
in the ruling party and civil society was weak, was still strong in Georgia in 2013, and institutional arrangements were not designed to alter it. On the other hand, NGOs were incapable of forming a united agenda regarding the fight against corruption. While Georgia had many NGOs that have declared anti-corruption, transparency, and accountability as part of their agenda, their cooperation on projects was minimal. Even more - NGOs were rarely aware of each other’s work. With the exception of TI and the Institute for Development of the Freedom of Information (IDFI), which were two of the leading NGOs since 2009, cooperation between non-governmental bodies was rare. Again with the exception of TI, IDFI, and Georgian Young Lawyers Association (GYLA), NGOs were not able to name a productive meeting between CSOs in which a strategy for applying pressure to the state for securing more transparency, and independence of anti-corruption institutions, was discussed.

To be fair, out of their cooperation with state institutions, such as the Council, NGOs served as watchdogs. Many of them conducted research regularly, monitored the work of institutions, and were publicly critical about particular anti-corruption policies. They also advocated for better freedom of information laws and practices (for instance see the work of IDFI) and generally made transparency, accountability, and good governance a priority of their work (GYLA is an example). In this aspect, most NGOs could be identified as think-tanks and educational institutions, which produced reports and analysis, but had little ability to use them in order to make positive change in the area of anti-corruption. In other words, NGOs were indeed almost all critical of the government and were almost always perceived by policy-makers as opposition, rather
than as an actor whose cooperation could potentially improve transparency and accountability. This state of civil society had its roots in the Soviet system, which left Georgia lacking a culture of association, a general skepticism toward unions, and very low citizen participation.\(^8^8\) A study commissioned by USAID and performed by East-West in 2012 confirmed this.

In summary, Georgia had a weak Parliament and Judiciary, which caused disruption of the horizontal accountability of anti-corruption institutions in the country. The Prosecutor’s Office, National Audit Office, and the Central Election Committee were not independent and were subject to political influence by a strong executive. Coupled with weak societal accountability, this created an environment in which a small group of people in the upper echelons of power could easily capture the state.

It is important to mention that in 2013 Georgia attempted to reduce the strength of the executive. In order to break what Fish (2001) called “superexecutivism”\(^8^9\), the country introduced constitutional changes, which began the transitioning of Georgia from a presidential to a parliamentary republic. According to the new amendments, more

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power was concentrated in the hands of the Prime Minister, and the President’s role was reduced to a neutral arbiter between Parliament and Government. However, according to the Venice Commission, the Council of Europe’s advisory body on constitutional matters, the interrelation between parliament and government envisaged by the draft of the constitution needed to be revisited. More specifically, the Venice Commission requested a change in the article that postulates that if the President refuses the dismissal of PM, the consent of 60% of parliament members is needed.  

In contrast, the legislature remained weak. Functions, such as scrutiny of state expenditures, holding individual ministers accountable, and the setting up of temporary investigative commissions were not introduced, thus Parliament remained still very weak in comparison to the Presidential institution. Additionally, speculations arose that amending the constitution was in fact a political move on the part of Saakashvili. At the time of the amendments, he had been in office for two consequent terms and could not run for the presidential office again. However, he could be elected Prime Minister. Thus, Saakashvili, convinced in the victory of his party in the following parliamentary elections, decided to empower the office of the Prime Minister. This move represented centralization of power and effectively stalled the process of democratization of Georgia. Thus, instead of transitioning to democracy, Georgia remained in a hybrid regime (Diamond 2002, Carothers 2002, Levitsky and Way 2005). Such regimes lack vital components of democratic quality, such as checks and balances and government

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90 Thomas Markert (Venice Commission) before the magazine Resonance, as quoted by Open Democracy. Availbale at: https://www.opendemocracy.net/od-russia/nino-tsagareishvili/georgias-politicians
accountability, and therefore they create an environment susceptible to high levels of corruption (Ekman 2009).

Indeed, Saakashvili’s loss in the elections of 2012 was a surprise for everybody. Said a representative of the winning Georgian Dream Coalition: “even we were surprised from the outcome of the elections.”91 Only time will show which course the new government takes. It is possible that it decentralizes power and opens up cooperation with civil society. At the moment this research was conducted in 2013-2014, the new government had refrained from making major changes in the area of anti-corruption. More importantly, if the Georgian Dream Coalition’s government oriented toward inclusion of civil society, it would face a NGO sector that was divided and unable to organize around a common anti-corruption agenda.

3. Montenegro

3.1 The Independence of Anti-corruption Institutions

In contrast to Bulgaria and Georgia, in 2013 Montenegro was in the process of developing an anti-corruption system that was not characterized by centralization of power and in which institutions had clear responsibilities. Perhaps more importantly, the developing anti-corruption system was more compatible with the domestic particularities, such as cultural traditions of gift giving, in that it specified very clearly what constitutes corruption and conflict of interest.

91 Authors interview with a mid-level leader of Georgian Dream, who wished to remain anonymous. October 5th, 2014.
To be clear, my argument is not that Montenegro has completely eliminated corruption. Instead, I suggest that the reforms in Montenegro were occurring at a slower pace than in Georgia and Bulgaria, while at the same time they had more potential to create institutions and legislation that is complied with because these institutions enjoyed a high level of domestic ownership. The slower pace of the reforms was in part a function of the fact that the opposition in Montenegro had been traditionally weak (Grzymala-Busse 2005), and Djukanovic’s Social Democratic Party (SDP) had been in power for the last twenty-three years. Many necessary reforms would weaken the SDP’s power and the party naturally lacked political will to introduce reforms. For instance, newly established democratic institutions, such as the Commission for Prevention of Conflict of Interest, were constantly lacking administrative capacity and suffering from insufficiencies in their budget.92

Similarly, there were many instances of poorly addressed cases of corrupt government officials and business people. For instance, in 2012 two thirds of the cases made available by courts referred to evasion of taxes. According to representatives of the Network for the Affirmation of NGOs, known under the Montenegrin acronym MANS,93 it was in such cases that business people were most often convicted, and thus statistics on

92 Author’s interview with Slobodan Lekovic, head of the Commission for Prevention of Conflict of Interest, March 2014

93 MANS (Mreža za afirmaciju nevladinog sektora) is one of the largest NGOs in Montenegro. Its goal is to expose corrupt public officials and to inform international entities such as the EU about the implementation and the functioning of anti-corruption policies.
court performance were being embellished. Additionally, instances of fining of public officials proportional to their convictions were too little and thus showed political influence over courts’ decisions. In the period of 2006-2010, almost half of corruption cases concerning government officials (47%) ended in dismissal, and only 42% in conviction.

At the same time, the slow pace with which reforms were taking place in Montenegro was used by both domestic and international non-state actors to apply pressure to the government and to raise awareness among citizens. As a result, Montenegro’s institutions were being transformed into democratic entities.

In 2012, an amendment to the Parliament’s Rules of Procedure implemented a parliamentary investigation mechanism and effectively strengthened the role of the legislature in fighting corruption. This control mechanism was also established in the Constitution of Montenegro. In 2013, Montenegro introduced further regulations by

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94 Author’s interview with Dejan Pejovic, MANS, November 2013
95 ibid
97 Constitution of the Republic of Montenegro Article 109
adopting the Law on Parliamentary investigation. By this time Parliament had conducted two investigations - one on Telecome (2012) and one on the infamous Recordings scandal (2013), both of which were under high media scrutiny. These investigations provided additional power to the Parliament’s Anti-corruption Committee and also power that was missing in the Bulgarian and Georgian Parliaments. Perhaps most promising was the fact that the bi-laws of the National Anti-corruption Commission specified that the Parliament elected the Commission’s President, thus sacrificing some power in order to acquire a higher level of legitimacy. Though some problems were still present, in comparison to Georgia and Bulgaria, by 2013 Montenegro had vested significantly more power in the Parliament with respect to fighting corruption. This mechanism prevented the centralization of power, despite the fact that Montenegro had had the same party in power for the last 23 years and some centralization was to be expected (Grzymala-Busse 2007).

With respect to managing conflicts of interest, Montenegro’s law covered a broader set of public officials than the Bulgarian and Georgian laws. In 2013, upon an advisement by the Commission for Prevention of Conflict of Interest, this definition was expanded to include a total of 3,541 officials. It also introduced a maximum monetary value of all gifts that a public official is allowed to receive. While Georgia and Bulgaria

98 Law on Parliamentary investigation foresees that Inquiry Committee is made out of equal number of MPs of parliamentary majority and opposition, while President of the Board is from the opposition and his deputy from parliamentary majority. Decision is made by majority of votes. Law has authorized Inquiry Committee to “ask of all state bodies, bodies of self-administration, institutions and legal entities to provide insight into all necessary documentation“ needed for investigations.
had also incorporated this standard in their legal framework, Montenegro went one step further and included in the law a provision that postulated that the evaluation of gifts be done by an independent expert and not by the Commission itself. This arrangement prevented the Commission from abusing its own power and made the process of controlling public officials’ assets more transparent than in Bulgaria and Georgia.

The Montenegrin Commission for Prevention of the Conflict of Interest (CPCI) also had a significantly broad scope of responsibilities, which allowed for cooperation between various institutions. In comparison with Georgia, the rights and the jurisdiction of the CPCI were significantly larger, especially in the area of investigation. The CPCI had the duty to verify data from reports on income and property, in coordination with other relevant institutions (Tax administration, Central Registry of Economic Entities, Real Estate Administration, Directorate for Public Procurement, Securities and Exchange Commission, etc.). This provision created a network between different institutions and the law clearly defined the process of investigation and required relevant institutions to cooperate with the Commission. Therefore, the law was specific enough to avoid potential misinterpretation or overlapping of responsibilities.

The superior functioning of Montenegro’s Commission for Prevention of Conflict of Interest in comparison to its Bulgarian and Georgian analogues was evident in the data from the Commission’s report.\(^9^9\) In 2013, 14.5% (519) of the public officials did not file

\(^9^9\) Commission for Prevention of Conflict of Interest Montenegro, 2012 report available at: konfliktinteresa.me
assets declarations and for all of them the Commission issued decisions stating that they violated the Law on Prevention of Conflict of Interest. Further, the CPCI submitted demands for initiation of misdemeanor procedures to relevant authorities and according to the head of the CPCI was regularly demanding updates about the progress of each case. In Contrast to Bulgaria, where the rules of conduct guiding the national Commission for Ascertainment and Prevention of Conflict of Interest created additional opportunities for corruption, the process that followed after such demands were made by the Commission in Montenegro was significantly more transparent (see the section on Bulgaria in this chapter). Depending on the nature of the offense in Montenegro, the case was transferred either to the Administrative Court or to the Misdemeanor Court, both of which had clear procedures for appealing.

The main preventive anti-corruption institution of Montenegro was the Directorate for Anti-Corruption Initiative (DACI) which, though not a policy-making institution, actively partook in the process of policy-making. In 2013, it reported directly to the Council of Ministers, but a procedure to move the supervision of its work to Parliament was underway. By design, DACI’s responsibilities were primarily in the area of preventing corruption. Article 4 of the Montenegrin Regulation of the Organization and Operations of the State Administration identified “advertising-preventive action, such as raising the level of public awareness about the problem of corruption and conducting

\[100\] Author’s interview with Slobodan Leković, Head of CPCI
research on the extent, manifestations, causes and mechanism of corruption occurrences\textsuperscript{101} as the main responsibility of DACI.

Similar to BORKOR - the Bulgarian analogue of DACI - DACI was not a policy-making institution. In contrast to BOROR though, it did partake in the process of policy making: technically it was entitled to “cooperation with competent authorities for the purpose of developing and implementing legislative and program documents of importance for the prevention and suppression of corruption.”\textsuperscript{102} More importantly, in practice DACI took part in the process of drafting legislation through several channels, the most prominent of which being its representatives in the teams on Chapters 23 and 24 from the EU membership negotiations structure. Finally, DACI was a part of the Action Plan on Chapters 23 and 24, which increased the visibility of the agency and forced it to be accountable and transparent. DACI had used this power to push for the criminalization of illicit enrichment. Though unsuccessful, this effort, combined with the efforts of a group of NGOs, allowed DACI to negotiate assets declarations to be an official document, which in turn made false information on them a criminal offense.

Furthermore, though DACI was in essence a preventive agency, its employees believed that the agency should take on additional responsibility. The Head of DACI put it simply: “Preventive work (campaigning, education) is done. Now we need

\textsuperscript{101} Decree on Organisation and Manner of Operation of the State Administration (Official Gazette of Montenegro 5/12 as of 23 January 2012, and 25/12 of 11 may 2012) Article 4

\textsuperscript{102} ibid, Article 2
Prosecution.” For this purpose DACI was indeed not limiting itself to raising awareness. Instead, it served as a mediator between people and the prosecution. In 2013, DACI had five times more complaints of corruption than the Prosecutor and all of them were sent to the investigative authorities within the Prosecutor’s office. Consequently, DACI in its role of complainer had the right to request information and monitor the Prosecution on each case it filled. DACI was empowered to mediate the interaction between citizens and the prosecution in this way because of a Memorandum signed in 2012, which allowed them to inquire for the progress of a corruption instances that they had sent. In contrast, Bulgaria and Georgia did not have such agreements.

In terms of the judiciary, the Montenegrin institutional set up differed from the ones in Georgia and Bulgaria in one fundamental point, namely the existence within the Supreme Prosecutor’s Office of a newly established Department for Prosecution in Cases of Organized Crime, War Crimes, Corruption and Terrorism. However, the draft of the Law on Special State Prosecutor’s Office which regulated the appointment of the Chief Special Prosecutor and her relationship with other State Authorities, was prepared by the Ministry of Justice with little contribution from other agencies and NGOs. One NGO explained that despite its attempts to influence the creation of this law, its comments were not heard and included in the final version of the bill. While further measures were

103 Author’s interview with Grozdana Lacovic, DACI


105 Author’s interview
needed in order for the independence of this institution to be secured, it is worth noting that the mere fact that such an institution existed and data on its operations was readily available to the public showed an actual attempt to combat corruption. In comparison to a very strong prosecutor without meaningful accountability in Bulgaria, and a weak and politically influenced prosecution in Georgia, Montenegro performance was stronger.

Furthermore, the rules for the election of the Chief Prosecutor of Montenegro were consistent with principles of transparency and accountability, and were in line with the domestic political context that lacked political competition. In 2012, the Parliament of Montenegro introduced an amendment in the Law on Public Prosecutor, which postulated that the Chief Prosecutor of Montenegro was to be elected by Parliament by a qualified majority. In light of the traditional lack of political competition in Montenegro, this measure represented an attempt to legitimize the Chief Prosecutor and to imbue transparency and accountability in his office. The new rules of electing the Chief Prosecutor required the consent of a large part of parliamentary opposition and ensured that both ruling elites and opposition support the nomination.106 Because the opposition was consistently underrepresented in the Parliament since the beginning of the post-communist transition of the country, this amendment represented a significant step toward the political independence of the judiciary, and, more specifically, independence of the Chief Prosecutor.

Finally, in contrast to Bulgaria, where with respect to law enforcement the functions of the ministry of interior and those of SANS overlapped, Montenegro had established a special unit within the police directorate. The unit’s (Section for Combating Organized Crime and Corruption) main task was to prevent and repress corruptive criminal offenses. The Section for Combating Organized Crime and Corruption was also connected with other operating structures of the Police Directorate and competent state bodies, institutions, and the civil society.

3.2 Civil Society Participation

With respect to participation of civil society in the decision-making process, the situation in Montenegro significantly differed from Bulgaria and Georgia in the ability of NGOs to use the EU in order to diffuse norms of transparency and to effectively monitor state institutions.

The adoption of two important regulations in 2012 provided the legal framework for CSO participation in the decision and policy-making processes. The Decree on manner and procedures for cooperation between state bodies and NGOs legislated information sharing, consultation, and participation in working groups and bodies as the key forms of cooperation between the public and civil sectors. The Decree on Procedures for Conducting Public Discussions prescribed procedures for organizing public discussion, thus involving civil society in the creation of public policies, and was obligatory for each ministry. In addition, a new Law on Free Access to Information (July 2012), was one of the measures from Innovated Action Plan for the Fight against
Corruption and Organized Crime (2013-2014). According to this law, each authority was obliged to provide clearer insight into the data that may be of public interest, and to facilitate the process of obtaining the necessary information. More importantly, CSOs had often used the availability of information not only to monitor different state bodies, but also to cooperate with them. For instance, in cooperation with the Union of Employers of Montenegro, the DACI designed a brochure entitled: “The participation of the private sector in combating corruption,” which contains a definition of corruption, an overview of criminal acts of corruption, important provisions of the Law on Liability of Legal Persons for Criminal Offenses, consequences of corruption, as well as suggestions regarding how entrepreneurs could join the fight against corruption and to report instances of corruption.

A significant difference between Montenegro on the one hand and Georgia and Bulgaria on the other was the existence of a document detailing the mechanisms of cooperation between NGOs and state institutions - The Strategy of Cooperation of the Government of Montenegro and NGOs. The document resulted in the exaction in 2012

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108 DACI webpage: antikorupcija.me/en/

of the Law on NGOs\textsuperscript{110}, which proved to be an example of successful cooperation between the Government and CSOs.

As a result domestically, NGOs were included in the working groups on each chapter of the negotiations. This decision was made by the government, but under mutual pressure from NGOs and the EU. The proposition to include NGOs in the working groups on different chapters came from domestic NGOs activists. NGO representatives and representatives of the EU delegation agreed on the cause of this proposition – the NGO sector truly understood the gravity of its role not only in the fight against corruption, but also in the holistic process of democratization. Interestingly, when asked to explain the process by which they came up with the idea, NGOs pointed out their extended communication and cooperation with the EU.

Indeed, it is worth noting that a careful analysis of proposals submitted to the working groups on Chapter 23 and 24 by NGOs showed that these proposals have rarely been included in actual legislation. From this standpoint, it seemed that NGOs’ inclusion represented a pseudo-democratic move on the part of the government (Ghandi 2008). While this was a source of frustration and disappointment, NGOs found a way to leverage their inclusion in the negotiation process. The participation of NGOs in working groups created potential for increasing the contributions of NGOs because it provided civil society with a real ability to monitor the process of negotiations from within.

\textsuperscript{110} Law on Non-Governmental Organizations “Official Gazette of the RoM No. 27/99, 09/02, 30/02, Official Gazette of Montenegro No. 11/07
Nonetheless, NGOs in Montenegro faced similar issues to those of their Georgian analogues. The reality of civil society in Montenegro, similar to Georgia and Bulgaria, had been clouded by poor political responsiveness and financial constraints. The major problem facing Montenegrin civil society organizations was their limited impact in the law-making and policy-making process. There were two key reasons for this. First, governments were traditionally reluctant to cooperate with civil society organizations on key social grievances. In particular, various segments of Montenegrin public administration saw civil society as an impediment, rather than a motor of positive societal change. An official in the Ministry of Healthcare voiced this concern by pointing out the constant discontent coming from one particular NGO (MANS) and the lack of constructive criticism.\(^{111}\) Second, despite the well-defined strategy mentioned above, the platform for the participation of civil society in a domestic policy dialogue was rather weak. The attempts of civil society organizations to clearly define the terms of their participation in policy dialogue found little resonance with public administration.

However, the aforementioned challenges were significantly abated through mediation from international actors, particularly the EU. While channels of cooperation were slow to emerge (as of 2013 it was primarily the office of the Premier of Montenegro that engaged civil society), they were steadily developing.

\(^{111}\) Author’s interview with an official at the Ministry of Healthcare, Montenegro

124
Another major challenge that Montenegrin civil society organizations faced was related to the scarcity of domestic financial resources. The major source of funding for Montenegrin CSOs was a governmental commission that supported projects in the fields of social protection and humanitarian activities, the needs of disabled people, the development of sports, non-institutional education, and the education of children and youth, culture and technical culture, and combating drugs and other types of addiction. However, the number of non-profit organizations applying to the commission was three times higher than those who actually received funding for their projects. Additionally, there was an issue with a lack of transparency in the allocation of funding. One NGO representative explained that they observed the work of the commission responsible for the allocation of funds and discovered a number of procedural violations.\footnote{Author’s interview with Delibroka Uljiaevic, Centre for Civic Education, Podgorica, MNE}

Despite these difficulties, and in contrast to Georgia, the NGO sector in Montenegro established a strong mechanism to counteract the gap between civil society and state institutions by leveraging international organizations, and more specifically the EU. In order to become a strong emancipatory and transformative power, especially in introducing European values in Montenegro, the NGO sector established strong connections with the EU. For instance, one of the most prominent anti-corruption NGOs (MANS) investigated corruption complaints, and frequently sent elaborate reports to the EU Delegation in Podgorica.\footnote{Authors interview with Dejan Pejovic, MANS, Podgorica, MNE} It also made sure to follow up with the Delegation
regarding developments in each particular case. This approach paid off and earned the NGO sector the EU Delegation’s trust. As a result, cornerstone legislation was credited to NGOs’ efforts. For instance, the establishment of the Anti-Corruption Committee in 2012, which enhanced the role of the Parliament in the fight against corruption, was intensively advocated by two civil society organizations: MANS and CeMI. This significantly differentiated Montenegro from the other two case studies: The legislation created through civil society projects was seen as a success chiefly by the civil society groups that had pushed for it. Their achievement was in having successfully lobbied government to adopt the law, rather than in the implementation of the law itself.

It is important to note that in comparison to Bulgaria and Georgia, NGOs in Montenegro differed in the tools that they used to achieve transparency and accountability because they were unified in the anti-corruption agenda. Some NGOs, like MANS, took the approach of exposing where the governments effort were insufficient to effectively combat corruption. Others, like CeMI, sought cooperation with the government. In coalition with thirteen other NGOs, CeMI managed to provide reports and studies to the government, and had its recommendations incorporated in legislation on five occasions in the period between 2012-2013. For instance, based on a report provided by CeMI and on a strong cooperation between CeMI and the Ministry of Health, significant changes were made to the National Insurance Fund.114

114 Author’s interview with an official at the Ministry of Health of Montenegro
Another example of how cooperation between the civil society sector and the EU delegation in Podgorica resulted in effective governmental pressure was the work of the Center for Civic Education (CCE). CCE was one of the oldest NGOs in Montenegro. In 2012, it signed a Memorandum with the Supreme Court of Montenegro, the Ministry of Justice, and the Supreme State Prosecutor in order to implement a project for the "Monitoring of court cases related to corruption offenses." The purpose as stated in the Memorandum was to

assess judicial efficiency in processing anti-corruption cases and raise awareness among the general public as well as legal and media professionals of the problem of corruption and the existing anti-corruption mechanisms.

The Memorandum underlined that “for the purpose of establishing the rule of law, an active participation, more direct cooperation and coordination of all segments of society in the fight against corruption is needed.” The Project also resulted in a detailed report, which was sent to the EU delegation. The head of the project asserted that sending this report to the EU delegation was the way to achieve maximal impact.

In summary, the picture presented by the institutional framework in Montenegro did not suggest that institutions were impeccable in their management of corruption.

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115 Cooperation against Corruption Center for Civic Education, January 24th, 2013
116 ibid
117 ibid
118 Author’s interview with Deliborka Uljarevic, Center for Civic Education, Podgorica, MNE
Certain problems impeding the work of anti-corruption bodies still existed in the time this study was carried out between 2013 and 2014. For instance, all interviewed agencies voiced complaints of insufficient administrative and financial capacity. This problem was most prominent in the case of the CPCI: understaffing caused the CPCI to examine only 60% of the assets declarations that it received in 2013. However, in contrast to Bulgaria and Georgia, this institution possessed the legal provisions to make checks and had established a viable network with other agencies, thus satisfying most of the conditions for an agency to effectively perform its function. Perhaps more interesting, anti-corruption institutions in Montenegro were subjected to constant scrutiny from civil society, and civil society systematically used the EU as a back channel to apply pressure to the government and make its voice heard.

4. Conclusion

This chapter focused on variation in the levels and types of corruption in the three case studies which resulted from variation in anti-corruption institutional frameworks. Including the extent to which they resulted from the mutual efforts of international and domestic actors, and the extent to which these institutions enjoyed domestic ownership. I examined and compared levels and types of corruption in Georgia, Montenegro, and Bulgaria in terms of two dimensions - the institutional ability to resist political influence and the participation of civil society in the decision-making process and in holding institutions accountable. The chapter made two main arguments.
First, I argued that while corruption and good governance indices shed some light on perceptions of corruption, they remain insufficient to provide enough data for understanding variation in levels of corruption because they lack the ability to differentiate between types of corruption. I argued that an understanding of the institutional environment provides such ability and allows for a precise understanding of the nature of corruption as well as directing attention to the social, political, and economic factors that created a context conducive to corruption.

Second, employing this approach I found that indeed the three countries had very different types of corruption. The combination of levels of independence of anti-corruption institutions and the level and style of political participation of civil society determines the context in which particular types of corruption thrive. For instance, in Georgia, centralization of power and a gap in state-society relationships nearly eliminated petty corruption. At the same time, it created an environment in which a small group of government and political officials concentrate political power and social and financial resources. In Bulgaria, according to various indices, while corruption is at roughly the same level as in Georgia (see table 1.1), the situation is significantly different. Despite Bulgaria’s long standing membership in the EU, which according to some observers created an expectation of low levels of corruption, I found a lack of networking and unclear and overlapping responsibilities between institutions, coupled with a disunited civil society whose participation was legally and institutionally impeded. As a result, corruption in Bulgaria remained decentralized (Stefes 2006) and present on every level of the bureaucracy. Montenegro, though having political issues such as weak opposition and
a party (in different coalitions) in power for the last twenty-three years, which lacked the political will to introduce viable anti-corruption reforms, was showing better progress than Bulgaria and Georgia.

Finally, a large body of literature provided numerous explanations of why levels and types of corruption vary across the countries from the former Eastern Bloc. Some of this literature claimed that it is entirely domestic factors that account for this variation, and I address these propositions in chapter six of this study. For now, I am interested in whether the EU played any role in managing levels of corruption and if it did what this role was. In the following two chapters, I proceed to explain why EU’s approach aided in some places and impeded in others the creation of functional anti-corruption institutions.
Chapter Three – The Effects of Conditionality

The EU has been guiding anti-corruption efforts in all countries from the former Eastern Bloc since the very beginning of these countries’ transitions. In most of them, it put anti-corruption efforts on the agenda immediately after the collapse of the communist regime. Even in places where it did not - in Bulgaria the first appearance of anti-corruption discourse was in 1997 - the EU actively defined democracy through concepts such as transparency, the rule of law, and accountability. In 1993, the EU established the Copenhagen criteria and specified the requirements that transitioning countries need to satisfy in order to become EU members. Through the Copenhagen criteria, the EU actively made the rule of law one of the major prerequisites for membership. The document defined democracy in terms of the rule of law. The political aspect of the Copenhagen criteria required “stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities.”119 This served as a starting point for understanding democracy by former communist societies, and placed anti-corruption efforts, political and economic transparency, and accountability at the top of the transitioning agenda.

119 European Council In Copenhagen, 21-22 June 1993, Conclusions Of The Presidency, p.13
In order to persuade countries to effectively imbue their institutions with and base their behavior on democratic principles of transparency, accountability, and political participation, the EU employed conditionality logic (Vachudova and Spendzharova 2011, Schimelfennig and Sedelmeier 2004, Schimmelfennig and Scholtz 2008). Conditionality is generally defined in the literature as an approach, in which actors are being provided with requirements, and rewarded or sanctioned based on their compliance, or the lack thereof. In order to be effective, conditionality relies on the assumption that actors make decisions through a rational cost-benefit analysis. Therefore, in the case of post-communist countries and the EU, the EU needed to make domestic actors’ benefit of complying with EU-promoted policies higher than the cost of not complying. Naturally, this could happen under particular conditions, such as severe sanctions for non-compliance, and large rewards for compliance (such as membership in the EU).

I agree with this conceptualization of conditionality. However, I claim that in order to be successful, conditionality requires mutual understanding between the EU and individual post-communist countries of what constitutes high cost and high benefit (Epstein 2008). In this chapter, I show that conditionality indeed had its intended effect, only in countries where such mutual understanding was present. In contrast, in places where domestic actors’ rationality was bounded by the context in which they operated, and the meaning they imbued in conditions, sanctions, and rewards was not compatible with this of the EU, conditionality did not have an effect or in some cases had a negative impact.
More importantly, the domestic context that bounded the rationality of domestic actors was malleable. It is true that the fall of the Berlin Wall found former communist countries in different conditions, and some of them were clearly more liberal than others (Vachudova 2005). However, the domestic context was never static. Instead, it was constantly evolving, and I show in this and the next chapters that its development was to a large extent a function of the EU involvement with different domestic actors. More specifically, the malleability of the domestic context made it susceptible to the establishment of mutual understandings of international and domestic actors. In places where the EU was highly engaged in understanding the precise conditions underpinning corruption, such as Montenegro, shared understandings were established, and conditionality had its intended effect. In contrast, in Bulgaria and Georgia, where neither domestic actors, nor the EU managed to fully comprehend each other’s understandings of notions of corruption, transparency, accountability, and conditionality often had a negative effect.

I argue that the effects of conditionality varied by country, and that this variation was due to both domestic and international factors. More specifically, I argue that variation in the outcomes of EU conditionality is explained by differences in domestic perceptions and interpretations of EU’s actions, and by the level of flexibility of EU conditions, incentives, and sanctions. First, once recommendations, conditions, incentives, and sanctions were produced by the EU, it was domestic actors that interpreted them and decided whether, and more importantly how, to act on them (Vachudova 2005, Schimmelfennig 2005, Levin & Satarov 2000, Fritzen 2005, Mungiu-
Pippidi 2006). In some cases, the meaning imbued in EU suggestions for reforms was understood by domestic actors in the way intended by the EU. In others, it was not. For instance, Bulgarian policy makers consistently believed that the creation of more institutions would address EU’s suggestions, while the EU actually desired a comprehensive judicial reform,\textsuperscript{120} leading to the coordination between anti-corruption institutions. In contrast, Montenegrin authorities correctly understood EU requirements as guidance to embedding transparency and accountability into domestic institutional structures.\textsuperscript{121}

The second factor that determined the success of conditionality was the level of state specific knowledge that motivated EU’s conditions, incentives, and sanctions. In some countries, such as Montenegro, the EU received politically unbiased feedback and was capable of iteratively adjusting its recommendations in a way that they addressed specific problems. In other countries, such as Bulgaria and Georgia, the EU did not manage to grasp the full picture, or to understand the underlying causes of corruption. This made its recommendations unclear and general, and recommendations were often perceived as externally imposed.

Finally, I claim that while the EU used conditionality in all post-communist countries, conditions, incentives, and sanctions varied across countries. I build upon

\textsuperscript{120} Author’s interview with S. Diez, EU Commission, Brussels

\textsuperscript{121} Author’s interview with S. Lakovic Head of the Commission for Conflict of Interest of Montenegro
academic literature, which suggests that the EU applied the same logic of conditionality to both candidate members, and countries that did not have membership potential. For instance, Kelley (2006, 2011) argued that the raison d’être of the European Neighborhood Policy (ENP) was enlargement. She showed that the movement of people from DG Enlargement to DG External Service led to “some direct mechanical borrowing from enlargement experiences.” In 2002, the former President of the European Commission, Romano Prodi (2002) even suggested the creation of benchmarks “to measure what we expect our neighbors to do in order to advance from one stage to another. We might even consider some kind of “Copenhagen proximity criteria.” This statement directly referred to the logic of membership conditionality, expressed in the Copenhagen criteria: “accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required.”

The EU’s use of the logic of conditionality in countries that did not have membership perspective was evidenced by the similarity of mechanisms employed to those used in countries that did have perspective. Just as with candidate members, countries from the European Neighborhood Policy (ENP) created Action Plans, and

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124 European Council In Copenhagen, 21-22 June 1993, Conclusions Of The Presidency, p.13
received regular reports from the EU Commission. Certainly, the fact that the ENP offered “everything but institutions”125 was significant. Some have claimed that without the ultimate incentive of membership, countries would be less compelled to comply (Grabbe 2004, Lavenex 2004). I address this argument in chapter six. Here, I show that in all cases the logic of conditionality remained the same, but the conditions, incentives, and sanctions changed. For instance, in the case of Bulgaria, the logic of conditionality continued to be a leading principle of the country’s interaction with the EU, even after membership was granted in 2007. While after 2013, the offered reward was not membership, the Cooperation and Verification Mechanism (CVM) operated in a way that was very similar to pre-accession conditionality. It differed from membership conditionality only in the reward, which now was Schengen zone inclusion instead of EU membership. The above argument is consistent with Kelley’s view, but I add to it by claiming that a change of the conditions, rewards, and sanctions is important throughout the process of integration. In cases where the EU managed to alter conditions, rewards, and sanctions to address specific problems that underpinned corruption, EU-promoted reforms were not perceived by national actors as externally imposed and unclear.

I show that EU conditionality had a different impact on corruption reforms in each of my three cases. In Bulgaria, the EU’s lack of understanding of the domestic factors underpinning corruption led the EU to introduce conditions that consistently focused on

125 Chaves Gonzales, president of the Region of Andalusia (ES/PES) and rapporteur for the opinion on Wider Europe in Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours.said that neighbouring countries must "share everything with the Union but institutions" available at http://europa.eu/rapid/press-release_COR-03-94_en.htm
the harmonization of law and the pace of the reforms. As a consequence, the EU’s conditionality led to the creation of a set of institutions that was characterized by unclear responsibilities, and was lacking inter-institutional coordination. In Georgia, EU conditionality consisted of a blanket requirement to eliminate corruption and almost unconditional support for President Saakashvili’s actions, which led the government to indeed eliminate petty corruption. However, such conditions and incentives also provided Saakashvili with the legitimacy that he needed in order to centralize power and create an environment, where rent extraction was possible by a small and elite group of government officials.

