

Ever Closer or Diverging: The Relationship between EC and the Latecomers (Bulgaria and Romania) Seen Through the Prism of CVM

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Abstract: Upon the formal accession of the last two member-states to the EU in 2005 it was evident that the Balkan countries had socio-political and institutional peculiarities and faced challenges which made it necessary to launch the unprecedented Cooperation and Verification Mechanism (CVM). In the beginning it was clear that the Bulgarian case was the worse one since the Bulgarian authorities had to fight the large scale organized crime as well. Yet it was even clearer that the gravest deficit in both countries was the lack of systematic policies of anticorruption fight.

Five years later it is quite interesting:

- 1. To what extent the objectives of CVM have been achieved in bringing local citizens to the standards of EU citizenship or the problems – and the threats to the basic EU principles and values – persist?*
- 2. Are the two countries increasing their dissimilarities? Or do they keep moving in a common track (or even become more and more alike)?*
- 3. Are there proofs that EC is really a partner (which would mean that it was capable of adequately addressing the specificity of the South-East European societies and had taken shared responsibility for the policy outcome) or the potential of the very CVM is limited by some initial paradigmatic handicaps and it has actually aggravated the situation in contrast to its good intentions?*

These are the major questions that have been answered by the comparative empirical study of the EC's regular reports under the CVM for the last 6 years. The paper presents the key findings of this study in brief.

I. Why should the level of commensurability (or similarity) between Bulgaria and Romania be studied? Because the two countries regularly appear as identical. But this is an appearance only

The level of similarity seems spectacular, indeed. For example, the findings of the so called “Catch-up index” are quite symptomatic.¹ Having compared 35 European countries in terms of economy, democracy, governance, and quality of life in general the study summarizes the results about the Balkan countries under the paragraph title “A bunch of identical twins” p. 53 (only Croatia being somewhat different positively and Bosnia and Herzegovina – negatively). If one looks more carefully at the comparison between Romania and Bulgaria the conclusion is

1 M. Lessenski, *Aftershocks: What Did the Crisis Do to Europe?* OSI-Sofia, January 2013, <http://www.thecatchupindex.eu/TheCatchUpIndex/>, accessed 20.02.2013.

inevitable – these two are twins, indeed.² The diamond of the integrated indices for the two countries is not only overtly smaller than the one for all EU-27, i.e. the four crucial dimensions of public life are far less developed than the EU-27 average. The two diamonds actually coincide as if it is a single national case – “Bul-manian” or “Ro-garian”.

If we switch our attention to the results of the National Integrity System project the findings would not be that much different. Yet, with the exception of press freedom where Bulgaria lags far behind Romania, the two countries seem similar/commensurable in overall account.

| | Rank | | Score | |
|-----------------------------|-----------------|---------|-------------|-------------|
| | Bulgaria | Romania | Bulgaria | Romania |
| Corruption perception index | 75/176 | 66/176 | 41 | 44 |
| control of corruption | 52% | 54% | 0.183081909 | 0.158045272 |
| global competitiveness | 62/142 | 78/142 | 4.27 | 4.07 |
| judicial independence | 104/142 | 94/142 | 2.9 | 3.1 |
| rule of law | 53%-0.080129673 | 56% | 0.080129673 | 0.049652261 |
| press freedom | 80/179 | 47/179 | 29 | 14 |
| voice and accountability | 63% | 61 % | 0.485637139 | 0.44657546 |
| human development | 55/187 | 50/187 | 0.771 | 0.781 |

Source: European National Integrity System Project, 2012. <http://www.transparency.org/country>, accessed on 20.02.2013

Obviously, both *the field of measurement* and *the measurement technique* provide for some important nuances of variance. But broadly speaking the socio-structural pattern behind the empirical pictures is very much the same.

This is why we should not be surprised neither by the fact that the EC packed Bulgaria and Romania tightly together in the accession process and in a common conditionality framework of their actual EU membership nor by the fact that the Bulgarian case used to be worse of the two. Consequently, Romania has been monitored under the CVM³ upon 4 benchmarks⁴ while Bulgaria had to report on 6 bench-

2 See app. 1. Both in Romania and Bulgaria, being inseparable, the economy is better developed than the overall quality of life and democracy scores higher than... governance.

