



International Organizations and Democratization Models--The Case of EU Accession of Romania

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**International Organizations and Democratization Models
The Case of EU Accession of Romania**

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International Organizations and Democratization Models

The Case of EU Accession of Romania

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Abstract:

The paper reviews some aspects of Romania's democratic consolidation in the context of EU accession process. The core idea is that the accession process of Romania, as a "problematic case", represents an experimental laboratory for innovations in the EU conditionality methodology to be applied on future "problematic" candidates. The recent EU practice of pushing the political conditionality to its limits, and the promising results, generated a precedent which will certainly become ordinary rule for the next enlargements.

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The paper begins with a short mentioning of the importance of EU as a democratizing agent in Europe and World wide. With the Enlargement, EU has proved its vocation as a world democratic "pivot".

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The second section provides some background explanations for the characteristic of Romania as a problematic case in the context of the 5th Enlargement. Considering the initial extremely poor ratings given on Romania's chances for democratization it is very interesting to follow its *cursus honorum* up to the status of member in one of the most exclusive democratic clubs. The right mix of ``carrots and sticks`` from the part of the Union, combined with political will and European vocation from the part of the candidate were the ingredients of this magic.

The third section reviews some particularities of EU political criteria for Romania. The issues of minorities, children rights and rule of law related reforms are tackled.

The fourth section focuses on the significance of accession negotiation stage for the conditionality effectiveness in determining the speed and depth of reforms. This is the stage when the ``Europeanization`` machine is reaching its peak, due to the specific typology of the accession negotiations. Chapter 24-Justice and Home Affairs receives a particular attention as being directly related to the political criteria. This chapter has been one of the most difficult and the last to be concluded by Romania.

The fifth section of the paper is dedicated to the ``novelties`` in the conditionality which were brought in the context of negotiating the last chapters: competition and justice and home affairs. The paper explains that it was in the context of the formidable tension for concluding the negotiations in time that the Commission found the opportunity to refine its conditionality ``recipe`` with new ingredients in the form of the ``pre accession safeguard clauses``. This stands as evidence of Commission's skill and creativity in adjusting its instruments.

The sixth section shortly tackles the issue of transparency and public involvement in the EU accession context with a particular focus on the negotiations phase, when some reforms with negative social impact were to be taken. The advance in the transparency and the level of public involvement represented a concrete step forward in terms of democratic consolidation.

The administrative capacity horizontal criterion is approached in the seventh section. It is explained that, like in all the other candidate states, the public administration reform in Romania followed a rather formal top-down approach, without consistent impact in terms of performance. At the same time, the negotiations phase brought a change in the way the ``Europeanization`` has been perceived in Romania as the authorities finally understood that the EU accession process largely represents the management of domestic transformation and not a sophisticated diplomatic exercise with Brussels.

The eighth section shortly reviews the limits of Brussels driven Europeanization, respectively the

excessive ``top down`` approach resulting in formal institutions, the lack of conceptual clarity of its criteria and the issue of exporting the Community ``democratic deficit``, which is brought along by the ``fussier`` analysts.

The paper concludes with some reflections for the present and prospective candidates based on Romania's experience as a ``problematic`` case. It is stressed that in the Balkans and especially in the Black Sea Area the Union will face the challenge of providing the right mix of ``sticks`` and ``carrots`` in order to achieve conditionality leverage with ``Europeanization`` effect. The accession process will be more gradual while the Union will have to provide sufficient interim benefits and credible perspectives in order to keep the target countries within its reforming gravitational power. The paper emphasizes the direct link between the accession horizon and conditionality efficiency. The case of Romania shows that EU obtained maximum leverage power after the accession date has been within reachable horizon. Thus, the theory that the conditionality is decreasing when an accession date is set has no empirical support as Romania and Bulgaria offer evidence for the opposite. When a candidate sees the shining ``carrot`` within touchable distance it will do anything to complete the final leap. For the Black Sea cases where the EU member states are reluctant to commit even to a remote accession date, which consequently means weaker conditionality leverage, the paper suggests a smaller but tasty ``carrot``: the Schengen visa free regime. The ``visa free regime`` might sound more appealing and tangible, and more worth the effort of accelerated reforms, than a fuzzy and remote ``peace of the Internal Market`` perspective.

Finally, the paper reviews some other formulas experienced in the course of the 5th Enlargement like: ``the group therapy``, the progressive inclusion in Community programs, the Synergy between European and Euro-Atlantic integration and the importance of the ``bilateral dimension`` with the key Member States.

1. EU – A World Democratizing Pivot

In Europe, the last decades have produced strong empirical evidence for the regional organizations influence over regime change. A variety of regional organizations like the Council of Europe, OSCE and NATO, together with a myriad of international non governmental organizations, concurred to the establishment of stability and democracy in the former communist countries. Among all of these democratizing actors, the European Union has proved to be the most persistent, articulated and influential. Although the European Union has been sometimes known to adjust its commitment to democratic conditionality

with respect to third countries on the basis of strategic and economic interests, especially when dealing with Russia or China, it has been far less willing and able to do so in the context of the enlargement project. The fulfillment of the political criteria genuinely represented a *sine qua non* condition for membership. Through the Enlargement, EU became an active world democratic ``pivot``¹.