In contrast, Montenegrin authorities were operating in an environment where constant interaction between the EU and domestic civil society altered the domestic context in a way that united civil society, and the EU Delegation formed a mutual understanding around the goal and the dynamics of the anti-corruption reforms. Thus, in contrast to Georgia, civil society did not allow the misuse of EU’s approval of government actions to result in centralized political power, or to lead to ad hoc changes in the anti-corruption institutions of the country that did not amount to a comprehensive reform.

The previous chapter identified the cornerstones of the anti-corruption arrangements in Bulgaria, Georgia, and Montenegro, as well as the problems that each of the three countries faced. In this chapter, I turn to the particular actions of the EU that contributed to the shaping of these systems. I identify the critical junctures of the creation
of anti-corruption systems in the three case studies, and analyze the relevant actions of the EU before and after those critical junctures.

I. Bulgaria

As previously discussed, the main issues preventing the effective functioning of Bulgaria’s anti-corruption system were a politically dependent judiciary with a strong prosecutor general, the lack of cooperation between different anti-corruption bodies, and the weak participation of civil society. This chapter examines the way in which the EU contributed to the establishment of Bulgaria’s anti-corruption system through conditioning membership upon harmonization of the law, and without specific quality criteria on the implementation of the newly created law.

I argue that in Bulgaria the focus on harmonization of the law, coupled with time pressure, led to fast harmonization of domestic law with the *acquis communautaire*, ad hoc reforms instead of comprehensive reform of the judiciary and anti-corruption institutions, and support for populist and nationalist tendencies. Thus, the way conditionality was applied resulted in institutions, which were not capable of effectively controlling corruption, but that were merely used to sustain political parties in power, and to facilitate the extraction of rents.

I also show that this unintended effect was a function not of conditionality itself, but rather of the lack of shared understandings between Bulgarian officials and the EU, with respect to the final goal and the tools necessary to achieve it. In contrast, in
Montenegro, the key local advocate of the merit and the importance of institutions imbued with transparency and accountability, and enjoying a high level of domestic ownership, was civil society. In Bulgaria, the absence of such strong, value-driven players to audit implementation and champion EU norms resulted in a lackluster attempt at achieving the intended outcomes. As a result, and despite EU’s best intentions to support Bulgaria in its search for the most suitable anti-corruption institutional arrangement, the EU consistently failed to address the core problems of Bulgaria’s anti-corruption system, such as the inability of civil society and government officials to cooperate in creating policies, and to secure domestic ownership of these policy. Instead, it required actions, which were not only ineffective, but also led to partial reforms, resulting in institutions, which did not cooperate with each other, and had unclear responsibilities.

High levels of corruption in Bulgaria consistently remained a top priority for the EU. The issue was first mentioned in official communication between Bulgaria and the EU in the EU issued opinion on Bulgaria’s progress from 1997. The Opinion singled out the lack of clear responsibilities among anti-corruption departments as a specific cause of corruption. The Opinion stated that, “Considerable discretionary power and a lack of clarity in allocating responsibilities and powers among Civil Service departments has allowed corruption to take hold easily.”\(^{126}\) As the previous chapter concluded, the unclear and overlapping responsibilities of anti-corruption agencies, as well as their inability to

\(^{126}\) Commission Opinion on Bulgaria’s Application for Membership of the European Union DOC/97/11, Brussels, 15th July 1997, p.14
coordinate anti-corruption efforts, indicated that the issue mentioned in the 1997 Opinion still persisted in 2013, and that Bulgaria made little progress in the last twenty years.

In over two decades of trying to leverage varying incentives, such as membership conditionality and the CVM after accession in 2007, the EU failed to effect meaningful change in Bulgaria. After the collapse of the communist regime, Bulgaria saw two periods of EU conditionality: before and after the country was granted membership in January 2007. The EU’s use of conditionality in both of these periods (Kelley 2004, 2011) was clear, and the change of the main incentives should not be mistaken for a change of the approach. Before 2007, the EU was clear that membership was contingent upon Bulgaria’s ability to satisfy pre-accession conditions. Membership - the ultimate incentive that the EU could use to increase its leverage - persuaded many to place a strong emphasis on accession, and to argue that once membership was granted, the EU’s leverage was inevitably decreased (Kelley 2004, Schimmelfennig 2005, Schimmelfennig and Sedelmeier 2005, Vachudova 2005). In this chapter, I show that even in the years before 2007, when the EU had the ultimate power, it failed to persuade Bulgaria to increase its institutional capacity in the area of anti-corruption because it failed to correctly identify the core issues, and to apply pressure on governments to introduce holistic anti-corruption policies.

\[127\] ibid
The beginning of pre-accession conditionality was marked by the start of negotiations in 2000. At this point, securing the rule of law became the issue that required the most attention. Chapter 24 of the negotiation process directed the negotiations between the EU and Bulgaria on judicial and home affairs. It specified the milestones that the country needed to achieve in order to become a member of the EU. This chapter was opened in June 2001. Shortly after, Bulgaria issued a negotiation position, which described the progress made by the country, and outlined the current state of affairs.\textsuperscript{128} The negotiation position committed the country to fighting corruption, and claimed that Bulgaria had been pursuing a consistent policy, aimed at preventing and prosecuting organized crime and corruption. However, the language in all sections remained vague, and only promised the ratification of international conventions which Bulgaria had signed some three to four years prior.

The chapter was closed only two years after it was opened. The short negotiations period on Chapter 24 proved to be an insufficient period for Bulgaria to introduce reforms pertinent to the domestic context. In the course of negotiations, Bulgaria introduced a new Penalty Procedural Code, and amended legislation on border and customs control. Coupled with the ratification of many international conventions related

to organized crime, fraud, and corruption, these amendments signified a level of commitment to fighting corruption.

However, commitments to fighting corruption in Bulgaria did not directly translate into implementation and enforcement of the law. A successful reform would have required a careful consideration of the existing system and a change in the institutional arrangement, in order to secure horizontal accountability of institutions, such as a more transparent mechanism for electing the magistrates in the Supreme Judiciary Council (SJC), and an accountable Prosecutor General. A successful reform would have also required guarantees for the diagonal (societal) accountability through the participation of civil society.

Instead, in the period before 2007, when some claimed the EU had the most power (Vachudova 2005, Schimmelfenning and Sedelmeier 2005), its conditionality approach had two consequences. First, before accession, it put Bulgaria on a path of anti-corruption reforms which did not specify a clear anti-corruption model as an end goal. The negotiation process for Chapter 24 was quick, filled with reforms that were not related to each other, and that did not amount to a cohesive approach toward anti-corruption efforts.

Comprehensive and well thought out anti-corruption reform and simultaneous harmonization and implementation were not realized by 2005. For instance, in a speech

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before the Parliament, President Purvanov stressed that, “I don’t want to dramatize the situation in which the country is … but our EU membership depends on how the Bulgarian institutions perform. In other words the law- and the institution-making process need to be extremely fast-paced.”¹³⁰ This statement showed that he saw membership conditionality as a mere pressure to synchronize Bulgaria’s law with the law of the EU. Instead of furthering the internalization of norms that underpinned anti-corruption requirements of the EU, the fast-paced creation of institutions was aimed solely at satisfying EU conditions. Despite some objections to the President’s speech, there was not a discussion with respect to potential downfalls of fast-paced reforms. The lack of concern with quick reforms was evidence testifying to the fact that membership in 2007 was the end goal for Bulgarian public officials, and the level of successful implementation of the reforms was not a priority. Similarly, all interviewed members of the negotiation team agreed that membership was the priority, and pressure from the EU was directed toward fast harmonization instead of implementation. According to some negotiators, the harmonization of law was a very technical process, which required altering more than 200 laws a month.¹³¹ Indeed, in the period when negotiations on chapter 24 began in 2001, to Bulgaria’s membership in the EU in 2007, the Penal Code of the country was amended fifteen times, five of which occurred in 2007. In the same period, the Law on Health was amended eighteen times. Naturally, the 2007 deadline left

¹³⁰ President Purvanov before Bulgarian Parliament July 11th, 2005 available at: http://parliament.bg/bg/plenaryst/ns/2/ID/29 (author’s translation)

¹³¹ Author’s interview with a former member of Bulgaria’s Negotiation team
little time for implementation, consideration of local particularities, and consultation with the third sector.  

Second, the inability of the EU to understand the necessity of long and comprehensive reforms in the area of anti-corruption in Bulgaria led to a structure of negotiations which did not prioritize anti-corruption policies and judicial reform, and which did not allow the negotiations on an independent judiciary to focus on tangible results. In Bulgaria, chapter 24 encompassed both Judicial and Home Affairs. Negotiations began with issues pertinent to home affairs, such as asylum, border control, and refugee issues. In the context of the recent Yugoslav wars, 9/11, and Bulgaria’s future role as a guardian of the EU border, the EU’s focus on home affairs was understandable. However, this focus also left the issue of judicial reform and anti-corruption unaddressed.

One of the lead negotiators on Chapter 24 in the period from 2001- 2003 claimed that negotiations on anti-corruption policies did not take place at all, and that the emphasis was placed entirely on Home affairs. In 2003, a new negotiating team was introduced. Though information about the exact trajectory of the negotiation process is not available, it is worth noticing that instead of a reform in the judicial system, the CVM emerged as the result of negotiations. Again, there was very weak and superficial public debate, and stakeholders were not included in this decision. One representative of civil society said

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132 Authors interview with a former Head of Bulgaria’s Negotiation team.

133 In consequent negotiations the chapter was divided in two chapters

134 Author’s interview with a member of Bulgaria’s Negotiation Team, February 2014
that everyone in the NGO sector was equally surprised by the introduction of the CVM.\textsuperscript{135}

Perhaps more importantly, the lack of inclusion of civil society actors in a political dialogue with the EU led to the EU not receiving the feedback it needed to adjust its positions and actions in a way that focused them on pressing issues that sustained high levels of corruption. For instance, in 1991 a new mechanism for electing the Prosecutor General vested additional power in the office. By 1993, it became clear that the intent to make the prosecution independent had backfired, and instead Bulgaria had created a powerful institution which was not held accountable by anyone (see chapter two). Nevertheless, CSOs were lacking a relationship with the EU, which did not allow them to convey their concerns to the EU. As a result, in the period from 2000-2007, there was not a single mention of the problem of a powerful prosecutor in the regular reports of the EU. Instead, in this period, the EU focused on capacity building and failed to pressure domestic authorities to address the power of the Prosecutor General. Similarly, the Supreme Judicial Council (SJC) has traditionally suffered from a lack of transparency and fairness in appointing judges and prosecutors, and the EU has been equally unable to identify this issue.

The inability of the EU to identify the most prominent problems stemmed from its lack of cooperation with independent civil society, and led to inept recommendations.

\textsuperscript{135} Author’s interview Tihomir Bezlov, CSD
The ineptness of recommendations was obvious in the fact that they often failed to target the real causes of corruption. For instance, in 2000, the main objections of the EU were related primarily to budgetary issues, such as deficiency in the funding that the state budget provided for the Judicial system instead of the mechanisms securing an independent yet balanced Prosecutor General.\footnote{EU report of the Progress of Bulgaria toward EU membership 2000} This particular issue, raised by the EU, indeed caused an increase in the budget for the judiciary. However, it did not balance the powers of the judges collegiate and the prosecutors collegiate within the SJC. Also, the issues raised by the EU did not address the fact that the SJC was prone to political influence because the additional budget was balanced in an unchanged corrupt system. In other words, having more funding did not mean a fair mechanism for appointing judges, nor did it provide conditions for decreasing the backlog in courts, nor did it create an institution that was capable of guaranteeing the independence and functioning of the judicial system. Instances like this one were not rare, and they explain why strong but misguided conditionality made Bulgaria incapable of fighting corruption effectively.

This unintended effect of conditionality was not a function of conditionality itself. What appeared to be a willful neglect of EU recommendations driven by the mere desire of Bulgarian officials to quickly receive EU membership was indeed underpinned by the lack of shared understandings between the EU and domestic political elites. Lacking shared understandings between the EU and Bulgarian officials with respect to the goal of anti-corruption reforms and the intended way of achieving them hindered not only the EU leverage over domestic reforms, but the reforms as well. In order for one actor to
successfully persuade another to act in a certain way through employing rewards and sanctions, both actors need to have a mutual understanding of what constitutes strong sanctions and high rewards. This seemed not to be the case in Bulgaria. The EU saw membership for the post-communist countries as a way to assist their transitions\textsuperscript{137}, and, in contrast, the majority of Bulgarian policy-makers saw membership as an end rather than a means to democracy. As early as 1999 (the third report on Bulgaria’s progress), the EU called for “creating or strengthening internal and external control structures in the administration and the judiciary.”\textsuperscript{138} This recommendation continued to appear in consequent reports and was consistently met with a domestic response that showed the inability of policy makers in Bulgaria to fully comprehend ideas put forward by the EU. For instance, the internal structures for control that the EU referred to were the inspectorates within different ministries and the SJC, which at this point were failing to manage corruption because they did not have an established mechanism for cooperation (see chapter two). Such inspectorates were not created until 2007. In other words, the EU consistently sent its main message stressing that “implementation of actions on the ground”\textsuperscript{139} was more important than public officials’ will to tackle corruption. Yet, recommendations have been consistently used for introduction of only partial judicial reform.

\textsuperscript{137} Author’s interview with S. Diez, European Commission, DE Enlargement, Brussels February 2014

\textsuperscript{138} EU Commission Regular Report on the Progress of Bulgaria toward EU Membership 1999

\textsuperscript{139} EU Commission Regular Report on the Cooperation and Verification Mechanism for Bulgaria, 2007
The lack of shared understandings with respect to the meanings imbued in EU suggestions created and sustained a tendency for Bulgarian policy-makers to misread EU’s suggestions, and to address them by creating ad hoc committees to investigate accusation of corruption, instead of establishing a comprehensive reform. This tendency was more obvious after accession in 2007. In 2008, the EU revealed that prominent Bulgarian officials, including the Minister of Agriculture, had intentionally misused EU funds and benefited personally. In an attempt to sanction Bulgaria for corruption in the area of EU funds, the EU froze €500m in aid to the country. The EU Commission President, Jose Barroso stated that the government “shows that the institutions and systems are now in place but tangible results need to be achieved in investigating, prosecuting and judging cases of high - level corruption and organised crime.”

The new GERB government responded by creating yet another institution - a specialized joint team of state investigators and prosecutors whose task was to investigate cases of abuse and misappropriation of EU funds. This measure, while praised in the CVM reports, simply addressed a concrete instance of corruption, but did not identify the lack of comprehensive design of the anti-corruption institutional structure as a core problem, and did not mark the beginning of needed institutional reform.


The sanctioning of Bulgaria in 2008 clearly did not have its intended effect because a similar scenario occurred again in 2013 when the EU again suspended funds. This time the frozen funds were under the Operational Program “Environment”, but the reasoning for this sanction was similar to the one from 2008 - mismanagement of funds. GERB did not comply with the report of the European Court of Auditors from 2011, which called for the imposition of higher financial corrections in projects funded with EU money. This case indicated that previous financial sanctions did not have a significant effect because they were misread by Bulgarian officials, and the issue that provoked the sanctions was not addressed. Institutional opportunities for the abuse of EU funds was still very much present.

More importantly, the unintended effects of EU conditionality, in addition to a lack of shared perceptions, were also due to reforms that were being introduced in order to satisfy EU criteria, but not in order to fight corruption. The work of the Parliamentary Commission for Counteracting Crime was a striking example of this trend. The Commission met six times to address EU’s first recommendation for strengthening the judiciary.142 Two of the meetings were dedicated to specific instances of corruption and the purpose of the other four meetings was to discuss measures for improving the customs administration, the causes of the collapse of the banking system, and the creation of a public register of properties owned by high level government officials. In neither of

142 EU Commission Regular Report on Bulgaria’s Progress toward EU Membership 1999
these meetings was the EU regular report discussed explicitly, nor was there any focus on comprehensive judicial reform. Some amendments to the Law on Commerce and the Law on Assets of Public Officials resulted from these meetings. However, they were superficial and never implemented. Yet, in an attempt to persuade legislative change, one MP used EU membership as main motivation, and threatened the rest of the MPs: “If you think that the national interest of Bulgaria is not to become EU member, you need to be loud and clear about it. We are a country and you know what happens to countries that don’t comply.”

Over the years, the EU remained consistent in its criticism of the judiciary reform, but this criticism unfortunately did not achieve a significant effect. A lack of mutual understanding between the EU and Bulgarian authorities regarding the most salient issues and best approaches to address them led to what Noutcheva and Bechev (2008) labeled, “accession fatigue.” The October 2005 annual report concluded that, “no steps were taken in the reporting period to modernise the prosecution service, although there remains a need to make it more transparent and accountable.” The strongest criticism of the SJC by the EU came as late as 2007, when the first CVM report observed a pressing need for an inspectorate with the SJC and concluded that, “In the absence of the Inspectorate

143 Peter Dimitrov speech before the Parliament October 28th, 2005, available at http://parliament.bg/bg/plenaryst/ns/2/ID/55 Author’s translation

under the JSA, no progress can be reported.”\textsuperscript{145} This indicated a better understanding of the core issues leading to high levels of corruption on the part of the EU. However, it also came as late criticism, which had little impact on Bulgarian officials and the public – a fatigue from the constant flow of negative feedback from the EU. As a result, Bulgarian authorities did not take actions to reform the SJC and to change the procedure by which its members were elected. Even today, some eight years after accession, the debate continues to be whether the structure of SJC should be altered, rather than how it should be changed.

Upon accession, the EU continued to apply conditionality with the same lack of results. This time conditionality was enforced through the Cooperation and Verification Mechanism, which was specifically tailored to Bulgaria and Romania. Despite the fact that in 2007 Bulgaria was already a full-fledged member, the CVM was based on the same logic of conditionality. Simply put, now the ultimate incentive of EU membership was substituted by inclusion of the country in the Schengen zone\textsuperscript{146} – the European border-free area consisting of 25 states. Membership in Schengen was desirable by all political groups in Bulgaria. In 2014-2015, the leader of the Bulgarian socialist party – Sergei Stanishev and the leader of GERB and current Prime Minister of Bulgaria – Boiko

\textsuperscript{145} EU Commission Regular Report on the Cooperation and Verification Mechanism in Bulgaria 2007

\textsuperscript{146} 25 member states: 22 EU countries (all except Bulgaria, Romania, Ireland, the UK and Cyprus) as well as three associated countries: Norway, Iceland and Switzerland. Denmark has signed the Schengen agreement, but has kept its freedom not to apply certain measures. The UK and Ireland chose to stay outside the Schengen area.
Borisov agreed on a common agenda, and established a common position with respect to Bulgaria’s membership in Schengen, and referred to Schengen as the new Berlin Wall in Europe. In a joint statement they said:

We have a common position for Schengen. While this Berlin Wall is present, there will not be an effective common security and since Bulgaria has satisfied all criteria it would be necessary and it is time that we become members of Schengen.147

Similarly, Meglena Kuneva from the Reformist Bloc and the current Deputy Prime Minister for European integration has been traditionally extremely vocal in advocating Bulgaria’s membership in Schengen. In 2014, she explained that “leaving Bulgaria out of Schengen is risky for both the country and the EU.”148

This overwhelming agreement with respect to Bulgaria’s membership in Schengen gave the EU the opportunity to condition inclusion in Schengen upon effective anti-corruption reforms and to continue its approach of conditionality. In turn, consistent criticism from the EU led to the enactment of a new Judiciary System Act (SJA) in

147 Борисов и Станишев се обединиха в името на приемането на България в Шенген. Borisov and Stanishev united in the name of Bulgaria’s acceptance in Schengen [author’s translation] Varna24.bg, February 12th, 2015 Available at: http://news.varna24.bg/540835.html

148 Сметките ни са криви ако очакваме да ни поканят в Шенген. Our calculations are wrong if we expect to be invited in Schengen. Investor.bg, October 18, 2015. Available at: http://www.investor.bg/ikonomika-i-politika/332/a/kuneva-smetkite-ni-sa-krivi-ako-chakame-da-ni-pokaniat-v-shengen-204329/
2007. However, there was no evidence of public discussion regarding the new SJA, and statements from government officials showed that the purpose of the SJA was to simply address EU criticism, but not to make the SJA functional and effective. The EU’s specific recommendation for internal control within the judges collegiate, for example, was addressed with a proposition for imposing disciplinary sanctions for judges who breach the Oath of Office. This proposition, though vague about the exact meaning of breach of Oath of Office, was passed in Parliament. Later it was struck down as unconstitutional by the Constitutional Court. As a result of its inadequacy, the SJA was amended and supplemented seventeen times in the period between 2007-2012.

Failed interpretations of EU recommendations and a general lack of understanding of the purpose of these recommendations had a negative impact on other institutions as well. For instance, the idea for a Specialized Criminal Court was entirely credited to GERB, the party in power at the time. It was presented as a consequence of EU’s recommendation in the CVM report, despite the fact that in the reports such an explicit recommendation was not found. Instead, the report called for changes in the pre-trial procedures, such as investigation of alleged crimes. Such procedures were often lengthy and when it came to corruption, it was not always clear which one was the investigating agency. None of these pre-trial issues would have been addressed by the creation of a Specialized Criminal Court, for the Court did not have investigating powers.

\(^{149}\) State Gazette of Bulgaria No. 64/7.08.2007
Perhaps most importantly, the CVM not only failed to achieve the goals it had set for itself, but it had a negative impact. Both scandals at the State Agency for National Security (SANS) and the Commission for Prevention and Ascertainment of Conflict of Interest (CPACI) were politicized and used by different political parties to gain dividends. The controversial appointment of a head of SANS in 2013 (see Chapter two) led to the longest mass protest in the post-communist history of Bulgaria, with corruption the main grievances of the protesters. The consequent political rhetoric was centered on high levels of corruption, and political parties used it to increase their constituencies. For instance, the majority of political parties’ campaign statements primarily focused on corruption and disregarded their ideological orientation.

The protest resulted in national elections, and, during the protests, EU Parliamentary elections took place. In both campaigns, the issue of corruption was prioritized at the top of all political parties platforms. Coupled with the lack of clear steps as of how to address corruption, campaigns were reduced to appealing to voters based on the issue of the day. Therefore, the creation of SANS and CPACI was highly ineffective in addressing corruption and conflict of interest, and instead it served to solidify the pre-existing trends of party populism as political strategy. This is because political strategy populism is less concerned with the details of specific movements and

150 GERB has been consistently placing the fight against corruption and organized crime at the top of the party’s agenda. See Граждани за Европейско Развитие на България [Citizens For The European Development Of Bulgaria] [GERB], Програма на Политическа Партия ГЕРБ за Европейско Развитие на България [Gerb Platform For The European Development Of Bulgaria], (2013) available at http://www.gerb.bg/bg/pages/otcheti-za-predizborni-kampanii-88.html
whether they meet preconceived platforms and agendas. Populist movements, such as GERB in Bulgaria, aim to bypass formal political institutions and use informal institutions in the name of “direct” and “immediate” action.\textsuperscript{151} The actions of the leader of GERB, Borisov, confirmed Jones’s idea of populist leaders as “political entrepreneurs” who compete to catch any voters and displace established political parties as the main mechanism for capturing votes (Jones 2007).

The creation of anti-corruption institutions that were empty shells (Dimitrova 2007) as a response to negative CVM reports had an impact beyond just reinforcing populism. Some political parties, such as ATAKA and the National Front for the Salvation of Bulgaria (NFSB), used their electorate’s exhaustion from negative CVM reports to promote a nationalist ideology, and to amplify anti-EU sentiment in Bulgaria. Emil Cohen, the head of Bulgaria’s Tolerance Salvation NGO, explained the approach of the two nationalist groups to amplify xenophobia and to call for a strong nationalist state\textsuperscript{152}

\textsuperscript{151} One of the earliest formulations in this direction originates with William Kornhauser who distinguishes between populist and liberal democracy: Populist democracy involves direct action of large numbers of people, which often results in the circumvention of institutional channels. Liberal democracy involves political action mediated by institutional rules, and therefore limitations on the use of power by majorities as well as minorities. The difference between liberal democracy and populist democracy, then, does not concern who shall have access to power (in both cases, there is representative rule); rather, it concerns how power shall be sought, the mode of access. In liberal democracy, the mode of access tends to be controlled by institutional procedures and intermediate associations, whereas in populist democracy the mode of access tends to be more direct and unrestrained. Kornhauser, William, \textit{The Politics of Mass Society}, (New York, The Free Press of Glencoe, 1959), p. 131.

\textsuperscript{152} \textit{Political extremism on the rise in Bulgaria}, DW, July 2014. Available at: http://www.dw.de/political-extremism-on-the-rise-in-bulgaria/a-17613184
with the EU’s repeated accusation of Bulgaria having rampant corruption and a poorly functioning judiciary. Anti-EU sentiment was clearly expressed in ATAKA’s political program for the election in 2014. The leader of the party, Volen Siderov openly blamed the striking difference in living standards between Bulgaria and other EU members to Bulgaria’s membership in the EU.\[153\] Siderov, who was also the head of the Anti-Corruption Committee in Parliament in 2013-2014, claimed not only that CVM is crushing the national esteem of Bulgarians, but also that, “The Europact only maintains the power of the domestic bank and corporative oligarchy.”\[154\] Furthermore, Siderov’s comments on the CVM report from January 2015 were focused on interpreting the report as positive and practically dismissing its significance. With this rhetoric, ATAKA won a substantial number of seats in every Parliament since 2005, and was a decisive force in the 42nd National Assembly (2013-2014).

Indeed, the constant flow of negative reports from the EU created a fatigue instead of shaming because they did not adequately address domestic norms and meaning. The CVM consisted of six benchmarks identified by the Commission, and not one of them was dedicated to civil society’s participation. This is not to say that the CVM did not assert the role of civil society in the fight against corruption. To be fair, an analysis of all CVM reports showed increasing discussions of civil society and increasing demand on

\[153\] Планът Сидеров срещу Колониалното Робство. Управленска Програма на Партия ATAKA. The Siderov Plan against the Colonial Occupation. Program of Political Party ATAKA. Available at: [http://ataka.bg/Programa_ATAKA_PLAN_full.pdf](http://ataka.bg/Programa_ATAKA_PLAN_full.pdf)

the part of the EU for inclusion of civil society in the decision-making process. Though increased, this recent focus on civil society remained sporadic and overgeneralized. For instance, the CVM report from February 2014 was the one that mentioned civil society the most; however, it did not specify a clear mechanism for securing the participation of the third sector. In the next chapter, I show that this problem dates back to before the CVM was introduced in 2007. The failure to address it then created an unstable and dysfunctional relationship between the EU and domestic CSOs, and set the CVM up for suboptimal achievement of its goals.

2. Georgia

In the following section, I examine the role of the EU in the process of creating anti-corruption institutions in Georgia. I argue that through almost unconditional support and praise for Saakashvili’s actions, the EU served to legitimize the incumbent and his anti-corruption activities that often proved to be at odds with democratic principles. This in turn allowed Saakashvili’s government to create power structures, to further solidify its power, and to create an environment conducive to grand corruption while virtually eliminating petty corruption.

In the period before the Rose Revolution in 2003, the EU and other international actors were extremely critical of high levels of corruption in Georgia (Stefes 2006, Papava and Tokmazishvili 2006). When in 2003, domestic grassroots organizations, such as KMARA! (Enough!), the Liberty Institute, GYLA (who first contested the 2003
election results), and Rustavi-2 (a national TV station that gave media outlet to protestors) led the Rose Revolution, the EU, through the Partnership and Cooperation Agreement (PCA), had already applied pressure to Georgia to fight corruption.\textsuperscript{155} It had also condemned the lack of transparency in the 2000 elections and had pressed President Shevardnadze to “further political, economical and judicial reforms, with a view to establish a democratic and market oriented society in Georgia.”\textsuperscript{156}

Toward the end of 2003, the EU was worried both about Shevardnadze’s methods and his Soviet past, and saw new hope in the Rose Revolution and its leader - Mikhail Saakashvili. He represented the people “who knew English and computers,”\textsuperscript{157} had a Western education, had openly declared Georgia’s pro-EU orientation, and had committed to the fight against corruption. The Presidency of the EU declared:

\begin{quote}
The Presidential election has opened up new opportunities for Georgia. The EU now looks forward to helping Georgia and the other countries of the South Caucasus to come closer to the European family.\textsuperscript{158}
\end{quote}

\begin{footnotes}
\item \textsuperscript{155} Partnership and Cooperation Agreement Georgia, art 73 (1)
\item \textsuperscript{156} Declaration by the Presidency on Behalf of the European Union on the Re-election of President Eduard Shevardnadze of Georgia, Brussels, April 2000
\item \textsuperscript{158} Declaration by the Presidency on behalf of the European Union on the Presidential elections in Georgia, Brussels, 9 January 2004
\end{footnotes}
Support for Georgia was continuously conditioned upon success of the anti-corruption reforms:

The EU welcomes Mr. Saakashvili's first public comments following his victory on the need to combat corruption and to uphold the rule of law. Progress in this reform programme will facilitate increased international support and engagement in Georgia's development.159

The hope that the EU saw in Saakashvili’s victory soon translated into actions which legitimized further the government’s anti-corruption reforms. Bilateral relations intensified in 2004, Georgia was included in the European Neighborhood Policy, and Rapid Reaction Mechanism (RRM) funds were made available. The RRM provided Georgia with €4.65 million to assist measures to reinforce the rule of law and democratic processes in Georgia.160 Finally, the EU also adopted a Joint Action establishing the EU Rule of Law Mission in Georgia - EUJUST-THEMIS,161 in the context of European Security and Defense Policy (ESDP), in order to assist in the development of a government strategy to guide the reform of the country's criminal justice system. Saakashvili understood the support that the EU provided him as a tool for legitimizing domestically his radical anti-corruption reforms, but also to centralize power. As a result, these reforms did eliminate petty corruption, but they did not change the culture of

159 ibid
160 Press release EU commission, Georgia: €4.65 million to reinforce the rule of law and democratic processes, Brussels, 2 July 2004
161 EUJUST THEMIS covered the expenditure to EUR 2.3 million. Press release, 2603rd Council meeting General Affairs and External Relations Brussels, 13 September 2004
corruption in Georgia, and created an environment in which grand corruption could thrive.

The government used both the financial support and the legitimacy provided by the EU to introduce drastic reforms immediately after it took office in 2004. It started with revamping the police force. This was a twofold process. First, reforms in the Ministry of Interior abolished some institutions and created new ones. The most prominent example is the Police Academy, which moved from a Soviet-style institution to an Academy where acceptance became merit-based. Second, the government fired 80-90% of all police officers. 25,000 to 30,000 trained police officers were left unemployed without an explanation and more importantly without compensation. Shortly after this, Saakashvili explained to National Public Radio in Washington that “most of them did have savings because they were corrupt and they had money.”

Similarly, the mechanisms by which new police officers were hired were unclear and therefore not merit-based. The MoI hired young and inexperienced people who seemed to be loyal to

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162 The National Bureau of Passport-Visa and Citizens Registration was transferred to the Ministry of Justice. The Main Administrative Board of Highway Patrol was established. The Ministry of Internal Affairs eliminated the Main Administrative Boards of Traffic Police, Protection of Public Order, Ecology Police and the Transport Department. The Financial Police was established within the Ministry of Finance. However, the criminal offences in regard to money laundering and forge money remain within the structure of the Ministry of Internal Affairs, as they are mostly connected to other types of organized crimes. The Central Telephone dispatch system is at least functioning in the capital Tbilisi and in all regional capitals. The so called “Protection Police” is still a part of the Ministry of Internal Affairs, but is not funded from the Ministry’s budget.

higher-officials and the ruling party rather than to professional standards (Kupatadze et al 2006).

Part of the reforms consisted in the restructuring of the Ministry of the Interior (MoI). Indeed, such restructuring discontinued the Ministry’s financial dependence on its involvement in the shadow economy from Shevarnadze’s era (Wheatley 2005). However, MoI remained powerful, and organized hierarchically with no external control or transparency. The reforms centralized the MoI and were justified by the government as a measure to prevent the formation of corruption-prone informal power centers. In turn, MoI became prone to serve political interests. The lack of a National Director of Police or similar police professional who would report to the political post of the Minister (and arguably, to an external oversight body) and hold overall responsibility for police actions led to the virtual assumption of the role of the highest police officer in the country or police headquarters (Krunic and Siradze 2005). As a result, police officers are in fact dependent on the governing party.

Finally, the reform indeed produced immediate results, but it was not backed up by social dialogue and a societal agreement about the necessity of such reforms. In turn, the reforms did not represent a step toward the necessary change of the culture of corruption in Georgia. Instead, citizens and the new police officers’ compliance was driven by fear of losing their jobs, and not by clear understanding of the necessity to downsize the
police force and the detrimental effects of corruption.\textsuperscript{164} In other words, the revamped police reflected the values of the new political elite, but not necessarily the values of the wider population. Therefore, the absence of social dialogue and shared understandings about norms that dictated everyday behavior between the population and the new political elite created compliance that was driven by the logic of consequences, rather than the logic of appropriateness. This type of compliance could prove unstable under a future government, which might not be able to sustain the level of sanctions that were driving compliance during Saakashvili’s regime.