3 The [local]“authorities and the other Member States recognised that far reaching judicial reform was necessary if [their citizens] were to be able to exercise their rights as EU citizens and benefit from all the opportunities, including financial support, that EU membership would bring. More broadly, they recognised that principles which are at the heart of the EU – respect for the rule of law, mutual recognition and cooperating on the basis of a fundamental bargain of trust – could only be put into practice if these problems were tackled at source”. Brussels, 27.6.2007 COM(2007)377 final http://ec.europa.eu/cvm/progress_reports_en.htm

4 “The Commission sees all the benchmarks as closely interlinked. In its dialogue with Romania ample evidence has been given that progress under one benchmark contributes to

marks despite of the fact that in both cases the problem was one and the same – insufficiency of the *Rule of law* principle which, according to the EC’s phrase, is at the heart of EU. Not surprisingly, the bulk of the official reports issued by the EC for the last 6 years from 2007 to 2012 seem as speaking of one situation only in terms of policy and politics. Of course, they can be read as political evaluations derivative of the findings and conclusions from the specific national cases but the sheer amount of identical paragraphs – literary word by word, proves that it is not the particular empirical state of affairs in the country under scrutiny that is crucial for the final evaluation but much more important is the general scheme of interpretation of those findings. This is why a more careful study of the very CVM is urgently necessary. Bulgaria and Romania may seem identical just because they are observed from afar and the socio-cultural distance nullifies the important substantive differences.

II. The empirical study of CVM reports

2.1. The method of research

We have to admit that the shift of the focus of our attention from the performances in the respective policy spheres monitored under the CVM to the mechanism itself came out of necessity. Initially, our research intention was simply to trace the developments under the 6 benchmark areas in Bulgaria⁵ and 4 benchmark areas in Romania⁶. The point was exactly to identify and to measure as strictly

progress under another benchmark. The rationale for the CVM is not to establish a check-list, but to develop an independent, stable judiciary which is able to detect and sanction conflicts of interests, and combat corruption effectively. Therefore the Commission does not envisage removing the benchmarks one by one but rather working with Romania to the point where the CVM in its entirety is ended”. REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Romania under the Co-operation and Verification Mechanism, Brussels, 22.7.2009 COM(2009) 401 final http://ec.europa.eu/cvm/progress_reports_en.htm, accessed 20.02.2013 The very same is the report for Bulgaria.

- 5 “Six benchmarks were established, covering the independence and accountability of the judicial system, its transparency and efficiency; the pursuit of high-level corruption, as well as corruption throughout the public sector; and the fight against organised crime”. REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Bulgaria under the Cooperation and Verification Mechanism, Brussels, 18.7.2012 COM(2012) 411 final, http://ec.europa.eu/cvm/progress_reports_en.htm, accessed 20.02.2013. “Benchmarks were established in four areas: Judicial reform, integrity, the fight against high-level corruption, and the prevention and fight against corruption in the public sector”. REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Romania under the Cooperation and Verification Mechanism, Brussels, 18.7.2012, COM(2012) 410 final, http://ec.europa.eu/cvm/progress_reports_en.htm, accessed 20.02.2013.
- 6 “Benchmarks were established in four areas: Judicial reform, integrity, the fight against high-level corruption, and the prevention and fight against corruption in the public sector”.

as possible the levels of commonality and difference between the Bulgarian and the Romanian cases. In order to carry out this research task we composed a very complex research instruments comprised of about 130 indices concerning the complexity of the phenomenon of judiciary system reform and the anticorruption policies, for example – identified deficiencies, kinds of resources used, temporality and scope of the problems, levels of subject involved, kinds of interest abused, types of EC’s assessment, emotional affectivity of the evaluations, etc. The idea was to trace the trends over the 6 year period and to analyze to areas of similarities or dissimilarities of the tracks between the two national cases. All national reports for Bulgaria and Romania have been studies both technical (issued usually in February each year) and political (issued in July).

2.2. The empirical facts – divergence and similarities

The empirical picture turned out to be very close to what one could expect – on closer inspection the two national cases performed processes *simultaneously* of homogenization, divergence and even incommensurability. Let me give just an illustration of the typical cases: a case of synchronized developments in both countries and a case opposite directions of the monitored processes.⁷

Keeping in mind the fact that we used 130 indices and through that research device observed only a tiny segment of the reform processes the empirical picture certainly could be classified as discouraging and predominantly chaotic. Not surprisingly the EC has been at pains to come up with systematic, logically consistent and concise interpretation of the on-going events. Again for the sake of an eventual clarity we calculated correlation coefficients for all the cases observed were there were more than 15 entries for a particular index per country for the entire period of 6 years. This is what has been found.