This veritable “gravity model” for democratic consolidation has exercised its influence in Central and Eastern Europe first through ``contagion`` and ``socialization`` and later, in the ``contractual phase``, through the accession process ``conditionality``².

What distinguishes EU membership from that of the Council of Europe or OSCE is that the full membership is sufficiently attractive in terms of comprehensive security and prestige to make the accession conditionality a functional instrument of transformation in the target countries.

2. The case of Romania

Among the EU candidate countries from Central and Eastern Europe, Romania has proved to be a more difficult case due to various reasons: a more hesitant and gradual approach in early transition reforms, periods of political and economic crises, insufficient foreign direct investment, a more ``Byzantine`` political and economic culture and a more peculiar geographical position comparing with the ``frontline`` Central European states.

The case of Romania is also characterized by other specific particularities: the

¹ See Amichai Magen., *EU Democracy and Rule of Law Promotion: the Enlargement Strategy and its Progeny*, Working paper, Center on Democracy, Development, and the Rule of Law, Stanford Institute for International Studies, November 2004.

² ``Contagion`` has been manifest in early years of the transition and is characterized by the voluntary, non-contractual initiatives taken by countries from Central and Eastern Europe to assure the convergence with EU model. ``Socialization`` has been a continuing phenomenon even after the entering into contractual relations with EU. It represents the influence exercised by EU through multiple activities as well as personal and institutional contacts

legacy of one of the toughest national communist dictatorships in Europe which made impossible any attempt of pre-1989 privatization or ``Perestroika`` reform style as was the case in other Central European countries.

Therefore, Romania's poor ratings in 1989 on generally accepted parameters for the consolidation of democracy (including prior democratic experience, civil society, level of economic development, external environment, mode of transition) led Samuel Huntington to designate this country on an equal footing with Sudan, as the two countries with the worst chances for democratic consolidation. Considering this rating, it is quite clear that some transformations took place in Romania from 1990 to April 2005, when the EU Accession Treaty has been signed.

EU Conditionality

In the European Union, conditionality developed from a minor policy tool used in a limited way in agreements with third countries and development assistance, to become the main pillar of EU enlargement and the most successful tool of EU foreign policy.

``Conditionality`` basically implies that the EU is phasing assistance, ranging from economic, political and institutional incentives to full membership on the condition that, the previously set, political and economic objectives are met.

As for the content of conditionality, the EU moved in the later 1990s well beyond the formal democracy criteria going into areas of substantive democracy. While the Copenhagen criteria as defined in 1993 covered the human and minorities rights, stability of democratic institutions and the rule of law, EU conditionality has also since then come to specify the strengthening of administrative capacity and the pursuit of anti-corruption measures.

EU Conditionality and Romania

In the case of Romania, until 1995, when the Government officially forwarded its application for membership, the ``EU conditionality`` has not been firmly embedded in the political discourse. While the EU political standards were introduced rather smoothly in Central Europe through ``contagion`` and

“socialization” in early ‘90s and to a limited extent as an effect of “conditionality” (except Slovakia), in the case of Romania, the “conditionality” instrument became visibly effective only in the moment the accession prospects were clearer, starting with the 1997 Luxembourg Council and the 1999 Helsinki Council which decided the beginning of the negotiations process. Clearer accession prospects were further given in 2000 at Nice European Council and in December 2002 at the Copenhagen Council when Romania’s, self assumed, 2007 accession date has been politically “supported” by the Member States, providing that all the conditions will be met by that date. This was also the moment of releasing the Brussels designed “road maps” for tackling the remaining priorities which meant a new stage of “guidance” and conditionality.

Like in the case of other EU accession candidates, in Romania, the contractual relations with the EU, starting with the years of the Europe Agreements, took place when the basic democratic criteria and institutions were, at least formally, already in place³. Therefore it is more appropriate to talk about the multilevel democratic “consolidation” in the context of EU accession⁴.

Regarding the “conditionality” leverage, all Romanian governments and the Parliament were responsive enough to the EU “stick” to secure a steady place of Romania on the accession track. By the end of 1997, in its first Report, the Commission concluded that, generally, Romania fulfilled the political criteria, the necessary condition for obtaining the official candidate status and entering the actual process of accession. Since then we can consider that the “consolidation” phase of Romania’s democracy begun.

3. Coping with the Political Criteria – The Specificity of Romania

³ Legitimate institutions resulting from free elections and the respect for human rights

⁴ In general, democratic consolidation involves the stabilization, routinization, institutionalization and legitimation of patterns of democratic behavior (a 10-15 years process). See R. Gunther, N. Diamandouros and H-J. Puhle (eds.), *The Politics of Democratic Consolidation: Southern Europe in Comparative Perspective* (Baltimore: The Johns Hopkins University Press, 1995).

The basics: minorities and human rights issues

With Romania's population of almost two million ethnic Hungarians, 6.6 % of the population, improved relations with Hungary was a prerequisite to Romania's European (and Euro-Atlantic) integration. On democracy and human rights issues, EU established as benchmarks the Council of Europe's standards and expected all its partner countries to respect the Council's charters and conventions.