Despite the lack of social agreement on the reform, and clear violation of the rights of fired policeman, the EU was blinded by the immediate success and the boldness of the reforms. As a result, it was not able to critically analyze the reforms. The 2005 Georgia Country report issued by the EU Commission stated: “...an extensive reform process is underway in the area of the police and the judiciary. This remains a key priority of the Georgian government and is therefore substantially supported by the EU.”\textsuperscript{165} As a result, the EU did not pressure Georgia into further ensuring the rule of law through becoming a part of international conventions regarding the rule of law and cooperation on criminal matters. For instance, Georgia was not a member of the Lugano convention and did not have an agreement for cooperation with Eurojust. In terms of bilateral agreements with

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\textsuperscript{164} Author’s interview with Tamar Pataraya, The Caucasus Institute for Peace, Democracy and Development (CIPDD), April 2014
\end{flushleft}

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\textsuperscript{165} European Neighbourhood Policy: Country Report Georgia, EU Commission, March 2nd, 2005
\end{flushleft}
EU member states for cooperation on judiciary and law enforcement, in 2013 Georgia had only twelve agreements, most of which were with former communist countries.\textsuperscript{166}

The undemocratic nature of the reforms and the inability of the EU to see Saakashvili’s actions as centralization of power were shocking for some people within the EU Mission in Georgia. Though they were taken aback by Saakashvili’s approach, EU’s official stance was to approve it and support it because it was effective.\textsuperscript{167} Even more, the EU rewarded Saakashvili’s approach. In 2006, it signed an Action Plan which opened new partnership perspectives, such as,

\begin{quote}
The perspective of moving beyond cooperation to a significant degree of integration, deepening trade and economic relations; providing the opportunity for convergence of economic legislation, the opening of economies to each other, and the continued reduction of non-tariff barriers to trade.\textsuperscript{168}
\end{quote}

This further support again provided Saakashvili with powerful tools to legitimize his reforms. An officer at the time from the Ministry of Justice who wished to remain anonymous said: “Putting aside the public, we had to often pressure other institutions or


\textsuperscript{167} Author’s interview with a representative of the EU delegation who wished to remain anonymous, March 2014 2006 ENP Action Plan for Georgia

\textsuperscript{168} Georgia’s Action Plan
sub agencies in the Ministry to agree with our policies, by telling them that the EU has demanded these policies.”

She continued to explain how effective this was, for the biggest fear of low and mid-level bureaucrats was a return to a situation similar to the Shevardnadze regime. The domestic and international public alike were persuaded by the same rhetoric. For instance, in the midst of the three months when the country was left without a police force, Saakashvili declared Georgia a full European member when he declared:

For anyone who ever thought, or hoped, that Georgia was a failed State, our Revolution and our people, proved them forever wrong ... The second lesson of the Rose Revolution is that Georgians have become full members of Europe and the European family. In reflecting on this point, I am not simply looking to geography, but rather, to national identity... our Revolution was about people fighting for their freedom and their desire to live in a democratic society. A society that respects human rights, freedom of speech, the rule of law and the belief that citizens and citizens alone, have the right to choose their leaders and their destiny... I am the President of democracy! 

In 2005, the EU and domestic actors that were approving of Saakashvili’s methods declared that addressing corruption only through a reform of the police force was insufficient, and pressed Saakashvili for more tangible reforms. Such reforms were the

\[169\] Author’s interview with a former official at the Ministry of Justice

\[170\] Speech delivered by Mikhail Saakashvili at John Hopkins University, 4th February 2004
“strengthening respect for the rule of law” which was to take place by altering the judiciary, law enforcement agencies, and penitentiaries. As a response, on January 18, 2005, Saakashvili’s administration set up a Working Group tasked to elaborate a strategy by June 1st, 2005. The Working Group included representatives from different NGOs, such as Transparency International (TI), the Georgian Young Lawyers Association (GYLA), and the Young Economist Association (YEA). However, it was coordinated by the National Security Council of Georgia, which was the President’s advisory body and was part of the State Chancellery. Though the Working Group’s efforts indeed resulted in an anti-corruption strategy, the way it was organized empowered the President by placing the power of executive decisions in his hands.

The Working Group also had the support of the EU, which again indicated the support Saakashvili’s actions were receiving by the EU, despite their undemocratic character. The EU in fact almost doubled its financial support for Georgia (European Commission 2005). Without such support by the EU, Saakashvili would not have been able to legitimize or to finance his reforms. The European Commission was the major sponsor of the reforms. According to the EU Delegation in Georgia, the EU made considerable contribution to the criminal justice system reform in the country, which

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171 EU Commission Communication 2005

172 Presidential Decree #815: A special Anti-Corruption Policy Division was created within the newly formed National Security Council’s Department of State and Public Security.
included the police reforms, and between 2008 and 2013, the EU provided more than €20 million to the Criminal Justice System.173

This support came without a consideration for the shortcomings of the process by which an anti-corruption strategy was elaborated. First, the Working Group did not meet until March 2006, which represented a delay that signified the lack of will on the part of the government. After its initial meeting in March 2006, meetings were sporadic and ad hoc, rather than agreed upon and scheduled bi-weekly meetings. In turn, the irregular meetings left the participating NGOs out of the process and highly discouraged.174

Finally, similarly to the case of the police reform, no public discourse took place in order to support the decision-making process of the Working Group. Internal strategies were required by each ministry’s representative, and NGOs were supposed to comment on them. However, submissions from NGOs were rare and NGOs complained of the superficiality of the documents received. Public debate was not attempted either. No draft was publicized, the public’s opinion was not sought, and the document was compiled primarily by the National Security Council and government representatives. The lack of will on the part of the government, the hindered work of NGOs, and a complete disregard


174 Author’s interview with an expert at GYLA, March 2014
for public opinion deprived the first Georgian strategy from domestic ownership and discouraged NGOs to cooperate with the government.

In this sense, the National Anti-Corruption Strategy that resulted from the efforts of the Working Group was not agreed upon by all major stakeholders, and was used to further legitimize Saakashvili’s reforms before international entities. On June 24, 2005, the President approved the National Strategy. This approval came shortly before the Group of States Against Corruption’s (GRECO) assessment group was scheduled to assess Georgia’s compliance with GRECO recommendations. Based on this report, the EU once again praised the government’s efforts and provided further legitimacy for the reforms.

The EU support for Saakashvili allowed him to embark on an approach which eliminated petty corruption. Part of the reform in the Ministry of Justice was based on the government’s idea of the principle of one window, which allowed citizens to receive certificates issued by a particular agency at one place. Georgia’s government had determined by now that the most salient reason for the overwhelming corruption in the country were unclear rules and broad bureaucracy, and the one window principle was designed to address this problem. Indeed, it significantly simplified the obtaining of public services. Immediately after the implementation of the principle of one window, the government determined that it was not enough. Saakashvili declared that the level of

\[175\] Presidential Decree #550
corruption in Georgia required radical measures, and delegated the task to further develop the principle.

In 2008, the Ministry of Justice began to implement the project of Public Service Hall,\(^{176}\) which incorporated all the “one windows” in one building and made most of the services electronic. Newly equipped with technology and a shiny building, the Public House opened its doors in 2011, and in the next two years sixteen more public service halls were open, practically covering all major Georgian cities.

In creating the Public Service Hall, and choosing to address problems of unmotivated staff, lack of technology and financial resources, and bureaucracy,\(^{177}\) Saakashvili took a specific path to fighting corruption, which ensured three factors that were essential for the solidification of the incumbent’s power. First, it was the elimination of petty corruption. Second, Saakashvili received international and domestic support for the government. Finally, domestic and international actors’ attention was taken away from grand corruption. The combination of these three factors allowed Saakashvili to concentrate power in a small elite group, and create an environment conducive to grand corruption.\(^{178}\)

\(^{176}\) The Public Service Hall brings under the same roof the National Bureau of Enforcement, The National Archive of Georgia, the National Agency for Public Registry, the Civil Registry Agency, and the Notary chamber of Georgia.

\(^{177}\) Author’s interview with Nino Evgenidze, Economic Policy Research Center, October 2014

\(^{178}\)
First, the Public Service Hall indeed turned out to be extremely efficient in reducing petty corruption. Prior to its existence, everyday activities of citizens were subjected to various institutional red tape, which in turn bred an environment susceptible to high levels of corruption. The Public Service Hall simplified everyday activities of citizens, such as obtaining a business or marriage license, acquiring a passport, or registration of property. Thus, it radically decreased bureaucracy, and, as a consequence, petty corruption as well. Many domestic and international reports attested to this. According to the Global Corruption Barometer in 2013, only 4% of Georgians were asked for a bribe.\textsuperscript{179}

Second, by choosing to tackle petty corruption, Saakashvili won points both domestically and on the international level, and moved Georgian’s and international actors’ attention away from the topic of corruption. Domestically, the Public Service Hall received the approval of the majority of the population. By addressing the immediate problems that sustained corruption in the everyday life of citizens, Saakashvili not only increased his approval rating domestically, but he also made corruption an issue of a low salience among the population. Internationally, the EU met both the principle of one window and the Public Service Hall with standing ovations, and the World Bank declared Georgia to be the post-communist country that fought against corruption most effectively and made the most progress.

\textsuperscript{179} Global Corruption Barometer, 2013
Most importantly, the newly revamped approval of Saakashvili, combined with reduced attention to the high level political corruption, allowed the incumbent to solidify his power (Börzel and Pamuk 2013). The Public Service Hall, however, was not designed as a policy-making institution, and high-level political corruption was not within its charter. These reforms then allowed Saakashvili to completely capture the creation and implementation of anti-corruption policies, and to promote legislation that concentrated in his hands authority over anti-corruption institutions, which were responsible for high level political corruption. In turn, the power over the policy-making institutions (see chapter two) allowed for rent extraction by the political elite.

In sum, continuous approval by the EU for Saakashvili’s reforms served to legitimize the incumbent, and to empower him to capture the anti-corruption agenda of Georgia. In turn, Saakashvili’s government indeed was tremendously successful in addressing some forms of corruption, but it did not introduce effective normative change. In fact, a study by East-West Management Institute shows that Georgian culture still held values necessary for corruption to thrive: trust in one’s immediate circle is significantly higher that trust in institutions and civil society. More importantly, support from the EU allowed the incumbent to create politically dependent institutions, solidify his power, and to instrumentalize anti-corruption policies to settle internal power struggles, and tighten its grip on the exchange of resources. Most importantly, his government did so with strong support from the EU, and did not need to bring domestic stakeholders in to the process, such as representatives of civil society.
3. Montenegro

Just as in Bulgaria and Georgia, the EU applied conditionality in order to pressure the government of Montenegro to introduce anti-corruption reforms to lower levels of corruption. However, in contrast to Georgia and Bulgaria, I argue that conditionality in Montenegro achieved more sustainable results. In the following paragraphs, I aim to answer the question why EU conditionality was more effective in Montenegro as compared to the other two case studies. I argue that the higher level of success of conditionality in Montenegro can be explained by the type of and the way in which EU introduced conditions, incentives, and sanctions. More specifically, the EU was significantly more attentive to the domestic context in Montenegro, and it emphasized the implementation of legislature instead of mere harmonization of law, as was the case of Bulgaria. Also, the EU introduced a more comprehensive way of assessing progress, and required a track record of the effects of reforms. Perhaps more importantly, the EU conditioned closing the negotiation chapters upon tangible results, which prevented Montenegro from experiencing the same time-related pressure as Bulgaria did. As a result, the reforms took longer than in Bulgaria and certainly longer than the radical overnight changes introduced by Saakashvili in Georgia. However, anti-corruption reforms were subject to public debate in which all stakeholders partook, and thus the reforms enjoyed higher levels of domestic ownership.

Corruption in Montenegro was identified by the EU as an issue that needed immediate attention from the very beginning of the country’s interaction with the EU. Even before the country received its independence from Serbia in 2006, the EU voiced its
concern with respect to high levels of corruption through the Stability and Association Pact. Later, the EU explicitly conditioned membership upon changes in the judicial system and the introduction of functioning anti-corruption institutions. While in 2013, the EU had not yet applied sanctions against Montenegro, it had expressed a readiness to do so should the need arise, thus committing to its conditionality approach.

In 2011, shortly before the opening of the negotiation process, the EU announced certain changes in its approach which took the membership negotiations in general, and the fight against corruption in particular, on a path that differed from that of Bulgaria and Georgia. First, the EU separated the content of what used to be Chapter 24 of the negotiations - Judicial and Home Affairs - into two chapters. This meant the introduction of a separate chapter dedicated to judicial reforms, and indicated commitment to negotiations on the particular topic of corruption as a stand-alone subject. In turn, this meant that the pressing issue of high levels of political corruption and dysfunctional anti-corruption institutions was not going to be tucked in as part of largely understood home affairs. Instead, and in contrast to Bulgaria, it was to be given the necessary attention.

Second, the EU requested that the chapter on judicial reform was opened first and closed last. This demonstrated an understanding on the part of the EU with respect to how pressing the issue of corruption was, and the precise mechanisms by which it could be addressed. For example, “The rule of law is now at the heart of the enlargement
process” because “countries need to tackle issues such as judicial reform and the fight against organised crime and corruption early in accession negotiations.” This was a promising change from the fast paced negotiations that took place in Bulgaria. It showed an understanding of the necessity to comprehensively change the system and avoid ad hoc reforms. It also meant corruption in all areas of the political and social life could be addressed systematically through the process of closing all chapters. The long process of negotiations on the Judicial Affairs chapter aimed not only to prevent fast harmonization of the law, but also to secure appropriate implementation as well. As part of the protracted process, the EU has created considerably clearer impact indicators for Montenegro.

As a result of these two changes, conditionality in Montenegro took on a more evolved form than in Bulgaria and Georgia. This form is attested to by two main characteristics of EU conditionality in Montenegro. First, instead of conditioning a closer relationship between the EU and Montenegro on harmonization of the law, the EC reports emphasized implementation of new legislation and policies. Second, the recommendations provided by the EU targeted specific domestic problems, and were synchronized with domestic state and non-state actors, thus creating more domestic ownership.


\footnote{ibid.}
3.1 Focus on Implementation and Track Record

The EU’s focus on implementation had been consistent in Montenegro since 2001, when the country became a member of the Stability Pact Anticorruption Initiative (SPAI). As early as 2001, the EU observed that there was no financial control unit for government institutions. Budget users were requesting transfers to their bank accounts with the Payments Bureau and then spending them. Apart from this approval of spending, which was merely filed after processing, there was not documentation in the payment process, nor were there any control over expenditure. To move toward a more transparent system, the EU recommended that the authorities develop an interim financial control system using, as a minimum, a payment voucher. Each ministry created an Accounting and Control Section which was responsible for ensuring that the financial regulations issued by the Minister for Finance were put into practice, especially in the areas of income, commitments, expenditure, and financial and other assets. Once these institutions were created, an implementation phase followed, and a separate unit (The Internal Audit Unit) was created in 2003, whose responsibility was to ensure these measures were effectively implemented. The focus on implementation remained a major characteristic of EU’s conditionality in Montenegro. The EU’s Enlargement Strategy Paper from 2013 confirmed this. The section on Montenegro stated that the strategy “maximises the time countries have to develop a solid track record of reform implementation, thereby ensuring
that reforms are deeply rooted and irreversible. This new approach is a key element of the negotiating framework for Montenegro.”

In order to facilitate implementation, and to ensure an overall balance in the progress of negotiations across different policy areas, the Commission also created new rules for the screening process and a timeframe for the opening of specific chapters. The following passage reveals this:

Given the link between the chapters Judiciary and fundamental rights (C 23) and Justice, freedom and security (C 24) and the values on which the Union is founded, as well as their importance for the implementation of the Acquis across the board, should progress under these chapters significantly lag behind progress in the negotiations overall, and after having exhausted all other available measures, the Commission will, on its own initiative, or on the request of one third of the Member States, propose to withhold its recommendations to open and/or close other negotiating chapters, and adapt the associated preparatory work, as appropriate, until this imbalance is addressed.

Therefore, a special emphasis was placed not only on corruption and anti-corruption, but also on a balanced progress across chapters. This in itself indicated EU’s

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higher level of understanding of the domestic context in Montenegro in comparison with previous enlargements.

The focus on implementation, and EU’s emphasis on conditioning membership on tangible results from the reforms was also evident by that fact that the EU did not provide a specific date for accession. Instead, it conditioned accession upon tangible results. The EU did not commit to an accession date, and instead declared:

\[\text{The negotiations will be based on Montenegro’s own merits and the pace will depend on Montenegro’s progress in meeting the requirements for membership}. \quad \text{184}\]

\[\text{The shared objective of the negotiations is accession. By their very nature, the negotiations are an open-ended process whose outcome cannot be guaranteed beforehand.} \quad \text{184}\]

The lack of a temporal condition relieved policy makers in Montenegro from the pressure to quickly introduce new institutions and legislation in order to satisfy EU requirements. Instead, Montenegro was allowed time and space for public debate, which considered the opinions and the propositions of the majority of stakeholders, such as representatives of CSOs and business, and secured domestic ownership of the reforms.

In this sense, officials in Montenegro used membership negotiations as a learning experience. The head of the Commission for Prevention of Conflict of Interest (CPCI) explained that Montenegro should not strive to become like the original members of the EU, or even like the successful post-communist members, because, “Montenegro is not

\[\text{184 Accession Document, Brussels, June 29th, p. 8}\]
Germany, France, or even Italy and never will be." He firmly stated that the largest benefit for Montenegro of becoming an EU member was that the country “learns what democracy should look like and applies it domestically.” He was not alone in interpreting membership negotiations with the EU as a learning experience. A member of the negotiating team concurred the point made by CPCI and added that the EU must learn as well. He claimed that,

ويليو: Europeans are often at a discontent with what we are doing but it is our job to educate them and explain to them that Montenegro and its people have certain traditions and habits which need to be considered while reforming any system and especially the judiciary.187

This process of mutual education was a lengthy one and the fact that Montenegro did not have a projected date for acceptance in the EU served the country’s best interest. According to the former Minister of European Integration, the leading and most important principle for Montenegro in the process of negotiations was, “quality before speed - it is better to enter [the EU] ready, as a NATO member, economically competitive, and with stronger institutions including an independent judiciary.”188

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185 Author’s interview with the head of the Commission for Prevention of Conflict of Interest
186 ibid
187 Author’s interview with a member of Montenegro’s Negotiation Team
188 Author’s interview with Gordana Djurovic former Minister of European Integration (2004-2010) currently an Associate Professor at the Faculty of Economics and Faculty of Political Science University of Montenegro
As a result of the innovative and improved use of the EU’s conditionality strategy, the first Action Plan to Fight Corruption and Organized Crime was elaborated in Montenegro in 2006 - that was five years before the official start of the negotiations and it was synchronized with the EU Mission in the country at this time. In contrast, Bulgaria’s first anti-corruption strategy was created by a think-thank after the start of the negotiations, and was never followed by an Action Plan, while Georgia’s first strategy was a product of the Ministry Justice only, and its authors never referred to the EU for advice or approval. Montenegro’s action plan was intended for the period of 2006-2007. In this period, 27% of the measures were implemented, 26% were partially implemented, and 44% were not implemented. Most measures were implemented by the Directorate for Anti-Corruption Initiative (DACI) and the lowest performer was the Privatization Council. Indeed, the percentage of implemented policies was not satisfactory, but the EU proved to be flexible, and instead of creating a completely new strategy, it altered the existing one. This brings me to the second characteristic of conditionality in Montenegro - namely the extent to which conditions in Montenegro were compatible with the domestic context.

3.2 Domestic context considered

In contrast to Bulgaria and Georgia, in Montenegro the EU reached out to all domestic stakeholders, which allowed it to adjust the conditions, incentives, and sanctions. For instance, the Stability Pact Anti-corruption Initiative (SPAI), in contrast to

189 Monitoring report by MANS, October 2008
similar initiatives in other countries, reached out to civil society. In the beginning of 2001, the Senior Representative of Montenegro for SPAI gave several interviews with influential newspapers, and thus used them to promote the initiative, and to invite civil society to join the implementation of the Action Plan. This publicity resulted in several meetings with NGOs and Trade Unions, which led to the creation of a specific website dedicated to monitoring the implementation of anti-corruption policies. Such participation and publicity promoted the activities of SPAI, and provided a forum for public debate. Most importantly, it marked the beginning of a relationship between the EU and domestic civil society, which provided a channel of communication through which the EU could receive feedback regarding the effects of its conditionality.

The EU continued its interaction with civil society over the years after 2001. It learned about the domestic context from NGOs, and was able to iteratively alter its conditions, incentives, and sanctions in order to increase its leverage over policy makers. In light of the traditional structures of power in Montenegro, the EU understood that instead of sanctioning Montenegro for not performing on the Action Plan, it needed to understand the potential of the country to comply. In 2008, after numerous meetings with NGOs and state institutions, and after reports sent to the EU Delegation by MANS and CRNVO, the EU established the necessity of a new Action Plan.

A new and improved form of conditionality was possible in Montenegro by supporting the participation of the majority of stakeholders in anti-corruption reforms, and, most significantly, including civil society. For instance, the change in the structure
of negotiation teams marked a significant difference with previous enlargements. The negotiating team in Montenegro was composed of six bodies: College for Negotiations on Accession of Montenegro to the European Union, State Delegation, Negotiating Team, Working Groups for Preparation of Negotiations on Individual Negotiating Chapters, Office of the Chief Negotiator, and the Secretariat of the Negotiating Team. Working groups for Chapter 23, Judiciary and Basic Rights, and Chapter 24, Justice, Freedom and Security, were the first two to be established. The Working Public officials consistently and publicly stated their support for the inclusion of civil society groups in the process of negotiations. However, the Decision from July 2012 was not explicit about the method of selection and appointment of CSOs, and suggested that CSOs could be included in as experts by the main negotiator. After the first meeting in Brussels, where some NGOs did not attend because they were not satisfied with their status in the process of negotiations, the EU applied pressure for full inclusion of NGOs in the working groups. The Head of the EU mission in Montenegro, Ambassador Drobnic, stated on the behalf of the EU Delegation in Montenegro:

Let me underline that Montenegro is now entering a very demanding phase of its accession process, which requires continued and focused efforts to maintain consensus on European integration not only among all political actors, but also among the citizens who need to be fully informed. To that end, civil society has the key role in monitoring the

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accession negotiations and making the process transparent by informing the citizens through its activities.\footnote{Speech of the Head of the EU Delegation in Montenegro Ambassador Mitja Drobnic on April 9th, 2013 for the 2nd meeting of the EU-MNE Civil Society Joint Consultative Committee, available at: http://www.delmne.ec.europa.eu/code/navigate.php?id=2565}

Thus, as of August 2012, the Secretariat of the negotiating team changed the Rules of Procedure and made NGO representatives full members of working groups, with the ability to contribute to the process.\footnote{Portal Analitika, 2012, http://portalanalitika.me/politika/vijesti/63090--lakoevi-uloga-nvo-sektora-je-da-do-prines-a-ne-da-kontrolie-pregovaraki-proces-.html (Author’s Translation)} In 2013, six CSOs were included in the working groups on Chapters 23 and 24, and they were provided valuable feedback to the EU Delegation in Montenegro. This represented a feedback mechanism, which was missing in all previous enlargements, and which proved to be of tremendous value for the EU because the EU was now equipped with the necessary information regarding the effects of its requirements, and how they could be improved.

In summary, conditionality in Montenegro took on a new form and extended the principle of the three “C”s (conditionality, consolidation, and communication) defined in the 2005 enlargement strategy to a principle of seven “C”s to include credibility of the reforms, crisis management, concrete results, and common priorities. The realization of these points was made possible by more flexibility on the part of the EU, larger and deeper public debate, and inclusion of representatives from the third sector in the process of negotiations.

\footnote{Speech of the Head of the EU Delegation in Montenegro Ambassador Mitja Drobnic on April 9th, 2013 for the 2nd meeting of the EU-MNE Civil Society Joint Consultative Committee, available at: http://www.delmne.ec.europa.eu/code/navigate.php?id=2565}
Certainly this is not to say that Montenegro eliminated corruption completely, and that institutions in 2013 were entirely immune to political influence. Montenegro has much work to do and the path to EU membership has proved to be a difficult one. Reports of domestic NGOs and international institutions continued to often exhibit discontent with the progress made by the country. For instance, the progress report from 2013 state the following:

Corruption remains prevalent in many areas and continues to be a serious problem. The implementation of the relevant legislative framework has shown a number of shortcomings, which require further legislative action. The capacity of supervisory institutions in charge of checking political financing and conflict of interest still needs to be enhanced.  

However, what differentiated Montenegro from Bulgaria and Georgia was that reforms were slow, but they were targeted toward a comprehensive change of the system, and enjoyed a higher degree of domestic ownership because of the strong participation of civil society in them. Considering the fact that Montenegro opened Chapters 23 and 24 in March 2013, it is clearly too early to claim that they are successful. However, the motivation of public officials attests to the current success of the new form of conditionality employed by the EU in Montenegro.

\[193\] EU Commission Regular Report on Montenegro’s Progress toward EU Membership, 2013, p. 9
4. Conclusion

This chapter showed that EU’s conditionality approach led to different outcomes depending on the way conditions, sanctions, and incentives were formulated and introduced, and on the domestic perception of EU actions. While in all countries the EU applied conditionality, and the logic of deepening the relationship with the EU upon satisfaction of certain criteria remained the same, the nature of conditions, incentives, and sanctions were different in all three countries. In Bulgaria, the EU approached the negotiation process by stressing the importance of the harmonization of law. This remained the focal point of the negotiations for their entire duration, and indeed led to Bulgarian legislation that was compatible with EU legislation. However, neither the EU nor Bulgarian policy-makers were particularly concerned about the process of implementation. On the one hand, coupled with the fast-paced harmonization of law directed by the deadline of January 1st, 2007, conditionality in Bulgaria led to artificial reforms that did not amount to a comprehensive, all-encompassing transformation of the judicial system and the network of anti-corruption institutions. On the other, driven by the necessity to quickly introduce new legislation, Bulgarian authorities and policy-makers perceived EU membership as an end in itself, rather than a means to transition to democracy. The result of these failed negotiations was that in 2005-2006, the country was underprepared to become an equal member of the EU, and the EU was forced to establish a new mechanism specifically tailored to Bulgaria in order to continue to apply conditionality.
In contrast, the EU approached Montenegro with a more elaborated and evolved form of conditionality. The lack of an accession date allowed both EU and Montenegrin stakeholders to learn from each other and to systematically work on anti-corruption reform. The EU managed to be flexible, to alter conditions, and to follow up with reform recommendations which were suitable for the domestic context.

Perhaps the most important variation in the EU approach in Bulgaria and Montenegro was in the focus on implementation in the latter country, and on harmonization on the former. In Montenegro, the EU established a system for measuring progress which relied upon an established track record of results of the reforms, which was lacking in Bulgaria. This approach led to slower reforms, but reforms that proved to be significantly more adapted to domestic context and subject to domestic ownership.

The Georgian case showed a third approach of conditionality. Here, the EU embarked on almost unconditional support for Saakashvili’s government because it saw immediate results from the 2005-2008 reforms. Blinded by the seeming success of these not always democratic reforms, it failed to condition a closer relationship with the country upon elimination of high-level political corruption. At the same time, Saakashvili used the positive evaluations that he was receiving from the EU to legitimize eradicating petty corruption, while concentrating power in a small, elite group. The almost complete lack of petty corruption decreased the salience of the issue of corruption, while the introduction of loopholes in the law that allowed for rent seeking from high level officials, left an environment conducive to high level political corruption.
Chapter Four – The EU and Domestic Civil Society

I have shown in the previous chapter that in the post-communist world, civil society varies with respect to its ability to influence the policy-making process (Börzel and Buzogány 2010, Sardamov 2005, Nodia 2011). This chapter analyzes the efforts of foreign actors to shape domestic civil society, and focuses specifically on EU’s actions in the three post-communist countries. It argues that in Montenegro, where the EU became timely and intensively involved with civil society, the EU managed to establish a partnership relationship with domestic NGOs. In turn, this relationship allowed the EU to receive feedback that was not attempting to further the interests of a particular political party and to iteratively adjust its recommendation, incentives, and sanctions. The chapter also shows that a partnership between the EU and civil society in Montenegro legitimized domestically NGOs and provided them with more leverage to apply bottom-up pressure to the government. In contrast, such a relationship was not established in Bulgaria and Georgia, and civil society was incapacitated.

The cases of Bulgaria, Georgia, and Montenegro show that the degree to which civil society facilitated the adoption of EU-promoted reforms indeed varied over the years and across countries. In the years following the Rose Revolution, Georgian civil society was consistently underrepresented in the decision-making process, and its input
with respect to anti-corruption reforms was practically overlooked. Indeed, many Georgian NGOs conducted research regularly, monitored the work of institutions, and were publicly critical. However, they also saw their participation as on paper only. A clear measurement of NGOs participation did not exist, and all fifteen interviewed NGOs reported that policy makers considered no more than one or two of their proposals. This situation served as a highly demotivating factor and one that additionally decreased the participation of civil society organizations in the decision-making process.

In contrast, in Montenegro civil society organizations were included not only in the functioning of different domestic anti-corruption agencies, but also in the structure of the EU negotiations process. Thus, NGOs in Montenegro were provided a real opportunity to influence both the EU integration and the management of corruption. Finally, in Bulgaria NGOs were consistently incapable of securing societal accountability and their participation in the decision-making was not well-regulated. As a consequence, NGOs’ involvement in the efforts to address high levels of corruption became superficial. While reports by some think-tanks exposed specific problems related to abuse of power, these organizations did not have internal capacity, nor were they networking with other NGOs in order to use reports to effect decision-making. The lack of societal accountability, in turn, created an environment that was conducive not only to high levels of political corruption, but also for corruption in all levels of the public bureaucracy.

194 Author’s interview with Erekele Urushadze, Transparency International Georgia, October 2014
The variation in the ability of civil society to further externally-promoted anti-corruption reforms was especially puzzling in light of the numerous efforts of the EU and other international entities to develop domestic civil society into an actor that was capable of balancing between cooperation, monitoring, and opposing reforms, and serving as a liaison between citizens and ruling elites. The EU consistently stressed the importance of a developed civil society for consolidating democracy in the post-communist world. The necessity of a partnership between the EU and domestic civil society was embedded in the principle of participation of civil society that the EU expressed shortly after the collapse of the Berlin Wall. This principle of participation was especially pertinent for furthering Europeanization in areas characterized by normative discrepancies between the EU and individual countries. Such was the case of anti-corruption reforms in the post-communist world where long communist regimes left legacies of centralization of power and lack of transparency. This chapter then asks why did the EU achieve varying results with respect to developing civil society that was capable of applying the necessary pressure to national governments to introduce, implement, and enforce effective anti-corruption reforms?

I argue that the extent to which civil society was capable of contributing to securing the rule of law in Bulgaria, Montenegro, and Georgia was directly determined by the degree of cohesion of civil society. Without claiming that what the EU did or did not do is the sole explanatory variable of the variation of civil society in the three countries, I forward the argument that three significant variations in the approach of the EU to domestic non-state actors determined the ability of the latter to participate in the policy-
making process. I show that the EU’s approach to developing civil society varied in timing of involvement, intensity of involvement, and kind of interaction with domestic NGOs. As a result, the level of cohesiveness of the NGO sectors in Bulgaria, Montenegro, and Georgia became very different. In Montenegro, the EU was actively involved in the development of civil society from the beginning of the countries’ post-communist transition and managed to establish a partnership-based relationship with domestic NGOs. In Bulgaria, the EU did not get involved until after the beginning of formal membership negotiations. Finally, in Georgia, the EU abandoned the development of civil society in its early stages.

I claim that when a timely and partnership-based relationship exists between the EU and civil society, domestic ownership of reforms is more likely because civil society can help socialize the ideals behind the reforms, and secure a sense of domestic ownership for them. For instance, in Montenegro, the EU established a partnership with domestic NGOs, while in Georgia and Bulgaria, the EU dominated the interaction with domestic civil society and unidirectionally diffused norms of transparency, accountability, and political participation. The presence or absence of such partnership directly impacted the extent to which civil society internalized norms of transparency, accountability, and participation in the decision-making process, and the extent to which it was capable of cooperating with governments and serving as a channel of norm diffusion to citizens.

The second argument that I make in this chapter is that the ability of the EU to learn from domestic civil society and the development of civil society are interrelated
processes that depend on each other. For instance, I argue that in Montenegro the EU was made aware of the domestic context through its interaction with domestic NGOs. This learning process, in turn, was possible because of a partnership between the EU and Montenegrin civil society which equipped civil society with the tools it needed in order to reach out to citizens and relay their grievances to both the EU and the government. In contrast, where the EU did not establish a partnership with domestic NGOs it was not able to learn from them and adjust its conditions, incentives, and sanctions. A partnership between the EU and domestic civil society was not present in Georgia, or in Bulgaria, and the EU did not manage to acquire the information necessary to adapt its conditions, incentives, and sanctions. In turn, the EU failed to increase its leverage over the government.

To make these arguments, I first show that civil society in the three case studies varied in their level of cohesion. In the second part of the chapter, I proceed to explain how differences in EU actions in each case were causally related to the cohesion of civil society. In the final part, I address the implication that different types of civil society had on anti-corruption efforts.

1. *Employing a Social Network Analysis*

I employ a Social Network Analysis (SNA) in order to determine the cohesion of civil society and the EU’s influence on civil society across time and space. SNA allows
me to holistically analyze the system of interactions among network actors (Provan and Milward 1995, Tanjasiri et al. 2010, Valente and Davis 1999).

To perform the SNA, I created a database of NGOs in the three countries in the three periods of time. The sampled NGOs were selected based on their mission and goal statements. Information was gathered from official databases in the three case studies and through interviews in which NGO officials enumerated projects and interactions with the EU. The final sampling of NGOs in the three time periods in the three case studies provided me with the following distribution: For Bulgaria: 2003 - n=64, 2007- n=94, 2013 - n=97, for Georgia 2003 n=41, 2007 n=39, and 2013 - n=44, for Montenegro in 2013 n=75.

