

Justice and Home Affairs and Romania's Accession to the European Union

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Abstract

When compared to the other candidate states of Central and Eastern Europe, Romania emerged as a laggard of transition. Its integration into the European Union has been marked by much uncertainty and setbacks, as well as profound delays in fulfilling the EU's entry conditions. As a difficult case, the dynamics of Romania's EU accession provide insight into the potential and limits of the EU's leverage, revealing how domestic factors can be decisive in constraining external influence. Focusing on the reform trajectory in the fields of judiciary reforms, anti-corruption and external border policies between 1989 and 2007, this study assesses the interaction between EU politics and domestic politics and the role of domestic factors in slowing down internal reforms. By identifying the domestic conditions under which conditionality is likely to more, or less, successful, this study contributes to the Europeanization and enlargement literature. By assessing the preparations for accession in the field of Justice and Home Affairs, this research also fills a major lacuna in the existing specialised literature.

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List of Abbreviations

AFSJ	Area of Freedom, Security and Justice
ANI	National Integrity Agency
CDR	Democratic Convention of Romania
CEE	Central and Eastern Europe
CNSAS	National Council for the Study of the <i>Securitate</i> Archives
DA	Justice and Truth Alliance
DG	Directorate-General
DNA	Anti-Corruption Directorate
DGA	General Anti-Corruption Directorate
DIICOT	Department to Counter International Organized Crime and Terrorism
EC	European Community
ENP	European Neighbourhood Policy
EP	European Parliament
EU	European Union
FYROM	Former Yugoslav Republic of Macedonia
FSN	National Salvation Front
IMF	International Monetary Fund
IR	International Relations
JHA	Justice and Home Affairs
JLS	Justice, Freedom and Security
MIA	Ministry of Interior and Administration
NAPO	National Anti-Corruption Prosecutor's Office
NATO	North Atlantic Treaty Organisation

NGO	Non-Governmental Organization
OSCE	Organization for Security and Co-operation in Europe
PC	Conservative Party
PD	Democratic Party
PDSR	Social Democratic Party of Romania
PfP	Partnership for Peace
PHARE	Poland and Hungary Assistance for the Reconstruction of the Economy
PNL	National Liberal Party
PRM	Greater Romania Party
PSD	Social Democratic Party
PUR	Humanist Party of Romania
SAA	Stabilisation and Association Agreement
SCM	Superior Council of Magistracy
SIS	Schengen Information System
UDMR	Democratic Union of Hungarians in Romania
UN	United Nations
US	United States
UK	United Kingdom of Great Britain and Northern Ireland
VIS	Visa Information System

Chapter 1

Introduction

On 1 January 2007 Romania achieved the much-cherished goal of becoming a full member of the European Union (EU). Back in 1989, when the images of violence in the streets of Timișoara and Bucharest and those of the summary execution of Nicolae Ceaușescu and his wife Elena were broadcast around the world, not many would have predicted this outcome. Under Ceaușescu Romania experienced a brutal Stalinist-style dictatorship that drove out opposition and imposed tremendous economic and social costs upon its people¹. This meant that in 1989 Romania was the least equipped for a rapid and swift democratic and economic transition, lacking a grassroots opposition to the regime and facing a disastrous economic situation as a result of Ceaușescu's megalomaniac policies of the 1980s (Almond, 1990; Calinescu and Tismăneanu, 1992; Gallagher, 1996; Linz and Stepan, 1996). Yet, in less than two decades, the country has gone a long way in dismantling communist structures and in embracing democracy and market economy, and the goods shortages and political terror of the communist times are, for many, only a distant memory. In the past few years the economy has been performing well, democratic institutions have been established, the standard of living and real wages have continued to increase and the life of many Romanians is, in many respects, now comparable to that of fellow citizens in Western Europe.

¹ For accounts of Romania under Ceaușescu see in particular Almond (1988), Hale (1971) and the edited volume by Nelson (1981).

Romania's remarkable transformation is only one side of the story. The other side is a bumpy post-communist itinerary with often half-hearted commitments, insufficient political will and flawed implementation that affected the pace and quality of the reform process and slowed down the transition from authoritarian rule and central planning to democracy and a market economy.

Like all the countries emerging from communist regimes, Romania faced serious difficulties in restructuring the socialist-era institutions and its economy in the early transition period. Communism left behind a collapsed economy, inefficient state institutions, a highly politicised and unaccountable judiciary and public administration, corruption, political apathy and mistrust. But if we compare the country's reform trajectory throughout the 1990s with that of the other post-communist states in Central and Eastern Europe (CEE), Romania often stands out as the 'laggard' of transition. A decade after the collapse of communism only Albania and the former Yugoslavia, with the exception of Slovenia, had made less progress in their transition to democracy and a market economy (Phinnemore and Light, 2001, p.1). Similarly, if we look at Romania's integration into the EU, the country lagged behind in its preparations for EU membership, even when compared to Bulgaria². Romania remained on track with the EU's enlargement timetable – closing the negotiations at the end of 2004 and finally acceding in January 2007³.

² See 'Romania: Bucharest lagging behind Sofia in EU accession efforts', *RFERL*, 19 December 2001; 'As EU status beckons, Bulgaria and Romania drift further apart', *European Voice*, 5 February 2004; 'Behind the schedule to catch the EU train', *Euromoney*, April 2004, pp. 110-17.

³ The objective of Romania's accession in 2007 was first recognised by the European Council in Brussels in October 2002 and later endorsed by the Thessaloniki European Council in June 2003, which also stated the EU's objective of closing the accession negotiations in 2004. See respectively European Council (2002a) and (2003).

However, its process of accession has been exceptionally problematic, marked by many uncertainties and setbacks as well as pronounced delays in fulfilling the EU's entry conditions.

Perhaps one of the clearest examples of Romania's difficult journey to EU integration is the way the country closed the accession talks with the EU in December 2004. Romania was in fact the only candidate state from the 5th enlargement wave to finalise the negotiations under extremely tough and unprecedented conditions, forced by Brussels to sign up to an extensive list of commitments to remedy serious shortcomings in implementing Justice and Home Affairs (JHA) and Competition policies, amid the risk of seeing its accession date delayed by one year, with a decision by qualified majority in the Council. A similar risk also existed for Bulgaria, although this was less of a credible threat because the so-called postponement clause in its Treaty of Accession was not linked to any specific commitments and was far more difficult to activate since it required the unanimous agreement of all the member states.

Brussels' tough negotiating stance towards Romania in part reflected an 'enlargement fatigue' inside the Union after the entry of ten new countries in 2004, with some member states showing less inclination towards an 'all-inclusive' EU enlargement policy and reluctance in welcoming applicants despite unclear commitments to democracy and sound economic governance. However, as Bechev and Noutcheva (2008, p. 125) pointed out, the difference in treatment between Romania and Bulgaria at the closure of the accession talks, and the unprecedented entry conditions imposed on

Bucharest, also showed a long existing concern among EU policy-makers with Romania's membership credentials.

The fact that Romania found itself on the verge of EU membership with considerable delays in satisfying its accession requirements raises an interesting research puzzle for the study of the EU's leverage. It has generally been assumed by European integration scholars that the EU policy of enlargement has been a major catalyst for change in post-communist countries of CEE. In the last decade several influential studies on Europeanization and EU conditionality have gone to great length to show how the credible offer of membership, coupled with the severity of the accession process, gave the EU an unprecedented leverage on domestic policy-making in the candidate states of CEE (see, for example, Grabbe 2006; Schimmelfennig and Sedelmeier, 2005; Steunenberg and Dimitrova, 2007; Vachudova, 2005). Equally, a number of scholars working on democratisation and economic transition in CEE have claimed that the EU actively promoted in the region democratic governance and market-oriented reforms as well as the emergence of democratic institutions (see for example, Linz and Stepan, 1996; Pridham and Vanhanen, 1994; Pridham, et al., 1997; Whitehead 1996).

The course and speed of the reforms in CEE after 1989, and their relative success, have much supported these arguments especially when their democratic and economic performance was compared to the limited progress made by other post-communist states that lacked concrete prospects of integration into western institutions (see, Ekiert et al., 2007; Schimmelfennig, 2007; Way and Levitsky, 2007).

Yet, even among the CEE candidates there has been a considerable variation in the quality of efforts made to satisfy the EU's membership conditions, suggesting that the leverage of the EU might have worked in different ways and with very different effects. This has highlighted the need for more detailed empirical assessments of the EU's influence as its "transformative power", as Grabbe (2006) termed it, might not been as great as commonly assumed. The same author warned about the generalised tendency in much of the literature to over-estimate the Europeanization effect of EU conditionality on the CEE candidates arguing that "a systematic examination of the limits of the EU's impact as well as its extent is essential because the effects may not have been as great as commonly supposed" (Grabbe, 2006, pp. 41-42). In a similar tone, Schimmelfennig and Sedelmeier (2005, p.2) pointed out how "the process of Europeanization in the CEECs and its outcome have rarely been subjected to a systematic, theory-oriented and comparative analysis". Moreover, it has also increasingly become obvious that the dynamics of domestic politics in a candidate state, and the specificity of its implementing conditions, influence the scope of the EU's leverage, affecting institutional and policy choices and subsequently institutional and policy outcomes. Thus, while traditional strands of the EU integration and conditionality literatures devoted only marginal attention to domestic political contexts, more systematic efforts are now emerging to incorporate domestic factors into theoretical frameworks and empirical analyses examining the conditions for the success or failure of the EU's leverage (see Hughes et al., 2004; Jacoby, 2004; O'Dwyer, 2006a; Pridham, 2005; Vachudova, 2008).

Against this background, the complexity of Romania's integration into the EU makes it an interesting case study to assess the scope and impact of the EU's accession conditionality on the country's reform trajectory, as the dynamic of its accession might reveal some of the potentials, as well as the limits of the EU's leverage. Indeed, while Romania's remarkable transformation make it reasonable to assume that the EU's demanding entry conditions heavily influenced domestic-policy making, its laggard status in the process of EU integration also suggests that factors emanating from the domestic environment might have played an important role in constraining the EU's influence.

On the basis of these considerations, this thesis advances and explores two hypotheses. The first hypothesis is that the EU exerted a powerful leverage on the country's post-communist reform trajectory. The credible prospect of membership, coupled with the extensive accession conditions laid down by the EU, influenced domestic policy-making and the pace of domestic reforms. Secondly, this study posits that the overall impact of the EU was however not as great as one might expect because domestic factors mitigated the scope of its influence and constrained reform potentials. In order to test empirically these hypotheses, this thesis will examine the impact of the EU's accession conditionality on JHA policies in Romania, considering policy and institutional developments from the collapse of the communist regime in 1989 to the country's formal accession to the EU on 1 January 2007 (see section 1.4 below for a justification of the case studies).

The rest of this introduction is organised in the following way. The first section identifies the thesis objectives and the central research questions while section two outlines the core of the argument put forward by this research. Section three then sketches the contribution of this thesis to academic research on EU conditionality and Europeanization as well as to the specialised literatures on Romania's post-communist transition and Justice and Home Affairs. Section four offers a justification for the case studies while the last part outlines the methodology and structure of the dissertation.

1.1 Thesis objectives and central research questions

This thesis assesses the impact of the EU on public policies in Romania up to the moment of the country's formal accession on 1 January 2007. It investigates in detail how the EU used its leverage to stimulate reforms, assesses why at times it was effective while at others it was not, and evaluates the extent to which EU-driven reforms have become sustainable and irreversible now that Romania has secured full EU membership. In exploring the domestic impact of the EU this research also looks at how domestic factors intervened in the conditionality-compliance dynamic, affecting the pace and quality of reforms and mitigating the scope of the EU's leverage.

The central objective of this research is to provide a detailed, empirically rooted study of the impact of the EU's membership conditionality on domestic policies and institutional structures in Romania. By tracing the link between the EU's accession conditionality and the reforms introduced in Romania, and by examining how the domestic environment may affect compliance, this thesis thus aims to advance

knowledge on the potentials and limits of the EU's leverage on aspiring and would-be members and provide insights into the domestic conditions for its success. This research objective will be pursued through a detailed study of Romania's preparations for membership in the field of JHA, one of the most complex and politically sensitive policy-making fields at EU level, and one area where Romania lagged behind the most. Focusing in particular on the reform trajectory in the field of justice, fight against corruption and external border policies, this research seeks to answer two sets of questions:

1. What impact did the EU's accession requirements have on JHA policies in Romania, and what is the outcome of such influence? Is there evidence that EU conditionality was conducive to promoting effective and long-lasting domestic changes?
2. Was the EU potentially powerful leverage constrained by factors emanating from the domestic context?

In order to answer the above research questions, this study builds upon the literatures on EU conditionality and Europeanization, as I discuss in more detail in the next chapter. Unlike theories and academic accounts explaining how and why enlargement happened⁴, these provide interesting insights into the mechanisms of EU influence on

⁴ For competing explanations on EU enlargement see in particular Fierke and Wiener (1999); Moravcsik and Vachudova (2003); Schimmelfennig (2001) and (2003); Sjursen (2002) and Nugent (2004) for a review. For discussions on NATO enlargement see for example, Bebler (1999); Carpenter and Conry (1998); Crawford (2000); Goldgeier (1999) and Rauchhaus (2000).

the domestic structures in aspiring members as well as useful conceptual tools for unpacking some of the conditions for its success (see, in particular, Schimmelfennig and Sedelmeier, 2005; Grabbe, 2006; Jacoby, 2004; Kelley, 2004a; Vachudova, 2005). Since the EU accession preparations happened in parallel with a comprehensive post-communist reform process, it is increasingly recognised by Europeanization scholars that the specificity and challenges of post-communist transition must also be taken into account when studying the impact of the EU. Grabbe (2006, p. 97) for example argued that the political context and the institutional legacies inherited from communism determined how the EU influence worked and affected the outcome of Europeanization. Therefore, this research also draws on the transition literature, particularly research carried out on Romania, that provides insights and background material on domestic political dynamics in the country.

Although this research is chiefly concerned with assessing the role and impact of the EU, it is important to recall that other international organizations, such as the International Monetary Fund (IMF), the World Bank, the North Atlantic Treaty Organization (NATO) and the Council of Europe also had much leverage on Romania's post-communist politics and the need to satisfy the requirements set by these institutions also guided and stimulated domestic changes (Deletant, 2001, p.35; Freyberg-Inan, 2002; Gallagher, 2004; Pop, 2002). Moreover, in several policy areas, the reform agenda of these institutions overlapped and complemented EU conditionality. For example, the IMF played a prominent role with regards to macro-economic policies and structural economic reforms.

NATO's accession requirements stimulated the modernisation of the military services and the reform of the security services, while the Council of Europe's legal standards in the areas of human rights, rule of law and democratic institutions have been the reference points for the EU's assessment of the country's democratic credentials. Several agencies of the United Nations (UN), the Organization for Security and Co-operation in Europe (OSCE), various non-governmental organizations (NGOs) as well as the EU's member states also intervened, in different ways, in support of Romania's transition although their role is often not fully acknowledged in literature. While space constraints limit my ability to assess in any detail how and when this further external pressure stimulated domestic changes, the role of some of these institutions and international organizations will be acknowledged throughout this thesis.

1.2 Outline of the thesis argument

Based on a detailed analysis of EU conditionality and the reform trajectory in the three case-studies under consideration, this thesis puts forward the following argument. In relation to the first research question - i.e. the impact of the EU's accession requirements on JHA policies - this research argues that the EU was instrumental in guiding, stimulating and at times provoking domestic changes. The prospect of membership, and the risk of exclusion from the EU's enlargement process, proved to be a powerful incentive for reforming state structures, policies and institutions. Moreover, by using its leverage mechanisms strategically, the EU set the pace and timing of domestic reforms and on several occasions it proved successful in compelling the often-recalcitrant political class to live up to its commitments.

In addition, EU accession conditionality affected to a significant degree the substance of domestic policies and institutional choices introduced to fulfil the accession requirements, largely due to the lack of pre-existing JHA policy and institutional arrangements prior to the opening of the accession negotiations.

While acknowledging that the EU has been a major source and catalyst for reforms, this study nevertheless highlights the limited effects of EU conditionality on Romania. An assessment of the quality of the measures put in place to satisfy the EU's requirements shows that Brussels failed to entice full compliance with its accession demands prior to Romania's formal accession in 2007. Almost two decades after the fall of the Ceaușescu regime, the Romanian justice system remains a discredited and dysfunctional institution and has yet to transform itself into a credible and efficient body. Corruption is still regarded as a widespread and endemic phenomenon despite Romania now possessing one of the most comprehensive anti-corruption legal frameworks in Europe. With regards to Romania's compliance record in the field of external border controls, the legal framework might well be in place but its implementation remains uneven, flawed by weak administrative structures and by poorly established practices and methods.

The limited reforms in Romania can be explained by the fact that the impetus for reforms has come mostly from outside rather than from within Romania, while successive post-communist governments rhetorically committed to extensive state reforms, successfully pleasing EU officials with compliance on-paper without necessarily accepting the terms for integration.

As the following chapters will highlight, reforms in critical areas - such as those regulating the powers and functions of state institutions and the fight against corruption - have been introduced primarily in response to mounting external pressure, lacking however the necessary political consensus to ensure their long-term sustainability. As a result, at the time of writing many of the EU-driven reforms remain fragile and concerns remain over their long-term sustainability.

With regards to the second research question – i.e. whether the EU's leverage was constrained by factors emanating from the domestic environment – the case studies show that domestic factors mitigated the potentially powerful scope of the EU's influence and largely help explain Romania's laggard status in the process of EU integration. In particular, the reform trajectory and implementation record in the field of justice, anti-corruption and external border policies reveals that insufficient political will, half-hearted commitments and the desire to protect vested interests by powerful veto players have affected the pace and quality of domestic reforms leaving Romania struggling to bring its policies, institutions and practices in line with the EU's membership requirements. When EU-compatible rules were finally introduced, implementation did not always follow, flawed by the weakness of the country's administrative and judicial capacity that further undermined the efficacy of the legal, institutional and administrative measures put in place to meet the EU's demands.

1.3 Contributions of the Thesis

As previously pointed out, this thesis aims at advancing knowledge and insight regarding the potentials, as well as the limits, of the EU's leverage on aspiring and would-be members. It does so by exploring in details the effect of EU conditionality on Romania's reform trajectory in the field of JHA. In this respect this research draws upon and contributes to different academic literatures. First, this research contributes to the debates on external influence on post-communist transition, especially to the growing research on Europeanization and EU conditionality.