2.3. Correlation of (dis)similarities

| Correlation coefficient: | Number of cases/indices | per cent |
|--------------------------|-------------------------|----------|
| From -1,00 to -0,68 | 2 | 3,0 |
| From -0,67 to -0,34 | 6 | 9,1 |
| From -0,33 to -0,01 | 8 | 12,1 |
| From 0,00 to 0,33 | 18 | 27,3 |
| From 0,34 to 0,67 | 17 | 25,8 |

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Romania under the Cooperation and Verification Mechanism, Brussels, 18.7.2012, COM(2012) 410 final, http://ec.europa.eu/cvm/progress_reports_en.htm, accessed 20.02.2013.

7 See app. 2. These are just two illustrations of the correlations registered.

| | | |
|-------------------|----|-------|
| From 0,68 to 1,00 | 15 | 22,7 |
| Total | 66 | 100,0 |

As it becomes clear from the data in the table above, nearly three fourths of these 66 cases where intensive developments have been monitored in both countries prove a positive correlation and nearly half of the cases prove strong positive correlation. Yet in about 12 per cent of the cases there has been found a strong negative correlation. The analysis is far from being finalized because in the course of the study the research team was surprised by an unexpected fact emerging from the documents – the specificity of the CVM itself whose weird character happened to be documented in the annual monitoring and evaluation reports.

3. *The astonishing first findings*

3.1. EC's wrong doings

Within the limits of the current paper we can not provide the full-length proof of the conclusions we have made in the process of our work. They are summarized in a report of 75 pages.⁸ Here are some major observations:

- The CVM is designed to instruct national authorities who would be willing to undertake fundamental and far-reaching reforms but just lack know-how, *avoiding to address the inevitable and comprehensive opposition to the reforms* as a major institutional and political framework of the problem tackled;

- It is too narrowly focused on the procedures of the report preparation and the monitoring, while *underestimating the methodology of practical cooperation* between the EU institutions and the national governments;

- Although it is called a cooperation mechanism, *it does not provide in practice for real policy partnership*, (exemplified by the attribution of the advancements to the account of the EC's pressure mainly and all failures to the account of the two national governments only⁹);

- Hence, there are many deficits, such as undefined scope and structures of the functional relations in the monitored areas; frequent blending of facts, emotional and ethic evaluations, normative statements and optimistic expectations within a single sentence or paragraph. Many substantial drawbacks derive from the *plentiful recommendations possessing hidden crucial prerequisites, which – if present – would make the recommendations themselves superfluous*.

8 Dimitrov, Haralampiev, Stoychev, Toneva-Metodieva – “The Cooperation and Verification Mechanism: A Shared Political Irresponsibility between European Commission and the Bulgarian Governments” (research findings from the project “The Role of Fight against Corruption in the Relations between the European Commission and the Bulgarian Governments 2007-2012”), (2013 in press).

9 See the two national reports from July 2012 for more details.

3.2. It is a matter of approach ... and partnership (ownership and involvement)

The CVM has been designed to monitor and evaluate the progress in “putting in place” the rule of law in Bulgaria and Romania through a long-lasting and comprehensive reform in all authority systems. It is intended to instruct the national Governments how to perform the reform policies in fight against corruption.¹⁰ But it has been caught by surprise by the fact that no such policies are really envisioned by the successive national governments and that systematic corruption resists successfully any real reform attempts. Within the framework of this far-reaching, omnipotent opposition to reforms some key shortcomings of the CVM became obvious: its goals could be achieved only through systematic public international pressure towards authentic political responsibility but the mechanism at present does not provide *legal grounds*, *legitimacy* and even *instruments* for such an accomplishment. The CVM is operational as a means of monitoring; it is somewhat dubious as a means of evaluation and certainly a flawed instrument for cooperation if the latter implies solidarity: a shared responsibility for the interests of the citizens of the EU and for the validity of the rule of law. If we take the EC’s statement that “Today’s European Union is highly interdependent”¹¹ seriously this means that the rule of law in the two South-Eastern countries concerns the welfare of all EU citizens and the functioning of the EU itself.