In order to understand how the state of civil society changed over time, I present a snapshot of the network of NGOs in three critical periods (2003, 2007, and 2013) for the three case studies. In these critical junctures, one should expect dense network ties because these years marked stepping stones in the fight against corruption, as well as in the EU’s engagement in all three countries. For Bulgaria, these years represent critical junctures because 2003 marks the beginning of EU’s active involvement with civil society; in 2007 Bulgaria became a member of the EU and in 2013 Bulgaria had the largest street protests ignited by high levels of corruption. The same years were critical junctures for Georgia as well. In 2003, the Rose revolution took place, 2007 is

\[195\] For Bulgaria: database of the Ministry of Justice, For Georgia: database of the Public Registry, For Montenegro: database of the Ministry of Interior
immediately prior to Saakashvili’s second term in office, and 2013 marked the first electoral change of government in Georgia, and also the transitioning of the country from a presidential to a semi-presidential/parliamentary system. Data limitations prevent me from performing a full scale SNA for Montenegro because information about NGOs’ relationships before 2013 is not readily available. Therefore, I employed a SNA for Montenegro only in 2013 and supplemented with interviews, data, and documents analysis for the years 2003 and 2007.

I am also looking to establish the influence of the EU in the process of shaping civil society in Bulgaria, and in this sense the three selected years were critical junctures as well. The first period encompassed the network of NGOs in the initial years of EU involvement in developing civil society in the three countries. This allowed me to analyze the state of civil society immediately prior to the EU’s active involvement. However, projects on which various NGOs collaborated often extended for more than one year. For this reason, all projects that began or ended in 2003, and despite their respective beginning or ending date, were coded as relationships as well. Therefore, the approach allowed for encompassing a larger period, namely the period between 2002-2004. The other two samples were from 2007 and 2013. As with the 2003 sample, in reality the period included projects that began a year earlier and finished a year later.

I coded a network linkage between two NGOs based on whether they had at least one joint project, or partnership (Gulati et al. 2008, Hagedoorn and Duysters 2002, Koka and Prescott 2006). I used undirected relations because in many cases measuring these
kind of relationships is more robust (Wasserman and Faust 1997). When included in the analysis, an EU’s relationship with NGOs was coded as 1 based on the number of conferences, workshops, and lectures organized by the EU for representatives of civil society, or events organized by domestic NGOs and attended by the EU. When such interaction did not exist, the relationship was coded as 0. It is important to clarify that monetary relationships, such as funding for projects, were intentionally left out of the analysis. The reason for this was the difference in the funding mechanisms employed by the EU in the three case studies. For instance, cases such as Bulgaria, where funding was indirect and distributed through individual ministries, would have required the inclusion of state institutions as well. There was another reason for omitting financial transactions in the coding of data. If financial transactions led to socialization, it would mean that they also led to the type of relationships that I code here. Therefore, encoding monetary transactions was not required for a complete analysis. I also used undirected relations because it was my intent to capture not only the way in which the EU socializes domestic NGOs, but also whether or not the EU learned from national non-state actors, and thus which actor initiated the interaction was irrelevant.

To explore rough variation in the level of cohesion of civil society over time in each case I used the density value of the network. The density value shows the level of connectedness of nodes, and represents an index of the degree of dyadic connection in a population. It is calculated by dividing the number of existing connections (T) by the total number of possible connections (N x (N - 1)), $D = \frac{2xT}{N x (N - 1)}$, where the ties T are undirected.
To account for the anti-proportional relationship between graph density and size (Faust 2006), I checked density findings by also considering the percentage of connected NGOs (Scott 1987). Where density and percentage of connected nodes agree in comparing two graphs, I safely concluded that this was a reflection of different comparative levels of cohesion.

In order to show the role of the EU in shaping the state of civil society, I used a centrality measure. Centrality identifies the most important or influential nodes within a graph. A high degree of centralization identifies a hierarchy in the network where central nodes control the amount of interactions and the flow of information in the network. In this case, the impact of unconnected NGOs was hindered, and their role was only important in relation to the centers of power. There exist various different algorithms to calculate centrality which attempt to capture different network dynamics (Knoke and Song 2008, Scott 2000). I employed Eigenvector centrality for two reasons. First, it considers the degree of influence of the connections, and second due to the level of precedent in applications to social network analysis.

Formally, for node $v$ the eigenvector centrality is calculated by

$$x_v = \frac{1}{\lambda} \sum_{t \in M(v)} x_t = \frac{1}{\lambda} \sum_{t \in G} a_{v,t} x_t$$

193
where for a graph $G:=(V,E)$ with $|V|$ number of vertices, $A = a_{v,t}$ is the adjacency matrix. In the extremes, $a_{v,t} = 1$ if vertex $v$ is connected to vertex $t$, and $a_{v,t} = 0$ if they are not connected. In an iterative process, eigenvector centrality accounts for the difference between connections to high-scoring and low-scoring nodes: connections to high scoring nodes contribute more to the score of the measured node than connections to low-scoring nodes. Eigenvector centrality provides a normalized value relative to other nodes in the network. This makes the comparison across time difficult, but it can be used to rank the EU’s influence within the network. I used this ranking in order to determine the change of the EU’s influence over time. I also showed the distribution of eigenvector centrality in the network in order to show the relative centrality of the EU to other nodes in the network.

2. Characterizing Civil Society

Previously, I claimed that the level to which civil society engaged with anti-corruption policies, good governance, and EU integration in each country depended on how capable of uniting in a common anti-corruption agenda and of acting as a coherent actor it was. Here, I relay on SNA in order to determine the level of unity of civil society in each case, and I complement the findings with information gathered through interviews and analysis of documents.

I use the density of the NGO network as a measure of the extent to which civil society is united because density shows how connected NGOs were. The denser the network is, the more information flows in it and it is more likely that actors unify behind
a common agenda. I build here on the idea that actors that are highly connected will
define proper behavior through the behavior of their peers. Lui et al. (2005) called this
type of behavior justification imitation. They found evidence that support an information
argument and a socialization argument for imitating behavior. The information argument
claimed that densely connected actors were likely to have access to the same information
(Granovetter 1973) and thus imitation would become the dominant behavior. The
socialization argument suggested that highly dense networks functioned as “cliques”
(Kraatz 1998) creating strong behavioral pressures to conform to rather than to adopt new
practices. Similarly, Valente’s (1995) analysis showed that network density was indeed
associated with faster diffusion within the network. In summary, highly connected actors
were more likely to form shared understandings and to have a common agenda.

The SNA findings were corroborated with qualitative data gathered through
interviews and documents analysis and showed variation in the level to which civil
society in all three countries was capable of acting as a unified actor. In the period 2003-
2013, Bulgarian civil society consisted of disunited think-tanks whose activities were
limited to creating detailed reports with respect to the corruption and anti-corruption
activities in the country. Similarly, in Georgia, civil society was not coherent, but also
characterized by cliques of NGOs’ based on their sympathy to a particular political party.
Finally, in Montenegro, civil society was capable of unifying around a common anti-
corruption agenda and thus became stronger than its Bulgarian and Georgian counterparts.
2.1 Bulgaria

In examining the level of connectedness of NGOs in Bulgaria, the SNA showed that NGOs became less connected to one another over the years. In 2003, the density measure of Bulgaria was only 0.021, which meant that NGOs, engaged in anti-corruption and good governance activities, were weakly connected to each other. The year 2007 observed a striking decline of more than 20% of the 2003 density value. This decline was partially due to the increased number of NGOs that were created immediately prior to Bulgaria’s membership in the EU. Many of these NGOs were established for the execution of a single project and then ceased their operations. Even in this case, however, the network of NGOs remained limited. The data showed little improvement by 2013. Bulgaria’s NGOs networks density value was 0.12 and the percentage of NGOs that were connected increased minimally from 43.6% to 47.4%.

Moreover, in 2007, in addition to increased levels of exclusion, the data showed the emergence of separate networks. These networks not only remained undeveloped by 2013, but they disappear completely. A closer look at the participants in the SNA also suggested that the NGOs that were centers of power in 2003 remained the same throughout the years, and became well established as think-tanks over the years. In sum, the findings showed that the NGO sector in Bulgaria underwent little positive transformation from 2003 to 2013. The decreasing value of the density metric of Bulgarian NGOs indicated a high number of disconnected projects, and consequently the lack of unified anti-corruption agenda.
The very low level of networking was also evidenced through data gathered in interviews with NGOs representatives and in document analysis. Such data revealed a highly distrustful environment in which NGOs operated. While interviewees did not acknowledge their own ties to political parties, more than half of them were specific to point out other NGOs connections and the way the NGOs in question were created in order to further a particular politician or politician’s interest. For instance, one interviewee from an NGO, when asked about cooperation with a different NGO that had a very similar agenda, said: “We don’t work with them because they are the BSP (Bulgarian Socialist Party) puppet and they will cease to exist when the BSP is not in power.”196 This sentiment was repeated in many interviews, and showed that NGOs did not trust each other and consciously refrained from working together. Similarly, NGOs representatives accused other NGOs of being established for the purposes of rent extraction only. For instance, the Anti-corruption Network was an informal citizens network whose goal was to systematically direct corruption complaints to government institutions and to follow the developments on these complaints. While other organizations had attempted to do the same, a representative of the Anti-corruption Network informed me that they were intentionally avoiding other organizations. The reason for this was that they highly doubted the intentions of the other organizations, and said that each organization selectively reports instances of corruption depending on the actor and their political ties.

196 Author’s interview with a representative of a NGO.
This environment of distrust in many cases prevented NGOs from cooperating with each other. Furthermore, it created a self-perpetuating perception of NGOs regarding their counterparts, which proved detrimental for NGOs ability to establish common agenda, or to mobilize even when crucial decisions regarding judicial reforms or the creation of major anti-corruption institutions were made.

Civil society in Bulgaria did not manage to unite even when high levels of political corruption provoked citizens to spontaneously mobilize in mass protests. The appointment of Delian Peevski as a head of the State Agency for National Security (SANS) was one of these instances. One of SANS roles was to fight corruption in the high echelons of power, and Peevski was in a clear conflict of interest because of his mother’s ownership of a large number of media outlets. His appointment, in 2013, led to the longest street protest in Bulgaria since the country began its transition to democracy in 1989. In light of the 2013 protests triggered by high levels of political corruption, it would be expected that the third sector would unify around an anti-corruption agenda in order to support citizens’ protests. Contrary to this expectation, the findings from the SNA indicate an inactive and disorganized NGO sector in 2013.

Indeed, the protests were a sign of general discontent with high levels of corruption in Bulgaria. However, the protests did not mean that civil society was activated by high levels of political corruption. There is no evidence that the protests were organized from a particular NGO or a coalition of NGOs. Once the protests were ongoing, NGOs did not become active in guiding them or in helping the protestors to elaborate demands. Finally,
informal conversations with protestors and interviews with NGOs representatives did not indicate any attempt on the part of organized civil society to steer the protest in a particular direction, or to help mediate a productive negotiation process between the ruling elite and the citizens on the streets. In fact, one representative of Podkrepa - the oldest union in Bulgaria, said:

The problem with this protest is that the protestors’ demands go as far as resignation of the government. If we get involved we can do this in two days. We don’t get involved because it is going to be bad for the country to go through the winter without a government.\textsuperscript{197}

This statement and the results of the SNA showed that the protest in itself did not indicate that civil society was activated in Bulgaria in 2013. Thus, in the period 2003-2013, the NGO sector in Bulgaria remained void of shared understanding, goals, and approaches, and this became the most evident in the protests of 2013.

\textsuperscript{197} Author’s interview with a representative from Podkrepa Union
Graph 1: Density of Bulgaria NGO Networks in 2003, 2007, and 2013
2.2 Georgia

The density of NGOs’ networks in Georgia showed a decrease in connectedness of civil society over the years. In 2003, at the outset of the Rose Revolution, Georgia’s NGO network had a density of 0.024. This was the highest density value for Georgia in the three periods that were analyzed in this study. The relatively high to other periods density in 2003 was consistent with the claim that in a comparison to 2013 Georgia had a better developed civil society at the time of the Rose Revolution (Börzel 2011). The claim is based on the ability of civil society in Georgia to organize and successfully lead efforts to topple Shevarnadze’s government. Yet, in an environment where high levels of corruption triggered the Rose Revolution, it would be expected that the density of anti-corruption NGOs in 2003 would be significantly higher. Instead, a value of 0.024 showed a relatively highly disconnected\textsuperscript{198} NGO sector.

Nevertheless, in 2003 NGOs were indeed capable of organizing a large portion of the population to defend the resignation of Shevarnadze. However, three large NGOs were the main organizers and their goal was not cooperation with other NGOs, but rather getting people out on the streets. Furthermore, the main actor was a loosely organized social movement Khmera! (Enough), which had no structure or previously expressed values, and existed solely for the purposes of toppling the regime. While undoubtedly significant for the future political development of the country, the success of Khmera! did

\textsuperscript{198} Density of a network is measured on a scale of 0 to 1, where 1 represents the densest network in which each node is connected to each other node
not indicate a well developed civil society sector with clear values and the ability to defend them. This was evident in the constant decline of the connectedness of NGOs in the years to follow. In 2007, the density of Georgia NGOs networks decreased to 0.023 and in 2013 it was down to 0.015. In a similar manner, the percentage of connected NGOs decreased over the years. While the number of anti-corruption NGOs remained about the same, the percentage of connected NGOs decreased from almost 47% in 2003, to 40% in 2013. I interpret this growing gap in the NGO sector in Georgia as showing the inability of civil society to organize around a common agenda, and consequently an inability to exercise control over the government and to constructively participate in the decision-making process in the period 2003-2013.

Interviews corroborated the findings of the SNA and also revealed the emergence of politicized clusters among NGOs. Similarly to Bulgaria, ten out of the eighteen NGOs representatives that were interviewed wrote off the efforts of NGOs that are not politically aligned with the interviewees’ own NGOs as working for either Saakashvili’s party or his opposition. Interviews also revealed that on the rare occasions when NGOs cooperate with each other, they did so in clusters which were based on their sympathy to a particular political party. In 2013, there was an emerging cluster of NGOs that were headed by former officials in the Saakashvili administration. According to one interviewee, these NGOs exhibited a highly liberal orientation, they attempted to defend and perpetuate Saakashvili’s reforms,199 and consequently were standing strictly in

199 Author’s interview with Tamar Tomashvili, an Academic Director of the National Institute for Human Rights (NIHR) Georgia
opposition to the current government. In turn, this created an additional divide within the third sector and prevented them from acting as a coherent actor that was mobilized by a common anti-corruption agenda. In summary, Georgia witnessed a significant decline in the quality of its civil society over the years after the Rose Revolution. While in 2003 civil society was not strong, in 2013 it was certainly weaker and significantly more disunited.

Finally, coalitions of NGOs were rare in Georgia and when they existed they were small and consisted of only the largest NGOs, thus leaving smaller NGOs out and additionally deepening the divide within the civil society sector. For instance, reports on Georgia praised the work of the Open Government initiative launched in 2012. The initiative targeted issues such as freedom of information, citizens’ participation, and implementation of high standards in public service. On February 5th, 2013, eighteen Georgian NGOs submitted a list of recommendations to the Prime Minister Bidzina Ivanishvili to improve the Open Government Partnership action plan and to raise the profile of commitments undertaken by the government in this plan. Indeed, the initiative was a positive example of the development of civil society in Georgia. However, the eighteen NGOs participating in it reflected the gap in the civil society sector in Georgia because similar to other EU initiatives and projects, only the largest NGOs were participating, and no attempt to include smaller NGOs was made.
Graph 2: Density of NGO Networks in Georgia

2013 density = 0.015

2007 density = 0.023

2003 density = 0.024
2.3 Montenegro

Given data limitations, only a partial SNA of Montenegro was possible. A restructuring of the registration system for NGOs in 2012-2013 rendered NGOs registration data before 2012 unavailable. This made an SNA analysis of civil society in 2003 and 2007 especially challenging, and is the subject of future research. Much can be learned from the 2013 analysis, however. The dissolution of former Yugoslavia left civil society in all the newly sovereign states in weak positions vis-à-vis state institutions. By 2013, this situation had significantly improved. Findings from the SNA show that 2013 the density of NGOs networks in Montenegro were very high in comparison to the other analyzed cases and periods. Montenegro’s anti-corruption and good governance NGOs had a 0.038 density value. This is the highest value in all three examined countries in all periods, including Bulgaria in 2013, when the country was already a member of the EU for six years. Similarly, Montenegro in 2013 had the highest percentage node connectedness of any analyzed case and year. According to results from SNA, in 2013 78.95% of anti-corruption NGOs were cooperating with another NGO on at least one project. In comparison, in Georgia 47% were cooperating, and in Bulgaria only 40% worked on a project together with at least one other NGO.
Interviews with representatives of NGOs confirmed the high levels of cooperation within civil society in 2013, and showed that this cooperation had been ongoing at least since 1992, when Montenegro had its first unsuccessful attempt to receive independence from Serbia. In contrast to Bulgaria and Georgia, Montenegro’s NGOs often formed coalitions and cooperated on projects. The effects of NGOs cooperation were clearly observed in the results of the independence referendum in 2006. Analysts were in agreement that it was the public discussion of further affiliation with the EU that was led by NGOs and that contributed the most to the outcome of the referendum and the following independence of Montenegro. Weak support for independence after the ousting
of Milosevic was reversed, and most of the 25 percent that voted ‘don’t know’ or ‘don’t care’ in April 1992 expressed support for statehood in 2006. As Batt (2006) argued, this result was to a large extent the product of NGOs work toward the creation of a society indoctrinated in the democratic norms the EU was promoting. The internalization of these ideas factored into the establishment of Montenegro’s new national identity. In an attempt to distinguish itself from the brutality of the Milosevic regime, Montenegro moved toward becoming a modern state – a process entirely guided by the idea of returning to Europe. In the words of Batt (2006), “Being Montenegrin now meant being European.”

Similarly, a coalition led by the Center for Development of NGOs (CHRVO) resulted in the inclusion of NGOs in the fourth layer of the EU-Montenegro negotiations structure. According to the head of CHRVO, it was the strong coalition of NGOs and its cooperation with the EU that made it possible to push the government to agree to such an arrangement that did not have a precedent in the post-communist world.

Anti-corruption NGOs in Montenegro were also significantly more aware of their function as norm setting entities than the ones in Bulgaria and Georgia. Data gathered through interviews showed that NGOs in Montenegro agreed on their purpose: most anti-corruption NGOs defined their goals not as much in terms of fighting corruption, but rather in terms of furthering the melding of domestic norms and values to those of the

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201 Author’s interview with Ana Novakovic, CHRVO. November 2013
EU. In almost every interview, the NGO acknowledged that simply by creating strategies and action plans corruption was not going to be eradicated nor even managed. According to most interviewees, domestic cultural trends, shaped by legacies from historical events and periods, needed to be reversed in order for corruption to decline. Accordingly, the role of NGOs became to cooperate with the EU in order to effectively expose corrupt officials, while simultaneously working to educate ordinary citizens in various EU-promoted norms and values.

Finally, NGOs also understood becoming an EU member as a process, rather than an end goal. This is evident in the logo of one of the major NGOs in Podgorica: The Center for Civic Education claims that Democracy is to be learned. Dejan Milovac from the Network for Affirmation of NGOs (MANS) put it nicely, “one of the worst case scenarios for Montenegro would be rushing through the negotiation process, we need the time to slowly but effectively go through the process of becoming Europeans.”

3. Explaining the State of Civil Society

To explain why civil society looks differently in different post-communist countries, I turn to the role played by the EU in shaping the third sectors in Bulgaria, Georgia, and Montenegro. In order to portray the progress of civil society development in all three countries, I begin with a brief comparison of the state of civil society before and after the EU’s involvement in all three countries.

202 Author’s interview with Dejan Milovac, MANS, Podgorica MNE, November 2013
In the beginning of the 1990s, civil society in Bulgaria was not organized and lacked strong ideological underpinnings. Civil society in Bulgaria started to emerge in the mid 1980s as a result of the new opening with the policies of Glasnost and Perestroika. As of 1986, a couple of loosely organized entities (“the non-formals”) appeared on the political scene organizing around ethnic and environmental issues. By 1989, there were an array of dissident organizations covering three main areas – environment, human rights, and Glasnost and Perestroika. Such organizations could not compare to dissidence in other East European countries which had the history of Charter 77 in Czechoslovakia, or the Committee for the Defense of Workers (KOR) and Solidarity in Poland. Bulgarian dissidence by comparison was late and poorly organized, lacking mass support and a clear vision. It included no more than 200 people who were members of various organizations; a large part of which were communist party members as well (Zankina 2011).

Following the collapse of communism, many of those early dissident organizations turned into political formations of various types and participated in elections, many of them ending up with representatives in parliament. This is not surprising, given that the mode of emergence of Bulgarian civil society marked the sector with a character of an opposition force. It also points to the early failure of the NGO sector to consolidate. The 1990s proved this inability. It was most obvious in the inability of civil society to organize the protests of 1996-1997 when Videnov’s government led the country to what is known as the Videnov winter (Stone 2007). During this time, the value of the Bulgarian
lev decreased from 240 to the dollar to 500 to the dollar in only two months and inflation increased to 311%. Indeed, this rapid economic collapse prompted people to protests and triggered consequent elections. However, the protest was spontaneous instead of organized by civil society groups. Also, in contrast to Georgia in 2003 (see below), where civil society had an enormous role in delivering information to the citizens with respect to the fraudulent elections of November 2002, Bulgarian civil society did not manage to formulate popular demands and to organize the protest.

Some sixteen years later, a similar scenario developed. In 2013, the longest protest in Bulgarian history took place. Similarly to Georgia in 2003, it was motivated by high levels of corruption. However, in contrast to Georgia, the protest was not provoked by well-presented findings of NGOs. Instead, it came as a result of the blunt appointment of Delian Peevski, whose mother owned most of the media outlets and who was accused numerous times of conflict of interest and tax evasion, for the head of the State Agency for National Security, which was responsible for preventing and investigating grand corruption. Throughout the protest, civil society proved incapable of organizing popular grievances and translating them into demands which could be negotiated with the ruling party. Instead, the protestors voiced vague and unclear (anti-corruption measures), or unreasonable (abandoning of all political parties) demands.

In Georgia, before the Rose Revolution civil society was indeed stronger than its analogue in other countries in the Caucuses. With the 1997 Civil Code, Shevardnadze had allowed the development of civil society, registration was made easy, and restriction for
operations were lifted (Wheatley 2005). Immediately prior to the Rose Revolution, there were around three to four thousand NGOs in Georgia. They were also primarily financed by international organizations such as USAID, the George Soros Foundation, and the EU. In light of the weak Georgian economy at the time, international funding for NGOs made them capable of paying salaries higher than the ones in the public sector. While it is a stretch to argue that civil society organized the Rose Revolution, it is fair to say that its ability to carry out parallel vote tabulation, and consequently to expose the grossly fraudulent result, led to the Rose Revolution.

With the Rose Revolution, the state of NGOs changed and in the next ten years NGOs became progressively more disconnected from each other, lacking an unified agenda, and incapable of influencing the decision and policy making process. NGOs also became increasingly deprived of skilled personnel and funding, which they could use in order to mobilize public support and pressure the government. Even GYLA (one of the oldest and most prominent NGOs in Georgia dating from before the Rose Revolution) was unable to bring its corruption reports and policy suggestions to fruition. According to Sophia Chareli, a representative of GYLA, neither of the seven policy proposals that they have made available to the government in the period 2004-2012 have been addressed or considered.203

Similar to Georgia and Bulgaria, Montenegro civil society started its post-communist journey in a weak state. Its development in the early 1990s was taking place

203 Author’s Interview with Sofia Chareli, GYLA, April 2014
in the context of the Yugoslav wars, isolationism from the West and sanctions, political repression, and a rapidly declining living standard. As part of Serbia at the time, the larger part of Montenegrin civil society aligned themselves with the Montenegrin authorities in a struggle against Milošević’s rule and in an ambition for independence. This in turn led to decreasing the role of civil society as representative and advocate of citizens’ interests vis-a-vis the government.

By 2004, civil society in Montenegro had developed faster than its analogues in other countries from the Western Balkans. For instance, in 2004 it managed to mobilize popular opinion in a campaign to protect the Tara River and its canyon from plans to flood it for the development of hydro-electric power. This success testified to the ability of CSOs to collaborate effectively and gained parliamentary approval of a “Declaration for the Protection of the Tara River.” In turn, this forced the government to abandon its projected development of energy resources on the river.

According to a report by the Technical Assistance for Civil Society in the IPA countries Organization (TASCO):

As a sector, civil society in Montenegro has succeeded better than others in the region in raising its profile in the public eye and cultivating the trust of the people. On account of advocacy and networking of national NGOs, the sector is also now well positioned to take advantage, in terms of gaining a greater involvement and say in the policy-making process, of the ongoing course of

204 Declaration for the Protection of the Tara River, Montenegro Parliament, 2005
institutional and legal reform which will begin to gather pace as the country progresses toward European integration.205

By 2006, the significantly stronger ability of Montenegrin civil society to influence outcomes in cases of corruption, conflict of interest, and freedom of information, relative to other countries in the region, was well established. This year, the government moved to make the Prime Minister Djukanovic a president of the Montenegrin Investment Promotion Agency, thus empowering him to negotiate and control foreign investment deals. A coalition of NGOs, led by MANS, petitioned the Constitutional Court and argued that Djukanovic's seat on the investment board was a conflict of interest. The argument was considered and the NGO coalition won, with the court ruling it unconstitutional for the prime minister to sit on the board of an independent public institution.

Additionally, in 2012-2013 civil society in Montenegro was consulted on 76 anti-corruption measures. In 32 of them, the proposition and evaluations of NGOs were accepted. With respect to other 32 measures, NGOs agreed with the evaluation of the

relative institutions, and the remaining measures were left to be a subject of a joint revision between the NGOs and the implementing agencies.\textsuperscript{206}

Without suggesting that what the EU did or did not do is the sole explanatory variable, I show in the next pages that EU actions were a variable that had a significant impact on the character of civil society. I also show that the reason behind the EU’s impact is due to the tendency of CSOs to the EU for guidance in all aspects of their democratization, including civil society development, from the very beginning of Montenegro's transition.

During the process, the EU has consistently stressed the importance of a developed civil society for democracy to be consolidated in these countries. The necessity of partnership between the EU and domestic civil society was embedded in the principle of participation of civil society that the EU expressed early in the post-communist transitions of the countries from the former Eastern Bloc. This principle of participation was especially pertinent for furthering Europeanization in areas characterized by normative discrepancies between the EU and individual countries. Such was the case of anti-corruption reforms in post-communist countries where long communist regimes left legacies of centralization of power and lack of transparency.

\textsuperscript{206} Radulovic, V., V. Calovic, V. Maras (2013) \textit{Iza Statistike – Analiza Presuda I Podaci o Rezultatima antikorupcijskih reformi}, Каталогизација у публикацији Централна Народна Библиотека Црне Горе, (Author’s Translation)
The EU first acknowledged the necessity of civil society’s active participation in the process of Europeanization in the Treaty of the EU. The document stated that “the institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action”.  

A February 2000 discussion paper dedicated to the issue presented the rationale of cooperation between the EU and NGOs in five main points: (1) Fostering participatory democracy, (2) representing the views of specific groups to the European institutions, (3) contributing to policymaking, (4) contributing to project management, and (5) contributing to European integration. What brought together these five points was the idea that when cooperating, NGOs were empowered to serve as a liaison between citizens, national governments, and the EU. The document declares:

By encouraging national NGOs to work together to achieve common goals, the European NGO networks are making an important contribution to the formation of a "European public opinion" usually seen as a pre-requisite to the establishment of a true European political entity. At the same time this also contributes to promoting European integration in a practical way and often at grassroots level.

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This view was consistently affirmed in other documents throughout the years. The Commission White Paper on European Governance reinforces that, “Policies should no longer be decided at the top. The legitimacy of the EU now lies with the participation of its citizens”.\textsuperscript{209} This principle of participation is also established in the Constitutional Treaty of the EU which states that, “the European Union recognises and promotes the role of the social partners at Union level, taking into account the diversity of national systems; it shall facilitate dialogue between the social partners, respecting their autonomy.”\textsuperscript{210}

The EU also demonstrated a clear understanding of the necessity of politically unbiased feedback that it received from domestic NGOs. In a Communication from December 1992, the EU Commission declared the necessity for, “an open and structured dialogue between the Commission and special interest groups.”\textsuperscript{211} It also affirmed its belief in the “need to remain open to outside input and it to include NGOs which wish to put their views forward”.\textsuperscript{212}


\textsuperscript{210} Treaty Establishing A Constitution For Europe Adopted by the European Convention on 13 June and 10 July 2003, Article 47

\textsuperscript{211} An Open and Structured Dialogue Between the Commission and Special Interest Groups (93/C 63/02) Official Journal of the European Communities 5.3.93, Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_1993_063_R_0002_01&from=EN

\textsuperscript{212} Commission Communication 1992, JO C63 of 5 March 1993
Although the EU seemingly had a clear vision of what a developed civil society should look like and how it was to be achieved, I show in the following pages that significant variation in the EU approach to civil society in the three countries led to variation in the state of civil society that resulted. This variation was three-fold. It was based on the time, the intensity, and the kind of involvement the EU had in the process of developing civil society in each country.

3.1 Intensity of EU Involvement

To show intensity of EU involvement, I deploy again a SNA and more specifically an eigenvector centrality measurement. I use the eigenvector value as a proxy to the influence of the EU because nodes with a high degree of centrality serve as hubs in the network and thus they are key players with high influence over the whole network. Eigenvector centrality is appropriate for this analysis because it robustly considers the number and influence of those to which a nodes is connected (Katz 1953, Hubbell 1965, Taylor 1969, Hoede 1978, Coleman et al. 1966, and Friedkin 1991). Thus, I assume that where the eigenvector centrality of the EU was high, the EU had a high level of influence in the network and vice versa.

In Bulgaria, the eigenvector value of the EU showed that the centrality of the EU decreased over the years. In 2003 and 2007, the EU ranked first (EV =1) but in 2013 its eigenvector centrality is reduced to 0.678 and the EU is ranked fifth. This means that in 2003 and 2007, the EU was the most connected node in the network. In 2013, the centrality of the EU decreased, suggesting that a decrease in its influence on the network.
In this period, the EU also lagged behind the most influential node by almost 40%, suggesting that its influence over the network of domestic anti-corruption NGOs was further decreased. Therefore, I find that the influence of the EU became increasingly lower in the 2003 - 2013 period and more specifically after the accession of the country into the EU.
Graph 4: Centrality ($\lambda$) of the EU in Bulgaria’s NGOs’ Networks in 2003, 2007, 2013

EU $\lambda=0.678$

EU $\lambda=1$

EU $\lambda=1$
In Montenegro, the findings from the SNA showed that the EU was the most connected node in the network with a score of 1 ($EV=1$) and therefore the most influential one. In terms of the influence of the EU therefore, the EU was the most central node in the network. I interpret this as the EU having a significant impact on shaping the third sector in Montenegro.

![Graph 5: Centrality ($\lambda$) of the EU in Montenegro’s NGOs networks in 2013](EU*1.0.png)

In Georgia, the eigenvector centrality of the EU showed that the EU went from almost no influence in 2003 to high levels of influence in 2013. In 2003, the EU was the second most influential node in the network. However, it lagged behind the most influential node by almost 20%. In 2007, Saakashvili had already passed some of his
major anti-corruption reforms. The EU was content with developments in Georgia and abandoned the development of the third sector. As would be expected, the centrality of the EU fell to fourth place. In 2004, Georgia became a member of the ENP and in 2009 the EU introduced the Civil Society Forum through its Eastern Partnership Program (EaP) and began to actively engage with some non-governmental actors. These two developments resulted in the significant increase of the influence of the EU on the domestic civil society sector, and in 2013 the EU was the most influential actor in the network of domestic NGOs. Furthermore, the high centrality of the EU in 2013 was evidenced by the score of the second most influential NGO, whose eigenvector centrality value is less than half of that of the EU at 0.455.
Graph 6: Centrality of the EU in Georgia’s NGO network in 2003, 2007, and 2013
3.2 Timing of EU Involvement

In addition to how intense the involvement of the EU was in the three case studies, the timing of involvement of the EU with domestic NGOs was essential for understanding the variation in the outcome as well. I build here on research showing that change in actors’ self-perception, interests, and consequently behavior needs continuity from actors’ previous status. A large body of scholarly work argued that in the absence of continuity, an abrupt approach to change may produce a general orientation toward resistance to the attempted change. For instance, Moran and Brigtham (2000) argued that:

People need a sense of personal integrity and consistency over time. Change that strikes at the core of a person's sense of who they are will activate powerful motivations to return things to the status quo. This demand for personal consistency is one of the major forces working against the implementation and stabilization of organization change.213

In the following paragraphs, I show that in cases such as Montenegro, where the EU got involved in developing civil society earlier in the process of post-communist transition, it had significantly more opportunities to alter civil society in a way that domestic non-state actors became aware of their role, and were willing and capable of delivering politically unbiased information to the EU. In contrast to cases such as Bulgaria, where the EU got involved after membership conditionality peaked, and in cases such as Georgia, where the EU interrupted its efforts to cooperate with domestic

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NGOs for a significant period of time, I show that an abrupt change in the EU’s involvement was unfavorable for the abilities of civil society.

3.2.1 Late Involvement of the EU in Bulgaria

In Bulgaria, the EU’s involvement represented a rapid discontinuity not only from a virtually non-existing civil society during the communist regime, but, more importantly, from other international actors’ efforts to develop a NGO sector in the country. The EU did not get involved in the development of civil society in Bulgaria until the early 2000s. The 1997 Opinion on Bulgaria’s Membership Application stated: “Responsible officials and NGO staff have little knowledge of foreign circumstances and legislation and there is a major shortage of resources.”²¹⁴

By then and under the influence of the main donor, USAID, the Bulgarian NGO sector had already established a particular character that was in line with the US pluralistic understanding of civil society. The training that NGOs received at the time followed that logic and NGOs were primarily educated in their role as service providers in the narrow areas in which they were operating. What lacked were efforts to develop civil society in their capacity as actors that were capable of impacting the policy making process while simultaneously serving as a liaison between citizens and the state.

