

Unfinished Business? Eastern Enlargement and Democratic Conditionality



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36

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Contents

Introduction	1
EU Conditionality during Accession and Beyond	3
Romania's Compliance during Accession	7
Post-Accession Compliance since 2004	12
Conclusion: Post-Accession Romania	16
References	17

Enlargement is acknowledged as the European Union's (EU) most influential democracy promotion tool. While the accession process has undoubtedly helped push and entice Central and Eastern European (CEE) states towards democratic consolidation, its success has not been unqualified. Doubts remain over the depth of democratic norms in many CEE states. This can be seen particularly in Romania. Commonly regarded as the 'laggard' of the post-Communist countries, Romania did not qualify for accession in 2004 and became subject to a stricter application of EU political conditionality. In the latter respect, 'safeguard clauses' were operated against Romania (and Bulgaria) after entry negotiations were concluded; and, then, as a condition of allowing entry in 2007, a new sanctions regime was introduced involving a further extension of conditionality. But, while under such pressure, Romania succeeded in gaining EU accession at the beginning of 2007, the country's positive and cognitive adoption of democratic norms (what political theorists refer to as 'social learning') has so far been limited. Indeed, some such concerns are present also in two of the member states that were granted accession in 2004, Slovakia and Latvia. Crucially, such observations present challenges for how the EU can continue to contribute to deep, democratic consolidation in CEE states after accession. Sobering lessons can be drawn from this most successful of EU policies for democracy promotion strategy.

Introduction

On 31 December 2006 there were scenes of euphoria in University Square and elsewhere in the centre of Bucharest, where according to a foreign correspondent, 'tens of thousands counted down the seconds to midnight; fireworks then lit the night sky and Beethoven's Ode to Joy played while small groups formed circles and danced the Hora, a traditional Romanian folk dance'.¹ There were emotional speeches

at intervals during the evening, stressing the historical importance of this event. In particular, President Basescu touched on the widespread feeling in the country that Romania had been excluded from its rightful place in Europe after the Second World War; and he shouted, 'It was hard but we arrived at the end of the road; it is the road of our joy'.²

While also acknowledging this historic event, official voices in the EU were decidedly more cautious about the entry of Romania and also Bulgaria. They were concerned that this enlargement to the Eastern Balkans, following not long after the mega-enlargement of May 2004 to East-Central Europe, would challenge the EU's 'absorption capacity'. Attention to this was now a formal component of the EU's tougher enlargement policy since late 2004 under the new Commission of José Manuel Barroso with Olli Rehn as Enlargement Commissioner. Both Commission members asserted after the decision to admit Romania and Bulgaria in late September 2006 that there should be institutional reform (that is, resolution of the deadlock over the EU Constitution) before any more enlargements could take place.³

The decision had been taken to proceed with a 2007 entry for the two countries, rather than opt for a year's delay, but there were strong doubts about this among many member states. Even though a regime of sanctions was introduced, in effect extending conditionality into the first three years of membership, there were concerns that the authorities in the two capitals would relax now they had achieved their grand objective of EU membership. Such doubts were echoed in some circles in Bucharest where, for instance, the editor of the Romanian magazine *Eurolider* noted, 'Our politicians are doing their jobs only under pressure from the EU'.⁴ In particular, these concerns focused on the 'corruption, malfeasance and criminality still so blatant in public life', so that member states 'can see only trouble if these two poor Balkan applicants bring

¹ *Financial Times*, 1 January 2007.

² *Slovak Spectator*, 8-14 January 2007.

³ <http://www.euractiv.com>, 4 December 2006.

⁴ *Financial Times*, 1 January 2007.

with them into the Union a culture of corruption'. On the anti-corruption drive, it was further reported:

*The worry in Brussels is that much of the activity is designed simply to impress EU officials, with little political will to stamp out the culture of bribery or curb the mafia gangs who would take advantage of the new freedoms within the EU. There is a worry that after accession the two countries will have little incentive to continue a campaign that is dangerous and hard to enforce.*⁵

There was a sense that these two new member states from the Balkans were less prepared for the integration tasks ahead compared with previous enlargements. This mood of doubt and caution concerning these two countries was not new for it had followed their evolving record on conditionality matters during the accession process, that is over European political standards, economic reforms and 'the ability to assume the obligations of membership'. Notwithstanding this, elites in Bucharest looked to the EU as the essential anchor for the country's future development and for moving away from the past; although this more optimistic outlook had been punctured on occasions by severe criticisms from Brussels over conditionality failures and even some scarcely veiled threats to call a halt to the Romanian negotiations.

Pessimism about the follow-up to EU conditionality following accession has been expressed by some analysts. Looking back at the 2004 accession of eight post-Communist states from East-Central Europe, Sedelmeier identified a possible 'Eastern (compliance) problem'. He referred to factors that 'give rise to concerns that the application and enforcement of EU rules after accession will be problematic', including especially the changed incentive structure following entry.⁶ Two propositions have generally been presented

to explain non-compliance with international rules: that this is a government's deliberate strategic choice; or, alternatively, that it derives from involuntary defection due to limited state capacity.⁷

This working paper addresses such issues of possible post-accession non-compliance. It focuses on the EU's application of political conditionality to Romania. In Romania's case, responding effectively to the EU's political conditions proved notoriously arduous; hence pressures in the European Parliament to interrupt negotiations. Romania's record on compliance with democratic conditionality up to its accession in 2007 is discussed as a basis for judging what is still required during early membership. For comparative purposes, the record on following up political conditionality since May 2004 is considered with reference to the two new member states of Slovakia and Latvia. In this comparative light, the paper presents future scenarios for Romania's post-accession compliance with political conditionality.

Romania was commonly regarded over the past decade as the 'laggard' of Eastern enlargement, having already acquired a negative image in Europe in the earlier 1990s for a controversial, and for some years unclear, regime change of course after the fall of Ceausescu. There followed regular complaints from EU officials during the accession process of a marked disparity between rhetoric and action over conditionality matters. Is this negative reputation justified in the light of the country's record on political conditionality or did Romania in fact demonstrate any ability to adapt and change, as is required of candidate countries negotiating membership of the European Union?

⁵ *The Times*, 25 September 2006.

⁶ U. Sedelmeier (2006), 'Pre-accession conditionality and post-accession compliance in the new member states: a research note', in W. Sadurski et al. (eds.), *Après Enlargement: Legal and Political Responses in Central and Eastern Europe*, Fiesole: Robert Schuman Centre, European University Institute, 2006, pp. 145-46.

⁷ *Ibid.*, p. 148.