In this context, Romania's admission to the Council of Europe in October 1993 has been perceived as a gateway to wider European integration. Consequently, Romania could claim that its human rights record was beyond reproach. Soon afterwards though, by admitting Croatia and Russia, membership of the Council of Europe began to lose its prestige.

The efforts to protect minorities rights in Central and Eastern Europe have received a consistent support through the EU initiated ``Stability Pact`` in 1993. The consolidation of borders and support for minorities rights in Eastern Europe were to be secured by the signing of a system of bilateral treaties of friendship and good neighborliness. EU assistance programmes like the PHARE Democracy have been used to reinforce the Stability Pact with financial incentive. Romania also signed the European Charter for Regional or Minority Languages on July 1995.

Under the pressure to comply with the EU political criteria and with the (1995) official application for membership under careful scrutiny from Brussels, the Romanian authorities issued in the first half of 1997 two emergency ordinances, amending a controversial 1991 Local Administration law and the 1995 Education law (to allow national minorities the right of education in their mother tongue at all levels from primary to university education). In fact, more than 100 governmental emergency ordinances were issued in rush less than a month before the first EU "Report" in 1997 which may rise question marks over the ``quality`` of EU induced democratic consolidation. But back then it was all a matter of speed.

In the same context it has to be taken into consideration that, in the period 1996-2000 and since 2004, the political representatives of the Hungarian minority were directly involved in the governance exercise, having assigned

state-secretary and ministerial seats up to the current deputy prime minister position. Furthermore, due to its very diligent and compact electorate, the Hungarian minority has continuously been a powerful presence in the Romanian Parliament

As regarding the Roma minority, the Romanian Government released a ``National Strategy for the Integration of Roma`` and has introduced “positive” discrimination measures for the education of Roma children. Other measures like training police officers in dealing with the Roman minority were taken. However as being a matter of mentalities and perceptions changing, both from the part of Roma minority and the Romanian society in general, it is quite clear that the concrete outcome of these measures will appear only gradually, on a longer perspective, a view which is also shared by Brussels.

The Child Protection issue

An issue singular for Romania has been the harsh, embarrassing and highly visible situation of Child protection system inherited from the former Communist Regime. From the start, the EU applied pressure on Romania to make changes in the child welfare system. After several failed reform efforts, by 1997 the Romanian government was prepared to try again. The reform strategy emphasized decentralization, putting the responsibility for children in the hands of local counties. As part of the 1997 reform effort, the corrupt system of adoption was reorganized. Due to constant negative reports from Brussels, a new ``The Government Strategy Concerning the Protection of the Child in Difficulty`` was completed and approved in May of 2001. Under the direct pressure from European Parliament’s Foreign Affairs Committee, which urged the suspension of Romania’s EU membership negotiations if the government failed to resolve the long-standing problem of institutionalized children, in June of 2001, the Romanian government placed a moratorium on international adoption which has been meant to remain in place until the system was sufficiently reformed. The EU has emphasizing domestic adoption, family reunification, and small group homes replacing large institutions, the international adoption being seen as the last resort.

Here we have to underline the inconsistency between the European Parliament and European Commission positions, on the one hand, and the opposing signals and pressures coming from the Member States. The constant persuasion

coming from some Member States, for allowing ``exceptions`` from the international adoptions moratorium and the flexibility of the Romanian authorities had unexpectedly thrown the EU accession process into a serious crisis in 2004.

Thus, around the end of accession negotiations, when the emotions related to political criteria seemed to belong to the past, a major warning signal came from Brussels, more exactly from the European Parliament which issued a very critical Report on Romania. A motion asking for the ``reorientation`` of the negotiations was attached to the report. This Report was the result of the fact that, after political pressure from Rome, the Romanian Government pushed through a long-delayed adoption of 105 Romanian orphans by Italian families. The European Commission has been particularly angry because the deal broke the three-year EU-inspired moratorium on international adoptions. The crisis have been finally solved through the usual declarations of commitment from the Romanian authorities, a total ban on the international adoptions and the usual display of immediate ``to do`` implementation lists. Nevertheless, the issue of Child protection, through its sensitivity, continue to shadow the image and integration endeavors of Romania.

The Rule of Law issues: Independence of the Judiciary System

In the case of Romania, European Commission has repeatedly expressed ``serious concerns`` about judicial independence and called for ``comprehensive reform``. Legal adaptation to EU standards might have occurred in many areas, but they were showing practically no effects, since enforcement has been chronically handicapped by a widespread mental resistance to change.

The revision of the Romanian Constitution, process which started after 2000, had given a legal base to the creation of an independent judiciary following EU standards. The country was now undergoing the task of full restructuring and reorganization of its justice system. This entailed the creation of a ``Superior Council of Magistrates``, with elected judges over which the Minister of Justice would have no direct control. In choosing this organizational structure, Romania mirrored the practice of the French and Belgian systems. In the same context, the establishing of the ``National Institute for Magistrates``, independent of the Ministry of Justice and reliant on its own budget, is supposed to be the best solution for preparing a new generation of magistrates.

Romania's new Criminal Code, adopted in June 2004, has entered into force in June 2005, anchoring among other things, the legal base to determine criminal liability for legal persons and providing safeguards to guarantee freedom of expression.