After 1998, EU’s efforts to develop civil society were channeled through its main pre-accession instrument – PHARE. In 1998, the PHARE program significantly increased its funding for civil society development. The strategy that the EU employed significantly departed from USAID’s. In line with the European understanding of the role of civil society and with corporatist models throughout Europe, the EU treated NGOs as participants in social partnerships with governments, and therefore the EU was advocating close cooperation between the two. Thus, the late involvement of the EU. coupled with an approach deviating from the one USAID had used, meant that the EU was faced with the task of changing an existing NGO sector, rather than developing it from the ground up.

The active involvement of EU with civil society in Bulgaria also coincided with the peaking of membership conditionality, and consequently became a part of the final goal of EU membership. At the same time, though, the EU did not have an acquis with respect to civil society, and civil society was not formally part of the negotiation process. As a result, EU’s efforts to develop civil society were not well defined and remained vague both with respect to their final goal, and with respect to the tools deployed toward this goal. This approach to developing the third sector in Bulgaria left NGOs unclear with respect to their role both domestically and in relationship to the EU. Thus, many NGOs assumed the role of research organizations, while others did not manage to establish the necessary capacity to exist longer than the time required for the completion of their first and only project.
In 2004, under EU pressure, Bulgaria introduced tax cuts for NGOs that were foundations.\textsuperscript{215} As a result, the number of NGOs increased significantly.\textsuperscript{216} This peak in the number, coupled with the lack of capacity of most small NGOs, led to an additional division in the sector. Civil society in Bulgaria became composed of large think-tanks and small NGOs created and lasting for one project which were not exchanging information or cooperating on projects. Therefore, the late involvement of the EU led to the inability of civil society in Bulgaria to establish a common anti-corruption agenda, to support it with a comprehensive plan for pressuring the government into effective reforms, and to cooperate with the EU.

3.2.2 Interrupted Involvement in Georgia

In contrast to Bulgaria, where the EU got involved in developing civil society late in the post-communist transition of the country, in Georgia, the EU interrupted its involvement after Saakashvili assumed power in 2004.

In the years immediately after the collapse of the communist regimes, the EU was occupied with ethnic tension in Georgia. The EU was also concerned with the raise to power of Shevarnadze, who until 1985 served as First Secretary of the Georgian Communist Party (GCP) and between 1995 and 1991 as a Minister of Foreign Affairs of the Soviet Union. The EU saw this as continuity from the communist regime and became

\textsuperscript{215} Law on Non-Profit Organizations, Bulgaria

\textsuperscript{216} Data from the National Statistical Institute of Bulgaria

226
sympathetic to and supported domestic civil society actors that were opposing Shevardnadze’s regime. In this sense, the EU was involved in the development of civil society in Georgia prior to the Rose Revolution. In fact, in comparison to other countries in the region, prior to the Rose Revolution civil society in Georgia was well recognized internationally and connected with transnational NGOs and international organizations. Some international organizations used to fund NGOs in order to increase their visibility domestically. Stefes found that one international organization funded a prominent NGO to work from an office in the Parliament Building (Stefes 2006)

Saakashvili’s victory at the 2003 presidential elections was a turning point for the Third Sector in Georgia. Both the domestic public and international donors associated the majority of civil society with the new government. This perception was strengthened by the fact that NGOs provided human resources to the new government. In such a situation, it was not surprising that international donors (including the EU) were very comfortable with the new government. After all, they had previously established relationships with NGOs that were now in power and often with particular individuals from these organizations. In this context, after 2004, the EU did not prioritize civil society development. Specifically in the area of anti-corruption reforms, it worked primarily with the new government. The fact that NGOs that were left out of the governance process and were consistently pointing out non-democratic elements of the anti-corruption reforms and did not have EU support to apply pressure to the government,

217 A small group of NGOs, led by the Former Political Prisoners for Human Rights, have declared themselves against politicization of civil society in 2000 and were not associated with the supporters of Saakashvili.
attests to the interrupted relationship between the EU and civil society in Georgia in the period between 2004-2009.

The EU did not become active in developing civil society until 2009, when the European Partnership Civil Society Forum was launched. The Forum was a multi-layered regional civil society platform which promoted European integration, and facilitated reforms and democratic transformations in the Eastern Partnership (EaP) countries.\footnote{\textsuperscript{218}} This platform specifically addressed the development of civil society by providing opportunities for meetings, conferences, and cooperation between Georgian and EU NGOs. The work of the forum was organized into five working groups. In turn, their work was even more narrowly specified in subgroups. Work on anti-corruption was assigned to a specific subgroup, tasked with the development of a dialogue with international donors regarding anti-corruption and in particular with European donors aiming to change donor policies.\footnote{\textsuperscript{219}} The subgroup was also responsible for strengthening cooperation between EaP and EU CSOs, and for developing common initiatives aimed at sharing expertise and experience between the EU CSOs and the EaP countries.\footnote{\textsuperscript{220}}

The interruption of the EU’s engagement with civil society proved to have a negative impact on the NGO sector in Georgia. When the EU became involved in 2009,\footnote{\textsuperscript{218} The Eastern Partnership countries are Azerbaijan, Armenia, Belarus, Georgia, the Republic of Moldova and Ukraine} \footnote{\textsuperscript{219} Eastern Partnership Civil Society Forum website: \url{http://eap-csf.eu/en/working-groups/wg1-democracy-human-rights/wg1-subgroup21/}} \footnote{\textsuperscript{220} ibid}
its efforts represented a significant discontinuity in the relationship it once had with the third sector there, and it needed to work with a highly demotivated and disunited civil society. As one interviewee put it: “The EU is building on something broken.”

3.2.3 Early Involvement in Montenegro

In contrast to Bulgaria, where the EU involved itself in the process of developing civil society late after 1989, and to Georgia, where the EU interrupted this process in 2004, in Montenegro the EU was consistently involved from the beginning of the post-communist transition of the country. Even before Montenegro received independence from Serbia, its civil society was engaged by the EU. The Stabilization Pact had a separate section on the development of civil society which stated the precise steps that needed to be taken. Specifically in the area of judicial reform and the fight against corruption, the role of civil society was acknowledged, and efforts to include civil society in the anti-corruption agenda were made through the Stability Pact Anti-Corruption Initiative (SPAI). The founding documents of the SPAI stated “International and local non-governmental organisations and bilateral aid agencies are combining their efforts with those of national governments and international organisations to combat and curb corruption in South-eastern Europe.”

221 Author’s interview with Tamar Pataaraia, CIPDD, Georgia, March 2014
222 SPAI, 2001, Anti-Corruption Measures In South-Eastern Europe
The domestic NGOs of Montenegro cooperated with international and Western European NGOs. As Pilar V of the SPAI stresses, the development of a strong civil society is crucial for the successful curbing of corruption. Many steps in this direction were taken through the SPAI, but the most important one is that it provided a forum for a permanent dialogue between local NGOs and business representatives, and their European counterparts. SPAI was initiated in February 2000 as part of the Stability Pact adopted in 1999. One of the main functions declared by SPAI is promoting the development of civil society specifically in the area of anti-corruption. Between 2005 and 2006, through the auspices of SPAI there were six conferences in which NGOs partook.223

3.3 Kind of Cooperation Between EU and Civil Society

Cooperation between CSOs and domestic authorities, as well as between CSOs and the EU, took on many forms. In some cases, the EU led the interaction without much consideration of NGOs opinion. In this case, the EU could not learn from domestic non-state actors, nor could it evaluate its progress in developing civil society. A different form of relationship was where the EU became a partner of civil society. In this case, communication between the EU and civil society was as between equals, and both actors learned from each other. I call the former a domination relationship and the latter a partnership relationship.

223 Regional Anti-Corruption Initiative, Available at: http://rai-see.org/events/
A partnership relationship where the EU and civil society are equal actors that exchange information for the purposes of mutual education is consistent with EU’s principle of partnership. This principle is foundational for multi-level governance (Bruszt 2008), promoted by the EU. Scholars agree that the principle of partnership is a policy-making tool that allows stakeholders to exchange information and ideas (Bauer 2002, Nanetti et al 2004, Milio 2007, European Citizen Action Service 2005, 2010). Recently, ‘partnership’ has been examined as a structural principle for policy-making in the EU (Bauer 2002).

Though the EU definition of partnership does not specifically mention the involvement of CSOs, one Council regulation specifies that member states need to establish a wide and effective association of all the relevant bodies in the creation of particular policies. Partnership here does not simply refer to the EU’s involvement with domestic government authorities, but it also presupposes a wider consultation of all stakeholders, including employers’ organizations, trade unions, and NGOs. The creation of such bodies promotes equality and its final goal is the creation of the most representative partnership at the national, regional, local, or any other level (Council of the European Communities, 1999). Therefore, the principle of partnership refers to the

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224 “Community operations shall be such as to complement or contribute to corresponding national operations. They shall be established through close consultations between the Commission, the Member State concerned and the competent authorities designated by the latter at national, regional, local or other level, with each party acting as a partner in pursuit of a common goal...” Article 4 of the 1988 Framework Regulation, Council Regulation (EEC) No 2052 (Council of the European Communities, 1988)

225 Article 8 of Council Regulation (EC) No 1260
idea that cooperation between domestic non-state actors and the EU is crucial for the process of Europeanization.

In the following section, I show that this principle of partnership was not always followed by the EU, and often the EU developed a relationship of domination with domestic civil society. Consequently, its attempts to unidirectionally diffuse norms were unsuccessful.

3.3.1 Partnership of the EU and Domestic Civil Society in Montenegro

In contrast to the situation in Bulgaria and Georgia, foreign and international engagement with civil society in Montenegro took on a different shape. The EU established a partnership with the domestic third sector which proved to be the most favorable form of interaction for Montenegro’s process of democratization and anti-corruption activities. This partnership meant more time was required for the EU to diffuse norms relative to other cases studied, but also led to a higher level of internalization because the EU norms and rules were subject to extensive public debate in which all domestic stakeholders partook. The analysis below is based on interviews and document analysis and shows that domestic Montenegrin NGOs indeed internalized norms of transparency, accountability, and participation in the decision-making process better than their Bulgarian and Georgian counterparts.

The internalization of norms of participation in the decision-making process as a result of the cooperation between domestic NGOs and the EU was evidenced by the successful attempt of NGOs to insert themselves in the negotiation process. In 2011, the
Government of Montenegro agreed to include NGOs in the fourth layer of the negotiation teams on each chapter, and thus let them have a tangible say in the anti-corruption reforms. The fourth layer of the negotiating structure consisted of working groups, which were responsible for the analysis and assessment of the compatibility of Montenegro's legislation with *EU acquis* (screening), as well as for the development of negotiating positions, with support of public and other bodies and institutions. The inclusion of NGOs in the negotiation structure allowed for the evaluation of EU requirements against the particularities of the domestic context.

Originally, the idea of including NGOs in the negotiation structure resulted from the efforts of a coalition of NGOs led by the CRNVO (the Center for Development of NGOs). When asked to explain the process by which they arrived at the idea, NGOs pointed out their extended communication and cooperation with the EU. NGO representatives and representatives of the EU delegation agreed on the cause of this proposition – the NGO sector truly understands the gravity of its role not only in the fight against corruption, but also in the holistic process of democratization. Ana Novakovic,\(^{226}\) the head of the CRNVO, was the initiator and author of the proposal. She explained in an interview that the idea for this cooperation, which was unique to the post-communist world, came up during an informal conversation with the EU delegation representative during a conference organized by the EU. In the process of creating the proposal, she regularly approached representatives of the EU delegation and made sure she had their advice and approval. This is only one example of cooperation between the EU and NGOs

\(^{226}\) Author’s interview Ana Novakovic CRNVO,
in Montenegro which lead to a novel and effective way to keep a check on corrupt government officials. The NGO community, as well as the EU Delegation in Montenegro, also agreed on the effectiveness of having NGO representatives included in the negotiating groups. The main benefit that they pointed out is that NGOs could provide the EU with information about internal debates and processes in the creation of negotiating positions. The high value placed on this by representatives of the EU Delegation in Montenegro indicates the trust that Delegation had in civil society’s feedback. As the chief negotiator on Chapters 23 and 24 in the EU delegation puts it, “the NGOs are one of the very few actors around here that we can trust.”

Based on the interaction of the EU and domestic civil society, the EU altered its approach to financing NGOs in a way that provided independence and legitimacy to NGOs. As I theorized, the interaction of NGOs and the EU led to an evolving relationship which justified the dedication of large amounts of funding to civil society in Montenegro based on achievements. In contrast to Bulgaria, the funds for civil society development were consistently distributed directly by the EU instead of through state bodies, thus allowing the creation of a politically independent civil society.

Until 2007, the primary EU funding for civil society capacity building in Montenegro was channeled through the CARDS program. In 2008, CARDS was replaced by the Instrument for Pre-Accession Assistance (IPA). The Civil Society Facility (CSF) as part of IPA was set up even before the opening of the negotiation process, thus

227 Author’s interview with Annalissa Giansanti, EU Delegation to Montenegro
separating the process of EU accession from the efforts to develop civil society. Its purpose, as established in the founding document, was to, “contribute to anchoring democratic values and structures, human rights, social inclusion and the rule of law, thereby supporting the EU integration process.” For this reason, the EU’s budget in 2011 was EUR 1 800 000 and in 2013 the tentative amount assigned for the development of the civil sector was EUR 1 000 000.

Both 2010 and 2011 reports stressed the importance and the effectiveness of civil societies participation in the decision-making process, and emphasized that funds were for supporting the work of NGOs and further developing civil society. Although the reports also acknowledged that some NGOs had been subject to political and administrative pressure, it did not deny the critical role NGOs and other civil society groups played in the integration process in Montenegro.

In the period of 2007-2013, funding for civil society, and, more specifically, the NGO sector, was channeled through one of the IPA components, namely political criteria. As in Bulgaria, the distribution of these funds was done through a National Authorizing Officer (NAO), which was a high-ranking official in charge of sound financial

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229 IPA Implementing Regulation
management of IPA. The Montenegrin NAO was the Assistant Minister of Finance for Treasury Operations in the Ministry of Finance.

In contrast to Bulgaria, two provisions introduced in Montenegro worked to prevent empowerment of the state, and provided the EU with real possibility to manage the funds. First, the EU involved itself in the distribution of public funds. In 2013, state funding was provided only by the revenues from games of chance (the lottery). Often the process of distribution of this type of funding was characterized by a lack of transparency and monitoring mechanisms.\(^{230}\) However, recent changes of relevant legislation in the field of lottery games established a provision that enabled co-financing of EU supported projects. This co-financing could be in the amount of missing funds, and up to 10\% of the overall value of the project in question. Therefore, NGOs were presented with an incentive to work toward more transparent procedure in the process of securing state funding.

Finally, the EU introduced a grants mechanism, which in 2013 was by far the most preferred way to access EU funds. As a matter of fact, some prominent NGOs, such as MANS, consistently declined the opportunity to participate in state funding from the lottery because it was not perceived as being a government sponsored organization. Grants were submitted directly to the EU delegation and funds were managed directly by the same institution. Thus, a more transparent process was put in place. More

\(^{230}\) Authors interview with Ana Novakovic CHRVO, November 2013
importantly, though, this direct funding allowed the relationship between NGOs and the EU to be strengthened, and to take place without government involvement. As a result, the EU presented the possibility for sub-granting.\textsuperscript{231} As of 2012, two organizations in Montenegro were implementing sub-granting programs. They contracted with 28 organizations altogether. This clearly shows that the number of EC beneficiaries in the country has increased.\textsuperscript{232} To make the process more efficient, the EU organized numerous conferences and workshops focused on educating NGO representatives in the art of grant writing and management.\textsuperscript{233}

In sum, a strong and direct relationship between NGOs and the EU in Montenegro was developed from the very beginning of the country’s post-communist transition. This relationship was self-perpetuating and supported a process of learning for both the EU and domestic NGOs. In turn, NGOs and the EU altered their preferences and behavior and became more productive for the introduction of anti-corruption reforms. As a result, EU’s efforts to promote civic values and norms through the third sector were never directly linked to requirements in the pre-accession process, and developing civil society through the creation of institutions was never on the agenda. Instead, a constant dialogue between NGOs and the EU was and still is taking place at the time of writing. This communication began prior to Montenegro’s independence from Serbia and, in contrast

\textsuperscript{231} Presented in the IPA 2009 Civil Society Development National Program

\textsuperscript{232} Country report: Montenegro Country profile for the year 2012, Prepared by: Centre for Development of Non-Governmental Organisations

\textsuperscript{233} TACSO, 2011, Developing and Managing EU-Funded Projects
to Bulgaria, years before Montenegro had membership prospects. Finally, because of this early engagement, the EU and domestic NGOs managed to progressively establish a relationship of trust based on shared meanings and understandings. The EU was not in a rush to impose conditions. Instead, they were learning from domestic non-state actors as much as domestic non-state actors were learning from the EU. I come back to the precise anti-corruption implications of such a relationship in the last section of this chapter.

3.3.2 Domination of the EU in Bulgaria

In contrast to Montenegro, the type of relationship that NGOs had with the EU in Bulgaria was dominated by the EU. Interviewed NGOs consistently expressed discontent regarding the EU’s decreased interest in their work in the 2003-2005 period, and the general strategy of the EU to interact with state authorities rather than non-state actors. This strategy empowered the state and placed NGOs in a position of dependency on state institutions. As a general strategy, the EU remained largely oriented toward building strong relationships with the state and ruling elites within Bulgaria, and less engaged with non-state actors (Börzel and Buzogány 2010). This was evident in the way the EU dispersed funds for civil society, and instead of developing NGOs, it rendered them dependent on the state.

To distribute funds for civil society, the EU called for the establishment of National Authorizing Officer (NAO), who had the overall responsibility for the financial

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234 Author’s interviews November 2013 – May 2014
management of PHARE funds - the main source of EU funds for developing civil society. The NAO was to be appointed by the Council of Ministers, and Dimitar Ivanovski was the first to occupy this position. Following the Bulgarian Socialist Party (BSP) victory in the 2005 parliamentary elections, Ivanovski became Deputy Minister of Finances without resigning from the NAO position, thus conflating the responsibilities of two offices and not leaving space for NGOs to participate in the distribution of EU funds.

The EU also required the creation of an Implementation Agencies (IA) within each ministry. The IAs were in charge of tendering, contracting, payments, and technical implementation of Investment Support projects, and other projects if such were specifically provided. It is worth noting that both the NAO and the IA were part of the national administration. Hence, NGOs were dependent on the administration for their financing. For instance, in the area of structural funds distribution, Ordinance 171/2002 regulates the formation of the various monitoring bodies. According to it, most members of the monitoring bodies are representatives of the central government. In turn, this arrangement made state control inevitable, and left little room for the inclusion of non-state actors (Yanakiev 2010). Instead of decentralization, the state strengthened its role and dominant position through the Ministry of Finance, leaving limited roles for other actors (Yanakiev 2010). The IAs within different ministries became extremely influential, for they were essentially given the authority to select recipients, determine the type of projects worth PHARE funding, and monitor spending (through yet another agency within the national administration). To be fair, the IAs included civil society representatives, and in theory it was supposed to be politically independent from
government. However, the lack of a tradition of strategic planning and programming in Bulgaria hindered the independence of IAs. Such independence demanded specific changes, among which was included a clear mechanism securing the involvement of CSOs (Marinov et al. 2006). The inclusion of CSOs in 2002 in programming of the pre-accession funds of PHARE, ISPA, and SAPARD could be regarded as the first attempts at creating an institutional framework for partnership between the EU, Bulgaria’s NGOs, and Bulgaria’s state authorities. However, this attempt had limited success because the then developed National Development Plan was never officially adopted.

Instead, IAs became involved in the process of fund distribution in two ways. They were either responsible for implementation of PHARE civil society programs, such as LIEN and ACCESS, or they assisted the government and the EU delegation in designing the call for proposals. This approach, however, did not entirely secure the independence of the IAs, as in reality the government was often directly involved in selecting the members of the IAs.

Aware of some of these problems, the EU did not release all control of its funding for CSOs to national actors. A Joint Monitoring Committee (JMC) was also created. It consisted of the NAO, NAC, and the Commission representatives in charge of PHARE programs review. The JMC met once a year to review the outcome of activities on the PHARE program, and NGOs were rarely included in the meetings. Considering the fact
that PHARE was one of the two major pre-accession instruments, a yearly meeting was insufficient.\textsuperscript{235}

To be fair, the programs introduced by the EU did have limited effects on civil society participation. For instance, in the area of environmental politics, civil society has been indeed active. Dimitrova (2014) shows that environmental NGOs find links with the EU to be strategic channels for influence. She reveals that as of 2007, NGO representatives use direct contact with EU institutions in order to apply pressure to the national government. However, these results have only been found in the environmental protection sector, and, as shown above, they are not evident in other sectors, such as anti-corruption. Furthermore, while environmental NGOs may indeed use linkages to the EU, the extent to which they are successful remains questionable; Bulgaria remains the EU member with the least effective environmental protection laws.

The ineffectiveness of the relationship between the EU and domestic civil society created in Bulgaria was confirmed by interviews with representatives of the EU. Only five of the seventeen interviewed NGOs saw the potential to cooperate with the EU on the issue of anti-corruption. However, they generally saw the strength of the EU in the EU’s potential to freeze government funds, and not in supporting the efforts of the third sector to influence policy-making. As a result, during the protests in 2013 only Protestna Mreja (Protest Network) - an informal organization established in the beginning of the protest - made an attempt to reach out to the EU for support and legitimization of the

\textsuperscript{235} Author’s interview with a member of the IA in the Bulgarian Ministry of Finances
protest. Protestna Mreja sent an open letter to ALDE regarding the election of Delian Peevski for MEP earlier in May 2014.

The inability of CSOs to seek support from the EU also hindered the reverse process - namely the CVM’s ability to benefit from feedback by domestic civil society. The CVM’s website specified only nine out of the existing 5000 Bulgarian NGOs that were considered by the CVM to have exerted positive influence on judicial reforms and anti-corruption policies, and were thus trustworthy. From them, three are branches of international NGOs (TI, Open Society, and the Bulgarian Helsinki Committee) and the rest were think tanks with no membership base, and thus incapable of systematizing citizens’ grievance. The EU Commission’s Communication in office in Bulgaria claimed that the EU regular reports both before and after accession in 2007 were, “based on contributions from the Bulgarian Government, as well as from the Commission services, Member States, NGOs and other stakeholders.”236 However, information on which specific NGOs, how many of them, and the selection criteria, was not available. Therefore, the precise engagement of the EU with NGOs in Bulgaria in the process of creating progress reports was unclear. For the most part, the EU Commission worked with individual experts regardless of the organization they belonged to, if any. While these experts do provide valuable information to the EU with respect to the progress of anti-corruption reforms, they hardly express the opinion of an organized third sector.

236 Author’s written communication with Ognian Zlatev, EU Commission Representation in Bulgaria.
3.3.3 Georgia - Building on a Broken Civil Society

As specified above, the interaction of the EU and non-state actors in Georgia was interrupted for an extensive period of time between 2004 and 2009. When the EU became engaged again in 2009 through the Civil Society forum initiative of the Eastern Partnership, it was met with a highly fragmented domestic civil society which lacked capacity and knowledge with respect to impacting anti-corruption reforms.

Interview data suggested that the initial abandonment of Georgian civil society by the EU immediately after 2004 had two key effects: first, the EU became incapable of receiving feedback from civil society, and second, civil society did not see the EU as a partner which could support civil society to become a cohesive actor, and thus help further its agenda and guide NGOs in their attempts to apply pressure to the government.

The attempts of the EU to work with civil society were consistently weak in the period after the Rose Revolution. Between 2004 and 2008, these attempts were primarily evidenced by the inclusion of civil society in each anti-corruption project sponsored by the EU. There were many such projects in this period and NGOs indeed participated in each of them. However, blinded by an unrealistically optimistic view of what was left from civil society in Georgia, the EU placed some strong pre-requisites on NGOs in order to participate in anti-corruption projects. For instance, most of the requirements for an organization to qualify for an inclusion in an anti-corruption project specified that NGOs needed to be a first tier organization. This meant that they needed to have effective upper, middle, and lower structural units, clearly formulated mission statements, good public
outreach, short and long-term strategic plans, and sizable annual budgets (between $100,000 - $200,000). A study performed by the United Nations Association of Georgia (UNAG) and the Centre for Strategic Research and Development of Georgia (CSRDG) found that only about 16% of NGOs in 2005 qualified as such\textsuperscript{237}. While some NGOs with time would learn to talk the talk and receive EU grants, a majority of civil society did not have access to real cooperation with the EU. This created an additional divide in the Third Sector in Georgia. In addition, EU aid delivered through CSO channels privileged international NGOs over their national counterparts. For instance, of all 156 ongoing anti-corruption projects in Georgia in 2007, only 48 programs were implemented by local NGOs\textsuperscript{238}.

These actions by the EU bred not only additional division in the civil society of Georgia, but also mistrust of the NGOs with respect to the EU. In interviews, representatives of the NGOs were asked to identify the most reliable international or foreign organization that could be helpful in structuring a project in a way that it had the most leverage over the government. USAID was the first choice for most NGOs with the exception of one, and the EU was consistently placed at third and fourth place. Many representatives of NGOs were not sure in what capacity the EU could help, other than provide funding. However, small NGOs knew that their status would not qualify them for funding.

\textsuperscript{237} Development of Civil Society Organizations in Georgia: Countrywide Assessment Report, United Nations Association of Georgia and Center for Strategic Research and Development, Tbilisi 2005

\textsuperscript{238} Information from the EU Delegation in Georgia
In turn, the further division of civil society caused by the efforts of the EU to include non-state actors led to the inability of NGOs to provide feedback to the EU with respect to the anti-corruption reforms, and the way in which non-state actors could be effective. The EU did not actively search for civil society’s cooperation because it did not trust the ability of civil society to provide politically unbiased feedback. In an informal conversation, a representative of the EU Mission in Georgia, that was directly responsible for civil society development, was very clear on the affiliation of NGOs with political parties, and consequently the bias in their reports. Local NGOs were rarely asked to contribute to data gathering for EU evaluation reports. From fifteen interviewed NGOs, only four had been asked to do so and seven had volunteered information. For instance, GYLA was asked to contribute to a study performed by the EU delegation. The information required was related to the number and nature of cases that they had addressed in a period of time. At the same time, a study carried out by GYLA regarding large scale corruption in the public procurement of a significant road construction project was not taken into consideration by the EU and was not mentioned in the following evaluation report. This bred additional distrust of the EU by the third sector in Georgia.

The variation in the interaction of the EU with civil society over the years with respect to timing, intensity, and kind of involvement steered the development of NGO sectors in the three countries in different directions. These developmental trajectories

239 Author’s interview with Sophia Shareli, expert at GYLA, Tbilisi, March 2014
manifested themselves in different abilities of civil society to impact the creation and implementation of anti-corruption reforms domestically. The main variation was in the ability of civil society to bridge the gap between state and society by balancing cooperation, monitoring, and effectively opposition of government’s actions.

4. Conclusion

This chapter analyzed the effects that the EU had on developing civil society in the post-communist world. Using SNA and data gathered through interviews and document analysis, it focused on the limits and opportunities of the EU to increase the abilities of civil society to balance between cooperation, monitoring, and opposing government introduced anti-corruption reforms. The chapter made two arguments. First, by using a density metric of SNA, it showed that the variation in the ability of civil society to contribute to anti-corruption reforms was strongly correlated to civil society’s level of cohesiveness, and the extent to which NGOs were capable of acting as a unified player. Second, the chapter showed that the influence of the EU varied because the EU approached civil society in a different way in each of the studied countries. This variation was in the timing of involvement, the intensity of involvement, and in the kind of involvement of the EU with domestic non-state actors. Most importantly, the chapter showed that the initial involvement of the EU with domestic NGOs created a self-perpetuating relationship between the EU and NGOs, which manifested itself either as a partnership or domination of the EU. The next chapter will show that the variation in the EU’s approach to civil society resulted in allowing the EU to secure domestic
internalization of norms underpinning externally suggested reforms in some countries and not in others.
Chapter Five – Synergy

The theory tested in this study showed that the interaction between two entities alters not only their actions, but their identities and preferences as well (Wendt 1994, 1999, Checkel and Moravcsik 2001, Karns and Mingst 2004). I argued that in the process of fighting corruption in the post-communist world the roles and the actions of both domestic and international actors were essential (Jacobsen 1996, Millner 1997, Putnam 1998, Scully 1997). Domestically, I focused on two types of actors: First, I discussed the actions and perceptions of state actors that were representative of the executive, legislative, and judicial powers in each country. Second, I analyzed the abilities of domestic non-state actors, such as NGOs, to apply pressure to the state, to diffuse norms among citizens, and to effectively monitor the creation, implementation, and enforcement of anti-corruption policies.

Internationally, I emphasized the actions of the EU. Without claiming that what the EU did or did not do is the single explanatory variable with respect to variation in anti-corruption reforms among post-communist countries, I showed that the EU participated in the shaping of domestic actors throughout the entire period of the post-communist countries’ transitions to democracy. There were two reasons for the EU’s impact on domestic actors: First, immediately after the collapse of the Berlin Wall, small Eastern European and Central Asian states were left without the former USSR’s umbrella and
looked to the EU to understand the path to democracy and a Western style of governance. Second, the EU understood the importance of political and economic stability in its immediate neighborhood and engaged in assisting post-communist transitions. Therefore the involvement of the EU had an impact on each and every aspect of the transitions, and thus it altered the way post-communist states secured the rule of law and introduced anti-corruption reforms.

This chapter discusses the relationships among the three aforementioned players (domestic civil society, domestic state institutions, and the EU). It explains why the interaction among these actors took on a different shape in each country and consequently led to variation in the outcome of anti-corruption efforts. Three types of relationships are the focus of my theory: The first relationship is between the EU and the state government and examines the way in which the EU applies conditionality to states. In this chapter I show that results from conditionality varied across countries and that this variation was due to the level of fit between the conditions, sanctions, and incentives the EU chose to employ on the one hand and the domestic context on the other hand.

The second relationship is EU’s interaction with non-state actors. I argue that in cases where the EU not only served as a teacher of norms to civil society (Finnemore and Sikkink 1993), but also learned from civil society, the EU-domestic civil society relationship resembled a partnership and created an environment amenable to the construction of functional anti-corruption institutions.
The final relationship is the state’s interaction with domestic non-state actors. This relationship is shaped by both the interaction between the EU and civil society and the interaction between the EU and state institutions. Where the EU socialized civil society in norms of participation in the decision-making process, civil society-state relations were more likely to be cooperative and civil society was better equipped to effectively monitor the implementation of anti-corruption policies. In contrast, where the EU failed to engage in political dialogue with civil society, civil society was underprepared to monitor state officials and was more likely to serve as a constant opposition to the state.

Graph 5.1 Interaction between domestic civil society, state, and the EU
In this chapter, I first examine the cross-country variation of the EU’s approach to conditions, sanctions, and incentives. Then, I proceed to explain why the simultaneously developing processes of socialization and conditionality resulted in anti-corruption reforms that varied by country. Here, I am interested in why only in some countries did attempts to socialize civil society result in conditions, incentives, and sanctions which supported a sense of domestic ownership of externally-promoted reforms, while in other countries such attempts failed to do so.

1. Variation in Types of EU Conditionality across Cases

The EU’s interaction with state and non-state actors varied by country. The previous chapter showed that in Bulgaria and Georgia the process of socialization was weak. In these two countries, the EU’s engagement came late in the process of transitioning to democracy, or the engagement was interrupted by events related to the introduction of anti-corruption policies. In contrast, in Montenegro, the EU’s attempts at socialization of domestic civil society began before membership conditionality and were consistent even before Montenegro received independence from Serbia (socialization proposition).

I also compare the interactions of the EU and state institutions in the three examined cases and show that conditionality was strong in Bulgaria and Montenegro, but weak in Georgia. More importantly, I show that in contrast to Bulgaria and Georgia, conditions, incentives, and sanctions in Montenegro were compatible with the domestic
context and flexible with respect to the anti-corruption trajectory the country took (the conditionality proposition).

Finally, I argue, the variation in the EU’s approach to civil society led to different types of conditionality in the three countries. The variation in the extent to which conditions, incentives, and sanctions were designed to address well-defined problems and were the product of cooperation between domestic actors and the EU, led to different outcomes in terms of the domestic capacity to create, implement, and enforce reforms that were compatible with the social and political context of each country. The variation in the EU’s conditionality across countries was based on the flexibility of the EU to alter conditions, incentives, and sanctions in order to make them more compatible with the domestic environment, and on the focus that EU placed on implementation versus harmonization of law.

1.1 Cross-country Variation in the Focus of Conditionality

The approach that the EU took in the three countries was consistent with the principles of conditionality regardless of the three countries’ membership status: As I showed in chapter three, Georgia was the subject of the same logic of conditionality despite the lack of membership incentive, and in Bulgaria conditionality continued through the CVM even after accession.

However, conditions varied, as did incentives and sanctions. This variation was not only in the size (Schimmelfennig et al. 2005), the strength (Vachudova 2005, Schwellnus
2005), or the credibility (Andonova 2005) of the incentives and sanctions, but more importantly in the focus of the conditions. In Bulgaria, the EU consistently stressed harmonization of the law and did not engage in advising and supporting the process of implementation and enforcement. Similarly, before and after accession, incentives and sanctions were always financial and were not directly experienced by citizens.

In Georgia, the EU had been consistently posing the general condition of eliminating corruption since before the toppling of Shevarnadze’s regime. This condition, however came without a requirement for the country’s inclusion in international anti-corruption conventions, nor did it specify the way in which the EU was going to measure progress. The vague demands of the EU left their interpretation to the ruling elite and allowed Saakashvili to introduce reforms that did not eliminate corruption but rather transformed corruption. In terms of incentives and sanctions, the case of Georgia differed from both Bulgaria’s and Montenegro’s cases. Georgia had no membership prospects and thus the EU could not leverage the ultimate incentive. However, it was consistently praising the achievements of Saakashvili’s radical reforms and was sending signals that if these reforms continued the EU would deepen its relationship with Georgia. Indeed, shortly after the beginning of Saakashvili’s reforms, Georgia became a member of the ENP, and in 2014 the country signed an Association Agreement with the EU.