In the last fifteen years, much has been written on the impact of the EU on the countries of CEE and the mechanisms and conditions for the success of the EU's leverage have been topics of a lively academic debate –see chapter 2 for a comprehensive review of the literature. The comparative work carried out in recent years has provided evidence of the EU's influence on post-communist politics. Several theoretical studies have also offered the tools for a much more sophisticated understanding of when, how and why the EU stimulated, shaped and at times provoked domestic changes in the region (Haughton 2007, p.233). However, academic research has so far rarely focused in measuring the impact of the EU in terms of specific policy and institutional changes, and those who embarked on this task have done so mostly at the comparative level (see, for example, Grabbe, 2006; Hughes et al. 2004; Jacoby 2004, and the edited volume by Schimmelfennig and Sedelmeier, 2005).

By tracing the link between EU conditionality and domestic reforms in three policy areas – judiciary reforms, anti-corruption and external border policies – and in a single case study, Romania, this research thus contributes to the Europeanization and conditionality literatures, providing noteworthy empirical evidence on the actual impact of the EU. Moreover, by looking closely at how the domestic environment affects compliance this study also enhances academic knowledge on the domestic conditions under which conditionality is likely to be more or less effective.

By studying Romania's accession process in the field of JHA this thesis also contributes to two other bodies of literature: the literature on Romania's post-communist transition and the specialised literature on JHA. Many aspects of Romania's communist experience and post-communist politics have received attention and a number of recent comprehensive studies have much enriched the academic literature (see, for example, Gallagher, 2005; Pop, 2006; Siani-Davies, 2005; Tismăneanu, 2003). However, extensive research on Romania's integration to the EU remains scarce, and with a few exceptions (see, in particular, Papadimitriou and Phinnemore, 2008; Phinnemore, 2006a), studies on EU-Romania relations are generally confined to articles in academic journals or chapters in edited books (see, for example, Pop, 2002; Pridham, 2006 and 2007; Ram, 2001 and 2003). By assessing the role of the EU on Romania's reform trajectory, this research thus contributes to academic knowledge in this field.

This thesis also contributes to the literature on JHA. As one of the most dynamic EU policy-making areas, the literature concerning this subject has grown rapidly in recent years.

A great bulk of the JHA literature has focused on policy developments at EU level, especially on external border policies (see, for example, Amato and Batt, 1999; Anderson and Bort, 2001; Apap and Carrera, 2003; Grabbe, 2000 and 2002; Groenendijk et al., 2003; Townsend, 2003) and the emergence of asylum and immigration regimes at EU level (Anagnost, 2000; Becker et al., 1999; Geddes, 2000; Lavenex, 1999 and 2001; Monar, 1999). Some research has also been carried out on police and judicial cooperation among the EU member states (Anderson and Apap, 2002a and 2002b; Cullen et al., 1996; Guild and Geyer, 2008; Micklitz, 2005). However, the study of judiciary reforms and the fight against corruption – two policy areas dealt with by this research - has surprisingly received little academic attention. With regards to the JHA literature in the context of the enlargement, a number of interesting studies have been published in recent years on the experience of accession of the candidate states. But these focused mostly on the Visegrad countries, especially Poland (see for example, Piorko and Wolczuk, 2001; Piorko and Sie Dhian Ho, 2003; Wolczuk, 2002 and the edited volume by Henderson, 2005), while the experience of accession of Romania has been largely neglected, despite the security implications arising from its membership to the Area of Freedom, Security and Justice (AFSJ). Therefore, by exploring Romania's experience of accession in these policy areas this research fills a major lacuna in the existing JHA literature.

1.4 Case Selection

This research is concerned with the impact of the EU on domestic policies and institutional structures in Romania. To achieve the research objectives outlined earlier in this introduction, this thesis looks in detail at the process of accession of Romania in the field of JHA. I focus on this policy field for several reasons. Firstly, it is clearly a very important area covering a wide range of issues such as crime, terrorism, immigration and asylum policies, external border controls, justice and the fight against corruption. These issues affect the everyday life of ordinary citizens and therefore are highly sensitive areas for policy makers, the media and electorates.

Secondly, JHA has been high on the EU's political agenda during the accession negotiations with the CEE candidates. It was the opening of the eastern bloc and the application for EU membership of several eastern European countries that spurred much dynamism in JHA activities since the early 1990s (Friis and Jarosz, 2000; Occhipinti, 2004). Fear of uncontrolled migration and organised crime from the countries of CEE and neighbouring states broaden the consensus for EU-wide approaches, and led to the progressive development of converging visa, immigration and asylum policies after the Amsterdam Treaty came into force in 1999. In the context of the accession negotiations with the CEE candidates, this fear translated into an enormous pressure and extensive monitoring of the candidates' progress. Moreover the *acquis* was set as non-negotiable and despite the flexibility accorded to some member states - most notably the UK, Ireland and Denmark – no opt outs or derogations were offered.

Thirdly, JHA has been a highly debated and politically sensitive issue for domestic politicians in many of the CEE candidates, including Romania. These are areas that touch the nerve of state sovereignty, and the EU's negotiating position caused much frustration domestically because it implied full compliance with the EU's requirements, without benefiting from full membership to the AFSJ for many years after accession, most notably in the areas of labour migration and full participation into the Schengen area. Overall, JHA is interesting because it helps shed light on the complexity of the process of EU accession and the daunting challenges faced by an aspiring member in complying with the EU's entry conditions. As Monar (2000) noted, some of these challenges are intrinsically linked to the nature of the EU's demands and the volume of the accession *acquis*, its political sensitivity and the immense pressure deriving from the EU while others are purely of an internal nature, linked mostly to the specific domestic implementing conditions in post-communist states.

Romania's experience of accession in the field of JHA is particularly important because it mirrors in a number of ways the complexity of its negotiations for EU membership. Indeed, JHA is one area where Romania has been lagging behind the most. Persistent delays were registered by the European Commission in its annual Reports, and at the closure of the accession talks in 2004 Romania had to sign up to a list of highly detailed commitments to address serious shortcomings in implementing JHA policies, especially with regards to judiciary reforms, the fight against corruption and compliance with the EU's external border policies. I do not claim that the dynamic of accession in the field of JHA and the difficulties that emerged hold true for all other policies.

Indeed, in some areas of the *acquis*, compliance was smooth and unproblematic. But JHA presents a number of features which helps to shed light on the interaction between EU politics and domestic politics, providing a good test case for assessing the potential and limits of the EU's leverage on the one hand and the impact of domestic factors in slowing down the preparations for membership on the other. With regards to the scope of the EU's leverage, JHA is one area where the EU was potentially in a very powerful position to shape domestic policy and institutional choices, largely due to the lack of pre-existing EU-compatible legal and regulatory frameworks in place prior to the opening of the negotiations. At the same time this is one area where the EU had considerable room for manoeuvre in certifying compliance (or not) given the broad scope and evolving nature of its demands during the negotiations. At domestic level, this is one area where resistance to change was mostly likely to be expected, given the fact that compliance with the JHA *acquis* has involved radical changes to politically sensitive policy areas.

As previously mentioned, to investigate Romania's compliance record this research presents three cases under the JHA policy umbrella: the reform of the justice system, the fight against corruption and the EU's external border policies within the framework of the Schengen *acquis*. Starting from the analysis of the initial conditions at the moment of the regime change in 1989, this study traces the reform trajectory throughout the pre-accession and accession period in each policy area, assessing the impact of EU conditionality on domestic reforms and the role played by the domestic environment in slowing down the preparations for accession.

These case-studies have been selected not only for their political relevance but also because they have emerged as the most problematic ones during the accession negotiations. All three policy areas were high on the EU's political agenda during the negotiations, and these were subject to the postponement clause at the conclusion of the accession talks due to serious shortcomings registered both at legal and implementation level. Moreover these are areas where Romania continues to be monitored in the post-accession period. With regards to judiciary reforms and the fight against corruption, a special post-accession monitoring mechanism has been created by the Commission in late 2006 to verify the correct implementation of domestic reforms after accession. As for Romania's compliance with the EU's external border policies, implementation of the *acquis* is monitored under the existing Schengen evaluation process.

Despite these similarities, the case-studies are very diverse when it comes to the substance of the EU's accession demands. Issues related to the functioning of the justice system fall under the EU's democratic conditionality and there is virtually no EU *acquis* in this field. Anti-corruption and external border policies were part of the negotiating Chapter 24. However, while the EU's anti-corruption framework is primarily made up of non-binding recommendations, border policies are perhaps the most regulated domain in the field of JHA. Thus, this selection of case-studies allows us to test empirically whether the degree of clarity of the EU's demands and the presence (or not) of policy and institutional templates affects the ability of the EU to shape domestic policy and institutional choices, as some scholars would predict (see, for example, Grabbe, 2006; Jacoby, 2004; Hughes et al., 2004; Schimmelfennig and Sedelmeier, 2004).

I exclude other important policy areas such as asylum and immigration policies mainly because these were largely uncontested at domestic level. I touch upon third-pillar matters, mostly judicial and law enforcement cooperation, but I do not analyse these in any detail primarily because the EU framework is still in flux and during the negotiations, these were largely considered as secondary matters. JHA also covers other important areas, such as the fight against terrorism, drugs and arms trafficking, goods smuggling and trafficking in human beings, but space constraints limit my ability to test a wider set of policy areas.

1.5 Methodology and Structure of the Dissertation

The argument of the dissertation will unfold in the following way. Chapter 2 offers an overview of the relevant literature and introduces the analytical framework that shapes the analysis of the empirical material. Building in particular on the existing literatures on EU conditionality, Europeanization and Romania's post-communist transition, it conceptualises the mechanisms of the EU's leverage and the conditions for its success, and identifies how domestic factors can favour, or hinder the scope of its leverage. Chapter 3 documents the evolution of EU-Romania relations from the collapse of the communist regime in 1989 to Romania's formal accession to the EU in January 2007, highlighting developments at domestic level and in the framing of EU conditionality throughout the transition period. Chapters 4, 5 and 6 present the three case studies, documenting empirically the impact of EU conditionality on the reform trajectory in the field of justice reforms, anti-corruption and external border policies.

In particular, the case-studies will specify how and when the EU's leverage was instrumental in pushing for policy and institutional changes and will assess how domestic factors affected the pace and quality of internal reforms. It will be shown how the EU's accession conditionality played a critical role in shaping the country's reform trajectory. However, the lack of political will, the weakness of the country's administrative capacity, widespread corruption and the desire to protect vested interests acted as a 'break' to the introduction of EU-compatible reforms, and undermined the correct implementation of EU rules at national level. The conclusion in Chapter 7 will return to the research-questions and hypotheses, summarising the key findings of this research. At the light of these findings the conclusion will also reflect upon the contribution of this study to academic knowledge and will identify areas for future research. The chapter will also present the most recent developments in EU-Romania relations, analysing the mechanisms and scope of the EU's leverage in the post-accession period. The thesis will conclude with an assessment of Romania's accession process as seen through the lens of the EU's enlargement policy, pointing to the lessons learned by the EU from its enlargement to Romania along with the likely implications for current and future candidates.

The analysis relies on two sets of evidence. The first set is the information available through official documents spelling out EU conditionality and documenting the reform trajectory of Romania in the cases under consideration. This includes the EU's documentary record on the enlargement process, such as the European Council's conclusions and the European Commission's Regular Reports, as well as Romania's own documentation, including domestic legislation, action plans and strategies

developed during the negotiating phases. Official documentation is very useful when it comes to understanding the content of the accession requirements set by the EU as well as the domestic policy and institutional choices made in response to the EU's demands. However, when it comes to evaluating compliance, the European Commission's assessments do not always provide a reliable source of information, given the general and often highly politicised nature of the evaluations (Grabbe, 2006, p. 64). For this reason, this research also makes use of several reports and surveys elaborated by the World Bank, the Council of Europe and other NGOs. Not only do these provide valuable analytical material, especially in assessing Romania's implementation record, but they also allow to cross-check the information available in the official documentation.

Although not directly acknowledged, this research has also benefited much from the information I obtained during the period of internship carried out between September 2005 and May 2006 in the Cabinet of EU Commissioner Franco Frattini, who at the time was responsible for the AFSJ. During this period, I was exposed to EU conditionality in the making, and this allowed me to gather important insights on political processes at EU level in the concluding phases of Romania's process of accession.

The second set of evidence is the information obtained through over sixty semi-structured interviews with both EU and Romanian officials. These were conducted primarily in Brussels and Bucharest between March and December 2006.

This methodology was chosen because it allows, as Lilleker (2003, p.208) pointed out, ‘to learn more about the inner workings of the political process, the machinations between influential actors and how a sequence of events was viewed and responded to within the political machine’. The interviews were in fact designed to shed light on the policy interests, priorities and strategies of the various actors involved in process of accession of Romania to the EU and to help understand the framing of EU conditionality, the interaction between European and domestic politics as well as the key challenges experienced by Romania in preparing for membership. On the EU side, I have interviewed European Commission’s officials at cabinet level and in Directorate-General (DG) Enlargement, DG External Relation, DG Justice, Freedom and Security (JLS), member states’ diplomats, experts engaged in twinning projects in Romania, as well as officials from the European Commission’s delegation in Bucharest. On the Romanian side, I have interviewed representatives of the diplomatic mission to the EU, Members of Parliament, government Ministers from different administrations, as well senior and middle-weight civil servants in the Romanian Ministry of Justice, Ministry of European Integration, Ministry of Interior and Administration (MIA) and Ministry of Foreign Affairs.

To crosscheck information, I have also interviewed members of the judiciary and the anti-corruption prosecution services as well as representatives of law-enforcement agencies, including officials from the Romanian Border Police Inspectorate. The objective of these interviews was two-fold: to gather insight knowledge on the one hand and shed light on policy priorities of key actors and potential veto players on the other, thus providing valuable data on the level of political consensus on the direction of EU-

driven reforms, hence the likelihood of their sustainability and correct implementation after accession. To achieve further data triangulation, I have also consulted and exchanged views with several policy analysts and academics observing Romania's transition process and accession to the EU as well as civil-society activists and journalists.

All interviews were semi-structured and open to allow interviewees to elaborate on their experiences and explanations for outcomes. Most of these were tape-recorded and subsequently transcribed. However, since the fieldwork was carried out during the final stages of Romania's accession (October 2005 – December 2006) some interviewees preferred to speak "off-the-record". This was especially the case of EU officials and member states' diplomats. Thus, when quoted, I have often only indicated their position or institutional affiliation at the time of the interview (See appendix A for a complete list of interviewees).

Chapter 2

EU Conditionality and Domestic Reforms

As pointed out in the introductory chapter, this thesis seeks to provide a detailed assessment of the impact of the EU's membership conditionality on domestic policies and institutional structures in Romania, particularly in the field of JHA. To conceptualise the potential scope of EU influence it is necessary to identify the mechanisms through which the EU exerts its leverage on aspiring and would-be members as well as the key conditions for its success. The theoretical and empirical findings of the Europeanization literature, especially the research carried out on the candidate states of CEE, offer the analytical tools that will be applied to this research.

Against this background, this chapter presents the analytical framework of this study. The first section offers an overview of the Europeanization and EU conditionality literatures, highlighting the various mechanisms through which the EU can influence state behaviour and domestic policy choices. Focusing in particular on conditionality as a mechanism of Europeanization, the second section of this chapter then conceptualises the interaction between EU politics and domestic politics, pointing out how the EU exerts its influence on aspiring and would-be members and, how (and why) domestic political elites respond to external pressure. Section three moves on to consider the conditions for the success of the EU's leverage.

Building on the theoretical and empirical findings of the Europeanization and EU conditionality literatures this section identifies a set of key variables both at domestic and EU levels that can enhance or constrain the scope of the EU's leverage. These are (1) The credibility of conditionality; (2) The clarity and determinacy of EU conditions; and (3) The adaptation costs and policy priorities of key veto players. The empirical investigation in chapters 4, 5 and 6 will then look at the interaction between these variables to examine in the detail how conditionality worked in the three cases under examination. The empirical chapters will also assess how factors emanating from the domestic environment affected compliance.

2.1 The domestic impact of the EU: review of the literature

In the last decade, the study of the impact of the process of EU integration on domestic policies and institutional settings has emerged as one of most dynamic fields of academic enquiry, and the concept of Europeanization has increasingly been employed by European Integration scholars to assess the mechanisms and scope of this impact.

In simplistic terms Europeanization refers to the domestic impact of the EU, and the analytical focus of much of the Europeanization literature has been that of comparing the outcomes of EU influence across national and policy contexts in the member states – i.e. assess whether the process of EU integration has led to a convergence or divergence between decision-making structures, administrative systems, policies and processes.

However, the concept of Europeanization is contested and several competing definitions and analytical frameworks have so far been put forward. Scholars have used the term to refer to the emergence of distinctive political institutions and structures of governance at European level (Risse et al., 2001, p.3) as well as to explain how these institutions affect national politics. Goetz and Hix (2000, p.27), for example, defined Europeanization as “a process of change in national institutional and policy practices that can be attributed to European Integration”. In another important study Europeanization was defined as “the process of influence deriving from European decisions and impacting member states’ policies and political and administrative structures” (Héritier et al., 2001, p.3). Drawing on an earlier insight by Ladrech (1994) Claudio Radaelli took the concept even further, associating Europeanization with a progressive change in the logic of political behaviour. According to his definition Europeanization involves

Processes of (a) construction (b) diffusion and (c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and sub-national) discourse, political structures and public policies (Radaelli, 2004, p.3).

The large number of definitions in the literature is evidence of a vibrant debate in this field of research, and despite some scholars warning about the risk of “conceptual stretching” (Radaelli, 2000), the study of Europeanization has offered highly sophisticated theoretical accounts conceptualising the interaction between domestic and European levels of governance (see, for instance, Börzel and Risse, 2000; Featherstone and Radaelli, 2003; Héritier et al., 2001).

At an empirical level, the extensive research carried out in recent years has also helped clarify some of the possible outcomes of EU influence as well as identify the key factors that can positively or negatively affect the timing and correctness of implementation of European legislation. Studies carried out on policy convergence in EU15 member states have highlighted, in particular, the degree of compatibility (or incompatibility) between European rules and domestic institutional, policy and regulatory traditions (Börzel, 1999; Duina, 1997; Duina and Blithe, 1999; Giuliani, 2003; Knill and Lenschow, 1998 and 2002), the policy priorities of key veto players (Fischer et al., 2002; Gwiazda, 2007; Haverland, 2000; Héritier et al., 2001) as well as the bureaucratic capacity and the financial and human resources available in a particular institutional setting (see Hille and Knill, 2006; Knill, 2001; Knill and Lenschow, 2001).