EU Conditionality during Accession and Beyond

EU political conditionality dates back to the early 1960s, when the then Economic European Community (EEC, now EU) found itself compelled to define its position in relation to certain Southern European countries interested in a closer link. This period may be regarded as a preliminary phase, for the 1990s saw several major changes in this conditionality's timing, scope and focus, and priority and procedures. Firstly, whereas the basic conditions for Southern Europe had been voiced when countries were still in transition, it took rather longer for conditionality to be pressed in the case of Central and Eastern Europe. By the time political conditionality came to be activated systematically in 1997-98 – with the Commission's *avis* on applicant states and the first of its annual Regular Reports on progress with conditionality matters – the CEE countries in question were already far down the road of democratisation, although not yet consolidated democracies. This restricted the impact of conditionality on first-order democratisation tasks.

Secondly, in its scope the EU's conditionality moved in the 1990s well beyond the (somewhat bland) formal democracy criteria utilised in previous decades into areas of substantive democracy. The Copenhagen criteria, as defined in 1993, covered the stability of democratic institutions, the rule of law and human and minority rights. These criteria reflected trends in the growing activity of conditionality in the post-Cold War world, such as a priority to minorities, and they included new attention by the EU to human rights. But, rather importantly, they were also introduced to reassure some member states that in going ahead with enlargement the EU's 'deepening' would not be endangered – a first reference to the question of the EU's absorption capacity.⁸

⁸ J. Smith (2003), 'The evolution and application of EU membership conditionality', in M. Cremona (ed.), *The Enlargement of*

Since then, the EU has also specified the strengthening of state capacity, the independence of judiciaries, the pursuit of anti-corruption measures and the elaboration of a series of particular human and minority rights, as well as introducing economic, social and cultural rights, such as those relating to trafficking in women and children, gender equality and prison conditions. These additions were made as of 1997, once the accession process started to move, and the first set of negotiations commenced in early 1998. Then, one consequence of the onset of negotiations was an increasing concern with administrative capacity in the CEE candidate countries to implement the *acquis*. The primary motive of the Commission here was to contain the envisaged greater implementation deficit after enlargement.

Thirdly, a new priority was accorded political conditionality, for satisfying this was locked into the accession process. One feature of the Commission's new conditionality approach in the 1990s was to insist that democratic standards are met before accession takes place (in contrast to the more relaxed approach in previous enlargements, notably to Southern Europe) and that the original Copenhagen criteria are met before membership negotiations are opened. This stricter requirement was influenced again by anxiety among member states over the future effects of enlargement on the EU's own capacity and cohesion.⁹ A particular emphasis was placed on the political over the other conditions at this decisive phase in accession; and that, of course, created an acute pressure on applicant countries to upgrade their response to them. Once negotiations began, the political along with the other conditions were monitored annually during the negotiations on the understanding that continuous progress in meeting them was necessary for eventual EU entry.

the European Union, Oxford: Oxford University Press, 2003, p. 113; U. Sedelmeier (2005), 'Eastern enlargement: risk, rationality and role compliance', in F. Schimmelfennig and U. Sedelmeier (eds.), *The Politics of European Union Enlargement: Theoretical Approaches*, London: Routledge, 2005, p. 130.

⁹ H. Grabbe, *The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe*, Basingstoke: Palgrave Macmillan, 2006, p. 29.

The principal exception to this new priority given the EU's political conditions came from other considerations affecting enlargement decisions by the EU. These could include other membership criteria, high politics or geopolitical considerations, and also individual member state pressures. A much quoted case is the decision at the Helsinki summit in December 1999 to include Bulgaria and Romania among the invitees to negotiate membership from early 2000 despite their failures, especially in Romania's case, to satisfy adequately the political and economic conditions.¹⁰ One should also refer here to limitations to the EU's political conditionality relating to the Commission's bureaucratic approach, expressed in its reluctance to engage with political actors like parties and those from civil society, not to mention the relatively short period in which it sought to instigate change in candidate countries.

Fourthly, much more elaborate procedures were introduced to the EU's political conditionality. This was because the main regular responsibility for accession and conditionality matters was concentrated in the Commission, which favoured bureaucratic methods. The Commission's routine control over enlargement was exercised through its conduct of negotiations with each candidate country and its responsibility for the annual Regular Reports on the candidate countries that monitored the various conditions in detail and which provided the basis for enlargement decisions by the other EU executive institutions.

To summarise, these four changes in the EU's political conditionality during the 2004 enlargement process amounted to a considerable development compared with before; and, they tended to reinforce the EU's leverage over countries seeking membership. By and large, this policy gave a priority to positive conditionality – pressure through tight monitoring combined with support mechanisms like the Accession Partnerships and Phare Democracy Programme projects – over negative conditionality. The latter

operated through the EU's power of denial (over opening negotiations) and its formal right at the final stage to refuse membership in the event of serious and persistent infractions of the conditions. During the 2004 enlargement process there was no easy procedure for calling a halt to negotiations, for this was slow and cumbersome, involving eventual referral to a decision from the European Council.¹¹ It was never in fact exercised although Romania's accession came at moments close to this possibility, initially over the lack of reform concerning institutionalised children (and then more at the behest of the European Parliament than the Commission) and later during 2004-2005, with the end of that country's negotiations in sight, over unsatisfactory progress with issues like judicial reform and fighting corruption.

With this experience in mind, the accession treaty of 2005 with Romania and Bulgaria contained the new idea of a 'safeguard clause' allowing for a one-year delay in the event of obligations not being implemented. In this way, Romania was subjected – as also Bulgaria – to the stricter approach of EU conditionality following the installation of the new European Commission under President Barroso at the end of 2004 and the replacement of Gunter Verheugen by Olli Rehn as Enlargement Commissioner. This approach included tighter provisions for benchmarking and a much easier procedure for interrupting negotiations, as written into the negotiating frameworks for Croatia and Turkey. This shift to more negative conditionality was driven partly by the emergence of 'enlargement fatigue' (heightened by the crisis over the EU Constitution from 2005) and partly by lessons drawn from the 2004 enlargement experience. It was felt in the new Commission that its predecessor had been too relaxed about implementation of the conditions, as indicated in a speech by Commissioner Rehn soon after assuming office.¹² Most saliently, the view was taken that Romania in particular had been treated too leniently.

¹⁰ European Commission, *1999 Regular Report from the Commission on Romania's Progress towards Accession*, Brussels, 1999.

¹¹ G. Pridham, 'EU Enlargement and Consolidating Democracy in Post-Communist States – Formality and Reality', *Journal of Common Market Studies*, 40: 3, 2002, p. 958.

¹² *Die Welt*, 10 December 2004.

Also, there were indications from inside Directorate-General (DG) Enlargement that Rehn wished to follow a tougher line on Romania especially to differentiate himself from his predecessor Verheugen.¹³ The result, therefore, was a new firmness towards Romania over conditionality in the final stage of accession.