Finally, in Montenegro, the EU approached the fight against corruption in a way that showed a better understanding of the capacity of the country to manage corruption and to implement EU-promoted policies. In Montenegro, the EU focused on
implementation, while leaving the design of institutions and legislation to domestic actors. By 2013, Montenegro had not been sanctioned though the EU made its preparedness to financially sanction the country clear and credible. Montenegro, instead, had received numerous incentives from the EU. For instance, in 2010 Montenegro received a visa-free regime with the EU as a reward for satisfying the conditions presented in the *Roadmap to Visa Liberalization*. The *Roadmap* emphasized lowering levels of corruption and the creation of anti-corruption institutions as important milestones. In 2009, EU Commissioner Ollie Rehn presented the EU decision to grant a visa-free regime to Montenegro and stated that

> On the basis of roadmaps presented by the Commission, the countries have made important progress in improving passport security, in strengthening border controls, in reinforcing the institutional framework to fight organised crime and corruption, as well as in external relations and fundamental rights.

This reward was also of a different type in comparison to the rewards that Bulgaria was receiving while in the process of negotiations. In Bulgaria, rewards were exclusively of a financial nature, and they did not have an immediate effect on the citizens. Instead, governments and local officials very often misappropriated funds. In contrast, in Montenegro, the reward of visa-free travel was granted directly to the citizens prior to the beginning of negotiations. Ollie Rehn expressed his understanding about “how much visa

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free travel means to them [citizens of Montenegro].”

Granting a reward that directly impacted citizens, instead of the government, represented a change in the nature of the rewards provided by the EU. A deeper relationship with the EU was directly experienced by the citizens of the country, not only on paper, but in action as well. Directly rewarding citizens also meant that the government was not given the power to mediate the benefits of a deepening relationship between Montenegro’s citizens and the EU. In turn, this new type of reward provided a clear understanding among Montenegrins regarding their individual responsibility, potential to satisfy requirements, and the benefits of deepening the relationship with the EU.

In Georgia, the EU’s incentives were directed entirely toward the government and more specifically to the supporters of Saakashvili. These incentives came primarily in the form of approval of Saakashvili’s reforms which further legitimized his actions domestically and allowed him to deepen grand corruption and eliminate petty corruption.

1.2 Cross-country Variation in the Flexibility of Conditionality

The EU conditionality also varied, in terms of its flexibility, in synchronizing and collaborating with domestic actors in formulating its conditions. This flexibility was a direct function of the level to which the EU learned about the capacity of domestic actors to comply with conditions provided by the EU and the ability of the EU to incorporate its knowledge in subsequent rounds of recommendations.

\[242\text{ ibid}\]
The level of flexibility is visible in the presence or absence of a date or accession. In situations where the EU did not have the resources to be flexible, the presence of accession date proved to not only fail to aid, but also hinder anti-corruption reforms. For instance, from the beginning of the negotiations in 2001, Bulgaria had a final date for accession to the EU. This created time pressure among domestic state and non-state actors. It also created pressure on the EU Delegation in Bulgaria (before 2007) which managed the negotiation process, and consequently on the office of the EU Commission in the country that was responsible for monitoring the reforms and the implementation of the CVM recommendations after accession in 2007. In the period from 2001 to 2013 this pressure consistently prevented the EU from leaving adequate space and time for implementation of reforms and for evaluating the compatibility of the policies it was suggesting with the domestic context.

Unlike Bulgaria, Georgia did not experience time constraints because the country did not have a membership perspective. This might have been beneficial for both Georgia and the EU because it could have provided time for the EU to increase its knowledge of the domestic context and to be most flexible with respect to the conditions, incentives, and sanctions that it was presenting to the country. However, blinded by the immediate success of Saakashvili’s reforms and in the absence of feedback from civil society, the EU failed to use this flexibility. The vagueness of the conditions presented to Georgia by the EU and the almost unconditional approval of Saakashvili’s anti-corruption policies legitimized both his reforms and the way he decided to implement and enforce them.
In the period before the Rose Revolution in 2003, the EU remained consistently critical of the country’s performance in the fight against corruption. After 2004, when Saakashvili clearly signaled his commitment to eliminate corruption and began to introduce radical changes, the EU drastically changed course. In the next ten years the EU was highly supportive of what the government had proposed in terms of eliminating corruption. While this change of course came as a result of Saakashvili’s strong commitment, it was also the result of civil societies’ inability to bring awareness to the EU with respect to the undemocratic nature of the changes Saakashvili was making. In turn, instead of closely monitoring Saakashvili’s reforms and providing recommendations that addressed specific problems, the EU unintentionally legitimized Saakashvili’s future actions and allowed him to centralize power and create an institutional environment conducive to rent seeking from the small but powerful group around him. In sum, the EU failed in its flexibility with respect to conditions, incentives, and sanctions in Georgia because it almost completely abandoned NGOs as alternative sources of information regarding the progress of the reforms.

Finally, in Montenegro, as in the case of Georgia, the EU did not provide a projected date of accession. In contrast to Bulgaria, this lack of such date allowed a high degree of EU cooperation with civil society. As a result, the EU had time to learn about the domestic context and to apply appropriate conditions, incentives, and sanctions. Perhaps more importantly, the EU could create adequate mechanisms to measure progress and apply its knowledge regarding the potential of the country to comply continuously. In
other words in Montenegro, EU conditionality was an iterative process that was characterized by constant learning and adjustment of actions based on new knowledge provided by civil society. This iterative process was absent in Bulgaria and Georgia, where conditionality remained the same as it started in the beginning of the countries’ transitions.

The next section follows the process of interaction between the EU, civil society, and the state in each individual country. I show the critical junctures in each case where the process of interaction between the three entities could have taken a different trajectory and the way the chosen trajectory impacted the resulting anti-corruption institutions.

2. The Impact of the EU’s Varied Interactions with Domestic Actors on Anti-corruption Institutions

I theorized that in the presence of a partnership between NGOs and the EU, NGOs were more inclined to unite around an anti-corruption agenda, to synchronize their actions in order to apply bottom-up pressure to the government, and to provide feedback to the EU. The following section explains why variation in the EU relationship with NGOs led to variation in the EU’s approach to conditionality and consequently to variation in the anti-corruption institutions in each of the case studies. The main argument is twofold: on the one hand cross-country variation in the extent to which the EU socialized non-state actors created variation in the domestic context in which anti-corruption institutions were formed and in turn variation in institutions’ ability to create
an environment that is not conducive to corruption. On the other hand, where the process of socialization was bi-directional between the EU and the state, there was an impact on the EU’s approach to conditionality which changed the nature of conditions, incentives, and sanctions.

I found that in Bulgaria the EU failed to consistently socialize civil society. As a result the EU could not attain an understanding of the underlying problems that sustained corruption and thus did not provide conditions that were directly addressing these problems. Instead of focusing on implementation and enforcement of laws, the EU emphasized mere introduction of institutions and harmonization of the law. Similarly in Georgia, the EU abandoned its attempts to reach out to civil society immediately after Saakashvili’s coming to power. However, the resulting institutions in Georgia were different from the ones in Bulgaria in that they allowed for the transformation of corruption from endemic to centralized. I show that this is due to variation in the conditionality approach that the EU employed in these two countries. In contrast to both Bulgaria and Georgia, in Montenegro the EU was consistent in socializing civil society even before the country received independence and outside of the context of membership conditionality. In turn, three important processes that were largely missing in Bulgaria and Georgia took place and allowed Montenegrin authorities to introduce slow but comprehensive and effective anti-corruption reform: first the EU received feedback from domestic NGOs, second, the EU was flexible in its conditions, incentives, and sanctions, and third, NGOs managed to apply bottom-up pressure on the government.
2.1 Bulgaria’s Disconnected Civil Society in the Context of Strict Conditionality

In Bulgaria the EU failed to approach civil society actors from the very beginning. This failure prevented NGOs from contributing in three ways to the creation of a context suitable for the creation of functional anti-corruption institutions. First, civil society consistently lacked a relationship with the citizens. Second, the EU never appropriated the ability to cooperate with the government in order to produce sustainable anti-corruption reforms. Third, failed socialization did not create a productive relationship between civil society and the EU. In turn, the EU remained consistently deprived of unbiased feedback and incapable of adjusting its recommendations, incentives, and sanctions to be compatible with the domestic context. These three characteristics prevented the EU from identifying a way in which it could leverage domestic non-state actors to pressure policy makers into effective reforms. Similarly, the EU did not have the capacity to identify shortcomings in the third sector and address the problem. As a result the gaps between state, society, and the EU became self-perpetuating.

2.1.1 Disunited Civil Society

The failure of the EU to mobilize, and imbue values of transparency, accountability, and political participation in Bulgarian civil society led to the inability of civil society to unite and establish a common strategy for contributing to the establishment and implementation of anti-corruption institutions. The inability of civil society to unite in an anti-corruption agenda was evidenced by the density of NGOs’ networks metrics within
the SNA. This measure showed that Bulgarian NGOs consistently did not work together and that their level of cooperation decreased over the years after the negotiations with the EU began in 2001. Bulgarian NGO networks received the highest density score in 2003 and by 2013 this score has decreased almost by 50%.

Moreover, the inability of the EU to support the unification of Bulgarian NGOs resulted in NGOs lacking a common strategy for participating in the fight against corruption. While in interviews some NGO leaders were defending the thesis that corruption is local and international entities should not be engaged in its management, others were firmly defending the notion that only more sanctions from the EU could help resolve corruption issues. Only a small group of NGOs identified the necessity of raising awareness among the population and making information accessible and available to citizens. Even among the members of this small group a lack of cooperation with other NGOs was present. Perhaps more importantly, in contrast to Montenegro, interviews showed that most Bulgarian NGOs perceived their counterparts as politicized, working to further someone’s political agenda, and thus not trustworthy. This lack of trust naturally prevented NGOs from cooperating and sustained the disunited character of Bulgarian civil society.

The extent to which the EU was responsible for this insufficient interaction was indicated by the EU’s level of influence in the SNA and supported by interviews with representatives of the third sector. Interviews showed that in Bulgaria the EU did not approach even pro-EU NGOs and did not mobilize them to serve as domestic partners of
the EU in the process of Europeanization. The majority of interviewed subjects suggested that the primary role of the EU in the first years of transitioning to democracy was to fund projects. Interviewees specified that most of these projects were geared toward building the administrative capacity of NGOs and not toward developing an understanding of the role of NGOs in establishing and implementing anti-corruption institutions. With the exception of two NGOs\textsuperscript{243}, none of those interviewed were capable of identifying a conference, workshop, or another type of information exchange event which helped them to understand the most efficient and effective way to partake in the decision-making process.\textsuperscript{244} Further, interviewees claimed that this role of the EU did not change throughout the years.

As a result, even NGOs that openly marketed themselves as pro-EU did not elaborate a specific mechanism by which they could cooperate with the EU in order to shame corrupt government officials. According to most NGOs, the EU could have leverage only if they applied even more severe financial sanctions. This line of thinking indicated the NGOs’ lack of understanding of the mechanisms by which they could aid the EU in diffusing norms of transparency and accountability domestically. It also indicated a transfer of responsibility to the EU and the government.

\textit{2.1.2 Gap between the CSOs and Citizens}

\textsuperscript{243} These were the Center for the Study of Democracy and the European Institute

\textsuperscript{244} Author’s interviews with Bulgarian NGOs focusing on corruption, anti-corruption, and good governance policies.
The second major characteristic of Bulgarian NGOs was that they remained ill-equipped to represent the grievances of citizens. This was because no NGOs in Bulgaria had a membership base sufficient to make them independent from government funding. Therefore, the gap between citizens and NGOs remained large over the years. A series of studies by CIVICUS, the civil society index, showed that trust in NGOs in Bulgaria was low between 2003 and 2013. CIVICUS data reaffirmed the 2008 European Values Survey (EVS) findings of widely spread distrust among Bulgarians, both of each other and of the NGO sector. The fact that citizens were not aware of NGOs’ potential and were not engaged in participation through NGOs is evidenced by data gathered by the EVS. In 2008 the EVS reported that 81.5% of the population had never participated in any organizations, and that 86.9% had never participated in voluntary activities. In 2010 only 13.1% of the population declared participation in NGOs or civic associations in the previous five years. Participation remained weak not only in NGOs but also in political parties. In 2009, 95.6% declared that they had never been involved in political parties.

The large gap between NGOs and the public prevented NGOs from acting as channels of EU norms diffusion. In contrast to other countries, such as Montenegro, Bulgarian civil society actors could not successfully promote norms of transparency, accountability and political participation among the population. Such norms remained

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245 Open Society Institute – Sofia (OSI-S) data on Civil Society Index, CIVICUS, surveys conducted February-April 2009

246 European Value Survey 2011

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weak, and all attempts at their strengthening were domestically perceived as externally imposed.

The weakness of norms of transparency, accountability, and political participation is evidenced by the level of acceptability, susceptibility and awareness of corruption. A recent survey (2014) found that 30% of the population above the age of 18 years accepted some form of corruption. Unexpectedly, this level of acceptance was coupled with a strong awareness of corruption: While it was difficult for Bulgaria’s population to provide an exact definition of corruption, around 70% of the population surveyed by Center for the Study of Democracy (CSD) was capable of identifying acts of corruption.\textsuperscript{247}

At the same time, Bulgarians were susceptible to corruption. In 2014, 23.7% admitted to giving bribes because they were pressured and 5.5% admitted to giving bribes without being pressured into it\textsuperscript{248}. These numbers represented an increase from previous years and also the highest percentage of people who admitted to corrupt behavior in the last fifteen years. Indeed, increase in awareness with respect to corruption identified partial socialization. However this progress remained muddled by high levels of acceptance.

\textsuperscript{247} Center for the Study of Democracy (2014), Corruption Reloaded: Assessment of southeast Europe

\textsuperscript{248} ibid
The combination of high awareness, high acceptability and high susceptibility is not very puzzling when one analyzes corruption as a social norm. Bulgarians understood that corruption was not desirable, but they also did not see a way to avoid it. An overwhelming belief (94%)\textsuperscript{249} that a person is either “very likely” or “likely” to be asked for a bribe suggested that corruption in Bulgaria was understood as a widespread and normal practice. At the same time, involvement in corruption seemed to be perceived as highly effective in dealing with problems of everyday life. Informal surveys and conversations with citizens confirmed the willingness of many to compromise their convictions in order to get better medical treatment and/or to deal with traffic violations.\textsuperscript{250} In other words, corruption was seen as bad but necessary and effective behavior which is part of Bulgarian culture. Even in 2013, when high levels of corruption brought Bulgarians out on the streets to protest, rates of corruption did not decrease – a controversy that evidenced partial socialization of norms of transparency and accountability. The general attitude toward corruption was further sustained by an overwhelming apathy in Bulgaria. In 2013 over half of the population of the country believed that corruption cannot be substantially reduced. Said a representative of a major anti-corruption NGO in Bulgaria: “Corruption has always been part of Bulgarian culture,
we are used to gift giving and though it is officially corruption, it is going to be very hard to stop these practices.”

2.1.3 CSOs Insufficient Feedback to the EU

The consistent lack of cooperation between the EU and domestic NGOs prevented the establishment of a relationship between them which was based on trust and which could provide the EU with politically unbiased feedback. For instance, information provided by NGOs was only sparsely included in the EU Commission’s Regular Reports. In the instances where the EU was seeking information from non-state actors, it approached individual experts, instead of networks of NGOs. In turn, NGOs remained unmotivated to cooperate in monitoring the creation and implementation of anti-corruption institutions. An interview with the EU Commission officers in Bulgaria pointed to the lack of established channels through which the EU considered the opinion of non-state actors. The answer provided by the Commission’s office there was unclear and stated that the “commission is doing its best to approach NGOs.”

This gap in the information exchange between NGOs and the EU rendered the EU unable to alter its conditions, recommendations, incentives, and sanctions in order to make them more compatible with the domestic context. As a result, the EU remained

\[251\] Author’s Interview with a representative from Corruption Network, a Bulgarian anti-corruption NGO

\[252\] Author’s interview with an official at the Office of the EU Commission in Bulgaria
insistent on fast-paced harmonization of law before 2007 and remained vague in its recommendations after 2007.

2.1.4 The EU’s Impact on State - CSO Relations in Bulgaria

The inability of the EU to mobilize potential domestic partners in the process of Europeanization, even when its involvement peaked, created a disunited NGO sector that was incapable of representing the grievances of citizens before national policy-makers. In turn, this kind of civil society sector proved not to be equipped to exert influence over policy- and law-makers, producing a dysfunctional relationship between the domestic civil society sector and the state.

Most Bulgarian NGOs took on the shape of think-tanks but they were not capable of exerting influence over the policy making process. NGOs, such as the Center for Liberal Studies, The Center for the Study of Democracy, and the European Institute had tremendous research potential as well as general pro-EU orientation, primarily because they understood the value of producing unbiased studies on the progress of anti-corruption reforms. Yet, none of the policies suggested by these NGOs were considered by policy- and law-makers. For instance, in 2001 the Center for the Study of Democracy (CSD) was tasked with the establishment of a coalition of NGOs to create the first national anti-corruption strategy. The CSD indeed formed a coalition (Coalition 2000) that consisted of domestic and international NGOs, government officials, and representatives of political parties. It also performed research on best practices in the EU and in countries from the post-communist space that were at the time considered more
advanced in their anti-corruption policies. One notable achievement of the coalition was to bring anti-corruption discourse to the forefront of the policy agenda. There had been virtually no discussion in Bulgaria about this issue prior to CSD’s work. The resulting strategy, however was weak and was never implemented. The lack of implementation as well as the manner in which the strategy was prepared signaled two disturbing trends. First, NGOs were not prepared to evaluate the domestic context and to create a strategy that was compatible with it. One of the heads of the project acknowledged the inadequacies in the strategy and stated that “we were not sure what we were asked to do, and more importantly how to do it, so we naturally turned to these [countries] that had already done it.”

When asked to explain the exact corruption problem that they were trying to address with the strategy, he answered that a survey among the population was performed, but also that it was small and hardly representative for the entire country. The most salient finding of the survey was that “corruption is high especially in customs.”

Second, the failure to implement the strategy showed the inability of civil society coalitions to pressure the state into acting upon NGOs’ suggestions or at least to consider them. The Strategy was indeed a subject of discussion in two of the meetings of the parliamentary commission for anti-corruption. However, it was never brought to the Parliament’s floor. When asked to share their thoughts on the lack of implementation, representatives of the coalition claimed that the party in power was the one that was

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253 Author’s interview with Tihomir Bezlov, CSD

254 Ibid.
exhibiting the most pro-EU orientation in the country’s history of transitioning to democracy and thus they did not see the need nor did they have the power to apply any pressure.255

In sum, a majority of NGOs in Bulgaria in the beginning of the country’s post-communist transition took a pro-EU integration position and identified norms of transparency, accountability, and participation in the decision-making process as positive and necessary. This was what Checkel called type I internalization (Checkel 2005, 804) in which actors can identify what is acceptable and what is not. The failure of the EU consisted of the fact that it did not work toward moving internalization to type II where “Conscious instrumental calculation has now been replaced by *taken-for-grantedness.*”256 The EU did not mobilize NGOs by ensuring their access to mechanisms through which they could engage citizens and cooperate with policy-makers in order to achieve functional anti-corruption reforms. In turn, the gap between NGOs and citizens, the gap between the EU and NGOs and the dysfunctional relationship between state and civil society deepened and became self-perpetuating.

2.2 Montenegro’s Complete Circle of Interaction

In contrast to Bulgaria and Georgia, the EU engaged Montenegro’s civil society from the very beginning of the country’s post-communist transition, beginning even

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255 Author’s interview with a representative from Coalition 2000

before Montenegro received its independence from Serbia in 2007. As a result, Montenegrin NGOs were capable of contributing to the creation of effective anti-corruption institutions in three ways. First, civil society was united in an anti-corruption agenda and was working as one actor to further reforms. Second, civil society reached out to citizens and became capable of representing their grievances before the government as well as before the EU. Finally, NGOs were empowered to provide the EU with politically unbiased feedback and thus allowed the EU to adjust its conditions, incentives, and sanctions to be compatible with the domestic context. In other words, Montenegrin civil society through its interaction with the EU learned how to fill the role of a liaison between the state and the citizens. It also understood that a trustworthy relationship with the EU would not only legitimize the activities of the third sector, but would also empower civil society to apply pressure to state authorities to forward their work.

2.2.1 United Civil Society

The constant cooperation between the EU and Montenegrin civil society resulted in a domestic NGO sector which acted as a single unified actor and thus was able to apply bottom up pressure to the government, to participate in the decision-making process, and to effectively monitor the implementation and enforcement of anti-corruption policies. The ability of civil society to unite on an anti-corruption agenda was evidenced by the frequency of projects where NGOs cooperated. This frequency was measured through density of the networks of anti-corruption/good governance NGOs. Despite data limitations, the results from the Social Network Analysis showed that in 2013 more than three quarters of the NGOs cooperated with at least one other NGO. This ability of civil
society to unite and to establish a common strategy for counteracting corruption meant that in comparison to other transitioning countries such as Bulgaria and Georgia, the third sector was strong and capable of applying pressure to the government.

Perhaps more importantly, interviewed Montenegrin NGOs indicated a deep understanding and internalization of their role in society. All interviewed NGOs agreed on what their role in society entailed. In comparison to their Georgian and Bulgarian analogues, anti-corruption NGOs in Montenegro were significantly more aware of their roles as watchdogs of the government and as channels of norm diffusion among citizens. Most anti-corruption NGOs define their role not in terms of fighting corruption but rather in terms of furthering the approximation of domestic norms and values to those of the EU. In almost every interview the NGO acknowledged that corruption is not to be eradicated nor even managed through strategies and action plans for their implementation. According to most interviewees, domestic cultural trends, shaped by historical events and periods needed to be reversed in order for corruption to decline. The role of NGOs then became threefold: they strived to cooperate with the EU in order to effectively expose corrupt officials, while simultaneously working to educate citizens in various EU norms and values, and finally to cooperating with the state in creating anti-corruption policies. In contrast to Bulgaria, Montenegrin NGOs also understood EU membership as a process, rather than an end goal. As a result, NGOs successfully educated the EU about the domestic progress on anti-corruption reforms and managed to relay citizens’ grievances to the government. In turn, slow but steady and effective
institutional reforms were performed, and corrupt officials were put on trial (see chapters two and four).

2.2.2 Norm Diffusion to Citizens

The work of NGOs to educate the citizens of Montenegro in norms of transparency, accountability, and political participation was evidenced in their logos and projects. For instance, the logo of one of the major NGOs in Podgorica - The Center for Civic Education (CCE) - claimed that Democracy is to be learned [Demokratija se uči]. When asked to explain, the head of the NGO stated that the EU and EU integration was, and should have been, nothing more than a learning experience with respect to what democracy is, how to consolidate it, and sustain it.257

The idea that Montenegro’s Europeanization was a learning process had underpinned all CCE’s activities since their start in 2002. For instance, the CCE organized a School for Politicians and Democracy every year beginning in 2003. The school brought together future and present politicians, representatives of the EU, and ordinary citizens. By 2013 the School had been successfully completed by 687 citizens of Montenegro. They represented activists of non-governmental organizations, representatives of political parties, journalists, officials of local and state authorities, and students. Though at the period of participation in the School participants did not always

257 Author’s interview with Dragana Koprivica, Center for Civic Education
belong to the above listed structures, by 2013 many of them were at the positions of the policy makers or leaders of NGOs.²⁵⁸

This forum allowed different actors to share their ideas and understandings with respect to subjects such as cooperation between NGOs and policy-makers, anti-corruption reforms, and to proposed solutions to immediate problems facing Montenegro. Over fifty lecturers presented their views of democracy and the rule of law in the school, and more importantly, in each module there was a representative from the EU or a member state of the EU. This additionally strengthened the relationship between NGOs and the EU and allowed NGOs to provide feedback to the EU throughout the years. The school also increased the political participation of Montenegrins: According to the head of the CCE “citizens who at the time were not engaged in politics and/or civic participation attended our school and as a result became involved either in political parties or in CSOs.”²⁵⁹ The school furthered democratization by creating a forum for discussion among people that would normally not have the chance to elaborate their understandings of democracy and to learn from each other. The participation of future and present politicians and government officials in the School project, also created a culture of mutual awareness among NGOs on the one hand and policy- and law- makers on the other.

²⁵⁸ Democracy School, CCE. Available at: http://cgo-cce.org/en/programi/demokratija/skola-demokratije/#.VgBcA7QVblI

²⁵⁹ Author’s interview with the Deliborka Uljevic, Center for Civic Education
The CCE also worked closely with other NGOs to promote norms of transparency, accountability, and civic participation among citizens as well as an understanding of the role of the EU in the process of Montenegro’s democratization. For instance, one of the projects that gained wide recognition and indeed reached out to Montenegrins was the *EU Info Bus - on the Road to the EU* project. The project consisted of a bus that in the course of 11 months visited different towns in the municipalities of Cetinje, Danilovgrad, Kolašin, Mojkovac, Nikšić and Podgorica and organized over 45 events. At each stop citizens received EU information brochures and participated in EU quizzes. A round table discussion on the role of a local community in the process of the EU integration was organized at each location as well. This brought citizens closer to the process of EU integration and according to one observer “made citizens aware of why the process of Europeanization is important for their everyday life.”²⁶⁰ One observer also pointed out that the number of citizens that the project reached was small and it was still too early to identify any tangible results in terms of the extent to which people’s understanding was altered. However, the fact that NGOs together with the EU Delegation saw the necessity for involving citizens was already a couple steps ahead of what domestic non-state actors and the EU did in Georgia and Bulgaria. More importantly, initiatives such as the ones described above were lacking before the EU’s involvement with Montenegrin civil society. Interviewees agreed that such initiatives are the product of their cooperation with the EU.

²⁶⁰ Author’s interview with Dr. Olivera Kumar, Acoossiate Professor at the University of Montenegro, February 2014
2.2.3 CSO’s Strong Relationship with the EU

The third and perhaps the most important characteristic of the NGOs in Montenegro that allowed civil society to exert influence on the creation and implementation of anti-corruption policies was its ability to provide the EU with feedback with respect to challenges in the process of fighting corruption. As a result of this feedback and because the EU understood its importance, the EU requested the inclusion of NGOs in the negotiation process, which in turn, resulted in more effective anti-corruption policies.

The change in the structure of negotiation teams marked a significant difference with previous enlargements. The negotiating team in Montenegro was composed of six bodies: the College for Negotiations on Accession of Montenegro to the European Union, the State Delegation, the Negotiating Team, Working Groups for Preparation of Negotiations on Individual Negotiating Chapters, the Office of the Chief Negotiator, and the Secretariat of the Negotiating Team.261 Working groups for Chapter 23, Judiciary and Basic Rights, and Chapter 24, Justice, Freedom and Security, were the first to be established.

The process of including civil society representatives in the Working Groups was not easy. The political situation in Montenegro consistently lacked political competition

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and the ruling party remained in power for over twenty years after the collapse of the Berlin Wall. In turn, though political officials publicly stated their support for the inclusion of civil society groups in the process of negotiations, they did not follow through. Upon pressure from both the EU and a domestic coalition of NGOs a decision to formalize the involvement of NGOs in the working groups of the negotiating team was reached in July 2012. However the decision was not explicit about the method of selection and appointment of CSOs, and suggests that CSOs could be included in as experts by the main negotiator. After the first meeting in Brussels, where some NGOs did not attend because they were dissatisfied with their unclear status, the EU applied pressure for full inclusion of NGOs in the working groups. Ambassador Drobnic, the representative of the EU in Montenegro, stated on the behalf of the EU Delegation in Montenegro:

Let me underline that Montenegro is now entering a very demanding phase of its accession process, which requires continued and focused efforts to maintain consensus on European integration not only among all political actors, but also among the citizens who need to be fully informed. To that end, civil society has the key role in monitoring the accession negotiations and making the process transparent by informing the citizens through its activities.262

As a result, in August 2012 the Secretariat of Montenegro’s EU membership negotiation team changed the Rules of Procedure and made NGOs representatives full members of working groups. The change also granted more rights to NGOs. Their role

was increased from merely monitoring the process to participating in the decision-making process of the working groups. In 2013, six CSOs were included in the working groups on Chapters 23 and 24. More importantly, the change in the Rules of Procedures indicated the ability of domestic non-state actors and the EU to cooperate in persuading the government of Montenegro to allow the participation of a large number of stakeholders in the process of creating anti-corruption institutions.

Furthermore, the ability to receive feedback from domestic NGOs led to incentives provided by the EU that were immediately experienced by the population and furthered the process of mutual learning. As a result of visa liberalization in 2009, many Montenegrins were able to freely travel to the EU and experience first-hand the benefits of strong institutional arrangements that secured transparency and accountability. They were also able to observe the process of creating such institutions and to transfer this knowledge domestically. Most importantly, visa liberalization also furthered the context of mutual learning. Allowing free movement between member-states of the EU and Montenegro provided an environment where informational diffusion, contagion, and transference (Manners 2002) were present. Thus, visa liberalization was beneficial for the learning process for both the EU and Montenegro. In contrast, such visa liberalization in Bulgaria took place upon accession in 2007 and at the time of writing, Georgia was in the process of closing negotiations on this topic.

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2.2.4 EU’s Impact on State-Society Relations in Montenegro

The ability of civil society to reach out to citizens, to remain united in an anti-corruption agenda, and to provide the EU with politically unbiased feedback altered the relationship between NGOs and the State.

The common anti-corruption agenda, which united NGOs in Montenegro, led to the establishment of a common strategy with respect to applying pressure to the government. The strategy consisted of different acts by NGOs that cooperated with state authorities and NGOs that were aiming to expose corrupt officials. For instance, the Center for Monitoring and Research’s (CeMI) goal was to support the work of policy and law makers by guiding them through the process of addressing citizens’ grievances and EU requirements. CeMI understood that the lack of political opposition in Montenegro provided Djukanovic’s various coalitions over the years with power similar to the one Saakashvili had in Georgia. However, instead of playing the role of a political opposition, CeMI made a conscious decision to assist the government. Before and after each election that Djukanovic won, NGOs could have taken a different route and assumed the role of political opposition. Instead, they preferred to remain unengaged in political competition. This preference was shaped by their strong understanding of the role they needed to play in order for the Montenegrin transition to democracy to be successful and anti-corruption institutions to be consistently monitored, evaluated, and if need be, altered.
In other words, through the learning process, which arose from interaction with the EU, NGOs in Montenegro managed to avoid a large gap between civil society and the state, such as the one that existed in Georgia. One executive in CeMI clearly stated that:

it is not the job of civil society to engage in politics and NGOs are not supposed to become political parties. We understand that Djukanovic does not have an opposition and we don’t want to become one and be accused of having a personal agenda against him.  

This attitude changed the way NGOs, such as CeMI approached their interaction with the ruling coalitions and moved it in the direction of cooperation and assistance. The head of CeMI confirmed this attitude: “Most NGOs believe that establishing functioning anti-corruption institutions is in the government’s best interest and we are there to assist them and to provide a different but also important point of view.” Thus, NGOs were not always a threat to the government but instead were monitoring the government and cooperating with it, staying focused on anti-corruption, instead of political competition.

At the same time, other NGOs, such as MANS, took a different approach to influencing the work of policy-makers. MANS’s sole role was to expose corrupt officials and to show that resources are available but political will is lacking. The strategy that MANS employed was an investigative one. Using citizens’ complaints the NGO conducted investigations, the results from which it sent to the prosecutor general, all the relevant public authorities, and the EU Delegation in Podgorica. This role allowed

264 Author’s interview with Ana Selic, CeMI, October 2014
265 Author’s interview with Zlatko Vujovic, CeMI, October 2014
MANS to identify specific instances of corruption and monitor the functioning of the entire anti-corruption system. In addition to exposing officials, MANS then was able to trace the process of anti-corruption reaction and to produce analysis with respect to where in the system transparency and accountability were lacking or where institutions didn't network.

Most importantly, the relationship between the EU and domestic NGOs remained constant. NGOs, such as MANS, consistently sent their reports to the EU Delegation in Montenegro, thus providing the Delegation with information regarding the state of affairs of domestic anti-corruption arrangements. At the same time, NGOs cooperating with the government always sought the advice and the input of the EU delegation with respect to policies that they were attempting to push.

In sum, the influence of NGOs was possible primarily because of their relationship with the EU Delegation. This relationship legitimized NGOs’ efforts and provided them with high credibility both among citizens and before the government. NGOs also understood that the process of Europeanization and in turn the creation, implementation, and enforcement of anti-corruption policies as part of it, needed to take a long time in order for norms to be internalized. The goal of this elongated process was to create a domestic context that was driven by cooperation and mutual respect for the work of government and civil society representatives. Finally, NGOs learned their domestic role and did not behave as political parties but remained in the realm of a conscious civil society that balanced between monitoring, opposing, and cooperating with governments.
2.3 Georgia’s Weak Civil Society and the EU’s Approval of Saakashvili’s Policies

From the very beginning of the post-communist transition of Georgia, the EU took a different approach to interacting with domestic actors than it had in Bulgaria and Montenegro. In the immediate period before the 2003 Rose Revolution in Georgia, the EU was indeed engaged with domestic civil society and its development (Stefes 2006). However, this engagement was one that sought to develop civil society as a direct opposition to Shevardnadze’s regime, instead of developing it as a social force that could relay citizens’ grievances to the government, monitor the government, and also cooperate with it.