The classic strand of the Europeanization literature focuses on the domestic implementation of EU policies in the existing member states. However, in recent years this growing academic agenda has evolved and expanded to non-EU countries, such as Switzerland and Norway (Fischer et al., 2002; Lægreid et al, 2004; Mach et al., 2003) as well as the aspiring and would-be members in Central Europe and the Western Balkans. In the context of the EU enlargement, in particular, an increasing number of scholars have adopted the concept of Europeanization as a conceptual tool to examine the domestic changes taking place in the candidate countries in response to the promise of EU membership. Here the concept of Europeanization has been applied to study territorial organisations in the candidate states (Brusis, 2004 and 2005; Hughes et al., 2004) as well as public administrations (Papadimitriou and Phinnemore, 2004) and decision-making structures (Lippert et al., 2001).

Scholars have also looked at the impact of the EU on public policies (Andonova, 2003; Dimitrova, 2002; Grabbe, 2006; Epstein, 2006; Sissenich, 2007), on governance (Goetz, 2001; Grabbe, 2001), on political competition (Grzymała-Busse and Innes, 2003), as well as on party politics and the development of party systems in transition countries (Lewis and Mansfeldová, 2006; Pridham, 2001).

The study of Europeanization in the context of the EU's enlargement process to CEE fits in a wider academic debate among scholars of International Relations (IR) and comparative politics on the role and potential influence of trans-national actors and international institutions on regime change in post-communist Europe⁵. One of the main merits of the Europeanization literature is that it has provided the missing link between these theories and scholarly research on democratisation and regime change. Indeed, by taking into account the core features of the relations between the EU and the CEE candidates -namely conditionality and power asymmetry - and the specificity of post-communist countries, research on Europeanization in CEE has helped to conceptualise in a more accurate way the mechanisms and scope of the EU's influence on post-communist transition.

With regards to the mechanisms of the EU's leverage, the literature on Europeanization has identified several potential routes through which the EU shapes, directly or indirectly, state behaviour and domestic policy and institutional choices.

⁵ The literature on external influence on post-communist transition is vast. Among the most significant studies it is worth mentioning in particular Checkel, 2007; Grabbe, 1999, 2006; Dimitrova, 2004; Dimitrova and Pridham, 2004; Ekiert and Hanson, 2003; Kelley, 2004; Linden, 2002; Pevehouse, 2002; Rupnik, 2000; Schimmelfennig and Sedelmeier, 2005; Vachudova, 2005; Zielonka and Pravda, 2001; Whitehead, 1996.

Depending on the strand of social science they derive from, explanations have singled out the importance of incentives-based methods such as conditionality, of socialisation or of processes of learning, imitation and the diffusion of ideas. Broadly speaking, rationalist accounts have generally stressed the importance of *conditionality* as the main mechanism through which the EU induces policy and institutional changes in a candidate state (see for example Dimitrova, 2004; Grabbe, 2001 and 2006; Schimmelfennig et al., 2003; Schimmelfennig and Sedelmeier, 2005; Steunenberg and Dimitrova, 2007, Vachudova, 2005). Constructivists, by contrast, focused more on the softer and non-coercive mechanism of *socialisation* (see, for example, Checkel, 1999 and 2001; Dimitrova and Rhinard, 2005; Finnemore and Sicking, 1998; Kelley, 2004a; Linden, 2002; Risse, 2001). In this case compliance with external demands is not incentive-based, as in the case of conditionality, but depends on whether a state is persuaded by the value of the external rules, that is when domestic actors regard external rules and the demands of an International Organization appropriate in the light of collective identities, values and norms (Schimmelfennig et al., 2006).

The interaction between these two mechanisms has so far not been fully clarified in the literature, although some considerable efforts have been made to study both mechanisms under the same framework of analysis. Schimmelfennig and Sedelmeier (2005) for instance, elaborated and compared three distinctive models capturing the different mechanisms of the EU's influence in post-communist countries. Judith Kelley's study on minority policies in CEE convincingly shows how conditionality and socialisation are more complementary than mutually exclusive mechanisms, because in day-to-day policy processes these tend to occur simultaneously (Kelley, 2004a).

While recognising that the distinction between conditionality and socialisation might be purely artificial, this thesis will focus primarily on assessing the impact of EU conditionality on JHA policies in Romania. This methodological choice was made for two main reasons. Firstly, the literature has generally identified conditionality as the most effective and powerful mechanism through which the EU induces the candidate states to comply with its accession demands, especially in the case of contested reforms (Dimitrova, 2004; Dimitrova and Pridham, 2004; Grabbe, 2006; Schimmelfennig et al., 2003, Schimmelfennig and Sedelmeier, 2004; Steunenberg and Dimitrova, 2007; Vachudova, 2005). For example, Judith Kelley argues that socialisation failed when the domestic opposition to reforms was strong but as domestic opposition grew, “incentive-based methods such as membership conditionality were not only increasingly necessary to change behaviour, but they were also surprisingly effective” (Kelley, 2004b, p.426). Secondly, socialisation tends to happen at a much slower pace and evidence of its effects may take some time before they become apparent (Checkel, 2007; Schimmelfennig and Sedelmeier, 2005). By contrast, conditionality-induced changes are already to be expected prior to accession, as the fulfilment of the EU’s entry requirements is a pre-condition for membership. This is particularly the case of JHA policies that were high on the EU’s political agenda already in the mid 90s and represented a potential veto point in the EU’s enlargement decisions (Grabbe, 2006).

2.2 Conditionality as a mechanism of Europeanization

If there is one important feature characterising the relation between the EU and the countries of CEE, this is conditionality. Countries wishing to negotiate for EU membership are required to comply with several conditions elaborated by the member states. According to the conclusions of the 1993 Copenhagen European Council, EU membership requires:

- That a candidate state has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- The existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union
- The ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

The Madrid European Council in 1995 further added that the candidate states would have to ensure that their administrations and judiciaries were capable of implementing and enforcing the *acquis* effectively (European Council, 1995). Despite the initially vague nature of the accession requirements, EU conditionality was progressively spelled out via the numerous European Commission' reports, which monitored the candidates' progress towards accession and fleshed out the conditions to be fulfilled to proceed on the negotiating ladder.

The breadth of the EU's agenda for policy and institutional change in CEE and the high threshold set for membership have important implications for our study of JHA policy developments in Romania because conditionality affects, directly and indirectly,

domestic policy-making and internal political developments. To understand how EU conditionality interacts with domestic politics and influences policy and institutional choices it is useful to begin by outlining briefly how conditionality works.

Conditionality is an incentive-based method for stimulating compliance and its basic thrust is the rational logic of cost-benefit analysis whereby domestic change is a reaction to the material and social benefits offered by an international organization. Schimmelfennig et al. (2003, pp. 496-497) defined it as a strategy of “reinforcement by reward” whereby an international organization, such as the EU, “reacts to the fulfilment or non-fulfilment of its conditions by granting or withholding rewards”, without however necessarily resorting to coercion mechanisms to change the behaviour of the non-compliant government. At domestic level, actors’ decision to comply with the external demands is also based on a cost-benefit calculation. According to the rational choice logic, being purpose oriented, actors change their policies and behaviour and accept to comply with international rules if the reward offered and the benefits of compliance exceed the costs of non-compliance.

It is important to recall that EU conditionality is qualitatively different to any other forms used by other institutions, such as the IMF or the World Bank, because the benefits are not linked to the various stages of accession (with the sole exception of access to the pre-accession funds) but arrive with the final reward of membership. Moreover, the process of accession is characterised by an extensive monitoring of progress as well as a continuous pressure exercised by EU institutions, especially by the European Commission, to ensure compliance with the *acquis*.

If we look at the EU's enlargement policy vis-à-vis the CEE candidates through the lens of the rationalist logic, accession conditionality can, therefore, have several important effects on domestic policy-making. First, the credible and conditional prospect of membership, coupled with the perceived benefits of EU accession can interfere with the strategic calculus of domestic political elites, providing powerful incentives for domestic reforms (Schimmelfennig and Sedelmeier, 2005; Steunenberg and Dimitrova, 2007). For the CEE candidates in general, and Romania in particular, the prospect of EU membership carried enormous economic and political benefits, and the political elites accepted the huge costs of compliance with EU conditionality because these were perceived as lower than the costs of exclusion from the EU's enlargement process. As Andrew Moravcsik and Milada Anna Vachudova argued:

East European states take part in the laborious accession process because EU membership brings tremendous economic and geopolitical benefit - particularly as compared to the uncertain and potentially catastrophic costs of being left behind as others move forward. While the candidates have had to comply with the EU's requirements and acquiesce to certain unfavourable terms, EU membership has remained a matter of net national interest. On balance, the sacrifices demanded of them seem entirely in keeping with the immense adjustment, and the immense benefits, involved (Moravcsik and Vachudova, 2003, p. 43).

Secondly, conditionality reduces the negotiating power of domestic political elites, who have little or no room for negotiating the entry conditions or shaping their policy output (Grabbe, 2006, p.41). Compliance with the *acquis* involves in fact a large-scale transposition of EU laws into national legislation. The technocratic nature of the accession process - with the screening of national legislation and the negotiations in the 31 Chapters of the *acquis* - 'ties the hands' of decision-makers, posing political constraints on their ability to deviate from the EU's conditionality demands.

As Noutcheva (2006a, p.8) noted, domestic decision-makers that voluntarily embark on closer relations with the EU “are compelled to react to the conditions set in Brussels and this external dimension does play a role in domestic politics”. Thirdly, the process of EU integration can change the opportunity structures within which domestic elites operate (Knill and Lehmkuhl, 1999, p.2; Schimmelfennig et al., 2003, p. 497) and can empower reformers (Ekiert et al., 2007, p. 12; Grabbe, 2006, p.51), either as a result of a deliberate effort by external actors or because domestically driven. In the first case, EU policy-makers can influence domestic decision-making by strengthening, through ‘informal coalitions’, those domestic actors that are already committed to EU priorities as well as empower new ones (Jacoby, 2006, pp. 625-626). In the second case, domestic actors may use the accession requirements to implement a reform strategy domestically and to bypass internal opposition or administrative constraints to enforce decisions (Ekiert et al., 2007; Schimmelfennig and Sedelmeier, 2005). According to Cortell and Davies (1996), international norms can also serve as a powerful legitimating force for domestic policy choices. In their view, “government officials and societal interest groups can appeal to international rules and norms to further their own interests in the domestic political arena. Through these appeals, international rules and norms become incorporated into domestic debates, under some conditions influencing national policy choices” (Cortell and Davies, 1996, p.452).

The process of accession is generally regarded as the key vehicle through which the EU channels its influence. However, besides the mechanisms of the accession process and the format of the negotiations, there are several parallel ways in which the EU can shape actors’ preferences – from financial aid to advice and twinning projects involving

member states' experts (Grabbe, 2006; Papadimitriou and Phinnemore, 2004). These provide further routes for the EU to intervene in domestic decision-making and influence directly domestic policy and institutional choices.

2.3 When is EU conditionality effective

Drawing on some of the key assumptions of the Europeanization and EU conditionality literatures, the previous section has highlighted how conditionality interacts with domestic politics. But does EU conditionality always work? And if not, when and under which conditions is it likely to be more successful? The Europeanization and EU conditionality literatures have devoted particular attention to the interaction between four variables: the credibility of conditionality, the clarity and “determinacy” of EU conditions, the size of the adaptation costs and the policy priorities of key veto players.

The credibility of conditionality

In the study of EU enlargement to post-communist states, there is a broad consensus in the literature that the credibility of EU conditionality has been the most critical factor for the success of the EU's leverage. A number of influential studies have pointed out how the *credible* promise of EU membership, coupled with the *credible* threat of being excluded from the accession process in case of non-compliance, were critical for promoting extensive policy and institutional changes in the candidate countries of CEE (see, for instance, Grabbe, 2006; Moravcsik and Vachudova, 2003; Schimmelfennig and Sedelmeier, 2004 and 2005; Vachudova, 2005).

Scholars have also demonstrated how the effectiveness of the EU's leverage varied over time and became extremely powerful only after the EU's commitment to eastward enlargement and launch of the EU's accession process with the CEE candidates. In particular it has been shown that the EU was mostly effective in stimulating policy and institutional changes during the decision-making phases, especially when deciding whether or not to open the accession negotiations and when to close the accession process (see Brusis, 2005; Grabbe, 2006; Steunenberg and Dimitrova, 2007).

The changing scope of the EU's leverage was superbly captured by Milada Anna Vachudova (2005). In her analysis of the reform trajectory in six post-communist countries (Poland, Hungary, Czech Republic, Slovakia, Bulgaria and Romania) she convincingly shows how in the first five years of transition the EU exerted only a "passive leverage" on the countries' post-communist reform trajectory. This passive leverage - that Vachudova (2005, p.65) defines as "the traction that the EU has on domestic politics of credible candidate states merely by virtue of its existence and its usual conduct" - reinforced the reform strategies in liberal states. But in Romania, as well as in Bulgaria and Slovakia (defined by the author as illiberal states), the EU's passive leverage failed to break corruption and rent seeking behaviour. Only when the enormous benefits of EU membership and high costs of exclusion from the enlargement emerged clearly, was the EU able to exert "an active leverage" on the country's political trajectory.

The empirical chapters will investigate the changing scope of the EU's leverage in the pre-accession and accession period, detailing also how and to what extent the credible prospect of membership, and the threat of delays or exclusion from the EU's enlargement process spurred domestic reforms. In particular, based on the above-mentioned assumption that EU conditionality is most effective during the decision-making stages, we should expect specific policy and institutional changes in conjunction with the opening and closing of the accession process.

The clarity and determinacy of EU conditions

According to the Europeanization and EU conditionality literature, the clarity or "determinacy" of EU rules is an important factor for predicting the level of compliance one might expect at domestic level. Schimmelfennig and Sedelmeier (2005), in particular, argued that compliance is likely to be higher when the EU's conditions are clear and unambiguous because domestic actors know exactly what to do to meet the requirements for accession. By contrast, when the EU's demands are vague and open to interpretation, such as in the case of democratic conditionality, domestic political elites have more discretion in accepting or bypassing them. In their opinion, determinacy also matters because it "enhances the credibility of conditionality. It is a signal to the target government that they cannot manipulate the rule to their advantage or avoid adopting it at all. At the same time, it binds the EU. If a condition is determinate it becomes more difficult for the EU to claim unjustly that it has not been fulfilled and to withhold the reward" (Schimmelfennig and Sedelmeier, 2005, pp. 12-13).

With regards to specific policy changes, empirical studies have found the EU to be most influential in those areas where the *acquis* was *thick*, i.e. the EU prescribed models or templates for the candidate states to follow or emulate at national level (Grabbe, 2006; Epstein, 2006). In contrast, when the EU *acquis* was *thin*, such as in the case regional policy, health care or consumer protection, the impact of the EU was far more limited as the candidate states had much more scope for choosing or ignoring prevailing Western models (Hughes et al., 2004; Jacoby, 2004). With regards to democratic conditionality, such as human rights and minority rights protection, the scope of EU influence depended almost exclusively on the importance EU policy-makers attached to the conditions for accession. According to Schimmelfennig et al. (2003), even when lacking specific policies at EU level, EU conditionality can still produce visible domestic changes if the conditions for membership are repeatedly stated, because this sends a clear signal to a candidate state that the EU puts great emphasis on compliance with its conditions.

The case studies will assess whether the precision of the EU accession demands helped achieve greater policy and institutional convergence. Based on the previous analysis we should expect a high degree of policy convergence in the field of external border policies, because the *acquis* was complex and detailed. However, in the field of judiciary reforms and anti-corruption, the literature predicts a limited convergence because of the lack of substantial EU legislation in the field. In these two policy areas we should expect the scope of the EU's influence to be contingent upon the importance it attached to compliance and the extent to which it showed willingness to use its leverage mechanisms to push for domestic changes.

Adaptation costs and policy priorities of key veto players

There is a general consensus in the literature on Europeanization that the interests and policy priorities of key veto players matter for a successful compliance. A number of studies carried out in the EU15 member states have shown how veto players at political, institutional and administrative levels can mediate EU influence, affecting institutional and policy choices and subsequently policy and institutional outcomes (Fisher et al., 2002; Gwiazda, 2007; Haverland, 2000; Hèritier et. al, 2001).

The policy preferences and priorities of key veto players have also emerged as a key variable in the study of the effectiveness of EU conditionality in aspiring and would-be members. Although the number of veto players in the CEE candidates has generally been regarded as lower than in the existing member states (Dimitrova, 2002, p. 176; Schimmelfennig et al., 2003, pp. 498-99), a number of scholars have shown how the interests and priorities of government representatives (Pridham, 2002) as well as veto players in the constitutional courts (Ganev, 2002; Malová, 2002) and in the public administration (Dimitrova, 2002) are crucial for the success of EU conditionality. Indeed, as Grabbe (2006, p.53) noted, to be effective conditionality requires “willing, not reluctant partners”. Since the EU lacks coercive mechanisms to enforce compliance in non-members, the effectiveness of EU conditionality depends to a significant degree on the commitment of domestic political elites and the presence of political actors willing to comply with EU rules.

The receptiveness of domestic elites, their commitment to and motivations for complying with the EU's extensive entry conditions are important for two reasons. Firstly, they determine the quality of compliance one can expect at domestic level. If incumbent politicians pass legislation or set up institutions in line with the EU's requirements but these bear little or no actual impact on domestic policy and institutional settings, it is unlikely that EU rules will be implemented correctly (Jacoby, 1999). As Noutcheva (2006a, p. 11) argued: "If domestic actors pass legislation compliant with EU-demands but legal enforcement does not follow up and problems of technical nature are not obvious, the ensuing conclusion is that there is no political will to do the reforms requested". Secondly, actors' motivations to comply with the EU's demands determine whether reforms triggered by conditionality will be irreversible once this loses its effectiveness. If EU-induced reforms are not based on a broad political consensus for transforming the country and preparing it for integration, reforms are unlikely to be irreversible (Pridham, 2007; Steunenberg and Dimitrova, 2007).

What determines the propensity of domestic actors to accept the EU's entry conditions? According to Schimmelfennig et al. (2003) the size of the domestic costs of fulfilling EU conditionality ultimately determines whether domestic decision-makers will embark in EU-compliant reforms, independently of the credibility of the reward offered. In their opinion, "these costs increase the more EU conditions negatively affect the security and integrity of the state, the government's domestic power base, and its core political practices for power preservation" (Schimmelfennig et al., 2003, p. 499).

The previous analysis suggests that the interests and priorities of domestic veto players is an important variable in the study of domestic compliance, especially with regards to domestic political elites. According to Geoffrey Pridham (2002), political elites are crucial not only for the introduction of EU-compatible rules but also for their successful implementation, since they can overcome corporate interests or bureaucratic inertia. As he writes: “It is above all the commitment to EU accession of national governments that is the most decisive factor for, if unqualified, this drives through political conditions and may seek to overcome counter- pressures such as resistance from professional or corporate interests or bureaucratic lethargy” (Pridham, 2002, p. 961).