Conclusion: the necessity of tuning up the CVM

The initial aim of our research has to be postponed for a while. In the course of our study we found that the “optics” through which the Bulgarian and the Romanian societies are seen and politically monitored provides an aberration: the prevailing similarities of the two countries are due to this aberration and to the aloofness of

10 The problem of policy efficiency in fight against crime is not new and it is a matter of approach indeed: “*Transitions from corrupt regimes to regimes where ethical universalism is the norm are political and not technical-legal processes.*

...All good governance programs should be designed to promote this political approach: audits, controls and reviews should be entrusted to ‘losers’ and draw on natural competition to fight favouritism and privilege granting. No country can change without domestic collective action which is both representative and sustainable over time. The media, political oppositions and civil society should not be seen as non-permanent guests taking part in consultations on legal drafts but as main permanent actors in the process of anti-corruption and holding decisive seats in all institutions promoting ethical universalism.

...The failure of the anti-corruption conditionality is partly grounded in the lack of understanding of particularism as a regime of governance and in consequently selecting various implausible principals as main actors to change the regime”. (Contextual Choices in Fighting Corruption: Lessons Learned, p. 7)

11 See the reports for Bulgaria and Romania from July 2012.

the standpoint of the observer. They look as if similar a) to the extent they both (but not jointly) diverge from the basic EU principles and values and b) through the prism of their “common” failure to make qualitative progress. Yet the policy recommendations derivative from such a standpoint would never be productive. The CVM is designed as an instrument of the EC for providing support to the Bulgarian and Romanian Governments in order to overcome the fundamental political and institutional deficits, which would enable the rule of law. The latter is a necessary premise for guaranteeing the dignity and the interests, including quality of life, not only of the citizens in the two Balkan countries, but of all EU citizens. Given that the member-states of today’s EU are unprecedentedly interconnected, as the EC itself underlines, there would be no market economy, real representative democracy and civil rights at all, if “black zones” exist where other rules are in place, corruption is a cultural norm and political responsibility has no real sense.

Has, however, the six-year long application of this instrument achieved its goals? The usage of the CVM up to present shows a ‘mixed picture’, to use the Commission’s parlance. Undoubtedly there is a good will, devotedness and efforts invested by the Commission, not to forget the direct money investments in reforms, as well. Yet, what has been achieved is quite afar from the initially set goals. The mechanism is only partially successful – to the extent that it has not failed entirely. However, it does not meet the expectations because:

– It simply registers meticulously *the transformations in the resistance against the reforms* and against its goals which are different, in technical terms only, in Bulgaria and Romania (as is different their pace) while the common socio-structural pattern persists;

– It *legitimizes the imitation of reforms in anticorruption policies* through adoption of successive measures, varying in time but leading to no result in general.

The preservation of the CVM in its present form would lead to nothing more but escalating disappointment. Even further, the monitoring reports of the EC are turning into a source of political problems, since the mechanism itself possesses key drawbacks. Continuing the CVM would be meaningful only if its effectiveness drastically improves.¹² For that reason it should be substantially transformed into an *institutional mechanism for joint political liability to the results of its application*. Its new pattern of operation should *necessarily emerge as a result of a broad public European debate on the reason, the aims, the powers and the instruments*. It should lead to *stronger institutionalization of the pressure towards clear results in anticorruption policies for the protection of the interests of the European citizens and for fostering the integration processes in the EU*.

12 It is hardly a coincident that the findings of the International Advisory Board instituted by the Bulgarian Prime minister in 2009 to assess the severe problems of Bulgaria’s EU membership have been summarized in a report under the title *Bulgaria in the EU: Building a New Partnership...*

References

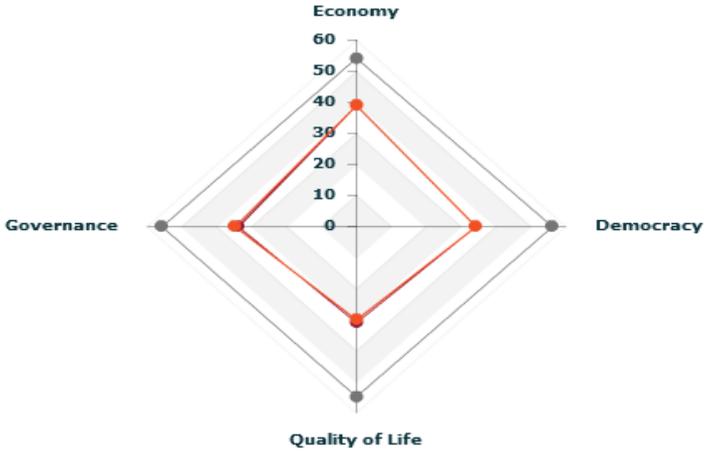
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Appendix 1.