The Rule of Law issues: The long standing ``corruption`` problem

Like other transition countries from the area, Romania needed a ``critical mass`` of legal and institutional framework to mount a full scale attack on corruptive practices. Transparency laws, conflict of interest legislation and anti-corruption institutions to monitor developments were crucial underpinnings of an institutional approach to limiting corruption. Consequently, ``A National Anti-Corruption Strategy`` has been released and a ``National Anti-corruption Prosecutors' Office`` was set up in 2003.

In order to achieve faster compliance with the EU criteria on the field, the government in Bucharest has resorted to a rather risky but speedy procedure of law adoption, namely assuming responsibility before Parliament for an entire ``Anticorruption Laws Package``.

Thus the progress on institution building and legislative adoption has been quite evident while the implementation element was less convincing for Brussels. The figures presented by the National Anticorruption Prosecutors' Office (a couple of thousand solved cases) did not impress the Brussels authorities who were expecting the tackling of ``big corruption`` cases. Therefore this level of mistrust and the pressure to conclude the negotiations in time determined the inclusion of a ``postponement clause`` into the Accession Treaty.

4. Accession negotiations and EU conditionality

During the accession negotiations the big ``Europeanization`` machine has

reached its momentum⁵. The specific typology of the accession negotiation process assured the structural character of the transformation process in all candidate states. This is due to the fact that the 31 negotiation chapters (now 35) cover practically all the societal and economic areas and there is little, if any, compromise in adopting the EU norms.

Chapter 24-Justice and Home Affairs (JHA) has been one of the most difficult to be closed. Romania had to prove not only the creation of an institutional framework and the availability of the necessary financial resources to make it operational but also there was to show an effective implementation record. This acquis chapter deals with issues in the area of rule of law and justice administration, law enforcement standards, police cooperation, the fight against organized crime, anti-fraud and corruption, customs. In fact Chapter 24-JHA has been the last to be closed (together with the competition chapter) and it was decisive for the timely conclusion of the whole negotiation process (finalizing the negotiations until the end of 2004 was essential in order to secure the 2007 accession date).

Although, except for Chapter 24- JHA, there are no chapters dealing expressly with the political criterion, as it has to be generally fulfilled well before the negotiations are started, it can be said that the majority of the negotiation chapters contain elements tangential to the democratic and ``rule of law`` functioning of a country⁶: Chapter 1. Free movement of goods includes public procurement rules; Chapter 2. Free movement of persons includes citizen's rights and modernization of social security provisions; Chapter 4. Free movement of capital, deals with issues in the area of fighting money-laundering; Chapter 5. Company law, includes corporate governance rules, accounting auditing and IP rules; Chapter 6. Competition policy, deals also with provisions assuring a healthy business environment; Chapter 11 Economic and Monetary

⁵ The concept of Europeanization has traditionally been used in order to assess the impact of EU governance on the member states' domestic environment. Europeanization can be defined as ``a process of construction, diffusion, and institutionalization of rules, procedure, paradigms, styles, ways of doing and shared beliefs and norms, formal and informal, defined and consolidated first in the decision-making process of the EU and then incorporated in the logic discourses, identities, political structure and policies at the domestic level`` (C. Radaelli, *Whither Europeanization? Concept Stretching and Substantive Change in European Integration on line Papers* (EioP) 4:8 2000).

⁶ See Amichai Magen.

Union deals also with the issue of the independence of the Central Bank; Chapter 13 Social Policy covers, among others, child labor, equal pay and non-discrimination at work; Chapter 20 Culture and audio-visual policy includes provisions related to the broadcasting in minority languages; Chapter 21 Regional Policy is supposed to have a clear impact on the decentralization of public administration. Chapter 28 Financial control, deals with the institutional framework for effective combating corruption and financial fraud.

5. ``Novelties`` in the Conditionality: The Safeguard Clauses

The special postponement clause

Towards the end of the accession negotiations, when the political will of most Member States was converging towards closing the Romanian and Bulgarian cases, the European Commission has been looking for instruments to keep a strong leverage over the reforms path in these two countries after the ``glorious`` moment of concluding the negotiations and signing the Accession Treaty. Meanwhile, for concluding the negotiations, the Commission had to conciliate the more reluctant Member States, especially their parliaments, that the two countries will continue their preparations and their membership will be not a compromise from the part of EU (especially when it comes to political criteria). Thus, the ``pre accession safeguard clauses`` emerged as a clever instrument designed by the Commission in order to keep an effective pressure on the candidates and to conciliate the worries of some Member States. ``Post accession safeguard clauses`` do exist in the treaties of the ``first wave`` of candidate states, but the pre-accession ``super clause``, allowing for the postponement with up to one year of the accession date, has been especially designed for Romania and Bulgaria, as more problematic candidate states, and stands as evidence of Commission's adaptation and creativity⁷.

Thus, the atmosphere at the end of EU accession negotiations is very suggestive for the conditionality pressure to determine the path, depth and speed of reforms in a candidate state. In the case of Romania, which struggled to reach the target of concluding the negotiations by the end of 2004, the

⁷ Art 39 of the Bulgaria and Romania Accession Treaty

Brussels negotiators seized the momentum to considerably strengthen their leverage power by introducing an amendment according to which the postponement clause can be activated through qualified majority voting in the Council rather than unanimously as in the case of Bulgaria. Under the time pressure, the Romanian negotiators had to accept it. Most of the sectors which may trigger the postponement clause are related to Justice and Home Affairs area (rule of law, combating corruption).