Based on these considerations, the empirical analyses in Chapters 4, 5 and 6 will also consider the interests and priorities of key veto players. As relevant actors, this study focus mostly on the governing coalitions in the 1989-2006 periods primarily because the reforms of the judiciary, of anti-corruption legislation, and of borders and visa regimes require the initiative of governments and the passing of legislative acts. However, when assessing judiciary reforms and anti-corruption policies I will also consider the policy priorities of representatives of the justice sector, including the constitutional court that has been identified by previous research as a potential obstacle to EU-oriented reforms (Ganev, 2002; Weber, 2002).

2.4 Conclusion

This chapter has set out the analytical framework for this study. A review of the Europeanization and EU conditionality literature has suggested that, in exercising its leverage, the EU does so in a number of ways and conditionality plays an important role in shaping actors' preferences and actions. However, the literature also suggests that the success of this leverage much depends on the policy preferences and the willingness of the domestic political elites to comply with the EU's accession requirements. Thus, domestic politics and domestic implementing conditions are important in the study of compliance as they tend to shape the pace and quality of domestic reforms, hence the likelihood of their successful implementation. Therefore, to assess the domestic impact of EU conditionality, it is necessary to take into consideration not only the way the EU uses its leverage to stimulate domestic reforms but also internal political dynamics. In particular, the Europeanization and EU conditionality literature suggests four variables to be taken into account when studying compliance. These are: the credibility of conditionality, the clarity of EU conditions and the adaptation costs and policy priorities of key veto players. Chapters 4, 5 and 6 – dealing with judiciary reforms, anti-corruption and Romania's compliance with the EU's external border policies – will look at the interaction between these variables, investigating how EU conditionality operated in practice to provoke domestic changes. These empirical chapters will also specify how the domestic environment has affected the pace and quality of the institutional and policy measures put in place within the framework of the accession negotiations.

It will be suggested that the difficulties experienced by Romania in fulfilling the EU's entry conditions are primarily of domestic origin, resulting from often hesitant and half-hearted reforms that slowed down the preparations for EU accession, leaving the country struggling to bring its policies, institutions and practices in line with the EU's entry requirements.

To fully appreciate the interaction between EU conditionality and domestic reforms, it is also important to outline the historical context of the evolution of the relation between the EU and Romania. As Chapter 3 will highlight, significant changes took place in the last two decades both at domestic level – with the coming into power of reformist coalitions that spurred domestic reforms – and at EU level, with the progressive framing of an 'all inclusive' enlargement policy. These developments helped the country move forward with its relations with the EU, and allowed EU institutions to become increasingly more involved in domestic decision-making.

Chapter 3

EU-Romania relations 1989 – 2007

This chapter provides the historical background of this research by documenting the main steps in the evolution of EU-Romania relations, from the collapse of the communist regime in 1989 to the country's formal accession to the EU on 1 January 2007. During this period the EU shaped its conditionality strategy vis-à-vis Romania, progressively laying down the conditions for its accession and increasingly becoming involved in domestic policy-making. The following three empirical chapters, exploring respectively the reform trajectory in the field of justice, anti-corruption and external border policies, will then detail the specific content of the EU's accession requirements in each policy area, tracing the impact of EU conditionality on domestic policy and institutional changes.

The relationship between the EU and Romania can be broadly divided into four phases: the post-1989 phase, with the establishment of trade relations followed by the launch of the first pre-accession strategy after the Copenhagen European Council's commitment to enlargement in 1993; the launch of the accession partnership and the Helsinki European Council's decision in 1999 to open accession talks with Romania; the negotiations for accession between 2000 and 2004; and finally, the period prior to Romania's formal entry to the EU in January 2007, with the signature of the Treaty of Accession and the EU's monitoring of domestic reforms under the terms of the postponement clause introduced at the closure of the negotiations in late 2004.

These four phases also roughly coincided with electoral cycles that brought about some significant political changes at domestic level. This contributed to initiating domestic reforms that helped the country to move along the lines of Euro-Atlantic integration.

It is important to emphasise that the evolution of EU-Romania relations cannot be studied in isolation as it is intrinsically linked to the broader context of EU's evolving enlargement strategy vis-à-vis the post-communist states of CEE. It has been the EU that determined the method, speed and timetable of Romania's accession. Yet, the dynamic of its enlargement has not been solely driven by conditionality and the progress made by Romania in fulfilling the EU's entry conditions. As David Phinnemore (2005) convincingly argued, the pace of Romania's integration into the EU owes as much to external factors as to Romania's actual progress in fulfilling the membership conditions. As he writes: "Romania has benefited from the EU's initially hesitant and later comprehensive approach to the development of relations with the CEE countries and eastern enlargement as well as a coupling of Romania with Bulgaria and the impact of geo-strategic developments on EU decisions concerning the future of European integration" (Phinnemore, 2005, p.2). These are important considerations on the nature of the EU's enlargement policy, and they carry implications for the study of how conditionality worked in shaping the reform process in Romania. For these reasons this chapter pays particular attention to the main factors behind the EU's commitment to include Romania, in its enlargement process, highlighting how political considerations, rather than the fulfilment of the EU's entry conditions, often helped the country's bid for closer links with the EU.

3.1 The post-1989 period (1989 -1995)

Romania's relations with the EU developed within the context of the EU's general policy vis-à-vis the former communist countries of CEE after the fall of the Berlin Wall and the strategic decision of EU leaders to overcome the division of the continent by seeking closer links with the countries of CEE. After 1989, Romania was progressively included in all the programs launched by the European institutions to encourage democratic and economic transition, including PHARE (Poland and Hungary Assistance for the Restructuring of the Economy), the economic aid programme created in 1989 to support post-communist transition in CEE and, from 1997 onwards, to assist the candidate countries in their preparations for joining the EU.

Economic ties between Romania and the then European Community (EC) were established in 1990 with the launch of the negotiations for a new Trade and Cooperation Agreement (see Official Journal, 1991). This agreement, which replaced the previous one signed at the beginning of the 1980s (see Official Journal, 1980), covered trade, commercial and economic cooperation, binding Romania to abolish progressively any restriction on imported goods from the EC. However, in the early transition period the EU remained cautious in its relations with Romania, and the first significant step forward in the strengthening of bilateral relations came only in 1992 when Romania, together with Bulgaria, began the negotiations for a Europe Agreement.

The Europe Agreements - which had been created as a rapid response by EU leaders to the political changes in CEE after 1989 - aimed at creating a free trade area between the EC and the associated countries of CEE with the implementation, over a ten year period, of the common market legislation and a deepening of bilateral financial and economic cooperation. The Europe Agreements also foresaw political dialogue and the creation of an institutional framework to support their implementation, including the establishment of the Association Council, the Association Committee, a Joint Parliamentary Committee and subcommittees dealing with various technical questions (Sedelmeier, 1994; Sedelmeier and Wallace, 1996). By signing this agreement in 1993 Romania committed to a gradual opening of its market to industrial goods from the EU, to bring its policies in line with the *acquis*, and to pursue democratic and market-oriented reforms. On the EU side, the member states committed to the progressive opening of their markets to industrial goods from Romania and to support the process of economic and democratic reforms in the country (see Official Journal, 1994). Although at this stage EU conditionality was still at an embryonic level, for Romania and Bulgaria the EU introduced a suspension clause in their Europe Agreements that linked trade and economic cooperation to the respect of the rule of law, the protection of human rights and the introduction of market-oriented reforms (Grabbe, 2006, p.9).

The decision of the member states to conclude the Europe Agreement with Romania was largely political, reflecting geo-political concerns inside the Union rather than the actual progress made by the country in its transition to democracy and market economy.

The political class that replaced Ceaușescu in 1989 - Ion Iliescu and the National Salvation Front (*Frontul Salvării Naționale*, FSN) - had formally committed to pluralist politics, free elections, establishment of market economy, and the respect of the country's national minorities. On the international front, Euro-Atlantic integration figured at the top of the country's foreign policy objectives. Yet, these pledges did not translate into the necessary domestic political reforms and after 1989 many in EU quarters began to question the democratic credentials of the Romanian post-communist elite. Details on the true nature of the revolution had emerge in the early 1990s, and the dubious victory of the FSN in the 1990 elections, followed by the brutal repression of the student demonstration in June the same year, was an indication that the political leadership that overthrew Ceaușescu had in fact not abandoned authoritarian practices and was not prepared to relinquish its grip on power by democratic means.

The European Parliament (EP) was perhaps the most critical voice among European institutions. Already in the late 1980s, the EP took a strong stance towards the Ceaușescu regime, openly condemning the persistent violation of human rights and the suffering imposed upon ordinary citizens (see European Parliament, 1989a, 1989b). This led to the Commission imposing sanctions on Romania, with the closure of a technical mission to the country and the exclusion of Romania from further trade concessions made to the countries of CEE (Papadimitriou and Phinnemore, 2008, p.19).

Similarly, in its 1991 report the EP openly questioned the country's democratic trajectory and the reform credentials of its political class:

Political reform is lagging. It is still not clear whether the Revolution was not, in fact, a coup. The new government, the NSF, consists mainly of ex-communists. There are doubts as to the freedom of the elections last year. Democratisation of the decision making process has not yet been achieved. Human rights are still being violated (European Parliament, 1991, p.24).

Despite these concerns, EU leaders decided to seek closer relations with Romania mainly because of a growing fear of instability in the Balkan region. The breakdown of the former Soviet Union in 1991 and the explosion of ethnic conflicts in Yugoslavia had highlighted the fragility of the democratic process in post-communist states, calling the EU to reconsider its strategy vis-à-vis the region, including Romania. The Romanian political class was quick to capitalise on this insecurity among the member states to ensure the country's inclusion in the EU's emerging policies towards the region. As Papadimitriou and Phinnemore (2008, p. 31) noted: "Whilst widely mistrusted in Brussels, the Romanian government was able to exploit international and regional security risks in order to convince EU policy-makers that possible exclusions from the association process would undermine the country's fragile transition and destabilise the wider Balkan neighbourhood".

The most significant step forward in EU-Romania relations came in June 1993, when the Copenhagen European Council recognised the prospect of membership of the CEE countries and specified the conditions for its future enlargements. To qualify for EU membership, aspiring members had to show high standards in democratic practices and economic governance in addition to having the ability to assume the obligations of membership, that is to align their national legislation with the EU *acquis*.

The vagueness of the accession conditions laid down by the European Council in Copenhagen for future enlargements has prompted much academic debate, raising questions as to whether this was the result of a conscious and deliberate attempt to actually calm enthusiasm in the countries of CEE rather than guide their internal reforms (see Baun, 2000; Grabbe, 1999; Mair and Zielonka, 2002; Mayhew, 1998, pp. 14-15). Wade Jacoby (2004, p.7), in instance, argued that EU officials “were wary of a checklist approach, because for several years, each IO had an internal consensus against a rapid enlargement. Some officials worried that if they gave precise targets to CEE reformers, they would come under more pressure to admit CEE states if those targets were met”.

An equally puzzling question that had generated highly interesting academic discussions among EU enlargement scholars is why the EU offered a membership prospect to the post-communist states of CEE, including Romania, despite the institutional, budgetary and operational costs associated with admitting poorer countries into its structures (Baldwin et al., 1997). Some scholars have argued that the EU committed to enlargement because this represented a considerable opportunity for the members states to expand its markets and increase its competitiveness while enhancing the security and stability at its borders (see, Grabbe, 2001; Moravcsik and Vachudova, 2003; Vachudova, 2004). Others have put forward explanations based on sociological and constructivist approaches, stressing the collective identity of the EU and its desire to export its democratic values and norms beyond its borders (Schimmelfennig, 2002; Sedelmeier, 2000; Sjursen, 2002).

Ulrich Sedelmeier, for instance, argued that “The discourse of a collective EU identity, characterised by a “responsibility” towards the CEECs, became a central aspect of the EU’s policy” (Sedelmeier, 2000, p. 269). Frank Schimmelfennig, challenged both rationalist and constructivist explanations, arguing that material incentives explained why the EU offered association through the Europe Agreement but cannot account as to why the EU agreed to share its political power through the full inclusion of the Eastern European countries. In his opinion, reluctant member states became “rhetorically entrapped” and compelled to approving the EU’s enlargement policy (Schimmelfennig, 2001, pp. 47-70).

In the study of EU enlargement to post-communist states, there is however a broad agreement that the decision taken in 1993 in Copenhagen represented an important step forward in the development of the EU’s relations towards the countries of CEE, including Romania, paving the way for the progressive framing of the EU’s eastward enlargement policy. The Copenhagen conditions were in fact followed by the formal launch of the EU’s pre-accession strategy at the Essen European Council in December 1994, which reaffirmed the commitment of the member states to enlargement and outlined the main measures to support the accession preparations of the candidate countries (European Council, 1994). These measures were further spelled out by the European Commission in its 1995 *Single Market White Paper*, which became the main benchmark for assessing the progress made by the candidate states in transposing the internal market *acquis* (Commission of the European Communities, 1995).

The conclusions of the European Council in Essen were welcomed in Romania, where the political class had been active in campaigning against a possible differentiation in the EU's policies towards the countries of CEE (Phinnemore, 2000). To secure its place in the emerging enlargement agenda all major political parties also gave unanimous consensus for EU integration, and on 22 June 1995 Romania became the third country to submit its application for EU membership. The reasons for seeking EU membership were explained in the Snagov Statement, the declaration signed by fourteen political parties in support of the application for accession:

The national strategic objective of Romania's accession to the European Union represents a crucial point of solidarity and convergence of political and social entities, a historical chance to promote the ideals and fundamental interests of the Romanian people, its identity and traditions towards international co-operation, the possibility, wide opened, to bridge the gap between Romania and the developed countries, to modernise the country in line with the requirements of the information society and to create the conditions to rise the standards of living and the quality of life in Romania (Quoted in Prisăcaru, 1996, p.33).

Romania also actively courted NATO and one year earlier, on 26 January 1994, it was the first ex-communist country to sign NATO's Partnership for Peace (PfP), a programme of bilateral cooperation considered as a preparatory stage for membership.

Economic and security considerations, along with a fear of being excluded from mainstream western institutions, were perhaps the most significant motives underpinning the applications for EU and NATO membership (Gallagher, 2004 and Phinnemore, 2000). Yet, its political class proved unprepared to release the grip on power and pay the price of initiating painful reforms to comply with the EU's demands. Despite declaring EU membership as a top foreign policy objective, Iliescu showed aversion to democracy and sound economy policies and his party paid lip service to the

demands of the EU and those of other international organizations with half-hearted and largely cosmetic reforms. As Tom Gallagher critically noted, Iliescu “needed Western financial backing to reload a battered economy and he desired a normalization of relations with the West to boost the legitimacy of his regime”. However, Iliescu and his entourage were “mediocre politicians looking for some sort of *modus vivendi* with the West in the hope they could still enjoy the autonomy to pursue a semi-authoritarian course in Romania” (Gallagher, 2001, p.108). Yet, the separation between foreign policy and domestic affairs would ultimately prove detrimental for the country, and in spite of the initial impetus for EU and NATO integration, Romania would soon find itself under open criticism from the EU and other International Organizations and relegated to a laggard status in the process of Euro-Atlantic integration.

3.2 From Exclusion to Inclusion (1996-1999)

In November 1996 the Romanian citizens went to the ballot for the third time after the collapse of the Ceaușescu regime⁶ and unseated President Iliescu and his Social Democratic Party of Romania (*Partidul Democrației Sociale din România*, PDSR) in favour of Emil Constantinescu - the then rector of the University of Bucharest - and a four-party parliamentary coalition known as the Democratic Convention of Romania (*Convenția Democrată Română*, CDR). Michael Sharif (1997) argued that a radical contribution to the victory of the CDR came from the failure of Iliescu and his party to generate economic recovery and improve democratic standards.

⁶ Elections were also held in 1990 and 1992.

In his opinion: “Their authoritarian habits, economic incompetence (or ideologically induced resistance to economic reforms), and condoning of rampant corruption in their own ranks seemed to have spread a general realization that ‘enough was enough’” (Shafir, 1997, p.155).

The 1996 elections opened, albeit briefly, a new chapter in Romanian post-communist politics. Domestically, they were seen as a turning point for Romanian democracy - with the first peaceful alternation in power since 1947 – and a genuine opportunity to overcome the legacy of Communist party rule in the country (Mungiu-Pippidi, 1999, p.136; Shafir, 1997; Tismăneanu and Kligman, 2001). At international level, the exit of the former communists from power was equally welcomed. For example, the IMF released previously frozen funds in an effort to support the process of economic reforms in the country. At EU level, the coming into power of the CDR alliance brought fresh hope that Romania would be able to launch reforms to improve the functioning of its state institutions and its economy. The 1996 elections also brought new foreign support for Romania’s bid for NATO membership, which until then was not considered as “a serious candidate for membership” as Alfred Moses (1998, p. 137), the then US ambassador to Romania, later noted.

At domestic level, the first CDR-led government under Prime Minister Victor Ciorbea (1996-1998) showed commitment to democratic and economic reforms and embarked on a series of measures to fulfil the conditions for Euro-Atlantic integration. These include reforms aiming at the modernisation of the judicial system and of the public administration, as well as attempts to curb corruption.

According to Tom Gallagher (2001, p.110), the reform drive of the new leadership aimed primarily at transforming Romania's image abroad from a Balkan trouble spot to a zone of stability and prosperity in the region and to enhance international support for its bid for NATO and EU accession.

However, despite the strenuous lobbying of the new leadership to sell Romania's case for NATO membership and the pressure from some member states (notably France), Romania would not make NATO's first enlargement invitation list in Madrid in 1997 - only Poland, Czech Republic and Hungary were invited to start the negotiations - and would only be invited in 2002, at the Prague Summit, along with Lithuania, Latvia, Estonia, Slovenia, Slovakia and Bulgaria.

According to Barany (2004), NATO's decision to leave Romania out the first enlargement wave and then commit to its membership in 2002 had much more to do with geopolitical concerns than with Romania's eligibility (or lack of it). In 1997, the US administration was against the inclusion of Romania (as well as Slovenia), because its membership would have called into question the issue of membership of the three Baltic States, with the risk of antagonising Russia. At the same time, there were concerns about the country's democratic credentials and the commitment of Iliescu to political and economic reforms. However, the Kosovo War in 1999 and the 9/11 terrorist attacks changed everything since the US "needed all potential allies, regardless of their deficiencies" (Barany, 2004, p.72).