At the December 2004 European Council, Barroso and Rehn opposed the scheduled ending of negotiations as premature in view of continuing disquiet over the political conditions (especially corruption but also authoritarian practices) and dissatisfaction with Bucharest's commitments over reforming state aids in particular.¹⁴ There followed heated discussions between the Council Presidency (held by the Netherlands), which wanted to end negotiations, and the Commission. At this point, Finland started to break ranks among the member states due to its strong views over the justice and home affairs chapter, arguing that closing just on the basis of commitments was not acceptable.¹⁵ The solution of this conflict was an agreement to operate a special 'safeguard clause' of eleven points over which Romania would continue to be monitored for the following year and a half. Thus negotiations were at last concluded.

This 'safeguard clause' amounted to an unprecedented extension of conditionality beyond the end of negotiations, since in the past this had ceased once the latter were concluded. According to the EU Ambassador to Romania, the 'safeguard clause' was 'intended to preserve leverage' on the part of the EU, for the thinking was that 'we need to find some instrument that will maintain pressure after the Treaty is signed'.¹⁶ While a 'safeguard clause' was also applied to Bulgaria – similarly providing for a possible delayed entry by one year to 2008 – that applied to

Romania was much tougher. There were more conditions imposed on Romania; but also the decision to activate the clause against Romania would be by qualified majority while that for Bulgaria was to be decided by unanimity. The clause provided for one year's delay in entry 'if serious shortcomings have been observed in the fulfilment by Romania of one or more of the commitments and requirements' relating to four specific items of the competition chapter and seven of the justice and home affairs chapter (including 'the acceleration of the fight against high-level corruption', which had meanwhile been included as an item in the *acquis* to reinforce its legal power).¹⁷

This extension of conditionality increased the uncertainty over the date of eventual accession, which in Romania touched on the raw nerve of national prestige. This is supposed to have the effect of upping the external incentive for an accession state.¹⁸ In December 2005, the European Parliament produced reports on progress with the conditions in both Balkan countries. Then, in May 2006, the Commission published monitoring reports on them; but a decision on an entry date (whether 2007 or 2008) was postponed until September when further monitoring reports were issued and January 2007 was chosen after all. Progress with meeting the conditions was noted – in Romania's case, with judicial reform and fighting corruption – but persistent concerns were still expressed over both issues. For this reason, it was decided to maintain pressure even after EU entry, with a new programme of benchmarks and sanctions (including the freezing of EU funds and the non-recognition of Romania's court decisions by other member states) in the event of relapses.

This background suggests that in Romania post-accession compliance with democratic conditionality remains an important issue. Academic work offers two competing perspectives on such compliance. One ('rationalist') explanation predicts problems with such

¹³ Author interviews, October 2005, Brussels.

¹⁴ *Financial Times*, 2 December 2004.

¹⁵ J. Scheele, EU Ambassador to Romania, author interview with, November 2005, Bucharest; D. Phinnemore, 'And we'd like to thank...: Romania's integration into the European Union, 1989-2007', paper to University Association for Contemporary European Studies (UACES) 34th Annual Conference, Zagreb, September 2005, pp 14-16.

¹⁶ Scheele (2005), op. cit.

¹⁷ European Commission, Press Information, *The Conditions to apply to the Postponement Clause: Romanian Case*, Brussels, 2005.

¹⁸ For more information see Schimmelfennig and Sedelmeier (2005), op. cit., Introduction and Conclusion.

compliance to the extent that conditional incentives no longer apply – the new regime of benchmarks and sanctions for Romania and Bulgaria may be seen as an attempt to replace those conditional incentives to some extent. A more optimistic ('constructivist') hypothesis predicts that habit and 'social learning' may turn the instrumental compliance with conditionality during accession into one of conviction based on European political values. The key point is whether such persuasion and identification, marginalised and superseded by conditional incentives, can come to the fore and 'acquire a causal impact on compliance' whereby 'social' instruments such as socialisation effects and peer-group shaming become influential with new member states.¹⁹

More concretely, four (not necessarily mutually exclusive) post-accession dynamics can then be envisaged:

(i) *Routinisation and Status Quo Bias*: This is a question of continuity established through habit that extends beyond EU entry and points to the possible durability of political conditionality. It argues that rules become set and political behaviour routinised through the practice of adaptation created during accession; and, that conditionality-induced change acquires some dynamic quality, so that the implementation of the conditions becomes (perhaps increasingly) difficult to reverse.

(ii) *Pressures for Reversal*: This hypothesis takes the view that 'impositional Europeanisation'²⁰ has its own limitations and risks, to the extent that the top-down political conditionality of Brussels during accession left little space and, for that matter, little time for value commitment to emerge. New member states, having not been involved in or consulted over conditionality matters, are no longer 'downloaders' of EU rules and, therefore, they may seek to overcome at least the less favoured conditions. It is assumed that the constellation of veto players changes somewhat after

EU entry and that it is not simply a problem of national governments making different strategic choices.

(iii) *Post-Monitoring External Pressures*: This suggests some continuity but with a more diffuse and less coercive situation in the absence now of the membership incentive. It is more diffuse in the sense that other pressures than direct monitoring of the political conditions assume an importance following EU entry. These may include formal constraints such as in the Treaty of Amsterdam (1997), which gave contractual force to European political standards and created a new procedure for dealing with a 'serious and persistent' breach of these by member states; but also sanctions written into accession treaties allowing for a form of post-accession monitoring at least for a restricted period (as is the case with Bulgaria and Romania) is another example. It should be noted here that some other international organisations continued to monitor new member states for a while on some of the political conditions, such as the Council of Europe on human and minority rights.

(iv) *Social Learning*: This is a question not so much of continuity as of a strengthening and even deepening of progress with political conditionality in the post-accession stage. There may occur changes in norms and beliefs, with a shift from instrumental to conviction-based behaviour on the part of the political elites; and, possibly too involving other actors relevant in one way or other with the implementation of conditionality matters and its effects. Added to this, the transnational socialising influences of early EU membership through working regularly and intensively in all the EU institutions and participating increasingly in European policy networks may inspire a new confidence, together with growing knowledge and understanding of European integration that favours a policy transfer habit, which directly or indirectly reinforces political conditionality.

¹⁹ Sedelmeier (2006), *op. cit.*, pp. 147 and 160.

²⁰ Goetz, 2005, p. 255.

Romania's Compliance during Accession

By the time political conditionality began to have an impact on Romania, the country had passed through a rather unclear post-Communist regime change, in the sense that the new ruling class up to 1996 was made up of partially reconstructed former Communists. Personified by President Iliescu, they pursued democratisation but with some reservations (as over economic transformation) and evidenced some reluctance in embracing pluralist politics. This meant that some aspects of regime transition continued into the period of closer relations with the EU.