A one year delay of the accession may bear considerable political costs for the government in power, as well as financial costs, in terms of lost opportunities⁸.

The Commission further refined its conditionality ``recipe`` by adding other gradual ingredients like the practice of issuing "early warning letters" preceding the eventual use of the ``postponement clause`` and yellow and red ``little flags`` in its regular reports in order to signal the faulty sectors which need maximum concentration from the part of the candidate/acceding state. It seems that the accession process of Romania and Bulgaria represents an experimental laboratory for innovations in the conditionality instrument to be applied on future ``problematic`` candidates (as are presently all those queuing at the doors of the Union)

Needles to say, the new forms of conditionality where soon the bring results in Romania. On tackling ``big corruption`` in one year Romania has considerably improved its ``Big Fish`` implementation/``catching`` record with the (former) president of the Chamber of Deputies and former prime minister, for members of the government and nine members of the Parliament being investigated for corruption. In this sense, since the introduction of the special postponement clause, with a humiliating QMV activation possibility, Romania has overtaken Bulgaria in accession preparations. Thus, it is a sign that under the EU pressure, the 2003-2004 ``formally`` created anticorruption institutions are starting to become functional.

Delaying the ``Moment of Truth``

The Commission was due to release on 16 May this year a monitoring report on Romania and Bulgaria accession preparedness, including a final

⁸ A 1 year delay for the access to the EU Structural instruments in real terms will signify a lose of about one million euro per day.

recommendation on activating or not the postponement clause. The tension rose to the maximum in Bucharest and Sofia but in the end, in a surprising move, the Commission decided to postpone the decision until October, keeping the maximum leverage power over the acceding states for another four months. The report was emphasizing the progresses as well as the last essential corrections to be made (4 little red flags and a 30 yellow ones still remained). By destroying the summer holiday of Romanian and Bulgarian officials, the Commission showed a tough stance which certainly pleased the Member States and the European Parliament⁹. It also added additional pressure coming from the ratification process of the Accession Treaty, some of the Member States declaring that they will expect the final recommendation of the Commission. In addition, through this move, the Commission eventually succeeded to gain some time to reflect on innovating new post-accession conditional elements to be brought along with the ``green light 2007`` expected in late September. This practice of pushing the conditionality to its limits has created a precedent which will certainly become ordinary rule for the next enlargements.

The case of Romania showed that the EU conditionality has maximum efficiency after an accession date has been on the visible horizon (politically supported since December 2002 and endorsed in December 2004). When a candidate state receives a possible accession date, the ``carrot`` is shining there, within touchable distance, and the candidate will do anything to complete its final leap. Furthermore, as demonstrated above, in the acceding period, with the safeguard clauses, the EU leverage has never been stronger.

Our conclusion comes in sharp contrast with that of some specialists who state that ``EU conditionality...effectiveness decreases sharply when the accession date is set``¹⁰.

The post-accession clauses

Mechanisms to influence the reform patterns of Romania post-accession exist, but they are much weaker compared to the conditionality applied prior to accession and it remains to be seen how effective they will prove to be¹¹.

⁹ The Romanian Parliament announced two extraordinary sessions in July and August in order to push the adoption of the legislation related to the red and yellow flagged domains.

¹⁰ See the paper of Steunenbergh and Dimitrova, *Compliance in the EU enlargement process: Institutional reform and the limits of conditionality*, Leiden University, July 2005.

¹¹ For a comprehensive view on the issue see: Gergana Noutcheva, *Bulgaria and Romania's*

There are three provisions in the Accession Treaty that provide the legal basis for taking protective measures against Romania (and Bulgaria) in matters of the economy, the internal market and in the area of justice, for three years after accession. These safeguard clauses are mentioned in the Accession Treaties of the new member states from Central and Eastern Europe too. The economic safeguard clause provides the legal basis for taking protective measures against a member state (old or new) in the case of temporary economic difficulties experienced by one or more sectors as a result of the inclusion of new members in the single market.

As for the permanent instruments valid for all the members, on the rule of law, the EU Treaty provides the legal basis for sanctioning the faulty member states (Art. 6 and 7 of the Treaty)¹².

6. Transparency and public involvement

The accession negotiations, although perceived as being a process reserved for an ``elite`` of government officials and civil servants, due to its social and political implications, induced an enhancement in the level of public involvement and transparency. In the case of Romania this characteristic has been evident compared with the previous period. A consultation framework mechanism has been established with political parties, business associations, trade unions and NGOs. The representatives of the political parties, business groups and civil society had the occasion to give their opinion and suggestions on the negotiation positions documents of Romania. These documents became official only after the completion of the consultation process with the civil society and the social partners.

In terms of the quality of political dialogue, all the political forces engaged to support the governmental strategy related to European integration, irrespective of the domestic power configuration. This European style consensus offers a very different image from the street clashes of early `90s.