TABLE 3.1. Romania's compliance with the White Paper *Acquis* (1997)

White Paper Chapters	Total Directives/Regulations	Romania
1. Free Movement of Capital	4	0
2. Free and Safety of Industrial Goods	165	100
3. Competition	4	4
4. Social Policy and action	29	25
5. Agriculture	203	101
6. Transport	55	40
7. Audio-visual	1	1
8. Environment	45	38
9. Telecommunication	16	11
10. Taxation	4	2
11. Free movement of goods	4	2
12. Public procurement	6	4
13. Financial Services	21	19
14. Protection of personal data	2	0
15. Company Law	6	5
16. Accountancy	5	4
17. Civil Law	2	1
18. Mutual Recognition of professional qualifications	18	10
19. Intellectual property	11	8
20. Energy	15	9
21. Customs Law	201	29
22. Indirect Taxation	75	10
23. Consumer protection	11	5
Total	899	426

Source: Commission of the European Communities (1997a)

With regards to Romania's integration into the EU, important deadlines were also missed. In December 1997, the Luxemburg European Council invited five CEE candidates (Poland, Hungary, Czech Republic, Estonia and Slovenia) to open the negotiations and Romania was not among them (European Council, 1997). In July 1997 the European Commission *avis* - the first official assessment of Romania's state of democracy and market economy - had judged the country unprepared for membership and therefore did not recommend the opening of the accession negotiations. In fact, the Commission expressed concerns for the limited progress made in fulfilling the Copenhagen criteria, especially at economic level.

According to the Commission, Romania “would face serious difficulties to cope with the competitive pressures and market forces within the Union in the medium term”(Commission of the European Communities, 1997a, p. 111). The *avis* also noted the limited progress made in implementing the *White Paper* and in transposing the internal market *acquis*. At the end of 1997 only half of the EU’s directives and regulations had actually been transposed into national legislation (See Table 1.1). A rather encouraging assessment was made of Romania’s efforts to meet the political criterion for accession, although this reflected more a conviction of the reformist credentials of the new leadership than the real situation on the ground (Phinnemore, 2000). Indeed, the *avis* noted shortcomings in guaranteeing civil liberties, protecting the rights of national minorities, rooting out corruption and improving the work of courts. But the Commission concluded that “the current improvement in Romania, following the arrival in power of a new government, indicates that Romania is on its way to satisfying the [Copenhagen] political criteria” (Commission of the European Communities, 1997a, p.114). The Commission reached similar conclusions also for Bulgaria, while Slovakia was the only CEE applicant to be excluded from the ‘Luxemburg group’ for non-compliance with the Copenhagen political criterion for membership (Commission of the European Communities, 1997b).

The decision in Luxemburg to exclude Romania from the first group of those invited to negotiate for membership created considerable frustration and uncertainty in the country. According to David Phinnemore (2000). Many in Bucharest feared that the differentiation introduced among the aspiring members would heavily penalise Romania, jeopardising the country’s credibility at international level and undermine

public support for painful economic and state reforms. The other CEE candidates that were left out from the first group of countries invited to open the accession talks also raised similar concerns. To soften their negative reactions, as well as minimise the perceived level of differentiation between front-runners and late-comers, EU leaders in Luxemburg decided to launch an enhanced pre-accession strategy with all the remaining candidate states, to enable them to “eventually” become members of the EU (European Council, 1997).

The first Accession Partnership for Romania, adopted by the European Council in March 1998, spelled out the short and medium term priorities to be addressed by the Romanian authorities in order to meet the accession criteria. The member states also invited Romania to submit a National Programme for the Adoption of the *acquis*, with a timetable for achieving compliance with the priority areas set by the EU (Official Journal, 1998). Among the most important priorities identified by the member states there were: macroeconomic reforms, the privatisation of state-owned companies and of the banking sector, legislation protecting foreign investments and regulating the financial market, the adoption of civil service reforms and harmonisation with the EU’s competition law. In the field of JHA, the member states called for efforts to modernise border structures, improve the fight against corruption and organized crime and alignment to the *acquis* in the field of asylum and immigration policies (see Official Journal, 1998). The Accession Partnership was later revised in 1999, 2002 and 2003 targeting priority areas and shortcomings identified by the European Commission in its annual Regular Reports (see Official Journal, 1999a, 2002a, 2003a).

Romania was finally invited to open the negotiations in December 1999 - along with Bulgaria, Slovakia, Lithuania, Latvia and Malta - when the Helsinki European Council decided to open the accession talks with all the remaining candidates. While affirming the principle of differentiation, stating that every country would be judged on its own merits, the decision taken in Helsinki represented a significant turning point in the EU's enlargement strategy, making it possible for late comers to catch up with the front runners, and for the two laggards - Romania and Bulgaria - to have a promise of eventual membership (European Council, 1999a). The launch of the negotiations was made conditional to Romania introducing structural reforms of child-care institutions and the resolution of macro-economic problems, two key areas of concern highlighted by the European Commission in its 1999 Regular Report (Commission of the European Communities, 1999). Despite this additional conditionality the Helsinki decision was enthusiastically welcomed in Romania ending a decade of uncertainty on the country's prospect of EU integration⁷.

As in the case of the Europe Agreement, geopolitical concerns rather than the actual progress made in fulfilling the conditions for accession shaped the EU's decision to initiate accession talks in 1999. The country's support during the Kosovo conflict and the desire among some member states to reward Romania and compensate the country for its losses, were key factors that helped Romania's candidacy for EU (and NATO) membership (Gallagher, 2004, p. 8; Papadimitriou and Phinnemore, 2008, pp. 43-46).

⁷ President Constantinescu was quoted as having said: "We can now see the light at the end of the tunnel". See 'Union comes of age at Helsinki', *European Voice*, 16 December 1999.

However, limited progress was actually made in fulfilling the EU's entry conditions, especially on the economic front. In 1998 the Commission's Regular Report expressed serious concerns with Romania's economic performance:

The economic situation in Romania is very serious. The new [Vasile] government must give absolute and urgent priority to restoring macroeconomic stability and establishing the credibility in the international financial markets. This must involve a substantial privatisation programme, attracting foreign direct investment, accelerating structural reforms and impressing financial discipline on enterprises. Romania urgently needs a medium term economic strategy to deal with all these issues comprehensively (Commission of the European Communities, 1998a, p. 22).

The conclusions did not read any better, noting that "Romania had made very little progress in the creation of a market economy and its capacity to cope with the competitive pressure and market forces has worsened" (Commission of the European Communities, 1998a, p. 50). As Papadimitriou and Phinnemore (2008, p.42) noted, "Implicit in the conclusions was a clear sense of disappointment with the efforts of the post-1996 governments that had promised so much".

Indeed, the CDR alliance had committed to extensive state reforms but it proved too factious and unable to live up to its commitments. Many of the reforms promised were not implemented, and the lack of political consensus among the coalition members slowed down the introduction of far-reaching institutional and policy changes. As we shall see in Chapter 4 and Chapter 5, legislative efforts to modernize the justice system were blocked by internal divisions on the direction of the reforms, while powerful veto-players slowed down efforts to set up a sound legal framework to fight corruption. Alignment with the JHA *acquis* also proceeded slowly, and only a few steps were taken to modernise border structures and bring policies and institutions in line with the EU's accession requirements.

The biggest failure of the CDR coalition was perhaps registered at economic level. Back in 1996, one of the factors of the success of the CDR at the national elections had been the promise to restructure industry and agriculture, reinvigorate privatisation and promote the recovery of the economy after six years of inefficient and largely cosmetic reforms. Despite initial success in promoting macroeconomic stability, economic reforms soon stagnated, and between 1997 and 1999 the economy experienced three years of negative economic growth, unemployment almost doubled and poverty continued to increase (Pop-Eleches, 2001, p.159).

By the spring of 1999 Romania was facing the deepest economic crisis since the collapse of the communist regime and it was ordinary Romanians who were the worst hit. In part this was due to the fact that the CDR had inherited a disastrous economic situation from the previous administration, with a skyrocketing inflation and declining foreign investment. But the economic situation also reflected deep structural problems in the Romanian economy, caused by the slow pace of the privatisation of small and medium scale industrial enterprises, especially in the energy sector, and the failure to implement much needed structural reforms (Freyberg-Inan, 2002; Hunya, 1998). The lack of consensus on the directions of economic and state reforms inside the ruling coalition also proved detrimental to the economy. Legislation often stalled in Parliament, a problem that the executive tried to overcome by extensively resorting to emergency ordinances (Shafir, 2001, pp. 86-88; Stan, 2002). This practice increased legislative uncertainty, placing an excessive burden on the justice sector and contributing to its chronic inefficiencies - see Chapter 4.

The constantly changing legal framework also negatively affected economic development because foreign investors were discouraged by the legal uncertainty in the Romanian market.

The medium-term economic strategy launched in late 1999 by the newly appointed Prime Minister Mugur Isarescu, an economist who had been head of Romania's Central Bank since the 1990, proved beneficial in saving the Romanian economy. The year 2000 was the first to bring some modest economic growth but this was perhaps too little and came too late to bring the much-promised economic benefits to ordinary Romanians, who sealed the defeat of the CDR coalition in the parliamentary elections in December 2000.

3.3 Negotiating accession (2000 – 2004)

The decision of the Helsinki European Council in 1999 opened a new chapter in Romania's relations with the EU, paving the way, on the 15 February 2000, for the formal opening of the accession negotiations. The year 2000 was also an electoral year in Romania, and in December the PDSR (renamed in 2001 *Partidul Social Democrat*, PSD) and its leader Ion Iliescu returned to power after a head to head second round of presidential votes with Corneliu Vadim Tudor and his ultra-nationalist Greater Romania Party (*Partidul România Mare*, PRM), while President Constantinescu did not run for a second mandate fearing a poor electoral performance (Mungiu-Pippidi, 2001, p.230).

While the return of Iliescu and the ex-communists was regarded by some as a setback for Romanian democracy (Gallagher, 2001; Mungiu-Pippidi, 2001; Tismăneanu and Kligman, 2001) it did not come as a complete surprise. As previously highlighted, the CDR coalition had performed poorly in economic reforms, in improving democratic standards, in fighting corruption and in securing Romania's place in the EU and NATO. According to Tom Gallagher (2001) these failures decreased its popularity primarily because these objectives were among the most important electoral promises made by the coalition in 1996. Grigore Pop-Eleches (2001) further argued that during the election campaign, Iliescu and PDSR also carefully exploited the weaknesses of the coalition, and went a long way in presenting themselves as a reformed political class. In his view "The PDSR electoral platform for 2000 avoided the shrill tones of its 1996 campaign. Instead, the PDSR and Iliescu emphasized their adherence to the values of European integration, democracy, and ethnic tolerance, while at the same time promising a coherent economic program to spur economic recovery and fight poverty" (Pop-Eleches, 2001, p.162).

Determined to achieve Romania's integration into the EU and NATO during his mandate Adrian Năstase, the newly appointed Prime Minister, announced a series of plans to speed up privatisation, to combat corruption, to thin out bureaucracy and attract foreign investors in the country (Government of Romania, 2000). Priority was given to economic restructuring, and not only because Romania's economy was in a state of disarray. During the 1990s many in PSD had shared the belief that Romania's poor economic performance was the main reason why the country failed to be invited to start membership talks with the EU and NATO.

Writing in 1997 Mircea Geoana, the then Romanian Ambassador to the US who was appointed as Foreign Minister in the Nastăse cabinet, noted: “Romania is not among the first invitees, and the reason is clear: its poor economic performances” (Geoana, 1997, p.19). However, many of the reforms promised did not materialise. If rhetorically the new administration pledged to introduce sound political reforms by modernising the judiciary and the public administration and root out corruption, PSD proceeded in practice to secure political control over every state sector.

With the opening of the accession negotiations in 2000 the EU became increasingly vocal on the state of the rule of law in the country, but criticism was carefully bypassed with largely cosmetic reforms that fell short of any implementation efforts. As we shall see in the following chapters, the judiciary remained under the effective political control of the executive until 2004. The restructuring of the economy and the launch of extensive privatisations of state enterprises offered wide opportunities for corruption and enrichment, while the executive efforts at curbing corruption did not go beyond cosmetic reforms. It is only when the EU threatened to sanction Romania with exclusion from its enlargement that significant reforms were introduced, although many of them would not actually be implemented before the formal closure of the accession negotiations in December 2004. More progress was registered in fulfilling the EU’s entry conditions in the field of external border policies, but this was primarily because incumbent politicians had very strong incentives to comply with the EU’s demands since Brussels linked domestic reforms to granting visa-free travel to the Schengen area for Romanian citizens – see chapter 6.

The limited progress made by Romania in fulfilling the entry conditions was clearly reflected in the European Commission's Regular Reports. In its 2002 assessment Brussels judged Romania's preparations insufficient to grant membership. According to the Commission it was unlikely that the country would be able to join prior to 2007. Significant shortcomings were identified in the legal transposition and the implementation of the *acquis* in most areas, and Brussels officials expressed concerns with the major delays in the negotiating process. In October 2002 only 13 out of the 31 chapters of the *acquis* had provisionally been closed, and according to the Commission the weaknesses of the country's administrative capacity posed major constraints in the preparations for accession (Commission of the European Communities, 2002a, p. 132). In December 2002, at the Copenhagen Summit, the member states decided to wrap up the negotiations with eight former communist countries plus Cyprus and Malta, setting the stage for the 'big bang enlargement' on 1 May 2004. Romania (as well as Bulgaria) would have to wait, although this decision did not come as a surprise to Bucharest and Sofia, who had themselves set 2007 as a target date for accession. To reassure the two laggards of the continuing nature of the enlargement process, the European Commission put forward in November 2002 Roadmaps containing a detailed list of short and medium term actions to be fulfilled in order to comply with the criteria for membership (Commission of the European Communities, 2002b).

The year 2004 was perhaps the most difficult for Romania's quest for EU integration. In February, the EP became extremely vocal on the state of the rule of law in the country. A motion by Baroness Emma Nicholson - the then EP's Rapporteur for Romania - openly called into question Romania's membership prospects, expressing serious

BOX 3.1. Extract from the European Parliament’s Motion (February 2004)

The European Parliament,

....

1. Deplores that despite progress in a number of areas, Romania currently faces serious difficulties fulfilling the requirements of the political Copenhagen-criteria; states that finalizing accession negotiations at the end of 2004 and becoming a member in 2007 is impossible unless Romania fully implements the following:

- anti-corruption measures, especially addressing corruption at the political level and implementing anti-corruption laws,
- independence and functioning of the judiciary, especially limiting the powers of the Ministry of Justice and providing more resources to the judiciary,
- freedom of the media, especially taking decisive action against the harassment and intimidation of journalists and curbing the economic control of the media which has resulted in self censorship,
- measures to stop ill-treatment at police stations, starting with the publication of the 2002-report of the Council of Europe’s Committee for the Prevention of Torture on the conditions at police stations;
- recognises the right of families affected by the moratorium to receive a reply to their requests; considers that the failure to reply in 3 years constitutes an infringement of the most basic human rights;

2. Calls on the Commission together with the Romanian government to develop action plans accompanied by clear benchmarks on these reforms in order to better evaluate the progress made;

...

Source: European Parliament (2004)

preoccupations with the country’s democratic standards. For the EP, finalising the negotiations in 2004, and becoming member in 2007 would be ‘impossible’ unless Romania took drastic action to fight corruption, ensure judiciary independence and guarantee media freedom (See Box 3.1). Although in its final version the motion did not recommend a suspension of the negotiations thanks to a last-minute deal struck by the Romanian government⁸, the tough position of the EP was an alarm bell for the

⁸ Author’s interview with Baroness Emma Nicholson de Winterbourne, European Parliament’s Rapporteur for Romania 2000- 2004, Brussels, June 2006.

Romanian political class. The EP's criticism did not go unnoticed in Bucharest where many still recalled how Emma Nicholson's harsh criticism of the treatment of children in orphanages caused outcry in the member states and forced the government to reconsider its international adoption practices⁹. Fearing a delay in the conclusion of the negotiations, Prime Minister Nastăse responded to the EU's criticism with a reshuffling of the executive and the removal, among others, of controversial Justice Minister Stănoiu, who had increasingly come under fire for her excessive control over the judiciary. Hildegard Puwak, the then Minister of European Integration, was also forced to resign in 2003 when a corruption scandal for the embezzling of EU funds broke out in the media. Under the mounting pressure from the EU Nastăse also 'reluctantly'¹⁰ signed up to a 'To Do' list, containing a number of immediate measures the government would undertake to secure the timely conclusion of the negotiation. In an effort to convince Brussels of the executive's will to live up to its commitment, the government also approved in March 2004 two major legislative packages to reform the justice system and fight corruption— see Chapters 4 and 5 respectively.

In November 2004, just a few weeks ahead of the foreseen closure of the negotiations, the timing of Romania's accession began to look uncertain. The Commission's Regular Report published in October 2004 had noted progress, most notably at economic level, finally granting Romania the status of functioning market economy.

⁹ In late 2001 the Romanian Government was forced to suspend all international adoption procedures after an EP's report exposed the corruption and malpractice in the adoption system. For media coverage see 'Romania: EU Report Assails Nation over Treatment of Orphans, *RFERL*, 4 June 2001.

¹⁰ Author's interview with Adrian Nastăse, Prime Minister of Romania 2000-2004, Bucharest, October 2006.

The Commission also acknowledged the legislative improvements to guarantee the independence of the judiciary and in fighting corruption (Commission of the European Communities, 2004). After the publication of the Report, the government expressed confidence that Romania would be able to close the accession negotiations in 2004 and secure membership in 2007¹¹. However, the reform drive of the Nastăse executive did not convince Brussels officials who maintained serious reservations on the government's will to proceed with implementing judiciary reforms and anti-corruption policies. A large-scale JHA mission carried out by experts from the member states at the end of 2004 found strong evidence of political interference in the justice sector and hardly any convincing track-record was produced by the government in tackling political corruption. Major shortcomings were also identified in Romania's competition legislation, especially in the field of state aid, as well as taxation and compliance with the EU's environmental legislation. Brussels officials feared that, with the negotiations drawing to an end, the lessening of the EU's leverage would weaken Romania's will to comply with the EU's conditionality targets (Pridham, 2006, p.13).

With this background in mind it is perhaps not surprising that the Barroso Commission, which was appointed a few weeks prior to the conclusion of the negotiations, felt unease about finalising the accession process. Olli Rehn, the newly appointed Commissioner responsible for enlargement, was behind the EU's toughening of its conditionality towards Romania.

¹¹ See interview of Vasile Pușcaș, Romanian Chief EU negotiator (2000-2004) in "Romania's Chief Negotiator: We will be Ready for Membership in 2007", *South East European Times*, 1 November 2004.