Before the Rose Revolution, civil society in Georgia was stronger than in other countries from the region. This was evidenced by its ability to mobilize citizens to employ peaceful means in order to topple Shevardnadze’s regime. The Rose Revolution was a critical juncture not only in the democratic transition of Georgia, but also in the relationship that the EU had established with domestic civil society there. The change of the government, which resulted from the Rose Revolution, presented the EU and other international actors with a choice. In the context of a government that had clearly declared a pro-EU and pro-Western position, the EU could continue its work with NGOs or it could also behave as if the civil society sector was irrelevant to the fight against corruption and there was no benefit from sustaining and further developing it. Without claiming that the decision made by the EU was intentional, I showed in previous chapters
that the EU chose to abandon its efforts to cooperate with and develop civil society. As a result, in the year after the Rose Revolution, civil society in Georgia was disunited, incapable of pressuring the government, and lacked the capacity to enlighten the EU regarding the progress of domestic anti-corruption reforms.

2.3.1 Interrupted Civil Society Development

In the immediate aftermath of the events of 2003-2004, NGOs in Georgia lost power because most of their members supported Saakashvili’s government and many of them moved into the realm of government institutions. This transfer of people from civil society to state authorities left civil society weak, and in combination with the overwhelming domestic and international support for Saakashvili, the efforts of NGOs remained deprived of visibility. Neither domestically nor in the eyes of international entities, such as the EU and the OSCE, was civil society a priority. As a result, the NGOs, which were still struggling to maintain the existence of a strong civil society, were facing resistance from both the government and other NGOs. They were also facing similar resistance when attempting to address the nondemocratic methods employed by Saakashvili in his famous anti-corruption reforms.\footnote{Author’s interview with Georgian NGOs} In chapter four, I showed in detail the progressive disconnectedness of NGO networks that took place in Georgia after the Rose Revolution. This disconnected state of NGO networks in Georgia led to an unclear strategy with respect to participation in the decision-making process. Interviews showed that NGOs were politically biased and the level of approval of Saakashvili’s party was
the main divide in the NGO sector. With respect to anti-corruption policies, this divide hindered the introduction of meaningful transparency and accountability because it prevented civil society from acting as a liaison between the state and its citizens.

2.3.2 Weak Connection with Citizens

By 2013, the rapid atomization and politicization of civil society in Georgia that began in 2003 had created a situation in which citizens did not trust NGOs, and only a small percentage of Georgia’s citizens were willing to turn to civil society for advice or assistance. A study, solicited by USAID and performed by the East-West Management Institute, found that in 2011-2012 only 5% of the surveyed population was aware of what NGOs were doing and only 7% were capable of naming an NGO. Furthermore a striking portion of the population (25%) could not identify the difference between an NGO and political party.267 At the same time, Georgians still trusted their immediate circles, such as family and friends, more than formal institutions.268 Georgians were also more likely to turn to these circles for help and less likely to follow established public procedures. In other words, citizens in this country still exhibit norms conducive to corruption more so than internalization of norms of accountability and transparency. As one NGO representative put it: “Georgians don’t engage in corruption in their everyday lives

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267 EWMI - GPAC Civic Engagement 2011 public opinion survey
268 ibid
because of fear of punishment and not because they believe that corruption is detrimental to the country and the citizens themselves.”

These statistics also pointed out the lack of grassroots NGOs in Georgia. As in Bulgaria, most Georgian NGOs in 2013 were think-tanks that did not engage with the population. To be fair, interviews suggested that to a large extent the lack of engagement of anti-corruption NGOs with the population was fear of retaliation from the Saakashvili’s repressive regime. Interviewees also expressed hope that the new government would allow more freedom to NGOs. This hope identified a certain level of awareness of the role of NGOs but it also admitted the inability of NGOs to incite change, as well as their complete dependence on state authorities.

One of the few, and also the strongest anti-corruption NGOs, that reached out to citizens is the Georgia’s Young Lawyers Association (GYLA). The way they engaged the public was by providing services to people hurt by corruption and directing them to the appropriate authorities. Often GYLA also took on corruption complaints and managed the process of addressing them. While this kind of NGO activity did not bring change within the institutional arrangement of anti-corruption efforts, it increased the trust that citizens had in civil society organizations. Unfortunately, GYLA was the only civil society organization that was capable of interacting with citizens and even this interaction was service based rather than a mobilization to set the agenda.

\footnote{Author’s interview with Tamar Pataraia, CIPDD}
2.3.3 A Lack of Trust between the EU and CSOs

The interrupted relationship between the EU and Georgian civil society in 2003 was not beneficial to the awareness that the EU built with respect to the domestic context in Georgia. The EU remained blinded by Saakashvili’s proclaimed commitment to anti-corruption and by the success of his radical reforms. The EU failed to see the centralization of power hidden behind the elimination of petty corruption because it did not receive politically unbiased feedback from civil society.

In 2009, the EU introduced the Civil Society Forum (CSF) through its ENP policy which marked a critical juncture in the interaction of the EU and domestic state and non-state actors. The introduction of the CSF was partially driven by Saakashvili’s reaction to the mass protests immediately prior to the beginning of his second term in 2008. The decision to use the police force to disperse protesters drew EU’s attention to the lack of domestic mechanisms to provide checks and balances. Thus, the CSF represented a completely new attempt to engage civil society. However two problems hindered the success of the CSF. First, the working groups were spread across all the Caucuses countries and were trying to address different problems by employing similar tactics. For instance, from the very beginning of the 1990s corruption was very different in Georgia and Armenia. In Georgia corruption was decentralized while in Armenia the government had established a hierarchical structure in which rent extraction on each level was distributed among superior public officials (Stefes 2006). After the Rose Revolution in 2003, Armenia’s corruption remained the same and Georgia moved to centralize power in the hands of a small elite circle around Saakashvili which had the opportunity to benefit
from rent seeking. This variation in the type of corruption required different approaches to address the problem. Yet the working groups on civil society and on corruption employed similar tactics in all countries.²⁷⁰

Second, and perhaps more importantly, was the fact that through the Civil Society Forum the EU was attempting to build on a domestic civil society that was already dysfunctional. For instance, NGOs were already dependent on political parties and incapable of providing effective assistance to the government or of monitoring a government that lacked the political will to manage corruption. Sponsoring organizations like this only meant furthering the status quo in Georgia.

2.3.4 The Hourglass Problem in State-Civil Society Relations

The EU’s failure to react in a well-informed and coherent way with respect to engaging civil society in all critical junctures of Georgia’s post-Rose Revolution history was coupled with strong approval of Saakashvili’s reforms. The combination of these two essential trends of the EU’s policies toward Georgia resulted not only in weakening the EU’s leverage over the government but also in a state-society relationship that resembled an hourglass (Maravishvili 2011). The essence of this relationship was the fact that state and civil society were almost completely disconnected. Individual NGOs, such as the Liberty Institute, Transparency International and the Institute for Development of Freedom of Information were producing valuable studies concerning the progress of anti-

corruption reforms. However, they were virtually deprived of the capability to use the acquired knowledge to persuade the government to alter its approach and to address corruption on all levels of the political and social life of the country.

The change of the government in 2012-2013 marked another critical juncture in the post-communist history of Georgia. Georgia’s transition from a presidential to a parliamentary system lessened the power of the office of the president, providing the EU with an opportunity to identify the shortcomings of civil society and to reengage NGOs. It also provided an opportunity for the new government to establish a strong relationship with NGOs. In 2013, it was still too early to conclude what form the interaction between civil society organizations and the new government would take. However, it was clear that the third sector was weak and even if international actors and the new government were willing to engage NGOs, they first would have to work hard to rebuild them into a strong domestic actor.

3. Conclusion

The way in which conditionality and socialization influenced each other varied by country. As a result, the three countries engaged in this study produced varying anti-corruption institutions and managed corruption in different ways. The three countries began their post-communist transitions with weak civil societies (Ekiert and Foa 2012, Ekiert and Kubik 2001, Sardamov 2005). Such civil societies were not equipped to effectively contribute to anti-corruption policies by monitoring, opposing, and cooperating with the government. Civil society was too weak to organize around a
common anti-corruption agenda, nor was it able to mobilize support from citizens. This chapter demonstrated that in countries where the EU worked to establish a partnership with NGOs, it managed to iteratively educate civil society in its domestic and international role. Domestically, the EU learned how to cooperate with governments and how to mobilize citizens’ grievances in order to apply bottom-up pressure to the state. Internationally, where civil society established a partnership with the EU, it provided the EU with much needed feedback.

I identified three factors that determined the variation in the EU’s relationship with domestic civil society: time, intensity, and type of involvement. The chapter showed that in Montenegro the EU became involved in civil society early in the transition of the country. Its involvement was intense and based on partnership. As a result, Montenegrin NGOs were empowered to provide feedback to the EU and to leverage EU’s conditionality to apply pressure to the government. At the same time, civil society worked with the EU Delegation to formulate conditions in a way that they address particular problems thus imbuing EU requirements with domestic ownership and legitimacy.

The cases of Bulgaria and Georgia differed from Montenegro. In Bulgaria, the EU engaged civil society in a political dialogue late in the transitioning of the country. It cooperated with only some NGOs and on rare occasions. As a result the EU never gained a holistic understanding of the factors that caused and sustained corruption in Bulgaria such as unclear institutional responsibility and a disproportionately powerful prosecutor
general. Instead the EU focused on harmonization of the law and created new but not necessarily improved institutions.
Chapter Six - Conclusions

In this concluding chapter, I address the following questions: What have we learned about the ability of an international organization to impact domestic politics? Why is there cross-country variation in the level of compliance with EU-promoted anti-corruption reforms? When does compliance with these reforms translate into an effective and sustainable means of controlling corruption? Is analysis of the interaction between civil society and the EU in the context of post-communist transition useful for studying major changes in the institutions securing the rule of law? Why did the prospect of EU membership not yield the greatest compliance?

I begin by summarizing the research question. I then briefly restate my findings and the main argument that the study made. In the subsequent section, I evaluate my theoretical approach and my evidence against other explanations offered for understanding the variation of compliance with EU-promoted anti-corruption reforms across post-communist countries. In this section, I address the two main debates in the literature on Europeanization and post-communist transitions. First, I evaluate my theoretical approach vis-à-vis arguments that propose that strong and credible conditions, incentives, and sanctions from international organizations will persuade domestic governments to comply with externally promoted reforms. Then I address the claims of
scholars who suggested that under certain conditions, socialization and shaming could eliminate corruption in post-communist countries. Second, I address the literature that positions domestic against international drivers of post-communist transitions and European integration.

Finally, as every study, this one has its limitations. I dedicate the subsequent section of this chapter to elaborate on the limitations of my study, and to identify topics and questions that future work could examine. I conclude by presenting contributions made by this study to the general knowledge of post-communist transitions, democratization, establishing the rule of law, and the limits and opportunities of international organizations to influence domestic politics.

1. Puzzles and Arguments

The main research questions this study examined was, Why did EU’s efforts to fight corruption produce varying results across countries? Why did Bulgaria, with the most attention and conditionality from the EU and already a member, fail to address corruption? And why did Georgia and Montenegro, which had no or very distant EU membership prospect, perform relatively better on measures of anti-corruption institutional reform as compared to Bulgaria?

In the 1990s, post-communist countries found themselves on a difficult path to democracy and a market economy: these countries set out to model their governance systems after West European states and the USA. In the absence of the Soviet umbrella
that previously dictated the market and political rules, post-soviet counties were too weak to establish democratic systems and market economies on their own, and needed guidance in the process of transitioning.

Around the same time, the EU quickly realized that while politically and economically unstable countries along its borders could destabilize the EU itself, and that accepting these countries into the EU could help stabilize them, and ultimately would be beneficial to the EU (Commission 2000a, Baldwin et al. 1997, Smith 1998). In addition to utility arguments, several studies emphasized the value dimension of enlargement, which focused on the EU as the international actor that was the most invested in the democratic transitions of post-communist countries. The EU committed to Eastern enlargement (European Council 2000) and made the creation of anti-corruption policies a priority for individual states. Given this priority, the EU emphasized a conditionality-based approach, and expected this approach to provide the mechanisms necessary for persuading domestic actors to introduce effective and sustainable anti-corruption reforms. Yet, the outcomes in terms of resultant levels of corruption and the anti-corruption institutional arrangement varied by country (see Table 1.1). This study aimed to explain this variation and to shed light on the limits and the opportunities that the EU had in order to impact the creation of anti-corruption institutions.

The main argument that I put forward in this study was that the EU had more leverage where it engaged civil society in a political dialogue independently of the context of membership conditionality. Where this engagement took place, the EU
received politically unbiased feedback and was presented with the opportunity to maximize the effectiveness of conditionality. At the same time, domestic civil society was continuously socialized in norms of transparency, accountability, and political participation, and with EU assistance was in a stronger position to pressure governments to enact anti-corruption reforms and focus on institutional change.

To explain this variation, I deployed a theoretical framework that focused on the three-way interaction between international institutions, domestic state actors, and domestic non-state actors. Assessing the relationships that these three types of actors had with each other, I began from a constructivist perspective, which centered around whether or not mutual learning mediated by a process of interaction between the EU and domestic civil society took place. To be sure, while I used institutional analysis to determine the level and the type of corruption in each country, my analysis remained constructivist. The reason for this is to be found in the main argument that I put forward, namely that where continuous mutual learning between the EU and domestic civil society took place, the newly created anti-corruption institutions achieved a high degree of domestic ownership, and were capable of addressing corruption in a comprehensive manner.

In order to test this argument, I introduced two propositions specifying the conditions under which the EU was more likely to secure domestic ownership for the reforms it proposed to different countries. First, my socialization proposition argued that the EU must engage in a political dialogue with non-state actors outside the context of
conditionality. Where present, this engagement made domestic state and non-state actors more likely to cooperate in the creation of anti-corruption policies, to implement functioning anti-corruption institutions, and to establish mechanisms for the enforcement of anti-corruption rules and laws. I argued that regardless of the structure of anti-corruption institutions, domestic ownership of anti-corruption reforms was a necessary condition for the effectiveness of newly created anti-corruption mechanisms.

Second, my conditionality proposition stated that EU conditionality could successfully achieve its goals only where the EU received politically unbiased feedback from domestic non-state actors. Where it did so, the EU was capable of altering its conditions, incentives, and sanctions so that they directly addressed specific issues of institutional deficiency and were not seen domestically as externally imposed. I have shown that where the EU had a domestic partner capable of communicating EU norms of transparency, accountability, and political participation to citizens, the shaming mechanisms employed by the EU were more likely to effectively pressure governments to introduce sustainable anti-corruption reforms.

1.1 Review of the Propositions

1.1.1 Socialization Proposition

My socialization proposition argued that in order to secure compliance with anti-corruption reforms suggested by the EU, the EU needed to convince domestic non-state actors of the appropriateness of norms underpinning these reforms, and to work toward type II internalization of such norms (Checkel 2002, 2005). Where it did so, the EU
altered domestic actors’ beliefs to accept and champion EU norms. Thus, domestic actors did not accept and act upon externally promoted anti-corruption reforms merely to deepen their relationship with the EU, as was the case of Bulgaria. Instead, domestic actors were motivated by their own understandings and deep internalization of norms of transparency and accountability which underpinned externally-promoted policies (Montenegro). In other words, domestic NGOs and policy-makers were guided by a logic of appropriateness instead of a logic of consequences (March and Olsen 1998).

The EU’s engagement in political dialogue with domestic non-state actors varied by country. In Montenegro, where the EU was involved with NGOs even before the country received independence from Serbia in 2006, NGOs became capable of organizing themselves around an anti-corruption agenda, and acted in a synchronized manner in order to apply bottom-up pressure to the government (see chapter four). In contrast, in Bulgaria EU’s involvement with civil society came in late in the post-communist transition of the country, and in Georgia, the EU’s involvement with NGOs was interrupted after Saakashvili came to power in 2004. As a consequence, the ability of NGOs to act with unity in Georgia and Bulgaria remained low despite the existence of individually strong NGOs in both countries. In contrast to Bulgaria and Georgia, in Montenegro NGOs were united and acted in a synchronized manner. Some Montenegrin NGOs established themselves as partners of policy-making government bodies and took an approach based on cooperation with the government, while other NGOs contributed by engaging strictly in exposing corrupt government officials. In Bulgaria and Georgia,
NGOs were traditionally in opposition of the government, which created and sustained a culture of interaction between enemies rather than cooperating actors.

1.1.2 Conditionality Proposition

My conditionality proposition predicted that EU conditionality can only achieve its intended results when the EU received feedback necessary to alter conditions, sanctions, and incentives in a way that they address well specified issues of institutional deficiency, and conditions are not seen domestically as externally imposed. In Montenegro, the strong relationship between the EU Delegation and domestic NGOs allowed NGOs to provide such feedback. NGOs were consistently and in a coherent manner attracting the EU’s attention to discrepancies in the creation, and more importantly in the implementation, of anti-corruption reforms.

In contrast to Bulgaria and Georgia, the feedback provided by Montenegrin NGOs to the EU allowed the EU to be more precise with respect to the reforms it suggested, and to grow more aware of the sustainability and the potential these reforms could have. In Bulgaria and Georgia, such feedback was not present, and the EU was consistently insisting on the same set of conditions that it put forward in the beginning of its applying of conditionality. Consequently in Bulgaria, the lack of feedback resulted in a quick process of harmonization of law and extremely low attention to implementation and applicability of the created institutions both on the part of the EU and on the part of domestic actors. In Georgia, the EU remained unclear about what precisely it meant when it required the country to eradicate corruption. Due to the absence of a relationship
between the EU and domestic NGOs in Georgia, the EU was blind to Saakashvili’s non-democratic methods of eliminating petty corruption. In Georgia, after Saakashvili took power, the EU saw faster and stronger results than in any other post-communist country. Without a politically independent domestic actor to inform the EU of the potential negative impact of the methods employed on the democratic transition of the country, the EU failed to adequately address the incumbent’s gradual centralization of power in the hands of a small elite group.

2. Alternative Explanations

In this section, I show the strength of my approach relative to other theories that explain why the EU had the necessary power to persuade some governments, but not others, to introduce, implement, and enforce sustainable anti-corruption reforms. The academic literature that examines the functioning of international institutions and their impact on domestic compliance with externally promoted reforms can be partitioned into two major debates. The first debate addresses the tools that the EU has at its disposal and juxtaposes EU’s conditionality and socialization. The second debate is focused on the actors that are the main drivers of post-communist transitions generally, and anti-corruption reforms and the securing of the rule of law in particular. This debate places domestic factors, such as political competition, the role of civil society, and the type of post-communist transition on the one hand against international actors, such as the EU, on the other.
My own approach bridges domestic and international actors’ impact on anti-corruption reforms. It argues that variation in the interaction between domestic and international actors explains variation in the level of impact international organizations have on domestic politics.

I also argue that the processes of conditionality and socialization created a domestic context which determined the level of domestic ownership that existed for anti-corruption reforms. In some countries, a bidirectional learning process allowed the EU to gain a better understanding of the domestic conditions that hindered the management of corruption. Where such learning took place, conditions were established and elaborated as a result of the mutual efforts of the EU and domestic actors and were not perceived as externally imposed.

2.1 Conditionality versus Socialization

2.1.1 Conditionality

Scholars working from a rational choice perspective put forward an argument that favors conditionality as the most effective tool of the EU to persuade domestic actors to act in a certain way. In other words, in order to achieve their goals, conditions, incentives, and sanctions must be such that for domestic actors the benefits of complying with EU regulations outweigh the costs of non-compliance. I agree that domestic actors act after they perform a careful cost-benefit analysis, and I do not deny their rationality. However, my evidence suggests that conditionality had varying effects across countries. Montenegro complied with EU recommendations even before membership was on the
agenda, and Bulgaria traditionally failed to satisfy conditions. With the help of EU rewards, Georgia transformed corruption from decentralized and endemic before 2004 (Stefes 2006) to centralized and in the hands of an elite group after the Rose Revolution. The evidence presented in this research suggested that domestic policy-makers’ rational analysis is bounded by their perceptions of what is costly and what is beneficial. Therefore, where the EU and domestic actors had different understandings of the meanings imbued in particular conditions, incentives, and sanctions, the EU’s leverage remained at best weak, and at worst it had counterproductive results.

More specifically, the argument in favor of conditionality is that the size of rewards, the speed of rewards, the credibility of threats, and the determinacy of conditions are crucial for altering the cost-benefit analysis of domestic actors, and in turn their willingness to comply. However, the evidence presented in this study showed that the outcomes of conditionality were not always as might have been predicted by the size, determinacy, and credibility hypotheses.

The size and speed hypothesis predicts that the likelihood of rule adoption increases with the size and speed of rewards (Kelley 2004, Schimmelfennig and Sedelmeier 2005, Andonova 2005). For instance, in a study of air pollution policies in Poland, Andonova (2005) found that these policies were only altered in order to comply with EU regulations in the late 1990s, when the accession date approached. This argument put forward the expectation that countries receiving membership - the ultimate incentive - should have been the ones that comply with EU-promoted anti-corruption
policies the most. From the three countries examined in this study, Bulgaria was the only one that received membership and has been a member since 2007. I showed, however, that anti-corruption institutional arrangements in Bulgaria were the least capable of addressing and managing corruption, and that levels of corruption in Bulgaria remained high. Furthermore, I have shown that corruption in Bulgaria remained endemic even in 2013, after the country had been a member of the EU for eight years.

In Georgia, the size of rewards also seemed to have limited explanatory power. The country had no membership prospect. Thus, the size of the reward that Georgia could receive was significantly smaller than the reward already received by Bulgaria. Georgia was aiming at deepening the relationship with the EU by entering a preferential trade regime with the EU, and by achieving visa liberalization for the EU. The country, indeed, received the former reward in July 2013 when it signed the Deep and Comprehensive Free Trade Areas (DCFTAs). Yet, as I showed, Georgia virtually eliminated petty corruption, but it also strengthened grand corruption.

In a slightly different manner, Vachudova (2008) argues that countries comply the most immediately prior to receiving membership. She finds that political parties followed the prescriptions of the EU before membership was granted, and that following EU accession parties tended to adopt more nationalist and culturally conservative positions.

With respect to anti-corruption reforms, then, this argument sets the expectation that in 2013, only a year after Montenegro began official membership negotiations with the EU, the country would exhibit the highest levels of compliance, and that Bulgaria would comply the least. Indeed, this was consistent with my findings. But, although this argument might explain the high level of compliance in Montenegro in 2013, it fails to address the country’s compliance prior to the beginning of negotiations in 2012. As chapter three showed, Montenegro was introducing institutions following EU prescriptions as far back as 2005. Furthermore, the argument does not explain why Montenegro was complying in the absence of a projected date of accession and even before membership conditionality peaked.

The argument that the EU’s leverage decreases after membership is granted did not hold in the case of Bulgaria either. This argument predicts that levels of compliance in Bulgaria would increase immediately prior to 2007 and decrease immediately after. Yet, my evidence shows that in the period 2004-2006, Bulgaria was not driven by the fact that EU membership was approaching, and levels of corruption did not decrease. Instead, the country was in a process of negotiating the Cooperation and Verification Mechanism (CVM) and thus securing more conditionality from the EU. As I showed in chapter three, even after the introduction of the CVM, compliance was not secured and Bulgaria was sanctioned on two occasions, in 2008 and 2013.

To be fair, Vachudova (2005) does not entirely dismiss the possibility that the EU influenced domestic affairs through channels that were different from strong membership
conditionality. She distinguishes between EU’s passive leverage before conditionality peaked, and their active leverage after the introduction of clear conditions in the context of accession. In her view, however, active leverage was uniquely successful in illiberal pattern states such as Bulgaria and Romania. This argument suggests that pre-accession conditionality in Bulgaria would have had a positive effect on anti-corruption institutions. Yet, I showed in chapter two that institution-building in Bulgaria was equally inefficient during EU membership-conditionality, and after it, when the CVM was introduced.

My own theoretical approach argued that it was passive leverage that created the context that determined the level of success of active leverage. In Bulgaria, in the absence of strong engagement with non-state actors before 2001, the EU did not manage to diffuse norms of transparency, accountability, and participation in the NGO community. Thus, NGOs were not prepared to effectively monitor and cooperate with the government after 2001. Similarly, in Georgia NGOs were left without the EU’s support after Saakashvili took power, and as a consequence they opened space for the government to centralize power. In contrast, in Montenegro, the EU engaged non-state actors in political dialogue before membership was on the agenda, and as a result, NGOs were capable of assisting the EU with introducing the appropriate conditions during the period of the EU’s active leverage.

I also showed that in the absence of political dialogue between the EU and domestic civil society, compliance with EU-promoted reforms did not necessarily translate into effective management of corruption. Only where the EU and domestic civil
society were learning from each other were the EU’s recommendations elaborated in a process of cooperation with domestic non-state actors, and the reforms gained domestic ownership and targeted well defined and specific problems. An extensive body of literature has differentiated between compliance with and the effectiveness of policies (Jacobson and Brown Weiss 1995, 1997). The definition of compliance provided by Young distinguishes compliance from effectiveness (Young 1979). According to this definition, a poorly designed policy may secure compliance but it is unclear whether the policy is effective with respect to addressing the underlying problem (Simmons 1998). For instance, Bulgaria was formally complying by introducing most of the legislative changes that the EU recommended. Yet levels of corruption did not decrease. Similarly to Bulgaria, Montenegro was complying with EU-promoted reforms. However, in contrast to Bulgaria, in Montenegro these reforms targeted specific problems of corruption and not the mere harmonization of law.

My theoretical approach is equipped to explain the effectiveness of conditionality because it emphasizes not only the size and speed of rewards and the credibility of sanctions, but also whether or not domestic actors understood conditions and suggestions for reforms in the same way as the EU did. I claim that where conditions were the product of cooperation between the EU and domestic non-state actors (as was in the case of Montenegro), the EU was capable of securing a degree of domestic ownership for externally promoted reforms, and in turn was able to pressure the government into achieving effective reforms. In contrast, where the EU’s conditions were perceived as imposed by international entities, conditionality led to ad hoc and disconnected reforms
(as in Bulgaria) or unintentionally assisted the incumbent in centralizing power and creating conditions favorable to rent extraction on the part of a small elite group (as in Georgia).

Examination of the type of conditionality, the extent to which conditions were addressing specific problems, and the variation in the success of conditionality on per country basis also made explicable the types of corruption prominent in each country. Thus, I showed that corruption in Georgia, Montenegro, and Bulgaria had very different characteristics, and that the size of the reward offered by the EU with respect to membership status had little to do with it.

Scholars also identify the credibility of conditionality as the main explanatory variable for variation in compliance. The main argument that is consistently put forward is that the more credible the conditions, incentives, and sanctions were, the higher the possibility of rule adoption became. Dimitrova (2005), for instance, finds that in the Czech Republic the administrative reform suggested by the EU failed because the government did not perceive the threats of exclusion from the 2004 enlargement as credible. If this argument is viable, we should expect that Bulgaria would have complied the most of all three countries. Yet, evidence suggested otherwise. I showed that in Bulgaria the EU’s conditionality was credible, as evidenced by sanctioning on more than one occasion, and that conditionality continued even after accession, albeit in a different form through the CVM. In Montenegro, the credibility of rewards might be perceived as low because the country did not have a determined accession date, and the negotiation
process could be prolonged indefinitely. Consequently, Montenegro should not have been expected to comply more than Bulgaria. Yet, as I showed in chapter two, Montenegro’s anti-corruption reforms were significantly more steady and sustainable than those in Bulgaria. In Georgia, the credibility of rewards was high, but that did not prevent Saakashvili from using the EU’s legitimization of his actions in order to centralize power.

Thus, credibility by itself does not say much about the outcomes of conditionality. I suggest that the process by which credibility was established provides a better explanation of the effects that conditionality has. While I agree that the credibility of conditionality factored in the decision made by domestic actors to comply with certain recommendations of the EU, I also show that credibility is a social construct, which is based on the presence or absence of shared understandings of domestic actors and international organizations. Evidence showed that in Montenegro, it was not credible conditionality that drove the country to comply. Rather, it was the process of interaction between civil society, the state, and the EU that imbued EU actions with meaning and credibility. More specifically, it was the mutual learning of the EU and domestic non-state actors that provided a shared meaning of the conditions, incentives, and sanctions. In contrast, in Georgia the EU did not engage actors other than the government, and left it to Saakashvili and a small circle around him to foster the credibility of reforms among citizens. Even when in 2008 the government deployed the police against peaceful protesters and the EU threatened sanctions, it did not have enough leverage to change the incumbent.
In a slightly different manner, the clarity of conditions has been often used to explain variation in compliance. The clarity argument predicts that the specificity of conditions would increase credibility (Schimmelfennig and Sedelmeier 2005, Dimitrova 2002, Grabbe 2004, 2005). However, I showed that the clarity of conditions, just as credibility, was secured through shared meanings which were formed during the process of interaction (Wendt 1994, Checkel 2005, Weaver 2006, Risse 2011). In this sense, in order to make conditions clear, both domestic actors and international institutions must have shared understandings of the meaning of the fight against corruption. As I showed in chapter three, Bulgarian and Georgian authorities rarely understood the message sent by the EU precisely because of a lack of shared understandings. In contrast, in Montenegro NGOs were equipped to translate EU’s messages to both the government authorities and the citizens.

2.1.2 Socialization

Scholars coming from a constructivist perspective argue that different levels of socialization explain the cross-country variation in compliance with EU-promoted reforms (Checkel 2001, 2005, Gheciu 2005a, 2005b, Sedelmeier 2006, Epstein 2008, Sedelmeier and Epstein 2011). The argument presented by these studies predicts that rule adoption is more likely if the EU convinces domestic actors of the appropriateness of the reforms, or when the ruling elite or other societal groups identify themselves with the community that establishes the rules (Checkel 2001, Johnston 2001).
I draw on these arguments and show that indeed, in Montenegro the process of social learning led to the inclusion of NGOs in the negotiation with the EU, and that a lack of social learning prevented Bulgarian and Georgian NGOs from influencing anti-corruption policy making. Perhaps more importantly, social learning also furthered the understanding of the EU with respect to the domestic context which it was attempting to alter. In turn, the EU moved away from the one-approach-fits-all, and became more flexible in its recommendations and in the way it presented conditions to domestic actors. For instance, this type of mutual learning led to separating what used to be *domestic and judicial affairs* negotiation chapter in Bulgaria into two negotiation chapters in Montenegro and Croatia. Such learning by the EU also led to the altering of requirements for Chapter 24 of the negotiations in Montenegro, and to the consequent focus on the establishing of a track record of actual convictions and sentences, instead of mere harmonization of law.

However, while following the socialization literature and claiming that the EU’s role was to serve as a teacher of norms for domestic actors, I also acknowledge that in some countries Civil Society Organizations (CSOs) were better informed and more convinced in the appropriateness of liberal democracy at the outset of the transitions than in others. When this was the case, the role of the EU as a socializing agent indeed should have been less significant.

It has also been proven that the presence of large western democracy minded groups did not mean that these groups knew how to mobilize society and how to pressure
governments into particular actions. For instance, David Ost (2005) convincingly argues that though the Solidarity movement in Poland was motivated by revitalizing civil society and liberal democracy and by challenging the communist regime, it eventually pursued a liberal economic program and completely abandoned the economic interests of the working classes. Similarly, Rachel Epstein (2008) showed that the existence of communities of experts did not explain the acceptance of central bank independence by former monobanks, by parliaments, and by societies (p. 306). I am sympathetic to Epstein’s argument. However, my evidence shows that communities of experts that were truly democracy-minded could contribute to the sustainable introduction of anti-corruption reforms under certain conditions: First, the EU’s involvement in the mobilization of such communities, and second the EU’s application of such communities’ knowledge to the domestic context.

Moreover, my evidence shows that prior to the fall of the communist regimes, neither Montenegro, Bulgaria, or Georgia had movements resembling the Polish Solidarity. However, later in their transitions both Bulgaria and Georgia made an attempt to mobilize experts living abroad. The Saakashvili government consisted of people that had received their education in Western Europe or the US, were professionals in their areas, and were aware of what was considered good governance, transparency, and accountability. As Shevarnadze had said in the late 1990s, these were the people that “knew English and computers.”272 The fact that they were included in the government in 2004 represented an attempt to bring home Georgians that were already convinced of the

272 Author’s interview with Gia Nodia, CIPDD
appropriateness of the rules promoted by the EU and the West. Yet, even in this case, the lack of a civil society that was capable of relaying citizens’ grievances to the government and monitoring the government’s work left a gap in anti-corruption efforts, and ultimately led to transformation of corruption instead of its elimination.

Similarly, in 2000, the government of the United Democratic Forces (UDF) made an unsuccessful attempt to form epistemic communities by bringing Bulgarian experts from abroad and tasking them with furthering the country’s integration with the EU. The government introduced the *Bulgarian Easter* – an initiative which was supposed to organize yearly meetings of Bulgarian expats. However, in 2001 the former tzar of Bulgaria - Simeon Saksoburggotski – entered the Bulgarian political scene and broke the two-party system that existed until this moment. He formed the political party National Movement for Stability and Progress (known under the Bulgarian acronym NDSV), and consequently a government. Both the party and the government included participants from Bulgarian Easter. Both Milen Velchev,\(^\text{273}\) who became a Minister of Finance, and Nikolay Vassilev, who was appointed as a Deputy Prime Minister and a Minister of the Economy, were very active in the Bulgarian Easter initiative. In 2001, as far as NDSV was concerned, the *Bulgarian Easter* initiative had served its purpose and the connection between NDCV and the initiative was destroyed. The government ceased to respond to invitations from the initiative for common participation in public projects, and the initiative progressively became demotivated and its role slowly but steadily

\(^{273}\) In 2003, Velchev was accused in the Yacht Scandal, where he was photographed with Ivan Todorov, one of the most successful drug traffickers in Bulgaria.
faded. In the period of 2001-2005, the initiative only made public some declarations, stating its discontent with public problems. There were no constructive propositions with respect to addressing these problems. The number of participants also declined. In 2004, the fifth meeting of the initiative gathered only around 350 participants, with 50 of them from abroad. In comparison, in the first meeting in 2000, approximately 600 professionals participated, with more than half of them from abroad.