The European Commission's successive Regular Reports on Romania from 1997 to 2004 tracked democratic standards in the country during the accession process, thus enabling patterns to be identified. While some conditionality difficulties were cross-nationally common among CEE candidates, notably difficulties with judicial reform and fighting corruption, various other problems were particular to Romania. These were either of degree (for example, Romania was continuously rated by Transparency International as the most corrupt country in Europe) or rather more unique problems. They included a marked slowness with economic reform (which also had a political significance in reflecting possible reservations about regime change), low state capacity and a weak policy-making environment, as well as the special issue of institutionalised children, which was treated in European circles as a reflection on the state of human rights. However, the picture conveyed was one of repeated criticism rather than qualitative improvement. To some extent this tendency was residual from the function of the Regular Reports continuously to prod candidate countries to 'get their act together' before accession could occur. Nevertheless, there were substantial reasons for

complaint in Romania's case, most notably the country's slowness in meeting European political standards.

Romania's difficulties of state capacity became an area of growing concern in Brussels during the country's accession process. While difficulties with administrative reform were also common in other CEE accession countries, their degree was more pronounced in Romania's case. The European Commission's *avis* on Romania in 1997 already identified the root problem here, and this reflected on the state of the country's bureaucratic elites:

The central administration is overstuffed. However, some ministries suffer staff shortages, particularly in the area of qualified personnel. Salaries in the private sector are much higher than in the public sector [...] The effectiveness of the civil service is also hindered by an unwillingness to take personal responsibility for decisions, with the result that these are passed too high up the chain of command, causing overload on senior staff, and delay.²¹

Problems that persisted through much of the accession period involved difficulties of coordination between ministries (a vital factor in managing accession business), a habit of repeated administrative reorganisation (this was due to political interference and in part also necessary to accession requirements, but it was generally inhibiting for efficient management) and a marked lack of continuity of personnel more than in most other CEE candidate countries (a special problem given the effort required to master EU affairs).

Anti-reform mentality was particularly strong in a national bureaucracy hostile to modern management methods. Thus, the theme of 'old state, new rules' had a special pertinence in Romania's case. This presented

²¹ European Commission, *Agenda 2000: Commission Opinion on Romania's Application for Membership of the European Union*, Brussels, 1997, p. 73.

serious obstacles to meeting the EU's own 'third condition' concerning administrative capacity or ability to cope with the demands of EU membership. It followed that progress with administrative reform was at best slow and rather piecemeal, as was noted in the Commission's Regular Report on Romania published in October 2005.²² Apart from inherent bureaucratic conservatism, such reform was not helped by the resistance of the Social Democratic Party (PSD) – in government during most of the negotiations period (2000-2004) – to abandon its effort to reinforce political control over the state machine. It was this politicisation, building on old habits from Communist times, which ultimately checked administrative professionalisation – notwithstanding fine-sounding strategies for administrative reform, such as civil service laws produced to please Brussels.

In the end, it was typically the pressure of regular direct contact with the EU over negotiations and other accession business that brought about limited change. Ultimately, inter-ministerial coordination improved although only at the top level, not at intermediate levels, so that 'everything goes up, then across'.²³ In particular, there was a noticeable improvement in working methods in those sectors of the administration – specifically, European integration departments in the different ministries – which were in regular contact with Brussels. In the case of the Ministry of Justice, the integration department became used to responding quickly to tight schedules set by the Commission and often working late 'so Brussels could have it early in the morning' while staff there were used to relying on computers (unlike the rest of the Ministry) and communicating in French and English.²⁴ Such developments led to the phenomenon known as 'islands of excellence', although some saw this as existing within an 'archipelago of incompetence'.²⁵ These

changes made for better management of the negotiations but they did not presage wider effects of improved governance.

It remains to be seen whether the everyday pressures of being an EU member state will eventually bring about the necessary change in Romania. However, one expert on administrative reform, employed previously as state secretary by the PSD government, said it was likely Romania would then face a management crisis inside the EU comparable to that experienced by Greece in its first decade of membership.²⁶

These limited improvements in state capacity were relevant to implementation of the EU's political conditions, for initially this was a matter of government response or initiative and legislation. But the overriding problem has been putting these conditions into practice. Here, the different conditions vary as to what factors – or, for that matter, what actors – are responsible. Thus, while some conditions are essentially dependent on institutional action, such as the stability and accountability of democratic institutions (or, changes like decentralisation with which Romania has been rather slow), other conditions depend on both executive action and behavioural or cultural compliance.

Throughout the accession period, the two most difficult examples in Romania of the EU's democratic conditionality were judicial reform and corruption. Although there were some belated improvements on both these fronts, they were still cited as an area for continued monitoring and possible sanctions by Brussels after EU entry in 2007. Both conditions were inherently complex. Judicial reform involved not merely changing professional structures but also dealing with a judiciary largely appointed under the Communist system and still subject to political influence under the country's post-Communist democracy. Judicial elites were not only innately conservative but also inhibited by a past pattern of political subservience.

²² European Commission, *Romania: 2005 Comprehensive Monitoring Report*, Brussels, 2005, pp. 10 and 21.

²³ M. Profiriou, Former State Secretary in the Ministry of Public Administration and Interior, author interview with, November 2005, Bucharest.

²⁴ S. Teodoroiu, State Secretary for EU Affairs, Ministry of Justice, author interview with, October 2003, Bucharest.

²⁵ Pridham (2005), op. cit., pp. 120-21.

²⁶ Profiriou (2005), op. cit.

Corruption was even more difficult a matter to confront effectively because it affected different layers of public life in post-Communist societies with political elites regarding the state and the economy as a reservoir for furthering personal or party-political interests. Above all, this problem concerned respect for the rule of law but it also affected other issues of reform, notably administrative and judicial, the professional operation of the public services (especially the health sector), the suitable conduct of post-Communist economic transformation and, in particular, the sincerity of the political elite (especially of the ruling PSD during the years of EU negotiations) to embrace reforms where they challenged embedded party-political interests in several ways. Therefore, the record of the PSD government over fighting corruption was a story of foot-dragging.

The Nastase government drew up the necessary plans and strategies to fight corruption at the insistence of Brussels. On the other hand, it repeatedly revealed a lack of will in forcing through change, not least because the ruling party's own patronage interests were at stake. The issue ran into domestic complications: the Anti-Corruption Agency – created under pressure from the European Commission and some EU member states – proved inefficient and costly in its operation, and was ultimately declared unconstitutional by Romania's Constitutional Court, most likely because it challenged some corrupt high rank politicians.²⁷ However, in the course of time, as the 2004 election approached with mounting scandals and growing public sensitivity to this issue, EU pressure over corruption began to have more effect. Nevertheless, in early 2006 the Romanian parliament resisted passing anti-corruption legislation, thus placing the reformist centre-Right government in an embarrassing position with regard to Brussels, which expressed outrage over this blatant act of parliamentary irresponsibility.