BOX 3.2. Romania: The Postponement Clauses

a) General Postponement Clause

Art. 39 (1). If, on the basis of the Commission's continuous monitoring of commitments undertaken by Bulgaria and Romania in the context of the accession negotiations and in particular the Commission's monitoring reports, there is clear evidence that the state of preparations for adoption and implementation of the *acquis* in Bulgaria or Romania is such that there is a serious risk of either of those States being manifestly unprepared to meet the requirements of membership by the date of accession of 1 January 2007 in a number of important areas, the Council may, acting unanimously on the basis of a Commission recommendation, decide that the date of accession of that State is postponed by one year to 1 January 2008.

b) Specific Provisions by Qualified Majority Vote

Art. 39 (2). Notwithstanding paragraph 1, the Council may, acting by qualified majority on the basis of a Commission recommendation, take the decision mentioned in paragraph 1 with respect to Romania if serious shortcomings have been observed in the fulfillment by Romania of one or more of the commitments and requirements listed in Annex IX, point I.

Art. 39 (3). Notwithstanding paragraph 1, and without prejudice to Article 37, the Council may, acting by qualified majority on the basis of a Commission recommendation and after a detailed assessment to be made in the autumn of 2005 of the progress made by Romania in the area of competition policy, take the decision mentioned in paragraph 1 with respect to Romania if serious shortcomings have been observed in the fulfillment by Romania of the obligations undertaken under the Europe Agreement or of one or more of the commitments and requirements listed in Annex IX, point II

Source: Annex X, Treaty of Accession of Bulgaria and Romania (Official Journal, 2005)

As soon as he came into office he openly opposed the closure of the negotiations, questioning the limited track record in implementing the *acquis* in the field of competition and JHA policies¹². The accession talks were finally closed but at the eleventh hour and on the verge of a diplomatic crisis in the European Council due to Finland threatening to veto the formal closure of the accession process. However, as a condition for wrapping up the negotiation, Romania was forced to accept a special postponement clause in its Treaty of Accession allowing the EU to potentially delay its

¹² See interview with Olli Rehn, 'Amânarea aderării pâna în 2008 rămâne o posibilitate', *BBC Romanian*, 9 December 2004 and; 'Defiant EU Commission say Romania is not ready', *Financial Times*, 4 December 2004.

membership by one year in case of a failure to comply with a highly detailed list of commitments in the field of JHA and competition policies (see Box 3.2). These covered the areas of state aid, restructuring of the steel industry, improved control of the EU's external borders, implementation of the Schengen Action Plan, introduction of anti-corruption measures, judiciary and police reforms as well as the development of an anti-crime strategy (see, Official Journal, 2005).

The conditions imposed on Romania were unprecedented and significantly tougher than those introduced also for Bulgaria, where the postponement clause was only of a general nature and more difficult to activate because it required the unanimous agreement of all the member states. According to a senior EU official interviewed by the author, although Romania's accession date could only be delayed by one year the introduction of the postponement clause by a qualified majority in the Council was intended as a clear political message that postponement was a serious option¹³. As Olli Rehn himself later explained: "Because these are exceptional circumstances and because Romania has a lot of hard work to do in these fields [JHA and competition] in the next two years, the Council wanted to retain the possibility to decide on a suspension of membership by qualified majority vote"¹⁴.

¹³ Author's interview with Barbara Brandtner, member of Cabinet of Commissioner Neelie Kroes, European Commission, Brussels, May 2006.

¹⁴ Quoted in 'EU: Enlargement Chief Discusses Romania, Turkey, Ukraine', *RFERL*, 9 December 2004.

BOX 3.3. General Safeguards in the Treaty of Accession of Romania and Bulgaria

General economic safeguard clause to remedy serious and persistent difficulties in one or other economic sector in the present or new Member States (Art. 36 of the Accession Treaty Protocol)

Internal market clause to prevent or deal with serious breaches of the functioning of the internal market (Art. 37 of the Accession Treaty Protocol)

Justice and home affairs safeguard to deal with serious shortcomings in the field of cooperation in civil and criminal matters (Art. 38 of the Accession Treaty Protocol).

Source: Treaty of Accession of Romania and Bulgaria (Official Journal, 2005)

Moreover, similar to the Accession Treaty of the ten countries that acceded in May 2004, the Treaty of Romania (and Bulgaria) also contains three specific safeguard clauses allowing the Commission to suspend concrete benefits of membership in the first three years after accession in case of serious shortcomings in the economic, single market and JHA fields (Box 3.3).

The EU's uncompromising stance towards Romania provoked considerable frustration in Bucharest. Despite Nastăse being quick to point out that these additional measures were "a way of supporting Romania's accession to the European structure"¹⁵, the unprecedented terms imposed by the EU to close the two remaining negotiating chapters caused widespread resentment, and behind closed doors many accused Brussels of applying unfair conditions and a second-class treatment to their country¹⁶.

¹⁵ Quoted in 'Romania has completed the accession negotiations', *Nine O'Clock*, 9 December 2004.

¹⁶ Authors' interview with Vasile Pușcaș, Romanian Chief EU negotiator 2000-2004, Bucharest, October 2006.

Yet, the Romanian government subscribed to these conditions because it feared a progressive toughening of the closing criteria with a risk of postponing indefinitely the country's accession. As a senior diplomat openly confessed to the author, "we feared we would fall victims of our own limits. Closing under these terms was better than not closing at all"¹⁷.

The conclusion of the accession negotiations also coincided with the electoral campaign for the presidential and parliamentary elections and this 'diplomatic gift' was a useful electoral token for Nastăse and his presidential campaign. Indeed, the PSD administration had been successful on the international front. It secured NATO membership, visa-free travel to Europe for Romanian citizens and successfully concluded the accession talks with the EU. But voters in the December elections unseated Nastăse and the PSD. The second round of presidential votes on 12 December 2004 saw his unexpected defeat in favour of Traian Băsescu, the outgoing mayor of Bucharest, by 51 to 49 percent and the coming into power of the centre-right Justice and Truth Alliance (*Alianța Dreptate și Adevăr*, DA)¹⁸ As we shall see in the following chapters, the appointment of a new government created a much-needed momentum for reforms that will prove crucial for securing Romania's accession in 2007.

¹⁷ Author's interview with a senior Romanian diplomat, who for professional reasons has asked to remain anonymous, Brussels, 2006.

¹⁸ Formally speaking the parliamentary elections, which run in parallel with the first round of the presidential elections, were won by the left-wing PSD party combined with the Humanist Party of Romania (*Partidul Umanist Român*, PUR renamed in 2005 *Partidul Conservator*, PC) with nearly 37% of the votes. The centre-right DA Alliance, comprising the National Liberal Party (*Partidul Național Liberal*, PNL) and Băsescu's own Democratic Party (*Partidul Democrat*, PD) obtained approximately 32% of the votes. However, after the results of the presidential elections, PUR switched sides giving a majority in Parliament to the DA Alliance. For a full analysis of the elections see Gross and Tismăneanu (2005).

3.4 Membership on the horizon (2005 -2007)

The credible threat of a delay in Romania's accession represented the central tenet of EU - Romania relations from the closure of the accession talks in late 2004 to the country's formal accession on 1 January 2007. The newly appointed government, led by Prime Minister Călin Popescu-Tariceanu, inherited a hefty burden of tough commitments and short deadlines from the PSD administration. Yet, the executive promised to fulfil all these conditions and in an effort to prove the credibility of the coalition in the eyes of foreign observers, President Băsescu appointed Monica Macovei - a non-partisan human rights lawyer - as the head of the Ministry of Justice¹⁹. The first few months of 2005 saw an impressive flurry of government activities to meet the deadlines set in the Accession Treaty. Some of the most visible reforms took place in the justice system and in fighting political corruption, with the opening of high-profile cases against well-known politicians including former Prime Minister Adrian Năstase – see Chapters 4 and 5. Progress was also registered in securing the EU's external borders as well as fulfilling shortcomings in the field of taxation, environmental legislation and in implementing the EU's competition policy.

For a country with a rather poor track record in living up to its commitments, the reform momentum in Romania in early 2005 took many in Brussels quarters by surprise, but was perceived as a positive signal that the centre-right coalition was serious about reforms.

¹⁹ Author's interview with Renate Weber, Advisor on Constitutional and Legislative matters to President Băsescu 2004-2005 and President of the Open Society Foundation, Bucharest, October 2006.

The Commission responded with support and encouragement and senior EU officials shared the belief that the EU's tough conditionality strategy was yielding positive results²⁰. On 22 February 2005 the European Commission issued a positive opinion on Romania's application for membership (Commission of the European Communities, 2005a). This was followed by the formal assent of the EP in April that gave the green light for the signature of the Treaty of Accession, which was signed in Luxemburg on 25 April 2005. In October 2005, the Comprehensive Monitoring Report from the Commission - the first assessment of Romania's progress since the closure of the accession talks - praised the executive efforts. Successful lobbying by the Romanian government also ensured that progress would not go unnoticed. The report still contained a number of outstanding issues to be addressed but for the first time, Romania found itself ahead of Bulgaria in the race for EU membership, which received a rather harsh treatment for its failure to curb organised crime and corruption and to address the question of accountability of the judiciary (Commission of the European Communities, 2005b).

Thanks to the reform efforts undertaken, Romania successfully received an encouraging report in May 2006, and in September the European Commission gave the green light for its accession. However, to ensure that Romania would continue implementing the reforms after accession, the Commission introduced a post-accession monitoring mechanism to verify compliance in the field of judiciary reforms and anti-corruption.

²⁰ Author's interviews with EU officials including Kristian Hedberg, member of the cabinet of Commissioner Olli Rehn and Karolina Kottova, member of the cabinet of Commissioner Franco Frattini. Brussels, June-September 2005.

According to the terms of the so-called ‘Verification and Cooperation Mechanism’, Romania is now required to report on a yearly basis on a set of benchmarks devised by the Commission amid the risk of safeguard measures being activated in the field of JHA (see Box. 3.4).

BOX 3.4. Verification and Cooperation Mechanism – Romania

...

(5) The remaining issues in the accountability and efficiency of the judicial system and law enforcement bodies warrant the establishment of a mechanism for cooperation and verification of the progress of Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption.

(6) If Romania should fail to address the benchmarks adequately, the Commission may apply safeguard measures based on Articles 37 and 38 of the Act of Accession, including the suspension of Member States' obligation to recognise and execute, under the conditions laid down in Community law, Romanian judgments and judicial decisions, such as European arrest warrants.

...

Source: Commission of the European Communities (2006a)

A similar mechanism was also established for Bulgaria, covering judiciary reforms, anti-corruption efforts as well as the fight against organized crime (Commission of the European Communities, 2006b).

As we shall see in further details in the following chapters, several factors help to explain the reform momentum in Romania after the closure of the accession negotiations. First of all, the one-year delay was perceived in Bucharest as a serious and credible threat. Not only could the postponement clause be relatively easily activated by the majority of the member states, but Olli Rehn’s tough stance towards

Romania at the closure of the negotiation and the anti-enlargement mood in many EU capitals after the 2004 enlargement signalled that the EU was no longer prepared to accept mere commitments to warrant membership. As Geoffrey Pridham (2006, p.14) pointed out: “Romania and Bulgaria experienced the thin edge of a forthcoming wedge over accession conditionality. This showed that Brussels intended enlargement in the future to be a far more stringent, rather less predictable and by no means automatic process”.

Moreover, the Commission skilfully used the threat of postponement to maximise the scope of its leverage. Firstly, the postponement clause allowed the Commission to subject Romania to an intensive and unprecedented monitoring. Indeed, in the two years preceding Romania’s accession, the number of formal exchanges between EU and Romanian officials intensified and several missions both at political and technical level took place in the country. For instance, between 2005 and mid-2006 three large-scale JHA missions involving member states’ experts took place in the country with the objective of verifying whether the country fulfilled the conditions laid down in the Accession Treaty²¹. Secondly, in order to keep the pressure for reforms on the Romanian government, Brussels officials also skilfully used the ‘rhetoric of postponement’ to foster uncertainty on the future accession date. Thus, while praising the reform efforts, the Commission repeatedly stated that postponement was a serious option.

²¹ Author’s interview Sabine Zwaenepoel, Desk-Officer for Romania and Bulgaria, European Commission, Brussels, April 2006.

For example, presenting the findings of the Comprehensive Monitoring Report to the EP, Olli Rehn stated: “Should there be serious shortcomings, I would not hesitate to make use of all our remedial tools. This includes not only the possibility of postponing accession by one year but also all the other safeguard clause” (Rehn, 2005). Moreover, although the Commission was in a position to make a recommendation for the accession of Romania and Bulgaria already in May 2006, it delayed the decision until September to ensure that the reform momentum would not be lost.

The Commission’s tough conditionality strategy was considerably strengthened by the difficult political climate within the EU after the rejection by French and Dutch voters of the Constitutional Treaty in 2005. Since the question of further enlargements was present in public debates prior to the referenda, their negative outcome was interpreted as a signal of a growing discontent, if not opposition to further enlargements (Bechev and Noutcheva, 2008, p. 125). Facing growing popular criticism for the handling of the accession preparations of the CEE countries, some member states had also slowed down the ratification process of the Treaty of Accession of Romania and Bulgaria, calling on the Commission for factual, rather than political, assessments of their compliance with the conditionality targets. The member states’ position not only justified Brussels’ unprecedented monitoring but also raised the stake for non-compliance, because a non-ratification by any member state of the Treaty of Accession would have halted Romania’s accession. Finally, EU conditionality proved successful because it helped reformers inside the ruling coalition bringing much needed reforms to the top of the political agenda. As we shall see in later chapters, the tough deadlines imposed by the Commission, the extensive monitoring that took place in the country until the moment

of accession and the credible threat of postponement proved crucial in enabling Monica Macovei, the bold Justice Minister, to bypass opposition and push forward comprehensive reforms of the judiciary and in the anti-corruption legal framework, well beyond the commitments Romania was requested to comply with in the Treaty of Accession.

Undoubtedly, the achievements in the field of justice and anti-corruption helped Romania secure accession in 2007. However, the political decision to allow Romania accede was also influenced by other factors including the need to safeguard the institutional credibility of the European Commission. Arguably, Brussels was never in a sufficiently strong position to recommend postponement. While publicly backing the Commission's tough conditionality strategy, some member states did not support a potential de-coupling of the two laggards, or a delay in their accession²². Without a strong political backing the Commission risked being overruled by the Council, a politically damaging situation for an institution that has been entrusted by the member states to monitor the accession preparations of aspiring members. Moreover, recommending postponement for either of the two laggards could have endangered the ratification of the Treaty of Accession and halt the enlargement process. Days before the publication of the Progress Report in May 2006, only 14 countries had ratified the Accession Treaty while others - notably the Netherlands, France and Germany - awaited the Commission's assessment to begin the process in their respective national Parliaments.

²² Author's interview with a senior EU Commission official who for professional reasons has asked to remain anonymous, Brussels, 2006.

In a more optimistic scenario, recommending postponement could have resulted in a halt or reversal of domestic reforms. After all, Romania's accession could not be delayed indefinitely but was set to happen on 1 January 2008 at the latest (Phinnemore, 2006b, p. 19).

All in all, the EU remained trapped in its own commitments, and despite evidence that some crucial reforms were far from irreversible, the need to safeguard the Commission's credibility and the EU's enlargement policy shifted the balance in favour of accepting Romania (and Bulgaria) in 2007 (Noutcheva, 2006b, p.1). Yet, the decision to introduce a post-accession monitoring mechanism in the field of judiciary reforms and anti-corruption is evidence that Brussels officials recognised the fragility of the reform momentum in the country, especially in relations to its democratic standards and respect of the rule of law.

3.5 Conclusion

This chapter presented an overview of EU-Romania relations from the collapse of the communist regime to Romania's formal accession to the EU on 1 January 2007. During this period the EU progressively defined its enlargement policy, while political changes at domestic level helped the country to move along the lines of Euro-Atlantic integration. As I have pointed out, in less than two decades Romania went from the margins of the EU's foreign policy interests to full integration into the Euro-Atlantic structures. Its relations with the EU have developed at a rapid pace, and conditionality was not always the critical factor in the advancing of the relations.

Romania benefited much from the EU's all-inclusive enlargement policy, while political priorities inside the Union helped the country secure accession in 2007.

The puzzling question here is how far Romania would have transformed itself without geopolitical factors helping the country's bid for EU membership. The political leadership that replaced Ceaușescu and ruled the country for most of its transition - Iliescu and the PSDR/PSD - showed aversion to democracy and often paid lip service to the EU's demands with half-hearted and cosmetic reforms designed to protect, rather than challenge, networks of political patronage and corruption. Yet, the prospect of membership and the severity of the EU's accession process, constrained domestic actors and had a major impact in shaping the behaviour of domestic political elites. As the next three chapters will highlight, EU conditionality proved to be in many occasions the main driver of domestic reforms. This not only helped Romania transform, but also allowed the EU to intervene considerably in its domestic affairs.

Chapter 4

Reforming the Justice System

This chapter presents the first empirical case study of this research, tracing the impact of EU conditionality on judiciary reforms in Romania from the collapse of the communist regime to the country's formal accession to the EU in January 2007. As specified in Chapter 1, this case study was selected because it emerged as one of most complex and controversial issues in the country's post-communist transition and negotiations for EU membership. Significant shortcomings related to the independence, accountability and efficiency of the justice system were identified by the European Commission in its annual reports, and the limited progress made during the negotiations resulted in the introduction of extra monitoring mechanisms before and after Romania's accession to the EU.

In line with the research questions and hypotheses outlined in Chapter 1, the objective of this chapter is twofold: firstly, this chapter aims at empirically show how EU conditionality influences domestic decision-making and shapes domestic policy and institutional choices. Secondly, this chapter identifies how domestic factors can mitigate the impact of EU conditionality and affect compliance. To evaluate the scope of EU influence and the limitations on the use of that influence this chapter draws upon and tests some of the keys assumptions of the Europeanization and EU conditionality literature with regards to the conditions for the success of the EU's leverage.

As mentioned in some length in Chapter 2, the literature suggests that domestic change in response to the process of EU integrations depends on four set of factors: the credibility of conditionality, the clarity of EU demands, the size of the adaptation costs and the policy priorities of key veto players.

In relation to the credibility of EU conditionality, the literature suggests this varied over time and was mostly effective during the decision-making phases, especially when deciding whether to open or close the accession negotiations and the accession process (Brusis, 2005; Grabbe 2006; Steunenberg and Dimitrova, 2007). Studies have also emphasised that the clarity of EU rules and the presence of institutional and policy templates are important factors for the success of EU conditionality (Grabbe, 2006; Hughes et al., 2004; Jacoby, 2004). In the Europeanization framework, actors' preferences and the adaptation costs are also used to explain problems of compliance. In particular the literature predicts a lower likelihood for compliance in policy areas with higher adaptation costs.