Accession to the EU: Postponement, Safeguards and the Rule of Law, CEPS Policy Brief, No. 102/May 2006

¹² The legal provisions allow for suspension of the voting rights of a member state government in the Council, a decision that can be taken by qualified majority

7. Horizontal criteria: the Administrative Capacity

This area is of particular importance for the overall progress in the accession process as it directly relates to the concrete implementation of the EU legislation. The findings of the successive EC Regular Reports were that the Romanian public administration is characterized by cumbersome procedures, a lack of professionalism and inadequate remuneration.

Romania's institutional problem has several typical aspects: a high overall number of ministries, a high level of instability of agencies, especially those in charge with co-ordination and, as a result of the institutional proliferation, a certain degree of overlapping and ambiguity in the co-ordination structures. Cutting down bureaucracy has been always among the priorities, but for social and political reasons, very few public institutions were ever rationalized.

As in the case of other candidate states, the public administration reform in Romania has followed a rather top-down approach. At the same time, paradoxically, the compliance with the EU requirements on adopting the status of the civil servant and the establishment of a professional civil service lead to the perpetuation and consolidation of the old and inefficient apparatus which got their positions permanentised by law. Thus, according to the current legislation it is almost impossible to fire a mediocre civil servant.

Furthermore, on the same critical note, the various training projects under the Phare Program targeting the state administration were largely formal and superficial. There is no illusion that after attending a three week (about 5 -6 class sessions) general course on EU affairs, a civil servant cannot suddenly turn ``European``. Nevertheless both the Romanian and Brussels statistics are mentioning thousands of newly ``European certified`` civil servants.

On a more favorable note, the institutional management of the accession negotiations brought a change in the way the ``Europeanization`` has been perceived in Romania. The authorities finally understood that the EU accession process largely represents the management of domestic transformation and not a sophisticated diplomatic exercise with Brussels. Consequently, the management of negotiations was passed from the Ministry of Foreign Affairs to the newly created Ministry of European Integration which coordinates the work

of the state secretariats for European integration established at the level of each sectoral ministry. Besides the fundamental ``home work``, diplomacy, especially the political deals struck at bilateral level with key Member States, had its own role in pushing forward and speeding the negotiation process, but only after a ``critical mass`` of reforms has been undertaken.

8. The limits of Brussels driven ``Europeanization``

Throughout this paper the influential role of EU as a democratizing agent in Romania has been persistently stressed and now its time to mention that this role has been certainly not perfect. The limits of Brussels driven democratization have been emphasized in the last years especially by the representatives of civil society and academia who are generally tempted to criticize any ``top-down`` approach. The representatives of the government as well as the EU technocrats had less time to look into the subtleties of democracy theory as they had to concretely focus on their ``mission impossible``.

The major critical aspects which are generally emphasized are the following:

A Lack of conceptual clarity

The Commission has never reached conceptual clarity on what constitutes a consolidated democracy despite the persistent use of the term in its annual Regular Reports.

The definition of ``human rights`` at the EU level remains incomplete. The Union's understanding or definition of the concept of "human rights" has never been elaborated exhaustively in any legally binding text. Furthermore, its Charter of Fundamental Rights remains a legally non-binding declaratory text. Thus, the European Union's human rights criteria in the framework of enlargement, whether included in the Copenhagen Conclusions, the Commission's Regular Reports or in the Accession Partnership possess political, not legal value. Therefore, such criteria are vulnerable to subjective understanding.

Asking the candidate states to comply with insufficiently defined standards has generated problems especially on the reform of the judiciary systems. Here it could be observed a lack of a coherent theory of judicial independence. The

absence of a uniform EU model and the corresponding lack of a consistent scheme of evaluation of the performance of different models have led to occasional problems in the enlargement process.

Forms without substance

Brussels showed that its approach to democratic conditionality is rather formal and bureaucratic. As governance reforms have been almost entirely oriented towards a top-down approach, on the short term, the outcomes were limited to changes only in formal structures. A good illustration of this is to be found in the civil service reform, largely formal and deprived of both incentives for change and the ability to differentiate between promoters and opponents of change¹³.

Exporting the Communitarian ``democratic deficit``

The pressure on the candidate states to create in no time new institutional and legislative frameworks has favored the executive institutions over the parliamentary ones, which is reflected by the extensive use of Government Ordinances to keep the path with the reforming path and legislative harmonization demanded from Brussels.

9. Conclusion – Reflections on Romania's experience

It is quite clear that the new countries aspiring for future membership will have to face tougher conditions and scrutiny. Concerning all criteria, implementation and enforcement will be the key. The experience of Romania showed that when it comes to the basic political criteria, the EU is quite agnostic. Can the experience of a ``problematic`` case like Romania be used to guide other countries reform path and accession strategy?

In the Balkans, it seems that the EU ``conditionality`` will give results only if

¹³ For a very critical view on EU democratization strategy in the enlargement context see Alina Mungiu Pipiddi, *Shapes in search of substance. European enlargement and democratic performance*, Center for Democracy and the Rule of Law, Stanford University, 2005

there will be a clear perspective of accession and a precise timetable for the receipt of interim benefits such as additional aid and political support. Therefore, on its side, the Union will face the challenge of providing the right mix of ``sticks and carrots`` in order to achieve the ``Europeanization`` effect in the region.