Graphical presentation of the finding of the Catch-up Index survey for Bulgaria and Romania in comparison with EU-27 <http://www.thecatchupindex.eu/TheCatchUpIndex/>

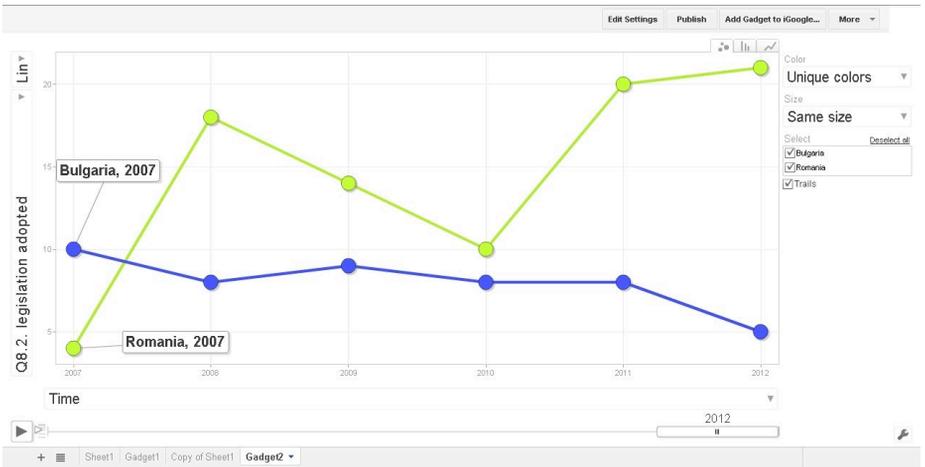
| Detailed statistics by indicator* | Bulgaria | Romania |
|--|----------|---------|
| Economy | | |
| GDP per capita in PPS with EU27 average =100 as a basis | 44.00 | 46.00 |
| General government debt (% of GDP) | 16.30 | 33.30 |
| Sovereigns credit ratings (10 is best and 0 is worst) | 6.90 | 6.57 |
| Employment rate % | 58.50 | 58.50 |
| Patents granted by USPTO per capita | 0.57 | 0.32 |
| High-tech exports as % of manufactured exports | 7.91 | 10.95 |
| Information and Communication Technology (10 is best and 1 worst) | 5.19 | 5.20 |
| Energy intensity of the economy (e.g. over 900 is a bad coefficient, below 100 is a very good one) | 853.77 | 588.93 |
| Motorways per area 1000 km ² | 3.94 | 1.39 |
| Motorways per 100000 inhabitants | 5.82 | 3.12 |
| Other roads per 1000 km ² | 171.53 | 344.20 |
| Other roads per 100000 inhabitants | 253.42 | 771.40 |
| Doing Business rank (e.g. 1 is best and below 180 worst) | 59.00 | 72.00 |
| Economic Freedom score (100 is maximum and 0 minimal freedom) | 64.70 | 64.40 |
| Democracy | | |
| Satisfaction with democracy % (100 is best and 0 worst) | 27.00 | 22.00 |
| Trust in people (10 is best and 0 is worst) | 4.10 | 5.50 |
| Freedom House democracy score (1 is best and 7 is worst) | 2.00 | 2.00 |
| Economist Intelligence Unit Democracy Index (10 is best and 0 is worst) | 6.78 | 6.54 |
| Freedom of the Press score by Freedom House (0 is best and 100 is worst) | 36.00 | 41.00 |
| Press Freedom Index by Reporters without Borders (e.g. 0 is best and 105 worst) | 74.34 | 84.21 |
| Voice and Accountability – WGI (100 is best and 0 is worst) | 62.56 | 61.14 |