On the basis of these assumptions, in the field of judiciary reforms we should expect limited compliance as the EU lacked formal *acquis* or legally binding instruments, and the costs of adaptation were particularly high given the political sensitivity of judiciary reforms. This chapter advances the argument and empirically shows that vague membership conditions do not necessary limit the scope of the EU's impact, as much of the literature predicts.

While precise conditions facilitate compliance, the EU can nevertheless influence state behaviour and compel domestic political elites to introduce EU-compatible rules even when it lacks formal EU-wide legislation. The critical factor here is not the clarity of the EU's demands or the presence of policy and institutional models but the importance the EU attaches to compliance and the extent to which it is prepared to use its leverage mechanisms to push for domestic change. Building on the Europeanization and EU conditionality literature this chapter also empirically highlights how the impact of EU conditionality varied over time and was mostly effective in the decision-making phases - i.e. when to open or close the membership negotiations and to close the accession process.

To outline my argument this chapter proceeds as follows: the next section introduces the content of the accession conditionality in the field of judiciary reforms laid down by the EU in the context of its enlargement to CEE. This is followed in section 2 by a detailed analysis of judiciary reforms in Romania up to the moment of its accession in 2007. The purpose of this section is to highlight how and when EU's policy of conditionality had led to formal policy and institutional changes in the country. Finally the last section of this chapter offers an explanation as to why significant problems were registered in modernising the Romanian justice system, showing how domestic factors mitigated EU influence and slowed down domestic reform.

4.1. Background to the EU's approach

The reform of the justice system has been an important item on the EU's agenda during the negotiation with the CEE candidates, although this was presented relatively late during the negotiations for accession. The importance attached to the judiciary grew progressively and largely mirrored broader policy developments at EU level. For most of the 1990s the EU's demands focused on ensuring the candidate states had in place a sufficiently strong judicial capacity to enforce EU policies. It is only with the Amsterdam Treaty, that set the ambitious objective of creating an "Area of Freedom, Security and Justice" (AFSJ) and placed Justice among the political objectives of the Union²³, that greater attention was paid to questions related to the independence and accountability of the justice system.

The 9/11 terrorist attacks also pushed onto the political agenda the need for greater cooperation between the judicial and law enforcement authorities in the fight against cross-border crime and terrorism. At EU level, this led to several steps being taken in the fields of criminal and civil justice, such as the legal approximation of definitions and sanctions of several forms of cross-border crimes, the creation of EUROJUST to improve cooperation and coordination between the judicial authorities of the member states, and the agreement on the European Arrest Warrant, that allows the arrest and transfer of criminal suspects for trial and detention throughout the Union.

²³ See Art. 1(5) of the Treaty of Amsterdam (Official Journal, 1997b).

In the context of the accession negotiations with the candidate states, the increased attention to the independence, accountability and efficiency of the justice system translated into a more stringent monitoring of the candidates' efforts, to ensure they had in place the means to facilitate communication of court decisions and to provide for legal assistance both in the field of criminal and civil justice.

4.1.1. EU accession conditionality in the area of Judiciary Reforms

Formally speaking, EU conditionality in the field of judiciary reforms stems from the Copenhagen political criterion for membership elaborated by the European Council in 1993, according to which an aspiring member must achieve “the stability of institutions guaranteeing democracy and the rule of law” (European Council, 1993, p.13). Although the justice system is not mentioned explicitly, fulfilling this condition would be unconceivable without the existence of an independent and impartial judiciary.

The judiciary occupies a unique position in a democratic society. As the guarantor of citizens' rights and freedoms and the respect of the rule of law, it plays a fundamental role in restraining the legislative and executive powers and in safeguarding the rights of individuals and minority groups. An independent, efficient and accountable judiciary is also crucial in the fight against organized crime and corruption, confronting the interests of the political branches and those of powerful individuals (Open Society Institute, 2001, p.17). An independent and efficient judiciary is also important for the correct application of EU policies. The EU legal system rests on the assumption that the judicial authorities of the member states are able to apply the Treaty provisions for the unitary application of the *acquis* and ensure the proper functioning of the Single Market.

Thus, as a condition for accession, the EU requires a candidate state to have in place a sufficiently strong ‘judicial capacity’ to enforce EU legislation. This criterion for membership was spelled out in 1995 by the Madrid European Council, and the progress made by the candidate states in fulfilling this condition has been subject to a specific evaluation in the European Commission’s annual Reports.

Although not formally defined by the EU, a strong judicial capacity presupposes an independent, impartial and accountable judiciary with professionally well-trained magistrates and auxiliary personnel, access to legislation and efficient court proceedings (Open Society Institute, 2002a, p.14). These principles were implicit in the annual Reports of the European Commission. When assessing the judicial capacity of the candidate states the Commission mostly emphasised the need to: 1) Guarantee the independence of the judiciary; 2) Improve the training of judges and filling judicial vacancies; 3) Improve access to justice and case handling and; 4) Ensure the effective enforcement of the court decisions (Kochenov, 2004, pp.20-21).

What kind of judicial system best matches these criteria is not easily discernable from the Copenhagen conditions. Strictly speaking the EU does not have common standards or legally binding instruments with regards to judicial independence or judicial capacity, and apart from the instruments developed to tackle common challenges through increased judicial cooperation, this area remains one of exclusive competence of individual member states²⁴.

²⁴ The only exception is the Charter of Fundamental Rights of the European Union. Art.47 establishes the right to a fair trial “before an independent and impartial court”. See Official Journal (2000a).

Some scholars have argued that the lack of EU standards and the vagueness of EU conditionality in the justice field, constrained the EU's leverage as it posed problems for EU officials in evaluating the progress made by the candidate states (Pridham, 2002; Smilov, 2006). The member states have also various arrangements when it comes to the constitutional and institutional settings guaranteeing the independence, accountability and efficiency of their justice system. Indeed, lacking EU-wide standards or a legally binding *acquis*, the Commission was not in a position to recommend a specific institutional model or shape directly the content of policy and institutional choices.

However, where the EU has been silent, the member states' own domestic practices have provided important guidelines for assessing judicial independence and judicial capacity in the candidate countries. At the same time, through EU-financed twinning projects and bilateral programmes, the members states have provided models for the candidate states to follow or emulate and helped identify the standards and requirements for accession. There are also a number of internationally recognised standards that acted as reference point for evaluating judicial independence and judicial capacity in the candidate countries²⁵. These include the *UN Basic Principles on the Independence of the Judiciary* (United Nations, 1985) and the Council of Europe's *Recommendations on the Independence, Efficiency and Role of Judge* (Council of Europe, 1994). Important guidelines to evaluate progress, and help the candidate states identify the conditions for accession, have also been provided by the jurisprudence of the European Court of Human Rights, which progressively spelled out the substantive conditions for an

²⁵ Author's interview with Sabine Zwanepoel, Desk Officer for Romania and Bulgaria, DG JLS, European Commission, Brussels, April 2006.

independent and impartial judiciary. These include the existence of guarantees against external pressure, the independence of individual judges from judicial hierarchies (also known as internal or intra-judicial independence), and a sufficient organizational separation of the judiciary from the executive power. Not only are the rulings of the European Court of Human Rights binding on individual member states, but by focusing primarily at the substantive conditions for judicial independence, rather than the legal and formal ones, these have provided significant guidance on the acceptable models and practices for judicial independence and its accountability (O'Boyle et al, 2005).

4.2 The Impact of EU Conditionality on Judiciary Reforms in Romania

The reform of the justice system has been one of the most complex and controversial issues of Romania's post-communist transition and negotiations for EU accession. In its annual Reports the European Commission repeatedly criticised the Romanian judiciary for being over-politicised, unaccountable, unprofessional and chronically understaffed (see, for example Commission of the European Communities, 2002a, pp. 24-25; 2004a, pp. 19-21). Reports from the Council of Europe, the World Bank and several NGOs further exposed the chronic inefficiencies of the justice system and the effective subordination of the judiciary to political power (see, for example, Council of Europe, 1997; World Bank, 2001a; Freedom House, 2005a). At domestic level successive post-communist governments either paid lip service to the EU's demands with half hearted reforms or proved unable to find the necessary political consensus to introduce extensive changes.

Legal guarantees for judicial independence were progressively established but reforms came about mostly under considerable external pressure from the EU and other international organization. Yet, powerful veto players in the judiciary have undermined the correct implementation of many EU-driven reforms, and a number of questions remain open on their long-term sustainability.

4.2.1 EU conditionality and Judiciary Reforms in Romania after 1989

Romania entered transition with a highly dysfunctional and discredited justice system. During communism the judiciary was characterised by a highly centralised administrative control of the Ministry of Justice, undue interference of the executive in court proceedings, archaic methods of case filing and case proceedings, limited access to legislation as well as poor working and pay conditions for judges and courts personnel. Four decades of communism had also undermined the institutional independence of the judicial branch, since judges were not expected to act as independent decision-makers but rather as mere executors of the will of politicians.

After the collapse of the regime, Romania embarked on redesigning new state laws and institutions and the question of the judiciary's autonomy and its relation with other branches of the state was addressed in the 1991 Constitution. This recognised the independence of the judiciary²⁶ and created the Superior Council of Magistracy (SCM)

²⁶ Article 123 of the 1991 Constitution states that “Judges shall be independent and subject only to the law” (Monitorul Oficial, 1991).

BOX 4.1. The Romanian Court System

Court of First Instance (*Judecătorie*)

Located in every district and in the city of Bucharest the Court hears first instance criminal, civil and some administrative and commercial cases in the first instance.

Country Court (*Tribunal*)

Considers certain types of cases in the first instance (i.e. important criminal, civil, administrative and commercial law cases), and review appeals on the decisions of the courts of first instance.

Court of Appeal (*Curtea de Apel*)

Considers certain cases in the first instance, such as serious criminal and civil matters, and reviews second level appeals on decisions from the *Tribunal*.

Supreme Court of Justice (*Curtea Supremă de Justiție*)

It handles appeals from the Court of Appeal and has jurisdiction for decisions of first instances or for high-level officials are charged with serious crimes.

With the exception of the Judecătorie, each court has specialised sections: civil, criminal, commercial, and administrative.

*** **

Constitutional Court (*Curtea Constituțională*)

Made up of nine members appointed for a 9 year mandate, the Constitutional Court reviews the conformity of laws, regulations and government ordinances with the Constitution. The Court also supervises the procedures for electing the President and conducting national referenda, oversees the suspension and impeachment of the President, and decides on the constitutionality of a political party.

Court of Account (*Curtea de Conturi*)

Reviews government spending and pursues cases to collect revenues on behalf of the state.

Military courts (*Tribunalul Militar*)

Act as Martial Courts and deal with disciplinary matters involving members of the military and the police.

as the main managerial body of the judiciary system²⁷. In the early transition period the basic reorganisation of the judiciary also took place with the adoption of the first post-communist law on the judiciary organization. Law 92/1992 entrenched the fundamental principle of the separation of powers between the judiciary and the other state branches, defined the rules for the appointment of judges and prosecutors and organised the Romanian court system into four levels of Courts (see Monitorul Oficial, 1992).

²⁷ See Articles 132-133, Constitution of Romania (Monitorul Oficial, 1991).

With regards to the role of the EU, in this initial period it did not exert much of a direct influence primarily because its conditionality did not systematically target the area of judiciary reforms. As I have discussed in Chapter 3, the Europe Agreement that was signed in 1993 contained an explicit suspension clause that linked trade and economic cooperation to the respect of the rule of law. However, this did explicitly address judiciary independence, efficiency and accountability. Indirect influences from Western Europe were of course present, as the models and practices in the member states served as a reference point for decision makers. Yet, until the mid-1990s the reform process was primarily domestically driven, and it is only after Romania's formal application for membership in 1995 that institutional and policy changes became responsive to the EU's concerns. The first explicit form of EU conditionality in the field of judiciary reforms came in fact only in 1997, when the European Commission issued its formal *Opinion* on Romania's application for membership. In this first assessment of the Romanian justice system the Commission noted:

The Romanian judicial system is not working satisfactorily. The courts are overloaded and judgements can be a long time coming. The problems can be attributed to a shortage of qualified judges (23% of posts are vacant), a lack of equipment, complex procedures and the great number of new rules to be enforced (Commission of the European Communities, 1997a, p.15).

It is significant to note how, albeit critical, the Commission did not make explicit reference to judicial independence and accountability, but merely questioned the ability of the justice system to enforce EU legislation. According to the Commission, "the judicial system in Romania has important weaknesses, particularly concerning resources and relevant expertise. Given this situation, the Commission has significant doubts about the ability of the system to assure the effective application of the *acquis*" (Commission of the European Communities, 1997a, p.104).

In the years that followed the EU progressively sharpened its conditionality and more precise requests were put forward to the Romanian authorities. However, it is only in the 1999 Accession Partnership that the member states identified a set of clear priorities to improve the functioning of the judiciary. These were: 1) Adoption of a new penal code; 2) Adoption of the law on penal procedures; 3) Limit the use of pre-trial detention; 4) Facilitate access to legal advice and representation; 5) Extend the court information system to all courts; 6) Improve the enforcement of civil judicial decisions (Official Journal, 1999a). These priorities targeted primarily the strengthening of judicial capacity to ensure the enforcement of the EU's *acquis*. The EU's demands largely reflected the EU's emphasis on efficiency rather than accountability and judicial independence because of the concern with Romania's ability to implement the *Single Market acquis* effectively. These latter issues would in fact enter the EU's agenda only after 2000, with the opening of the accession negotiation.

At domestic level, the CDR coalition that came into power after the 1996 elections showed willingness to improve the functioning of the justice system and address the European Commission's criticism. After the publication of the Commission *avis*, a number of measures were taken by Valeriu Stoica, the then Minister of Justice, to modernise the judiciary, including the strengthening of the National Institute of Magistrates as a specialised institution in charge of the training of judges and prosecutors, a rationalisation of the organizational structures of the Public Ministry, the creation of the People's Advocates and the removal of some former communist judges from office (Monitorul Oficial, 1997).

The Minister of Justice also attempted to address the crucial problem of brain-drain in the judiciary by increasing salary levels and by launching an extensive recruitment campaign for judges, prosecutors and court clerks²⁸. The legislative framework was also modified to reinforce the administrative capacity of the judicial system, and some provisions addressed - albeit timidly - the issue of corruption and malpractice. However, the reform momentum proved short-lived. In December 1999, the government brought to Parliament a package of draft laws on judiciary reforms (Monitorul Oficial, 1999a). These addressed organisational and human resources issues that were highlighted by the European Commission in its previous report, especially in relation to attracting and retaining qualified judges and prosecutors and improving their status and salaries (see Commission of the European Communities, 1998a, p.9). The amendments to the legal framework proposed by the Ministry also included a revision of the Civil Procedural Code, the creation of special sections within courts to deal with social security and labour law, and disciplinary measures for judges failing to deal with cases in due time.

According to some legal practitioners, if introduced some of these measures would have considerably improved the efficiency of the judicial process and the speed of court procedures, bringing Romania a step closer to western standards²⁹. Yet, the coalition proved fractious and the Justice Minister was unable to find the necessary political

²⁸ Author's interview with Valeriu Stoica, Minister of Justice 1996-2000, Bucharest, December 2006.

²⁹ This comment was made by different legal experts and practitioners interviewed by the author between September and December 2006. These include the interview conducted with Madeleine Crohn, the country Director of ABA/CEELI, Iulian Gilcă, who served as President of the SCM in 2006 and Arin Octav Stanescu, a Bucharest based lawyer and President of the Romanian Insolvency Practitioners Association.

consensus to introduce most of the reforms promised³⁰. As a result, out of the whole package of legislation proposed, only some parts related to probation and the revision of the civil codes were approved via government ordinances while crucial issues related to the reorganization of the judiciary and the division of powers remained unanswered.

When Romania opened the accession negotiations with the EU in 2000, the legal framework guaranteeing the independence and accountability of the judiciary still had to be created, including addressing the issue of executive control over judiciary affairs. A 2001 World Bank study commissioned by the Năstase government found major built-in problems within the country's justice system, especially in applying the most basic internationally recognised guarantees for judicial independence and accountability. For the World Bank the Romanian justice system was "inefficient and perceived to be corrupt", with judges "neither sufficiently independent nor accountable" (World Bank, 2001a, p.4). According to the report, the functioning of the justice system was undermined by slow court procedures, extensive control of the Minister of Justice over the judiciary, the weak role of the SCM as well as the poor organizational structure between judges and prosecutors (World Bank, 2001a, pp.10-15).

Indeed, neither the 1991 Constitution nor the 1992 Law on Judicial Organization gave powers to the SCM, and the effective control of the justice system was firmly set in the hands of the executive via the Justice Minister, who was entrusted to ensure "the proper organization and functioning of the judiciary as a public service"³¹.

³⁰ Author's interview with Valeriu Stoica, Minister of Justice 1996-2000, Bucharest, December 2006.

³¹ Art. 18 Law no. 92/1992 (Monitorul Oficial, 1992).

The SCM was empowered to appoint, promote and revoke judges and prosecutors, including those in key managerial positions such as Presidents of courts, but these decisions were not independently formulated since the SCM could only act upon a recommendation from the Ministry of Justice. Moreover, the SCM had no control over the administration of courts or budgetary issues, as it could only provide advisory opinions upon a direct request from the Justice Minister³².

In the early 1990s the problem of political interference in judicial affairs had raised same concerns among EU officials³³, but the only outspoken voice was the Council of Europe. For instance, in its 1993 opinion on Romania's application for membership the Council of Europe explicitly recommended to the Romanian authorities to address the question of judicial independence, by making "it impossible in future for a minister to give instructions to a judge" (Council of Europe, 1993). But Iliescu and the PSDR had little interest in transforming the political and administrative power structures of the communist regime, and paid lip service to these requests. Reforming the justice system into an efficient and accountable institution would have challenged their power basis and their network of patronage. Thus, while proclaiming a commitment to democracy and EU integration the Romanian political class appeared unprepared to pay the costs of introducing sound democratic reforms. When they returned to power in December 2000, Iliescu and the PSDR/PSD committed once again to improve the country's democratic credentials.

³² Art. 88 Law no. 92/2002 (Monitorul Oficial, 1992).

³³ Authors' interview with Enrico Grillo Pasquarelli, Head of Unit –Section, DG Enlargement, European Commission, Brussels, May 2006.