Implementation was the subject of repeated EU concern after negotiations commenced in 2000, and increasingly so as Romania's likely membership drew nearer. It is no surprise that the Commission has tended to be particularly interventionist over the political conditions with regards to Romania. In spring 2004, the EU Delegation in Bucharest, together with the Ministry of Justice, authored a major package of judicial reforms that was inspired by Western European ideas of judicial organisation, including an end to the political appointment of judges.²⁸ The European Parliament (EP) was more forwardly political than the Commission in its handling of conditionality matters, reflecting its different role as an institution. In February 2004, the EP report was harsh in its criticisms of Romania's record on the political conditions, casting doubts over the government's seriousness and once again adding pressure to suspend negotiations. Various measures were listed as necessary, including fighting corruption at the political level, implementing the independence of the judiciary, reinforcing the freedom of the media, ending ill treatment at police stations, and action on the moratorium on adoptions. On corruption, the EP demanded that 'first and foremost there must be the political will to eradicate corruption, for only this will lead to a change in attitudes'.²⁹

In November 2004, a clamorous scandal broke out when the full transcripts of a PSD executive meeting in 2003 were leaked to the press. These revealed various party leaders, including some in government, openly discussing ways of manipulating the judiciary and bribing journalists over this matter. Some of the crude language used about political manoeuvres was reminiscent of that on the Watergate tapes. One marked difference between the main political forces concerned the issue of fighting corruption, which by the end of Romania's accession emerged as the most difficult condition to implement. On both occasions upon coming to power, in 1996 and 2004, the centre-

²⁷ A. Mungiu-Pippidi (2005), 'EU enlargement and democracy progress' in M. Emerson (ed.), *Democratisation in the European Neighbourhood*, Brussels: Centre for European Policy Studies, 2005, p. 26.

²⁸ S. Moisa, Political Adviser, EU Delegation to Romania, author interview with, November 2005, Bucharest.

²⁹ European Parliament, *Report on Romania's Progress towards Accession*, 24 February 2004, pp. 5-7 and 16.

right parties made a major issue out of corruption. In the December 2004 elections, which led to the centre-right replacing the PSD in power, it was the primary concern because of the PSD's disinterested reluctance over fighting corruption while in office during the previous four years. At the end of the campaign, Basescu (the centre-right mayor of Bucharest, soon to be elected President) said provocatively in a television debate, 'We ask voters to give us a chance to pull Romania out of the hands of the mafia; it's time for a wind of change in Romania'.³⁰

Clearly, the centre-right saw political and electoral advantage in exploiting this issue – a case where partisan interests converged with an EU political demand – although elements of conviction were also present in their position. As President Basescu's foreign political adviser commented on the corruption issue, his 'motivation here is intrinsic; but the EU factor strengthens it'.³¹ The new Tariceanu government made decisive efforts with several of the political conditions at this late stage to meet Brussels' requirements for concluding the negotiations. However, it should be pointed out that the arrival of the new centre-right government coincided with the imposition of the 'safeguard clause' on Romania and Bulgaria at the end of 2004 – this had a significant influence on Bucharest.

There were some reservations in Bucharest at first over the 'safeguard clause', sensing that Romania was possibly being singled out for special treatment, although the official line was to emphasise the 'safeguard clause' as being based on 'realism and pragmatism'.³² Some in government circles, notably in the Ministry of European Integration, saw advantages in maintaining accession discipline up to the last possible moment. For instance, the Chief Negotiator, Leonard Orban, based in that Ministry, commented that the 'safeguard clause' was 'a useful instrument to

put pressure on other ministries; it's a question of maintaining the pace of reform'.³³ This outlook expressed an attitude among Romanian policy-makers most closely involved in accession business that European pressures helped to counter an inefficient state machine, thus reducing a domestic obstacle to achieving membership.

To complicate matters, the question of the 'safeguard clause' became linked somewhat to national pride and, what is more, featuring in media coverage. The author's elite interviews in Bucharest during November/December 2005 gathered a decidedly negative response to the idea of a year's delay in EU entry. The Chief Negotiator insisted that there were '25 arguments' against postponement, claiming this would cause 'huge problems' for Romania and would be 'very dangerous' by de-stabilising the government, blocking its activity and, in effect, halting preparations for EU entry. He also felt that Romania might be paying the price for the crisis inside the EU since the failure of the constitution.³⁴

As it happens, the 'safeguard clause' speeded up reform efforts in some areas, recalling previous immediate Romanian reactions when really placed under threatening pressure. This was most evident in the area of judicial reform where progress had stalled for some years until the EU directly linked it with the 'safeguard clause' in 2004.³⁵ The new departure over judicial reform owed much to the committed activism of the Minister of Justice, Monica Macovei, a former Non-Governmental Organisation (NGO) leader and human rights lawyer turned politician. Her un-hierarchical take on reform, which also had implications for fighting corruption, was that no-one would be above investigation. This relentless approach elicited rancour in establishment circles, but it had the relieved blessing of Brussels, thus strengthening this last-minute drive to

³⁰ *The Times*, 29 November 2004.

³¹ A. Ilinoiu, Foreign Policy Adviser to President Basescu, author interview with, November 2005, Bucharest.

³² L. Comanescu, Romanian Ambassador to the EU, author interview with, October 2005, Brussels.

³³ Leonard Orban, Romanian Chief Negotiator 2004-5, author interview with, November 2005, Bucharest.

³⁴ Orban (2005), op. cit.

³⁵ S. Parvulescu and B. Vetrici-Soimu, *Evaluating EU Democratic Rule of Law Promotion: Country Report – Romania*, Bucharest: National Association of the Romanian Bars, June 2005.

make several significant changes in the judiciary.³⁶ Among other things, the Justice Ministry adopted a revised strategy for judicial reform in response to the 'safeguard clause'. This included more effective measures and shorter deadlines with an emphasis on efficiency and accountability, and resulted in better coordination by the Ministry with the EU Delegation.³⁷ As a result, Romania now found itself exonerated over judicial reform.

But fighting corruption continued to be a complex resolve. The interpretation by the Commission of required action on high-level corruption was 'serious evidence that high-level corruption [was] being tackled', with a few notable cases at governmental or parliamentary level (known around Bucharest as 'big fish') 'on the way to prison', which would also be a warning sign to the public.³⁸ But, as the legal advisor to the Romanian President on anti-corruption noted, catching these 'big fish' was more of a political rather than a legal operation, since normal judicial procedures require operative proof, which in any case is rather difficult to obtain in corruption cases; and, they tend to last a long time – well beyond the schedule of the 'safeguard clause'.³⁹

When viewed in the EU context, Romania generally presented a complicated policy-making environment during accession. It is clear that EU enlargement is not as straightforward as suggested by those who emphasise this process as asymmetrical and top-down. This assumption is broadly true but, with regard to the implementation of conditionality, does not take sufficient account of domestic factors in candidate countries. In the case of Romania, political and party-political interests in particular came to the fore and inhibited implementation of some of the conditions, which in the most difficult cases included changing patterns of behaviour among other elites, notably

economic and judicial. In the end, EU pressures and persistence combined with the changing domestic situation to push through some changes at a late stage.