As for the Black Sea area, EU has to be more creative in managing its conditionality. Considering that the new European Neighborhood Policy (ENP) is a diluted version of enlargement, the difference in leverage is fundamental. In addition, compared with the actors of the 5th Enlargement, the ENP countries are starting out at much lower points of democracy, human rights and rule of law.

In many senses, the success in transposing modernization reforms through market integration in countries who are not subjects of accession, will give the measure for the universality of the EU model.

One of the most obvious facts, which results from the experience of the ``problematic`` second round of the 5th Enlargement, is the evolution of conditionality methodology which will affect the future enlargements. Bellow there are some reflections based on the above statement:

A more gradual accession process

The breaking of the enlargement process into gradual stages has been an important innovation in the context of the 5th Enlargement. In past enlargements, there would be relatively fewer stages. All of the multiple sub-stages of the enlargement process have conditions attached to them. Thus, the present and future candidate states can expect an even more drawn out process with more stages.

The importance of detailed "road-maps" for reforms

The ``road maps`` for fulfilling the remaining reforms where a great 5th Enlargement invention. Through the ``road map``, provided to Romania in December 2002, the Union showed clearly its expectations and the candidate could better schedule its priorities.

For the future enlargements the Union might consider providing these ``road maps`` much earlier in the accession process or even releasing them before the

candidate states ``NPAs``(National Program for the Adoption of the Aquis). It has to be considered that, in countries willing to undertake changes but suffering from weak state institutions and poor capacities for policy formulation, the Union has to enhance its ``guiding`` role.

Gradual yet clear timetable for interim benefits and the ``final prize``

The ``stick and carrot`` mechanism, in order to function, must be perceived by all actors involved as a mutually advantageous arrangement. In parallel with increased gradualism and tougher conditions, the Union must offer sufficient interim benefits and credible perspectives to its official and unofficial candidates in order to keep them within its reforming gravitational power.

Here we have to underline the importance of an accession timetable: the leaders of the candidate states need to be convinced that, at some point in time, they will be admitted to the Union, otherwise there is little reason to accelerate the process of hard and difficult domestic changes.

Accession horizon and conditionality efficiency

The case of Romania shows that EU obtained maximum leverage power after the accession date has been on the horizon. It is interesting that the confirmation of an accession date itself has been transformed in a gradual process. First, the candidate is fixing itself a technical date of accession as a reference point for the required reforming process and pushes for the confirmation of this date by the Union. A technical accession date is particularly important in the context of negotiations when the substance of talks is focusing on the transition periods which start after the presumed accession date. Then, by accepting to negotiate on the base of a technical accession date suggested by the candidate, the Union offers a hint that the respective date might be confirmed . The next step is the ``political support`` provided by the European Council for an accession date if the candidate showed enough commitment with its reforming timetable. The last step is the firm confirmation of an accession date which is to be enshrined in the accession treaty. Even then, as the Romanian experience shows, the European Commission can give additional strength to its conditionality leverage power by imposing pre-accession safe guard clauses to make sure the candidate is fulfilling all the requirements.

The theory that the conditionality is decreasing when an accession date is set has no empirical support as Romania and Bulgaria offer evidence for the opposite. With the ``postponement clause``, the conditionality effect has never been stronger than in the acceding period.

For the cases when the EU member states are reluctant to commit even to a remote accession date, the European Commission came with an innovative solution: open ended negotiations (for Turkey). Although it is not the ideal solution for assuring the speed of transformation, the Union safely keeps its gravitational power over the candidate. This might become a generalized procedure for future candidate states: negotiations which might not necessarily lead to accession or full membership. For the potential subjects of this procedure, this might be an acceptable solution as it is better to be in the process (with the pre-accession financial support) rather than outside.

A smaller but very tasty ``carrot``: Schengen visa free regime

A big accomplishment for the Romanian government has been the granting of the Schengen visa free regime by the EU Member States from the 1st of January 2002, in exchange of reforms and strengthened cooperation in the Justice and Home Affairs sector. For the ordinary citizen being part of Europe means first of all the freedom to travel.

Thus, for countries without a clear accession horizon, like some of those from the Western Balkans and especially those which are subject of European Neighborhood Policy, where the EU lacks sufficient incentives in order to insure the functionality of the conditionality instrument, the visa free regime might be the small equivalent of membership. This ``carrot`` carries sufficient consistency and visibility in order to be traded for deeper reforms in the area of ``democratic consolidation`` in countries surrounding the EU27. Not least, for those left outside, the ``visa free regime`` might sound more appealing and tangible, and more worth the effort of accelerated reforms, than a fuzzy and remote ``peace of the Internal Market`` perspective.

The ``Group therapy`` matters

The experience of the 5th Enlargement showed that ``the group therapy`` matters from the point of view of conditionality effectiveness as the target

countries will compare each others evolutions and will compete for obtaining faster the Brussels favors, which increases considerably the speed and depth of ``Europeanization``. For a prospective candidate state, especially for a more ``problematic`` one, joining a group of similar or better prepared countries is also a rewarding move. If they effectively coordinate, a group of countries can achieve aggregate negotiating power in relation with the EU. The smaller and weaker states can benefit of the deals obtained from EU by the more influential candidates. Thus, countries like Moldova or Georgia have anything to gain from joining a group with Ukraine which has more chances to make its voice heard in Brussels. Furthermore, as the experience of the Romanian-Bulgarian, *de facto* and unpopular, ``tandem`` shows, if perceived as a group, the candidate countries can alternatively drag each other forward in the accession process.