The failure of the Bulgarian Easter initiative was to a large extent caused by the initiative’s complete lack of cooperation with international organizations. In the absence of EU legitimization and support for the Bulgarian Easter, the inability of Bulgarian experts to mobilize despite their alleged belief in Western norms became visible. The goal of the Bulgarian Easter was directly related to securing EU membership, which raised expectations that EU representatives would be at least minimally involved. Yet, there were no attempts at inviting EU representatives, nor were there attempts at making the EU aware of the initiative’s work. As a result, instead of the original goal of bringing in experts from outside of the country, the initiative supplied personnel for NDSV and secured the party’s victory in the 2001 parliamentary elections.

Finally, the socialization literature suggests that the EU effectively uses naming and shaming tools in order to persuade governments into introducing reforms. Epstein (2008) argued that international organizations did not need to secure domestic internalization of norms in order to transfer rules from the EU. In her view, international organizations’ prescriptions become
acceptable not simply because domestic actors agree that the principles underpinning such policies are correct. They may not. If postcommunist states sign on to such policies, it is also to exploit international institutions’ definition of optimal policy in the service of constructing a Western identity that so many citizens of Central and Eastern Europe seek for themselves.\textsuperscript{274}

In other words, domestic actors did not need to believe in the appropriateness of norms underpinning EU-promoted policies. Instead, they needed to be shamed into them. I agree with the potential that naming and shaming tools have over domestic actors. However, my evidence suggested that the effects of naming and shaming varied across countries and that this variation was due to variation in the level of internalization of particular norms. As Pawson (2002) argues, “we need to discover the prevailing norms and values operating around the social problem and how formidably they gather in support of shaming sanctions.”\textsuperscript{275}

Despite material sanctions invoked through the CVM, in Bulgaria the CVM also served as a shaming mechanism. It effectively declared that the country was not ready to become a member in 2007, and that Bulgaria was far away from inclusion in the Schengen zone. Certainly, in order for shaming to be productive, certain scope conditions need to be in place. For instance, Epstein (2008) argues that uncertainty of domestic actors about how to make policies, when external promoters of ideas and norms are


credible, and when domestic actors seek social approbation of international institutions, shaming is more likely to have its intended results. Krain (2012) finds that naming and shaming is successful when it represents a direct threat to the reputation, identity, international legitimacy, and domestic viability of the actors that are being shamed. In Bulgaria, at the beginning of membership negotiations, all these conditions were present. Yet, shaming the country into an inferior status relative to all other member states did not have the intended effect. As discussed in chapter two, reforms remained superficial and unproductive. In contrast, a strong campaign on the part of the EU shamed the Montenegrin government at their lack of cooperation with NGOs. As a result, NGOs became active participants in the negotiation process, and were openly provided information which allowed them to effectively monitor the government.

The argument outlined in this study claimed that what matters for uncertainty, credibility, status, and a viable threat to the incumbent’s legitimacy was the existence of previous interactions between the EU and civil society. Where such interaction existed, and it was based on partnership and political dialogue, shaming was successful because international and domestic actors were imbuing ideas with the same meaning.

2.2 Domestic Politics

The second school of thought in explaining variation in compliance with international organizations argues that domestic factors are the primary drivers of compliance. Domestic factors that are offered to explain variation in compliance with international organizations range from political competition, the type of post-communist
transition, to the role of civil society. This school of thought claims that the outcome in terms of anti-corruption reforms is exogenous to the process of EU interaction with domestic actors. However, my evidence shows that this is not the case and in the next paragraphs I explain why.

2.2.1 Political Competition

Political competition has been often used to explain why some countries are more corrupt than others (Kitschelt et al 1999, Orenstein 2001, Vachudova 2005, Larreguy et al. 2015, Banerjee et al. 2011, Humphrey and Weinstein 2012). For instance, Furaz and Finan (2005) find that in Brazil second term mayors had significantly larger incidents of corruption because the two-term limit relieved them from pressure for reelection. In a study of nine post-communist countries, Grzymala-Busse argues that in the early phases of the democratic transitions the state represented “the most lucrative and readily wellspring of material resources,”\(^{276}\) and hence “an inevitable target of governing parties seeking material assets.”\(^{277}\) Therefore, she claims that in the absence of domestic and international actors to control parties in power, these parties needed to be faced with a credible risk of replacement. Political parties in power would “rather constrain themselves, and all subsequent governments, than allow their successors to have access to state resources.”\(^{278}\)


\(^{277}\) ibid.

\(^{278}\) ibid
However, my evidence suggests that the goal of reelection and the fear of losing power did not necessarily lead to effective reforms in the area of anti-corruption. In fact, as discussed in chapter four, Saakashvili’s government did not fear political competition. While it indeed strived for reelection, it chose to secure its next term in office by centralizing power and suppressing political opposition and civil society. Simultaneously, the government strategically eliminated petty corruption as a publicly visible mitigation of the issue to reduce its perceived severity. From all governments in the examined period, Bulgarian politicians were the ones that traditionally had the most reason to fear a loss of power. In contrast to Georgia and Montenegro, which sustained the same party in power for most of the period after the collapse of the Berlin Wall, Bulgaria experienced twelve changes of government in the period between 1990-2013 (see Table 3.1). Yet, as shown in Chapter two, this political competition did not pressure governments into introducing viable reforms that would effectively manage corruption.
<table>
<thead>
<tr>
<th>Bulgaria</th>
<th>Montenegro</th>
<th>Georgia</th>
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<tbody>
<tr>
<td>2001 – National Movement Simeon II (NDSV)</td>
<td></td>
<td>2013 -Margvelashvili</td>
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<td>2005 – BSP</td>
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<td>2009 – Citizens for European Development of Bulgaria (GERB)</td>
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<td>2013 – non-party</td>
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Table 3.1 – Political Turnover by Country

My own argument claims that political competition is not always a reliable explanation of variation in outcomes from anti-corruption reforms. Instead, the evidence presented here showed that anti-corruption reforms achieved their desired end when public debate and partnership between domestic state actors, domestic non-state actors, and international actors was present. Thus, in Montenegro, despite the consistent absence of political competition, anti-corruption reforms were slow but steady, while in Georgia, which similarly lacked political opposition, corruption was transformed rather than managed. In Montenegro, the lack of political competition was compensated for by participation of civil society in the decision-making process, NGOs cooperation with policy makers, and effective mechanisms of monitoring, which allowed for the creation, implementation, and enforcement of reform. In Bulgaria and Georgia, such participation of civil society was not present and, as the two case studies showed, corruption was not managed despite the presence (Bulgaria) or absence (Georgia) of political competition.
In Georgia, I showed that the fight against corruption was entirely guided by Saakashvili’s administration and it served to solidify his power and destroy the little and weak opposition. There were two problems with respect to corruption and anti-corruption in 2013 in Georgia. First, it was the transformation of corruption that was advertised both domestically and abroad as a complete eradication of corruption. Second, and most important, it was the way EU unintentionally had facilitated such transformation.

2.2.2 Civil Society

Scholars that emphasize domestic political factors as the variable with the most potential to explain variation in anti-corruption outcomes also stress the ability of civil society to monitor governments and hold them accountable (Backer and Stigler 1974, Nagin et al. 2002). Shleifer and Vishny (1993) found that weak civil society added further to the institutionalization of oligarchic monopolies. According to Olken (2007), monitoring by external actors, such as NGOs, reduced corruption. In a randomized field experiment on reducing corruption in over 600 Indonesian village road projects, he found that “increasing the probability of external audits substantially reduced missing funds in the project.”279

I agree that the civil society is a primary actor in the process of managing corruption and that monitoring is a necessary condition for holding government officials accountable. However, my evidence suggests that in order for civil society to secure

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transparency and accountability, specifically in the post-communist world, it must not limit its role to merely monitoring officials. It also needs to cooperate with ruling elites in creating and implementing anti-corruption policies (Mungiu-Pippidi 2013). In both Georgia and Bulgaria, NGOs shaped as think tanks produced detailed reports and possessed extensive knowledge with respect to the progress of anti-corruption reforms, yet their impact on these reforms remained low. For instance, I showed (see chapter four) that Montenegro’s NGOs differed from their counterparts in Bulgaria and Georgia, precisely in their ability to insert representatives in the decision-making process, and thus influence this process. In Georgia, NGOs and the government had consistently been locked in to an “hourglass” type of relationship, and in Bulgaria civil society was disorganized and incapable of forming the necessary coalitions in order to apply bottom-up pressure.

Furthermore, when discussing the role of civil society, authors often remain critical of civil society in former communist countries, and point out that the civil society in these countries has been traditionally underdeveloped (Wedel 2015, Perez-Diaz 2014, Ganev 2014, Ekiert and Foa 2012, Sardamov 2005). For instance, Kabakchieva et al. (2011) found that in Bulgaria civil society was not equipped to apply bottom-up pressure to governments due to both a lack of administrative capacity and knowledge. Muskhelishvili (2011) made a similar argument with respect to the “hourglass” situation in which civil society and government authorities found themselves in Georgia. While this literature establishes firmly the gap between society and the state domestically, it leaves the relationship between domestic civil society and international entities, such as the EU,
under researched. Some of the existing literature on transnational advocacy networks (TANs) addresses the problem, but it is for the most part focused on the interaction of NGOs or advocacy groups from different countries (Keck and Sikkink 1996, 1998, Mekata 2000, Donnelly 2002). Some have attempted to analyze the interaction of domestic NGOs and international organizations (Burgerman 1998, Börzel and Pamuk 2010, 2011, 2013, Dimitrova and Buzogany 2013, Turkina and Kostakakis 2014). However, most often these studies examine the impact that international organizations have on domestic NGOs and underrepresent the influence that NGOs have on international institutions.

My theoretical focus addresses the under researched role of NGOs, namely the role of providing information back to international entities, and the education of international actors on the domestic context. I agree that in a process of interaction, the EU could legitimize NGOs domestically, but I also emphasize that NGOs could provide feedback to the EU. Civil society was susceptible to external influence throughout the process of its formation after the fall of the communist regimes in each country. In comparison to the old members of the EU, the fall of the Berlin Wall found all former Eastern bloc countries with weak civil society (Howard 2003), and one that proved in some countries incapable of consolidation after an initial flurry of activity in the late 1980s and the beginning of the 1990s (Mungiu-Pippidi 2006). I showed that where the EU engaged NGOs in political dialogue, not only NGOs became capable of working as a coherent actor with a clearly defined anti-corruption agenda, but also the EU became capable of adjusting its conditions, incentives, and sanctions.
Finally, authors have questioned the applicability of the western concept of civil society in the post-communist world. I began this study with the assumption that civil society in the post-communist world must take on a specific shape in order to further the Europeanization process of transitioning countries. The concept of civil society that I entertained here was very much influenced by the concept that underpins Western civil society, and that had its origins in the work of John Locke and Adam Smith. I justify my approach with the Europeanization focus of the study, and the fact that this study has been primarily engaged in understanding the role of international organizations, such as the EU, in managing corruption in the post-communist world, and less with the general topic of corruption in transitioning societies. Therefore, I have used the EU’s understanding of civil society as a starting point of the study.

Indeed, scholars have been long examining the possibility that transitioning societies and specifically post-communist countries were developing a different kind of civil society, one that operated in a manner that is not comparable with its Western counterpart. For instance, Sardamov (2005) explains in great detail that in contrast to civil society in the Western world, post-communist civil society does not have organic origins. As a consequence, NGOs in the post-communist world may in fact sustain the crisis of institutions during the post-communist transitions of the countries from the Eastern Bloc, instead of correcting it. This conceptualization of civil society as a community primarily based on kinship ties, instead of social group, may be indeed valuable and certainly worth studying. In this aspect, my research sheds light on the
limits and opportunities of the EU to influence the shaping of domestic non-state actors and on the tools that are effective with respect to this process.

3. Extending the Argument

As with many studies, the limitations of this work raise many questions. The following section addresses the limitations of the study, and suggests some question derived by these limitations that could extend the argument.

3.1 How Equipped is a Social Network Analysis (SNA) to Address the Issue?

While SNA is a tool designed to evaluate the extent to which actors in networks are interconnected, there are various ways of coding data which may show varying results. In order to establish the level of networking of civil society in the three countries, I have used social network analysis. By using density of the network metrics over time, I established the extent to which NGOs cooperate with each other, and therefore the extent to which civil society is unified. Critics of Network Analysis have pointed out the importance of coding data in order to establish the influence of certain nodes. For instance, I have chosen to code the inter-NGO relationships and relationships between NGOs and the EU as unidirectional relations. This means that the analyzed data does not distinguish the initiator of an interaction. The network density measure sheds light on the network of NGOs in each country in each period. It attempts to show the level of interaction of NGOs as a property of the whole network, instead of as a property of a single node in the network. In this sense, directionality is not essential, though, if
included, it may lead to interesting trends within each network. However, when the EU was included in the SNA, the goal was to show the influence of a single node - namely the EU. In this case, considering the initiator of each interaction may reveal how proactive the EU was in seeking political dialogue with domestic non-state actors. While I have accounted for the EU initiative in the qualitative analysis, the theory presented here will benefit from a future study, which includes directionality of EU relations.

Finally, comparability of centrality within SNA is a controversial subject with a large body of research showing that centrality is not comparable across networks because of the changing number of nodes in networks (Wasserman and Faust, 2006). I have coped with this by employing ranking of nodes based on their centrality. Scholars are currently developing a temporal network model (Krivitsky et al. 2012), which could serve as an additional testing of my findings in future research.

The sample was also inconclusive with respect to data from Montenegro. A change in the procedure by which NGOs register was made in 2012, which rendered previous data regarding NGOs’ work unavailable. The unavailability of such data made the comparison over time and across space incomplete. Further research is necessary in order to compile an exhaustive list of NGOs that worked in the area of anti-corruption and good governance in Montenegro in the period of 2000-2013 and to test the theory in the presence of this information.

3.2 Is the Study Replicable in Other Countries?
The selection of cases for this study was based on two independent variables - namely variation in interaction between the EU and domestic civil society, and variation in membership status. I have argued that where the EU engaged non-state actors in political dialogue prior to the point at which conditionality peaked, it managed to imbue norms of transparency and accountability with meaning shared by domestic actors.

This study attempted to generalize about the influence of the EU on managing levels of corruption in all post-communist countries. Yet, it did so solely based on a comparison of countries that had similar legacies from their pre-communist period. Some scholars have argued that in some countries, such as the ones that were granted membership in the 2004 EU enlargement, norms of transparency and accountability were already present, for these countries were the subject of historical influence that was championing EU norms and values. For instance, scholars (Dimitrova-Grazjl 2005) argued that some post-communist countries, such as Poland, Hungary, and the Czech Republic, were culturally predisposed to accept EU norms and rules by the virtue of their historical influence by the Habsburg Empire. In contrast, Bulgaria, Romania, and the former Yugoslav republics’ cultural legacies were inherently incompatible with Western norms of transparency and accountability because of these countries long influence by the Ottoman Empire. Others have made the argument that corruption is a culturally loaded idea, and what constitutes corruption in the Western world and in the old members of the EU is not the same as what constitutes corruption in other countries (Uromboyev et al. 2013). The argument that I put forward in this study is based on the premises that culture changes, albeit slowly, and shows the mechanisms by which the EU could contribute to
such change. Yet, it will benefit from including in the study a country that has different cultural legacies than the states researched in this study, such as Poland, or Croatia.

On a similar note, Georgia has been traditionally considered to be a leader amongst the post-Soviet republics. To test the argument that the EU role in shaping civil society is crucial for the establishment of anti-corruption institutions that indeed manage corruption, and in light of the recent refusal of some countries to continue on the path to EU integration, Armenia becomes an interesting case. Preliminary research showed that the EU did not engage with civil society in Armenia (Gillespie and Youngs 2002). Among agencies that were engaged with civil society development and good governance promotion, the Open Society Institute’s Assistance Foundation Armenia (OSIAF - Armenia) was a leader. My theory would then predict that Armenia is not performing well in the fight against corruption because civil society was not capable of applying bottom up pressure to the government, and could not leverage the EU in order to contribute to anti-corruption reforms. Indeed, data shows that Armenia is still one of the most corrupt countries from the former Soviet Bloc. Transparency International puts the country in 94th place out of 175 surveyed countries. This makes it the sixth most corrupt country from all the post-communist states.

3.3 Is the Study Replicable on Other Issues?

I have shown that it is difficult for NGOs and international actors such as the EU to address corruption in the post-communist world because of the hidden and illegal nature of the phenomenon. Given this, critics may question the replicability of the study on other
issues. For instance, it is expected that shaming a country into addressing grand corruption that is hidden and difficult to establish in the first place is harder than shaming a country into addressing easily identifiable policies that are not environmentally friendly. Indeed, Dimitrova and Buzogany (2013) argued that the domestic environmental NGOs in Bulgaria learned how to successfully employ the leverage of international actors in order to persuade governments into introducing policies that protect the environment. In this sense, the theory would benefit from testing it on issues that are less specific than corruption, such as environmental, or migration and refugee policies.

In light of historical legacies, issues such as minorities and environmental protection indeed breed a demand for altering culture in the post-communist world. In terms of the rapid industrialization in all post-communist countries in the beginning of the communist regime, some countries lost most of their strong agriculture. With the exception of Albania, where in 1981 about 60% of the population was still living in rural communities and therefore was occupied in the agricultural sector, most countries took a sharp turn toward industrialization. For instance, Czechoslovakia’s agricultural output in 1960 and 1965 was below this in 1936 (Staar 1984) and by 1975 the net loss of workers in the agricultural sector was 224,000.\textsuperscript{280} Similarly, Staar (1978) found that in Hungary in the period 1950-1954, the production of the bread grain was less than it had been in 1911-1913, when the population was 25% smaller. In his words, “Statistics reveal that no

\textsuperscript{280} Data from the Statistical Survey of Czechoslovakia 1976 p. 16
government approach can so mismanage agricultural production than one based on the communist ideology.”

While indeed difficult (Rothchild and Wingfield 2007) decreasing agriculture’s significance, coupled with rapid industrialization also changed the demographics in Eastern Europe and made urban living more appealing to the population. As a result by 1989 on average in the post-communist countries 56% of the population lived in urban settings in (Beissinger and Kotkin 2014). A revival of agriculture after the collapse of the Berlin Wall thus demanded not only structural change, but also cultural change. The efforts of the EU here were primarily in the area of agricultural subsidies through the PHARE and TASCIS programs. However, such funds did not bring about the cultural change necessary for the population to move out of the cities and to return to villages in order to engage in the agricultural sector. My theory posits that in order for successful development of sustainable agriculture to take place, a cultural change is necessary.

Similarly, minority issues were overwhelming in all countries in Eastern Europe after the end of the communist regime. For instance, the integration of the Roma minorities was problematic in both Hungary and Bulgaria. Preliminary research supports the findings made by these study, and showed that indeed where the EU worked with civil society it had more leverage over the national government. The Decade of Roma Inclusion initiative represented the collaborative effort of twelve countries from Central

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and South East Europe,\textsuperscript{282} aiming to further the social and socio-economic integration of Roma in the region. The initiative ran between 2005 and 2015 and it was managed on a country presidency rotation principle, with the EU among the major founding international partners. A brief look at the participants in the projects under the initiative show that the Czech Republic included almost 30\% more NGOs than Bulgaria did and integrated the Roma to a significantly higher degree, with respect to lifestyle, education, and participation in the political process. As a result, in Bulgaria average income of Roma is 74\% less than that of the total population, and in the Czech Republic this percentage is 40\%.\textsuperscript{283} In Bulgaria, the percent of Roma that report experiencing discrimination (75\%) is again higher than the number in the Czech Republic (60\%).

3.4 Are all International Organizations the Same?

Despite the EU’s strong involvement in the post-communist transitions of the countries from Eastern Europe, it was not the only international organization (IO) that contributed. The Organization for Security and Cooperation in Europe (OSCE), the Group of States against Corruption (GRECO), and the World Bank all had their fair share of guiding Eastern European countries on their way to democracy and a market economy. This study did not engage with of these IOs, as they were out of scope of the goal of the study, which was focused on deepening our general understanding of Europeanization.

\textsuperscript{282} Countries participating in the Decade were Albania, Bosnia i Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, Macedonia, Montenegro, Romania, Serbia, Slovakia, and Spain.

\textsuperscript{283} Decade of Roma Inclusion Report 2015 available at:
However, testing the theory that IOs have the most leverage over domestic governments where they engage non-state actors in a political dialogue on IOs other than the EU would contribute to the generalizability of the study. This further research could deepen our understanding of how international organizations work, and how applicable conditionality is when the incentives are smaller than EU-membership.

On a similar note, I have argued that the EU learned from Montenegrin CSOs about the precise problems that drove corruption domestically, and what conditions could be satisfied, and to what end. While this was a major part of my argument, and I showed that the EU indeed learned, I did not discuss whether or not this learning process has the potential to make a doctrinal change in its behavior in future enlargements. The reason for this is because a general change in the EU was out of the scope of this research, which set out to discover the conditions under which the EU has the most influence. Future research should focus on the conditions under which the EU learns and under which its culture of interaction with potential members and non-members changes.

Finally, I have noticed certain discrepancies between the perceptions of EU representatives in the countries, and EU representatives in Brussels. At this stage, I would expect that it is EU representatives in the countries that learn and transfer this knowledge to the EU representatives from DG Enlargement and DG Judicial Affairs because they are the ones that interact directly with domestic CSOs. Yet, further research discussing the conditions under which transfer of knowledge takes place and the potential results from such transfer with respect to EU’s interaction with countries is necessary.
4. Implications of the Study

In addition to offering empirical analysis, this study aspires to make a theoretical contribution. It contributes to the literature discussing the power and limits of international organizations, and, more specifically, to the literature on Europeanization, the literature of civil society, and the literature on post-communist transition. The study also makes a methodological contribution to the study of corruption.

This study contributes to the literature on the limits and opportunities of international organizations to secure domestic compliance for their policies. My evidence shows that socialization and conditionality are best understood when discussed as symbiotic processes. I conceptualize the process of socialization as a political dialogue which takes place through constant interaction between domestic actors and the EU. I have shown that in some instances this interaction is indeed bi-directional, while in other cases it resembles a unidirectional dictation of norms and rules from one actor to another. My evidence shows that socialization secures compliance with EU regulations only when the parties in the process communicate ideological positions on the same issue in a continuous, iterative, and interactive manner (Heater 1974, Almond and Verba 1963, Dawson et al. 1977). In Montenegro, such process took place, while in Bulgaria and Georgia, the EU was dictating rules and was not learning from domestic actors.
I also argue that the reason for the success of socialization when it is bi-directional is to be found in the opportunity that it presents to the EU to alter the process of conditionality. To be fair, the EU’s relationship with all post-communist countries is based on conditionality. However, incentives, sanctions, their credibility and size, as well as the nature of conditions vary according to the relationship that EU has with domestic actors. Evidence showed that this variation was based on the extent to which the EU involved domestic civil society in continuous political dialogue from the very beginning of the transitions. In some cases, such as Bulgaria and Georgia, the climate created by the interaction of the EU with domestic non-state actors limited the types of incentives and sanctions that would be effective. In Montenegro, domestic non-state actors indeed learned from the EU, but they also managed to provide information to the EU, which in turn caused the EU to alter conditions, incentives, and sanctions. For instance, shaming mechanisms never worked in Bulgaria and Georgia, but were significantly more successful in Montenegro. Similarly, material sanctions in Bulgaria did not persuade governments to change their approach to anti-corruption reforms, despite these governments’ political orientations.

This study also contributes to the general knowledge of the formation of post-communist civil society and its role in the democratic transitions that took place after the collapse of the communist regime. Abundant literature on civil society in the post-communist world has well developed the subject. However, such studies often focus on gathering empirical data and establishing the state of civil society. These studies are for the most part focused on the ability of civil society to channel demands (Mercer, 2002),

Scholars rarely examined the process by which post-communist civil society is shaped. Even studies that have examined the formation of civil society in Western Societies and contrasted it to this process in the post-communist world have focused on the difference between organic and non-organic civil society. Rarely have these studies emphasized the specific influence that international organizations have on the formation of the third sector in young and unconsolidated democracies. Recently, some authors have begun to develop theories regarding the relationship between domestic civil society and international organizations. Turkina and Kostakakis (2015), for example, specifically focus on the process by which domestic NGOs learn norms from international organizations, such as the EU. I agree with their findings, but I also contribute to the literature by emphasizing the role of civil society as a teacher in addition to that of a student. In this study, I have developed the idea that under conditions of present political dialogue and cooperation with the EU, domestic NGOs provide international organizations with information, and thus teach them about domestic context and the way this context evolves.

Finally, this study makes a methodological contribution to the study of corruption. In general, scholars and policy makers alike use various anti-corruption indices in order to determine levels and types of corruption. However, these indices only purport to show perceptions of corruption. For instance, Transparency International’s Corruption
Perception Index (CPI) showed in 2011 that Georgia has immensely decreased corruption. It also showed that this progress has been steady since 2005. However, my evidence showed that Georgia did not decrease corruption as much as the CPI suggested. Instead, the country transformed corruption from endemic to centralized in a powerful political elite that was organized around Saakashvili. Thus, what the CPI registers is a change in the popular perception of corruption in the country, which is a low fidelity proxy for actual change in levels of corruption. The reforms that Saakashvili started in 2005 abated petty corruption, and as a result decreased the salience of the issue of corruption in Georgia. In doing this, grand corruption was removed from the spotlight because by its very nature, petty corruption is typically more topical. This allowed Saakashvili to mask the severity of high level corruption through a public attack on petty corruption. The problem of measuring perception instead of real change is one that reflects on domestic and international policies attempting to secure transparency, accountability, and the rule of law. Therefore, existing indices prove to be insufficient for a comprehensive understanding of the problem of corruption.

This study offers a more suitable approach to studying corruption. I have shown that instead of measuring perception, one is better equipped to understand the phenomenon if one examines the institutional and legal framework that governs anti-corruption policies. I justified this approach by relying on the fact that the rule of law is only possible if mediated by an appropriate institutional set up. Where institutions create additional red tape, or introduce confusion among citizens with respect to institutional responsibilities, priorities, and rights, an environment is created where corruption can
thrive. This approach explains not only levels of corruption, but it also sheds light on the type of corruption in each country. Analyzing anti-corruption institutions and the state of the judiciary as proxy to the type of corruption allowed me to point out significant differences between Georgia, Bulgaria, and Montenegro, which are not evident using indices alone.
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- The Statute of the Civil Service Bureau
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- The Constitution of the Republic of Georgia
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building a stronger partnership". 18 January 2000,
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PARLIAMENT AND THE COUNCIL Commission Opinion on Montenegro's
application for membership of the European Union Brussels, 9.11. 2010
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European Communities, 1988) Article 4
Article 8 of Council Regulation (EC) No 1260

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Appendix A: List of Interviews

Bulgaria 2013-2014

1. Senior Fellow, Security Program, Center for the Study of Democracy, Sofia, October 2013,

2. Senior Analyst and Program Director, Center for the Study of Democracy, Sofia, October 2013

3. Senior Official, European Institute, Sofia, January 2014

4. Former Deputy Minister of Economy, Sofia, November 2013

5. Member of the Managing Board of the European Institute, Sofia, September 2013

6. Chief Negotiator with the European Union on Bulgaria's EU Accession (2000-2001), Sofia, September 2013

7. Member (1) of the Bulgarian Negotiation Team, Sofia, November 2013

8. Member (2) of the Bulgarian Negotiation Team, Sofia, January 2014

9. Member (3) of the Bulgarian Negotiation Team, Sofia, September 2013

10. Member of the Managing Board of Professionals for Good Governance Foundation, Sofia, February 2014

11. Lecturer at the European Integration Program at Sofia University, Sofia, January 2014


13. Senior Official at Labor Podkrepa, Sofia, September 2014

14. Consultant, Bulgarian Center for Not-for-Profit Law, Sofia, July 2014

15. Founder of Anti-Corruption Map, NGO, Sofia, January 2014

362
17. Inspector at the Anti-corruption Inspectorate in the Ministry of Healthcare, Sofia, January 2014
18. Coordinator at Directorate “International programs, activities, and projects” at the Ministry of Healthcare, Sofia, January 2014
22. Senior Official and Member of the Board of Directors of Multiprofile Hospital for Active Treatment and Emergency Medicine /MHATEM/ "N.I.Pirogov", Sofia, May 2014
23. Cardio surgeon, First Multiprofile Hospital, Sofia, May 2014
24. Senior Official at the EU Commission Representation in Bulgaria, written communication, Sofia, February 2014
25. Team Leader – Communication, Partnerships and Networks, EU Directorate-General for Communication Representation in Bulgaria, Sofia, August 2013
26. Representative from the Center for Liberal Studies, Sofia, August 2013
27. Member of the European Parliament from EPP Group, Sofia, September 2013
28. Journalist from Kapital newspaper, Sofia, September 2013
29. Senior Official at TV Europe in Bulgaria, Sofia, September 2013
30. Senior Official at the Legal Department at the Commission for Prevention and Ascertainment of Conflict of Interest, Sofia, December 2013
31. Former Head of the National health insurance fund, Sofia, September 2013
32. Current Head of the National health insurance fund, Sofia, September 2013
33. Coordinator at the National health insurance fund, Sofia, September 2013

Georgia 2013-2014

2. Program Manager, Transparency International Georgia, Tbilisi, March 2014
4. Project Manager, Georgia’s Young Lawyers Association, Tbilisi, October 2014
5. Senior Official, Georgia’s Young Lawyers Association, Tbilisi, October 2014
8. Senior Official at the European and Euro-Atlantic Cooperation Program at the Caucasian Institute for Peace, Democracy and Development, Tbilisi, October 2014
9. Lecturer in Political Science and European Integration at the Ilia State University, Tbilisi, March 2014
10. Former Minister of Education and Science, Tbilisi, March 2014
11. Georgian Academic and Political Analyst, Associate Profession at Tbilisi State University
12. Senior Official at the Analytical Unit of the Ministry of Justice, Georgia, Tbilisi, February 2014
13. Senior Official at the Civil Service Reform and Development Department, Civil Service Bureau Of Georgia, Tbilisi, April 2014
14. Project Manager for Democratization and Civil Society, Delegation of the European Union to Georgia, Tbilisi, April 2014
15. EU Integration Field Manager, Open Society Georgia Foundation, Tbilisi, March 2014
16. Program Management Specialist, Senior Health Systems and Financing Advisor
Office of Health and Social Development, USAID/Caucasus, Tbilisi, April 2014


18. Founder, Media Development Fund, Tbilisi, March 2014

19. Director of EU Studies, Georgian Foundation for Strategic and International Studies (GFSIS), March 2014

20. Consultant, Association of Young Economists of Georgia (AYEG), Tbilisi, April 2014

21. Co-founder of "Georgia's Reform Associates" (GRASS) NGO, Tbilisi, March 2014

22. Former Deputy Minister of Foreign Affairs, Georgia, Tbilisi, March 2014

23. Project Manager for the Justice and Rule of Law, Delegation of the European Union to Georgia, Tbilisi, March 2014

24. Public Outreach Coordinator, East-West Management Institute, Policy, Advocacy, and Civil Society Development in Georgia (G-PAC), Tbilisi, February 2014

25. Member of at the Georgian Dream Coalition, Tbilisi, October 2014

26. Minister of Labor, Health, and Social Affairs of Georgia, Tbilisi, October 2014

27. Senior Official of Euro-Atlantic Integration at the Ministry of Internal Affairs, Tbilisi, September 2014

28. Former analyst at the Ministry of Justice, Tbilisi, September 2014

29. Senior Researcher at the Center for Social Research, Tbilisi, September 2014

**Montenegro 2013-2014**

1. Senior Official, program director of investigation center, MANS NGO, Podgorica, November 2013

2. Senior Official, Center for Civil Education NGO, Podgorica, November 2013

3. Democracy Program Coordinator, Center for Civil Education, Podgorica, November 2013

365
4. Senior Official, Center for Development of NGOs (CRNVO), Podgorica, November 2013

5. Research coordinator, Institute Alternativa NGO, Podgorica, May 2014

6. Assistant Professor of Political Science, University of Montenegro, Podgorica, May 2014

7. Associate Professor of Economy, University of Montenegro, Podgorica, May 2014

8. Senior Official at the Policy Research Department at Center for Monitoring and Research, NGO, Podgorica, May 2014

9. Senior Official at the Governing Board of Center for Monitoring and Research, NGO, Podgorica, May 2014

10. Senior Official at the Commission for Prevention of Conflict of Interest, Podgorica, May 2014

12. Advisor in the Directorate for Anti-Corruption Initiative, Podgorica, May 2014

13. PR Service and NGO communication officer, Directorate for Anti-Corruption Initiative, Podgorica, May 2014

14. Senior Advisor in the Directorate for Anti-Corruption Initiative, Podgorica, November 2013

15. Coordinator for Repression Corruption Part in Chapter 23, Podgorica, May 2014


17. Former Minister and Deputy Prime Minister for European integration of Montenegrin, Podgorica, May 2014

18. Senior Adviser, Department for International Cooperation and EU Integrations, Ministry of Health, Podgorica, May 2014

19. Senior Official at the Cooperation with NGOs Directorate, Ministry of Health, Podgorica, May 2014

20. Senior Advisor for Twinning Project *Support the implementation of the anti-corruption strategy and action plan*, Sector: Justice and Home Affairs, Podgorica, May 2014


23. Mid-level official at the Civil Society, EU Delegation to Montenegro, Podgorica, November 2013

25. Mid-level Official at EU Delegation to Montenegro, Podgorica, November 2013

26. Member of the Negotiation Team for Montenegro’s accession to the EU, Podgorica, November 2013

Belgium 2014

1. Adviser for the Western Balkans at DG Neighborhood and Enlargement Negotiations, EU, Brussels, February 2014

2. Deputy Managing Director for Europe and Central Asia, European External Action Service, Brussels, February 2014