What lessons may be drawn from this country case of political conditionality? Above all, conditionality's prospects depended crucially on the dynamics of accession. The pressure on candidate countries to satisfy these and other conditions is relentless and takes full advantage of the leverage that Brussels enjoys over them of promising membership at the final stage. But, leverage notwithstanding, there was an understood (and sometimes expressed) trade-off between the EU's credibility on this matter and the readiness of prospective member states to produce change. In the case of Romania, this balance between the two more or less worked. However, Brussels' hand was strengthened by the extension of conditionality beyond the point adopted in the case of the 2004 enlargement.

In other words, persistent and at times interventionist EU pressure – more so than was generally true of the EU-8 that joined in 2004⁴⁰ – was the decisive factor in explaining Romania's compliance with and partial implementation of conditionality. Romania was by any definition a difficult accession case; but this was recognised early on and influenced the EU's policy towards that country. Overall, it is possible also to see in the Romanian case some sobering questions for the future. What will happen now that Romania has achieved its overriding objective of attaining EU membership? Will the new regime of sanctions work; or, will somehow Romania's governing elites relax compared with the exertion of the accession years?

³⁶ *European Voice*, 27 April-3 May 2006.

³⁷ I. Codescu, State Secretary for European Integration, Ministry of Justice, author interview with, November 2005, Bucharest.

³⁸ O. Simons, Counsellor EU Delegation to Romania, author interview with, November 2005, Bucharest.

³⁹ R. Vining, Senior Adviser to the Romanian Presidency on anti-corruption, author interview with, November 2005, Bucharest.

⁴⁰ Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia.

Post-Accession Compliance since 2004

Indicators from the new member states that joined the EU in 2004 present a rather mixed picture on post-accession follow-up to political conditionality. To some extent, there is cross-national variation; but there is also a significant variation according to the different political conditions. As a whole, evidence of a post-accession dynamic developing over conditionality matters, deriving from advances made during accession, is not overwhelming; a clear picture of social learning from the experience of conditionality during accession has yet to appear. However, over some of the conditionality issues other actors, notably NGOs, have assumed a role of pressure agents. Moreover, there is no general pattern of backtracking aside from some national-specific cases like Poland and Slovakia over political control in their civil services, which occasioned a concern that these two countries were 'collapsing into old practices'.⁴¹

The record of two new member states on post-accession compliance – Slovakia and Latvia – provides a useful comparative perspective. Neither of these two countries had an easy accession and both experienced rather complicated democratisation paths, although for different reasons if contrasted with Romania. Using bilateral comparison of these two countries, conclusions can be drawn with respect to the four possible post-accession dynamics presented above. The discussion concentrates on those two difficult EU political conditions (judicial reform and fighting corruption) where Romania proved wanting for most of its accession period.

(i) *Judicial Reform*: While external pressure was provided by the Commission's Regular Reports up to

2002, the essential will to reform came from ruling elites in candidate countries. In *Slovakia*, the main drive for reform came from the two successive Justice Ministers in the reformist Dzurinda Governments of 1998-2006, Jan Carnogursky and Daniel Lipsic. There is an obvious comparison here with Romanian Justice Minister, Monica Macovei, although in the Slovak case the reformist ministers were in office for much longer. Both ministers were committed reformists and benefited from the determination of their own party (the Christian Democratic Movement, KDH) to fight corruption and make the judiciary transparent. At first checked by some internal coalition reservations, this commitment factor was eventually decisive in carrying through judicial reform even after the Commission stopped monitoring it in late 2002.⁴²

Thus, while the EU was important in agenda-setting and providing bureaucratic pressure, the sustained momentum for this reform came mainly from within Slovakia. As a result, judicial independence was instituted through a constitutional amendment in 2001 with a new Judicial Council; Special Courts were created to try major corruption and organised crime cases; and a new system in the administration of justice and criminal law was re-codified. Furthermore, each year new judicial appointments were made thereby gradually reducing the proportion of Communist-era judges.⁴³ Altogether, much progress was achieved in the first half of the 2000s; but the 'purification' of the judiciary remained incomplete on EU entry. The various achievements still needed to be consolidated focusing on systemic changes and developing human resources.⁴⁴ The new Fico Government, elected in 2006, showed rather less sympathy than its predecessor towards judicial reform. Its Justice Minister, Harabin had, as a major figure in the judiciary, been hostile to reform. One of his first

⁴² K. Staronova, Slovak Governance Institute, author interview with, May 2005, Bratislava.

⁴³ R. Prochazka et al. (2005), 'Rule of Law, Legislation and Application of Law', in G. Meseznikov and M. Kollar (eds.), *Slovakia 2004: A Global Report on the State of Society*, Bratislava: Institute for Public Affairs, 2005; Daniel Lipsic, former Slovak Minister of Justice, author interview with, September 2006, Bratislava.

⁴⁴ R. Prochazka et al. (2005), op. cit., in Meseznikov and Kollar (2005), op. cit., p. 144.

⁴¹ *The Economist*, 2 December 2006.

initiatives was to propose abolishing the Special Courts although this encountered controversy inside the coalition.

In *Latvia*, there was a marked slowness in addressing judicial reform. However, in 2004 new administrative courts began operating with the aim of relieving and speeding up the work of other courts.⁴⁵ These new courts introduced a new cadre of judges who were recruited in a competitive way and were often young, thus largely free from the Communist experience.⁴⁶ Judicial independence was based on article 83 of the Constitution and a law on judicial power, as well as buttressed by several international human rights treaties. But there remain weak points regarding the financing of courts (still under the Ministry of Justice), the general selection of judges and the quality of judges appointed for life, not to mention periodic attempts by the executive to influence the judiciary on specific cases. A court administration was created in 2004 to create self-government for the judiciary; but this remained under the supervision of the Justice Ministry. Thus, a full separation of the judicial and executive powers has not taken place.⁴⁷

Sustained political will was less present compared with Slovakia. There was one reformist Justice Minister in the 2002-2004 government, led by the New Era party, who was supportive of this reform and also of fighting corruption. This government change, together with the EU's persistent push for change, eventually bore fruit, albeit mainly after Latvia's accession was decided in late 2002. Reforms have included a new criminal code and new criminal procedures in 2005, a law on judicial salaries and pensions in 2006, with further efforts at shortening court proceedings and improving access to courts, as well as provisions for legal assistance and

judicial training.⁴⁸ In other words, judicial reform did not stop with EU entry. The accession process had created a certain dynamic but, essentially, the drive for reform came from individual ministerial commitment and was facilitated by a campaign on this issue by the committed quality newspaper, *Diena*.⁴⁹ As for Slovakia, it remains to be seen how much further progress will consolidate the changes and overcome the remaining defects of this reform.