The progressive inclusion in the Community programs

When it comes to democratization, a lot can be achieved through the increase in the level of human interaction at various levels between the prospective candidate and the Union. Starting from the governmental and inter-parliamentarian structures of cooperation introduced through the Association Agreements and down to the level of mass student exchanges through the extension of the ERASMUS program, all can contribute to the anchoring of the Union norms.

Using the Synergy between European and Euro-Atlantic integration

Many of the Romania's basic reforms in the area of democracy, especially the protection of minorities, were undertaken in the context of NATO membership bid. Without NATO political conditionality, the reforming path of Romania might have been slower. In a way, the reforms triggered by NATO accession process created the necessary momentum for continuing and deepening them in order to comply with EU's more detailed criteria. The same can be valid for the current and potential candidate states, most of them having NATO membership ambitions. Meanwhile, a closer cooperation between the two organizations residing in Brussels, in terms of the management of political conditionality, would be desirable in the future.

Never forget the Member States

The current and prospective EU candidate states have to bear in mind that behind the Union's complicated decision making machinery stand the Member States. Therefore, cultivating strong bilateral relationships with key Member states, stimulating their interests, can influence the accession path. The bilateral deals are not a replacement for meeting the criteria but an additional supportive factor which sometimes can be decisive. Having strong supporters in the EU Council is fundamental.

Providing that there is a "custom order" from the Member States, the Commission has proved to be innovative enough to design any form of integration scheme with fine conditionality tuning. If there will be enough political will from the Member States and the "left out" countries will provide enough reasons, still anything can be possible in terms of European Integration.

Bibliography

Dimitrova, A L. (2004) Enlargement driven change and post communist transformations: A new perspective, in: Antoaneta L. Dimitrova (ed.) *Driven to Change: The European Union's Enlargement Viewed from the East*, Manchester: Manchester University Press, 1-17.

Gunther,R., N. Diamandouros, (1995) N and. Puhle H-J (eds.), *The Politics of Democratic Consolidation: Southern Europe in Comparative Perspective* (Baltimore: The Johns Hopkins University Press,).

Grabbe, H (2001) How does Europeanization affect CEE governance? Conditionality, diffusion and diversity, *Journal of European Public Policy* 8: 1013-31.

Kubicek P. J. (Ed.), *The European Union and Democratization* (2003) (London: Routledge)

Mattli, W and **Thomas. P** (2002) *The demand-side politics of EU enlargement: Democracy and the application for EU membership*, *Journal of European Public Policy* 9: 550-74.

Magen, A (November 2004) *EU Democracy and Rule of Law Promotion: The Enlargement Strategy and its Progeny*, Working paper, Center on Democracy, Development, and the Rule of Law, Stanford Institute for International Studies.

Noutcheva, G.(May 2006) *Bulgaria and Romania's Accession to the EU: Postponement, Safeguards and the Rule of Law*, CEPS Policy Brief, No. 102.

Jora S. (2005) *Patterns of Democratization through Europeanization: The case of Romania* in Roberto Di Quirico (ed) *Europeanization and Democratization: Institutional Adaptation, Conditionality and Democratization in EU's Neighbor Countries* European Press Publishing, Florence.

Pridham G. and **Gallagher T.** (Eds.), *Experimenting with Democracy: Regime Change in the Balkans* (2000) (London and New York: Routledge)

Pridham G. (2005) *EU Accession and Democratization in Central and eastern Europe: Lessons from the Enlargement of 2004* in Roberto Di Quirico (ed) *Europeanization and Democratization: Institutional Adaptation, Conditionality and Democratization in EU's Neighbor Countries*, European Press Publishing, Florence.

Pipiddi, A.M., (2005) *Shapes in search of substance. European enlargement and democratic performance*, Center for Democracy and the Rule of Law, Stanford University.

Radaelli, C., (2000) *Whither Europeanization? Concept Stretching and Substantive Change* in European Integration on line Papers (EioP) 4:8)

Ruano L., (2002) *Origin and Implications of the European Union's Enlargement Negotiations Procedure*, Robert Schuman Centre Working Papers 62/02

Sadurski W., (2004) *Accession's Democracy Dividend: The Impact of the EU Enlargement upon Democracy in the New Member States of Central and Eastern Europe* 10(4) *European Law Review* 371-401.

Steunenberg B, Dimitrova A., *Compliance in the EU enlargement process: Institutional reform and the limits of conditionality*, in : Jean-Michel Josselin and Alain Marciano (eds) *Democracy, freedom and coercion: A law and economics approach*. Cheltenham Glos: Edward Elgar.

Vachudova M. A., (2001) *The Leverage of International Institutions on Democratizing States: Eastern Europe and the European Union* EUI Working Paper 2001/33, Robert Schuman Centre, EUI.

Youngs R., (2001) *The European Union and the Promotion of Democracy*, Oxford: OUP