| | | |
|---|--------|--------|
| Disrespect for human rights by Global Peace Index (1 is low disrespect and 5 high disrespect) | 2.00 | 2.50 |
| E-participation index (1 is best and 5 worst) | 0.03 | 0.08 |
| Quality of Life | | |
| Actual individual consumption with EU27 average =100 as a basis | 42.00 | 45.00 |
| Gini coefficient (e.g. over 35 is high inequality and below 25 is low inequality) | 33.20 | 33.30 |
| Relative median at-risk-of-poverty gap (%) | 29.60 | 22.20 |
| Long term unemployment rate | 6.30 | 3.10 |
| Share (%) of early school leavers | 13.90 | 18.40 |
| Share of population (%) with university degree | 19.40 | 11.90 |
| PISA score in reading literacy (e.g. over 500 is very good and below 300 is a very poor result) | 429.00 | 424.00 |
| PISA score mathematical literacy (e.g. over 500 is very good and below 300 is very poor result) | 428.00 | 427.00 |
| PISA score in scientific literacy (e.g. over 500 is very good and below 300 is very poor result) | 439.00 | 428.00 |
| Healthy life expectancy at birth in years (e.g. about 74 is very good and about 63 is bad) | 66.00 | 65.00 |
| Life expectancy in years (e.g. about 82 is very good and about 71 is bad) | 74.00 | 73.00 |
| Infant mortality by age of 5 (e.g. 3 is very good and below 10 is a very poor result) | 11.00 | 13.00 |
| EuroHealth Consumer Index (e.g. over 850 is very good and below 450 is very poor) | 456.00 | 489.00 |
| Human Development Index (1 is best and 0 is worst) | 0.77 | 0.78 |
| Governance | | |
| Corruption Perception Index – 10 (very clean) to 0 (highly corrupt) | 3.30 | 3.60 |
| Control of Corruption – WGI (100 is best and 0 is worst) | 52.15 | 53.59 |
| Political instability by Economist Intelligence Unit (1 most stable – 10 most unstable) | 6.00 | 6.40 |
| Political Stability and Absence of Violence – WGI (100 is best and 0 is worst) | 57.55 | 54.72 |
| Conflicts and tensions in the country 1 – most peaceful; 3 – least peaceful(selected Global Peace Index indicators) | 1.67 | 1.83 |
| Homicide rates per 100,000 population | 1.90 | 1.90 |
| Governement Effectiveness – WGI (100 is best and 0 is worst) | 56.46 | 50.24 |
| Regulatory Quality – WGI (100 is best and 0 is worst) | 71.77 | 74.16 |
| Rule of Law – WGI (100 is best and 0 is worst) | 53.08 | 56.40 |
| E-government development index (1 is best and 0 is worst) | 0.66 | 0.61 |

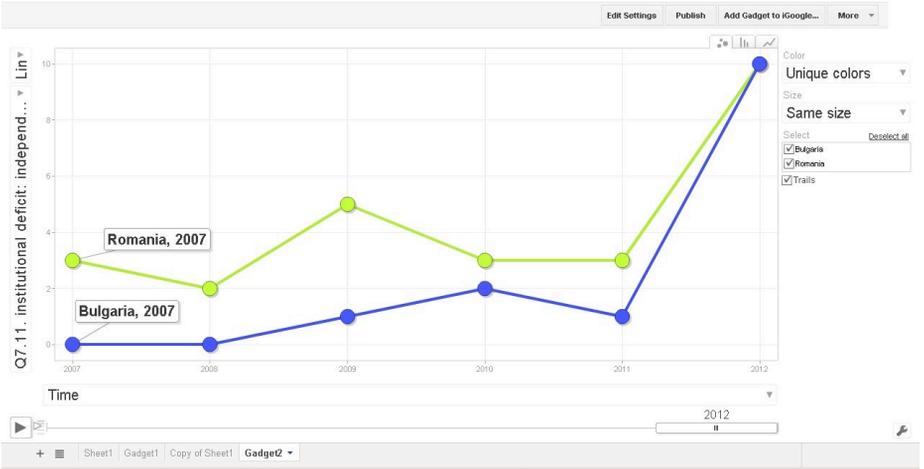


Appendix 2.

An example of a strong negative correlation between Romania and Bulgaria – levels of adopted anticorruption legislation by year.



An example of a strong positive correlation – institutional deficit: independent judiciary by year.



The statistical analysis and the visualization are carried out by Prof. K. Haralampiev.