(ii) *Fighting Corruption*: Both countries received severe ratings from Transparency International along with Romania during the accession period, these three being identified (together with Turkey) as the most corrupt in Europe. A tenacious problem affecting the political will for change was close and often corrupting links between the political class and economic interests. This varied somewhat cross-nationally within CEE; and, as mentioned above, was especially pronounced in Romania.

In *Slovakia*, EU influence was transmitted through new policies and establishing new agencies. The reformist drive of the second Dzurinda Government (2002-06) produced some results in two ways: a series of direct measures to fight corruption; and, especially, positive indirect effects from reforms of public finances (leading to a decline in corruption in the banking system, for example), of the judiciary and of the health care system.⁵⁰ Consequently, Slovakia's corruption ratings have improved in the past couple of years. But, since the country's accession the fight against corruption can no longer exploit the EU card. According to the head of Transparency International Slovakia, this has made a real difference to its work, for a new attitude is evident in Bratislava, including among top politicians, of relaxing over the issue.⁵¹

⁴⁵ A. Kucs and G. Feldhune (2005), 'The Rule of Law and Access to Justice', in Commission of Strategic Analysis and Advanced Social and Political Research Institute, University of Latvia, *How Democratic is Latvia: Audit of Democracy*, Riga: University of Latvia, 2005.

⁴⁶ V. Terauda, Providus Centre for Public Policy, author interview with, July 2005, Riga.

⁴⁷ Kucs and Feldhune (2005), op. cit., in Commission of Strategic Analysis and Advanced Social and Political Research Institute, University of Latvia (2005), op. cit., pp. 37-38.

⁴⁸ I. Juhansone, Deputy State Secretary in Ministry of Justice, author interview with, July 2006, Riga.

⁴⁹ Juhansone (2006), op. cit.; A. Ozolins, columnist for *Diena*, author interview with, July 2006, Riga.

⁵⁰ E. Sicakova-Beblava (2006), 'Transparency and Corruption', in M. Butora et al. (eds.), *Slovakia 2005: A Global Report on the State of Society*, Bratislava: Institute for Public Affairs, 2006, p. 611; E. Sicakova-Beblava, President of Transparency International Slovakia, author interview with, September 2006, Bratislava.

⁵¹ Sicakova-Beblava, author interview with, September 2006, Bratislava.

Since EU entry, a lack of urgency has been evident and most ministries have reduced their activity in this direction. Accordingly, some promised reforms have lapsed over conflict of interests; while some areas like party-political corruption have remained largely untouched.⁵² Although the media has come to play a relevant part in advertising concrete corruption cases, the outlook after three years of EU membership remains somewhat uncertain since the results so far have been mixed.

In *Latvia*, the picture is somewhat different. While the political class has apparently been more involved than in Slovakia in corrupt practices, the anti-corruption agency established under the EU and other outside pressures has developed into an independent actor and has become rather more assertive than its Slovak equivalent. The EU was decisive in both putting corruption on Latvia's political agenda from 1997;⁵³ and, in pressing for the creation of the Corruption Prevention and Combating Bureau (KNAB). According to one of KNAB's senior officials, 'if there had not been accession to the EU, I don't think politicians and government would have been so keen to act'.⁵⁴ Nevertheless, this agency took long to set up. Nothing much happened before the election in September 2002, with the various parties adopting delaying tactics. It was the new Repse Government (2002-04), led by a brand new party committed to the issue of corruption, which finally made a real effort, so that from February 2003 the new agency was fully operational.⁵⁵ In short, during the accession process EU pressure set the agenda but did not in fact bring about much actual change except for the agency's creation. In the words of one Latvian expert on corruption, politicians in that country 'followed EU pressure legally, institutionally but not politically'.⁵⁶

However, the establishment of KNAB at the end of the accession period turned out to be the real starting-point for change; and, it has led to some important results with new laws and action in corruption cases.⁵⁷ A momentum developed owing to the activism of KNAB, the complementary role of Delna (Transparency International Latvia), the commitment of Repse's party, New Era, in government until 2004, public pressure through speeches by the state president Vike-Freiberga, and the role of exposure played by the media.⁵⁸ The media helped to raise the independent profile of KNAB and to keep corruption on the political agenda.⁵⁹ For instance, the daily newspaper *Diena* lobbied hard for changes such as appointing a General Prosecutor.⁶⁰

Taking the first three years of EU membership, the cases of Slovakia and Latvia show there has been no uniform pattern. Further progress on conditionality matters has been rather variable cross-nationally, as well as between the different issues. There have been similarities between the two countries, such as in the difficulty of rooting out corruption even under persistent external pressure. But there have also been some differences between Slovakia and Latvia, as over progress on judicial reform, largely explained by the timing of reformist commitment. By and large, this analysis confirms, in hindsight, the overall importance of EU conditionality's impact during the accession process, notwithstanding its defects. In particular, it seems that it is the nature of European/national interactions that counts where political leaders may or may not seize the opportunity to push for change with European backing. And, even where the EU's main achievement was formal with the creation of new structures and an enlarged statute book to buttress the conditions, this could be important as a framework for subsequent action following accession.

It is noticeable in several instances that real progress only began towards the end of the accession process,

⁵² Sicakova-Beblava (2006), *op. cit.*, in Butora et al. (2006), *op. cit.*, pp. 623-24.

⁵³ R. Karklina, expert on corruption, author interview with, November 2006, Riga.

⁵⁴ D. Kurpniece, Head of Public Relations, Corruption Prevention and Combating Bureau (KNAB), author interview with, July 2006, Riga.

⁵⁵ *Ibid.*

⁵⁶ Karklina (2006), *op. cit.*

⁵⁷ L. Cigane and R. Karklina (2005), 'Minimizing Corruption', in Commission of Strategic Analysis and Advanced Social and Political Research Institute, University of Latvia (2005), *op. cit.*, p. 125.

⁵⁸ Kurpniece (2006), *op. cit.*; Karklina (2006), *op. cit.*

⁵⁹ Kurpniece (2006), *op. cit.*

⁶⁰ Ozolins (2006), *op. cit.*

for sometimes domestic factors were at work in slowing down change. This is true of judicial reform in Slovakia and of confronting corruption in Latvia, although in the former's case there were some signs of backsliding on the same issue after accession.

Altogether, the fears of the rationalists about unfavourable conditions for post-accession compliance have not so far been justified. At the same time, the hopes of the constructivists cannot yet be supported. The dynamics of the accession process, which did much to carry forward conditionality, have obviously disappeared. What has followed instead is a more diffuse situation regarding pressures for change. Given this mixed picture, it is suitable to comment as follows on the Slovak and Latvian cases, in the light of the four hypotheses:

(i) *Routinisation and Status Quo Bias*: There is clearly a status quo factor. New structures and agencies created to satisfy Brussels during accession have remained in place and, depending on their actual performance, they may continue to provide a pressure point for further action on political conditions. This is also true of the legislation carried out for the same purpose. Also, there is some evidence of EU initiatives bearing belated fruit after EU entry. One might add that being a member state often exposes a country to more media glare in other member states as well as at home.

(ii) *Pressures for Reversal*: There has been no overall pattern of this happening over conditionality matters. There have only been some ad hoc examples so far where domestic pressures have enjoyed more political space after EU entry. The anti-reform intentions of the new Slovak Justice Minister in 2006 are a blatant example. Such episodes are worrying, but more time is needed to establish whether they portray real patterns of reversal.

(iii) *Post-Monitoring External Pressures*: Here pressures have become more diffuse. Some other international actors have continued for a while to monitor certain conditions (such as the World Bank's

reports on administrative capacity in the new member states); but they have lacked the power of the EU's pre-accession leverage. The effects of transnational networking as a channel for elite-level peer pressure within the EU have yet to be seen.

(iv) *Social Learning*: In several instances, there was an element of late accession or post-accession political commitment to introducing reforms. These included judicial reform in Slovakia and fighting corruption in Latvia. Such examples demonstrated the importance of committed reformist ministers, with EU backing and some help from the media. However, social learning at a deeper level than that of the elites is probably necessary to complete the process of change sought by the EU's political conditionality. Nevertheless, this requires much more time.

In short, EU enlargement is, in terms of its domestic effects on accession countries, a continuing process that stretches beyond the point of actual entry. As political conditionality shows, accession-induced change did, as a whole, achieve sufficient progress upon which to build further. But the post-accession picture so far is more complex than that imagined by both the rationalists and the constructivists. It is one where direct pressures are diminishing and indirect pressures – coming from full engagement with the EU from inside – continue to grow.

Conclusion: Post-Accession Romania

If some uncertainty reigns over EU entrants of 2004, then that is all the more true of Romania, one of the two entrants of 2007. Cross-national and cross-issue variation, apparent already in post-accession compliance, is likely to be further demonstrated by this country. However, using lessons from the bilateral comparison of Slovakia and Latvia, and looking back at Romania's record on conditionality during accession, it is possible to project different future scenarios by applying again the four hypothesised dynamics on post-accession tendencies.

The EU employed extreme leverage in Romania's case, including veiled threats to interrupt negotiations followed by an unprecedented extension of conditionality not only up to the moment of accession but also beyond it. This illustrated that Romania was the most difficult of the accession countries, including those of 2004, although Bulgaria encountered more conditionality problems in the final year before accession. This suggests that external incentives were really crucial in driving compliance with conditionality. Insofar as the sanctions matter to Bucharest, notably over closed access to EU funds, one may expect some continuation with compliance due to such external pressure.

Several broader lessons can be drawn from the Slovak, Latvian and Romanian cases. Firstly, there are inherent difficulties with the implementation of some of the EU's political conditions due to either elite reservations or problems of wider or deeper behavioural adjustment. This means that satisfactory compliance requires, in the best of circumstances and at the very least more time, reaching into the early membership period. Fighting corruption is the issue most demonstrative of this problem. Secondly, political will and capacity are a central factor. Here, Romania has been weaker than the two

forementioned 2004 entrants, due to restricted commitment on the part of the PSD government and also deficient state capacity. However, the change of power in 2004 did open the way for a reformist drive to emerge, particularly over judicial reform. Ministerial commitment from reformers is a vital factor, but the disposition of party interests may either inhibit or facilitate this. Thirdly, there is the turning-point syndrome whereby pre-accession pressures from the EU produce such a change, as in structural or legislative frameworks, that it creates new initiative space for further reform efforts outside the political elites.

The second and third lessons were in essence stressed in the European Commission's monitoring report on Romania in September 2006 on the basis of which 2007 entry was at last granted. Certain concerns were expressed about both judicial reform and fighting corruption. On the former, it noted, 'a consistent interpretation and application of the law at all levels of courts throughout the country has not yet been fully ensured [...] further efforts are needed to [...] create legal certainty'; while on corruption 'there needs to be a clear political willingness of all political actors to demonstrate the sustainability and reversibility of the recent positive progress [...] the reforms led by the Ministry of Justice and DNA [National Anti-Corruption Directorate] need to be complemented by sustained efforts from all other executive agencies, the legislature and the judiciary'.⁶¹

Hence, with respect to future scenarios for post-accession compliance in Romania:

(i) *Routinisation and Status Quo Bias*: This is likely to occur with the less complicated conditions, such as the stability of democratic institutions, but could also embrace judicial reform given the significant efforts made by Bucharest in the final stage before accession. Serious questions remain, however, over fighting corruption because of an evident lack of consensus across the political class and also because new

⁶¹ European Commission (2006), *op. cit.*, pp. 34-35.

structures and NGO activity in this area have been weaker than in the Latvian case, for example. Furthermore, Romania has lacked the general reformist drive exemplified by Slovakia where important reforms in other sectors had an indirect impact in reducing corruption.

(ii) *Pressures for Reversal*: Given the feeling of 'impositional Europeanism' in Bucharest, one may expect some trend along these lines. This might be worsened by existent party-political reluctance to embrace genuine reforms, although there are differences between the main parties in this regard. This points especially to the PSD when in government during accession, so the reversal question will be most relevant if and when it returns to power. Changes in power in some other new member states have opened the way to reversal efforts, although counter-influences are likely to come from within the EU. In Romania's case, reversal efforts on particular conditions could present a serious problem and this would conflict with the country's interests, which are vulnerable to the sanctions regime.

(iii) *Post-Monitoring External Pressures*: The main point here is that Romania (with Bulgaria) is subject to further monitoring under a new sanctions regime. This obviously lacks the heavy leverage enjoyed by Brussels with the membership promise but such extended conditionality could be significant in compelling further progress. As the poorest member state, Romania would find the blocking of EU funds a painful experience.

(iv) *Social Learning*: There has been little evidence of this, for one needs more examples like that of the reformist drive shown over judicial reform to counter a prominent political cynicism in Bucharest during the accession process. Much depends on the composition and commitment of the current and successive

governments in the next few years. In any case, this is the most long-term of the four scenarios.

Altogether, the case of Romania still inclines more towards the rationalist than the constructivist argument about post-accession compliance, indicating the continuing importance of external pressure in propelling change. Any further progress brought about by the sanctions regime would probably confirm this conclusion. At any rate, whatever scenarios transpire during early membership, Romania is very likely – based on past experience – to take longer than other member states from Central and Eastern Europe to complete real compliance with the EU's political conditionality.

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