In the field of judiciary reforms, the executive under Adrian Năstase promised to restore “the authority of the state and of its institutions” and “the confidence in the act of justice” (Government of Romania, 2000, p. 21). In particular, the government committed to enhancing the stability of the legislative framework, to introduce more coherent regulations governing judicial proceedings as well as to guarantee the predictability of the legislative policy, speed up the administration of justice and the enforcement of judicial decisions and enhance the professionalism and honesty of the judiciary (Government of Romania, 2000, p. 21). Judiciary reforms based on “independence, authority, professionalism and Magistrates’ promotion on objective criteria basis” were also presented as a key step in the new anti-corruption strategy for 2001-2004 (Government of Romania, 2001a).

To achieve these objectives, the government promised a substantial revision of the law on judicial organization (i.e. Law 92/1992) in order to strengthen the role of the SCM, regulate the career system and the disciplinary procedures for magistrates (Government of Romania, 2001b, p.39). According to the executive’s own commitment with the EU, these measures were going to be introduced by the end of 2002 at the latest (Government of Romania, 2001b, p.39). However, these commitments did not translate into significant legislative or institutional changes, and during the first two years of the PSD administration hardly any progress was made in realising greater independence and professionalism of the judiciary. As it soon became evident, this was rather ‘a calculated strategy’ to reassure foreign officials, but this did not reflect a generalised political consensus or political will to introduce radical changes into the justice system.

The slow pace of judiciary reforms did not go unnoticed. Romania had opened the accession negotiations in 2000, and this gave the EU more room for using its leverage to push for domestic changes. The European Commission and the EP became increasingly vocal on the state of the rule of law in the country, especially in relation to the question of judiciary independence, and this compelled the government to modify the legal framework regulating the justice system.

From 2002 onwards, external pressure from the EU and other international organizations became the main driver of domestic reforms. Fearing that the EU's outspoken criticism would jeopardise the country's chances to join NATO, in late 2002 the Năstase's executive committed to addressing the issues of the independence and accountability of the justice system via constitutional amendments³⁴. The revision of the Constitution in 2003 introduced the principles of the judiciary as an "independent branch of power" as well as the right to a fair trial within "a reasonable time"³⁵. The Constitutional amendments also introduced for the first time the principle of life-long tenure for magistrates and revised the composition and mandate of the SCM, granting this institution the sole decision-making powers for the promotion, transfer and sanctioning of judges and prosecutors³⁶. Moreover it was thanks to the immense pressure from the EU and the World Bank that the Chamber of Deputies finally relinquished, in 2003, its effective control over Supreme Court's rulings by rescinding the much controversial right of the General Prosecutor to file extraordinary appeal to

³⁴ Authors' interview with Enrico Grillo Pasquarelli, Head of Unit –Section, DG Enlargement, European Commission, Brussels, May 2006.

³⁵ Art. 124 Constitution of Romania as amended by Law No. 429/2003 (Monitorul Oficial, 2003a).

³⁶ Art. 125 Constitution of Romania as amended by Law No. 429/2003 (Monitorul Oficial, 2003a).

High Court sentences both in civil and criminal matters³⁷. Perhaps the clearest example of EU-induced reforms is the adoption of the so-called three-law package - Law on the Superior Council of Magistracy, Law on the Organization of the Judiciary, and Law on Magistrates³⁸ – which introduced significant changes to the status of magistrates and brought important structural improvements to the court system through transparent and merit based criteria for the selections of judges. This set of legislative provisions were adopted by the government following the EP's motion in February 2004, which threatened to call for the suspension of the accession negotiations because of the country's questionable democratic standards. As I mentioned in Chapter 3, fearing a delay in the negotiations and hence the chance of Romania not closing the accession talks in time to accede in 2007, in March 2004 Năstase also agreed to a government reshuffle, with the replacement of Rodica Stănoiu that had come under fire for her excessive control over the judiciary. To improve the government's image in the eyes of the EU, Năstase appointed Cristian Diaconescu - a young party member from the reformist wing of PSD - as the head of the Ministry of Justice.

³⁷ Between 1994 and 1996 this ground was used extensively by the General Prosecutor – who under the Romanian legal system has supervisory review powers of courts' decisions - to return unlawfully nationalised houses to its owners claiming that courts did not have jurisdiction over those cases. Despite strong criticism from the European Court of Human Rights pointing to a violation of the right of access to justice, this provision remained in the Civil Code until 2003 and in the Criminal Code until 2004, when it was finally dropped under the pressure of the European Commission and the World Bank. Between 2001 and the end of 2004 this power was formally used only when courts adopted wrong decisions. According to Freedom House (2005a) this addressed the problem only in part. Since the correctness of a court's decisions is a matter of interpretation, retaining the powers of the General Prosecutor still allowed for decisions to be scrapped and retried by a new panel of judges. Since cases were not randomly distributed, this left significant room for political intervention. For a full analysis see Freedom House (2005a, p. 22).

³⁸ See Monitorul Oficial (2004a), (2004b) and (2004c).

Drafted explicitly to comply with the EU's demands - as the then Justice Minister confirmed to the author during an interview³⁹ - the three-law package was, at least on paper, the first coherent attempt to systematically address the shortcomings of the justice sector, bringing the judicial legal framework broadly in line with European standards⁴⁰. As requested by the EU, the reform package stripped the Minister of Justice of most of its powers in favour of the SCM, which until then had no control over the recruitment, promotion, management and sanctions of judges and prosecutors. Significant amendments were also introduced for the appointment of judges, which were now required to pass an examination⁴¹.

In its progress report published in late 2004 the European Commission welcomed the improvements introduced in the legal framework, but still noted how the new laws did not fully eliminate the opportunity for influencing the judicial process (Commission of the European Communities, 2004a, pp.19-20). Many in Brussels doubted the government's commitment to implement the reforms, and it did not go unnoticed how the PSD administration used the constitutional provision granting judges life-long tenure to appoint party affiliates in leading managerial positions within the high courts and in the SCM, thus effectively maintaining its grip on the judiciary (Commission of the European Communities, 2004a, pp.20).

³⁹ Author's interview with Cristian Diaconescu, who served as Minister of Justice between March and December 2004, Bucharest, October 2006.

⁴⁰ Author's interview with Renate Weber, Presidential Advisor to Băsescu on Constitutional and Legal Affairs and President of the Open Society Foundation in Romania, Bucharest, October 2006.

⁴¹ Law no. 92/1992 was very permissive on the nomination of magistrates without examination. Art. 67, which was later abrogated, allowed appointing to the magistracy without examination persons holding a Ph.D in law or who had previously acted in the capacity of magistrate, general inspector, and legal counselor within the Ministry of Justice, law professors as well as lawyers or notaries with a minimum 5 years experience (See Monitorul Oficial, 1992).

Furthermore the Commission's report expressed concerns over the level of corruption in the judiciary, and the Draft Common Position elaborated prior to the expected conclusion of the negotiations explicitly called on the member states to demand drastic actions to curb corruption in the justice system (Commission of the European Communities, 2004b, p.7). NGOs remained equally critical on the state of the rule of law in the country. According to the 2004 Freedom House's assessment:

The Romanian courts are weakened by low budgets and excessive property lawsuits resulting from contradictory restitution legislation. But political interventionism remains the number one problem. Bad politics prompts bad justice in Romania, overriding any endemic organizational or administrative problems in the Judiciary (Freedom House, 2004, p.15).

With this background in mind it is perhaps not surprising that Olli Rehn, who was appointed Commissioner for enlargement as Romania was finalising its negotiations, opted for a tough stance towards the Năstase's executive. As discussed in Chapter 3, as a condition for wrapping up the accession talks, Romania was forced to accept the introduction of a special postponement clause covering, among others, the implementation of judiciary reforms. In particular the Treaty of Accession singled out specific commitments with regards to the timetable, financing and human resources to implement the reforms as well as the full operability of the random distribution of cases, to prevent possible corruption or political interference in the allocation of cases to prosecutors and judges (See Box 4.2). With this clause, the Commission aimed at securing the time and instruments to pressure the Romanian government to begin implementing the measures foreseen in the government's reform strategy.

BOX 4.2. Specific Commitments undertaken by Romania in the field of Judiciary Reforms

....

(3)“To develop and implement an updated and integrated Action Plan and Strategy for the Reform of the Judiciary including the main measures for implementing the Law on the Organisation of the Judiciary, the Law on the Status of Magistrates and the Law on the Superior Council of Magistracy which entered into force on 30 September 2004. Both updated documents must be submitted to the Union no later than March 2005; adequate financial and human resources for the implementation of the Action Plan must be ensured and it must be implemented without further delay and according to the time schedule set. Romania must also demonstrate by March 2005 the full operationability of the new system for random distribution of cases”

...

Source: Annex X, Treaty of Accession (Official Journal, 2005)

The threat of a potential delay to the country’s accession proved an important external in stimulus to accelerating reforms prior to accession. The first few months of 2005 saw in fact an impressive flurry of justice reform activities. In line with the EU’s demands, the Tariceănu government that came into power after the 2004 elections, adopted an ambitious reform strategy tackling some of the key shortcomings identified by the Commission in its previous annual reports (Government of Romania, 2005). The 2004 three-law package, which came into force under the PSD administration, was also amended and a clear distinction was introduced between judges and prosecutors making the latter independent in conducting investigations. Objective criteria were also elaborated for the random distribution of cases to prosecutors and new rules were introduced to regulate the careers of magistrates. These included the introduction of clear and objective rules for the promotion, transfer and revocation of positions as well as the establishment of the principle of open competition for leading positions,

including a new appointment and revocation procedure of the General Prosecutor and of the General Prosecutor of NAPO - the Romanian Anti-Corruption Prosecutor's Office (see Monitorul Oficial, 2005a). Additional funds were also allocated for the modernisation of courts, for the training of judges and prosecutors on EU laws and for purchasing equipment. A new Criminal Code was adopted (Monitorul Oficial, 2006a), and discussions began for the revision of the Criminal Procedural Code, to simplify and speed up the lengthy and often complicated judicial process⁴². A new code of conduct for magistrates was also approved, providing for the first time in Romanian law that judges and prosecutors must not have collaborated with the former *Securitate* and must not be working for any intelligence services while in office (see Superior Council of Magistracy, 2005).

It is important to stress that while a number of these measures had been explicitly requested by the EU at the conclusion of the negotiations, such as the random allocation of court cases, others resulted primarily from the firm determination of the Minister of Justice. The presence of the postponement clause and the EU's extensive monitoring prior to accession had pushed judiciary reforms high on the domestic political agenda, helping the Minister to bypass opposition and present a wider set of measures than those foreseen in the Treaty of Accession. As she openly admitted when interviewed by the author, "I would have not been very successful without the support of the European Commission and the postponement clause still being an option"⁴³.

⁴² Author's interview with Ionut Codescu, State Secretary in the Ministry of Justice 2004-2007, Bucharest, November 2006.

⁴³ Author's interview with Monica Macovei, Minister of Justice 2004-2007, Bucharest, November 2006.

Thanks to these efforts, as well as those registered in fighting corruption, the government was able to secure accession to the EU in 2007. However, a number of issues remained open, especially in relation to accountability mechanisms and the potential conflict of interests of some of the appointed members of the SCM. For these reasons the Commission elaborated a post-accession mechanism to maintain pressure on the Romanian authorities to continue the reforms, amid the risk of safeguard measures being introduced in the field of mutual recognition of criminal and civil law decisions.

4.2.2 EU conditionality and Romania's implementation record

The Romanian justice system underwent a profound transformation in the past two decades. Yet, the previous section has highlighted how efforts at establishing a modern, truly independent and effective justice system have been slow and hesitant and the most significant policy and institutional improvements came about primarily in response to the external pressure from the EU in the concluding phases of the accession process (such as the adoption of the three-law package in mid- 2004). Have these reforms bore fruit? To what extent has the Romanian justice system been transformed into a modern, efficient and credible institution?

The reforms initiated in 2004, together with the series of measures introduced by the Tariceanu government to speed court proceedings and improve the efficiency and independence of the judiciary, have brought about considerable improvements both at legal and institutional level. Yet, few months ahead of Romania's formal accession to the EU, the judicial system was still suffering from inefficiency, chronic uneven

application of the law, huge case workloads and lack of training. A report released in late 2006 by three Romanian NGOs found that many of the statutes under which the Romanian judiciary operated were confusing, and problems have persisted in the effective separation of powers and judicial independence, especially concerning the appointment and promotion of judges and prosecutors (Open Society Foundation et al., 2006, pp. 3-5). Similarly, a 2006 assessment by *Sojust* - a Romanian NGO specialised in the justice sector reforms – argued that Romanian justice system remained hampered by poor legal training and by the failure of successive governments to address coherently the reform of all legal professions (SoJust, 2006).

Despite the new legal framework and the increase in budgetary allocation for the judiciary, improvements in court performance will take many years to become apparent and the judicial institutions empowered by the 2004 three-law package, such as the SCM, will need to develop their administrative capacity to use productively their power. The new role and status of judges envisaged by the new laws has also to be realised through acquiring new judicial skills and the strengthening of accountability mechanisms. According to a 2008 assessment by the European Commission, “the performance of the Romanian judicial system is hampered by legal uncertainty due to many factors, including an uneven application of the law and the excessive use of emergency decrees. It will take some time for the reform to take firm root” (Commission of European Communities, 2008, p.2).

Several surveys carried out since 2000 showed that successive reforms have registered only a minor improvement in citizens' trust and the judiciary is largely perceived as corrupt, inefficient and unaccountable. A 2001 survey on corruption carried out by the World Bank found that the Judiciary was perceived as one of the most corrupt institutions in Romania, second only to customs officers (World Bank, 2001b, p. 5). Similarly, a 2005 Eurobarometer opinion poll indicated that only one-third of Romanians trusted the justice system, twenty percentage points lower than the confidence among EU15 citizens (Commission of the European Communities, 2005c, p.7). Corruption and public trust are by nature difficult to measure. However these surveys suggest a lack of confidence of ordinary citizens in the act of justice and they mirror the weaknesses of the judicial system. The persistent and often evident inefficiency of most courts has crushed public trust in the rule of law, and although recent reforms have contributed much to the modernisation of the justice system, it will take many years before results in performance will become visible.

4.3 How Domestic Factors affected compliance

Several domestic factors can help explain why Romania faced considerable difficulties in establishing a modern, efficient and accountable judiciary. An obvious starting point is to make references to the legacy of the communist past. As I mentioned earlier in this chapter, Romania entered post-communist transition with a highly dysfunctional and discredited justice system, and four decades of communism had undermined the institutional independence and accountability of judges and prosecutors.

Transforming the justice system from an instrument of socialist power into an institution devoted to safeguarding the rule of law entailed profound changes at legal, institutional and structural levels. Yet, if communism had an important bearing on the functioning of the judicial system, many of the built-in problems of the Romanian justice system have been exacerbated by the failure of successive post-communist governments to introduce coherent and effective reforms.

The absence of a clear reformist agenda for the judiciary is most evident when looking at the question of judiciary independence and the executives' resistance to relinquish control over the justice system. One significant step would have been to grant more powers to the SCM, as repeatedly highlighted by the European Commission and expert evaluations. However, external pressure did not bear fruit until 2004 when, facing a credible risk of a delay in concluding the accession negotiations, the Năstase government launched a comprehensive reform of the justice sector that reflected the recommendations of the World Bank and the accession's demands set by the EU. Until then the Minister of Justice enjoyed enormous control over the justice system, playing a major role in appointing, promoting and removing judges from office.

The resistance of the executive to ease its control over the judiciary was not an issue unique to Romania, and was common to many other post-communist countries. In Slovakia, for example, until 2002 the executive retained almost total administrative control over the judiciary and only constitutional amendments allowed for the creation of a judicial Council with a far-reaching administrative authority that ensured judicial independence (Commission of the European Communities, 2002c).

Latvia was also criticised by the Commission for the failure to address judiciary independence and the efficiency of the justice system, especially with regards to the rules governing the career structures and appointment procedures of judges and court personnel (Commission of the European Communities, 2002d). However, in the case of Romania, the extensive powers held by the Ministry of Justice were used under the Năstase administration in a rather “Machiavellian way” – as one EU official defined it⁴⁴ - to ensure full subordination of the judiciary to political power. Indeed, between 2000 and 2004, the conservative and highly controversial Justice Minister Stănoiu widely resorted to her extensive powers to intimidate judges and prosecutors⁴⁵. Many feared for their jobs and the practise of sending inspectors to investigate individual cases became a common day-to-day affair during her term in office⁴⁶. To paraphrase a comment made by Adrian Năstase, Rodica Stănoiu was giving “too much of a personal touch to the judiciary”⁴⁷. Political control over courts’ decisions was also secured via the appointment of political affiliates in key managerial positions. One of the most notorious cases was Iliescu’s appointment of Șerban Stănoiu, husband of the then Justice Minister, as a judge to the Constitutional Court⁴⁸.

⁴⁴ Author’s interview with Sabine Zwanepoel, Desk Officer Romania 2000-2007, DG JLS, European Commission, Brussels, April 2006.

⁴⁵ For media coverage see, for example, ‘Presedintele CSJ denunta presiunile factorului politic asupra magistratilor de la Suprema’, *Adevarul*, 17 June 2002.

⁴⁶ Author’s interview with Viorica Costiniu, judge at Bucharest’s Court of Appeal and President of the Association of Magistrates, Bucharest, November 2006.

⁴⁷ Author’s interview with Adrian Năstase, Prime Minister of Romania 2000- 2004, Bucharest, October 2006.

⁴⁸ See ‘Opoziția critică numirea lui Șerban Viorel Stănoiu la Curtea Constituțională’, *Ziua*, 6 June 2001.

If the political class in Romania has proven to be a successful obstacle to the creation of a modern and efficient justice system, other powerful ‘veto players’ have played a significant role in slowing down the reform process. One of the most powerful has been the Romanian Constitutional Court whose decisions have significantly slowed down the modernisation of the justice system and democratic reforms in the country.

According to the Romanian Constitution, the Constitutional Court is entrusted to ensure that legislation, regulations and government ordinances are not in breach of the Constitution⁴⁹. In this respect the Constitutional Court plays an important role in restraining any possible abuse of political power. Yet, in the past two decades the Romanian Constitutional Court has had difficulties in finding its ‘soul’ (Weber, 2002). While in many post-communist countries - especially Bulgaria, Slovakia and Hungary - the Constitutional Courts have acted as a powerful guardian of judicial independence (Boulanger, 2006; Ganev, 2002; Malová, 2002), in Romania it acted more as a tool in the hands of political will rather than an institution guaranteeing the respect of constitutional rights. As Schwartz critically noted (1999, p. 210), in the first five years of the transition the court essentially “rubber-stamped everything Iliescu has done”.

Indeed, in the past two decades the Constitutional Court has used its powers several times to block reforms. One of the most recent and controversial decisions is the 2005 ruling that declared unconstitutional several amendments to the three-law package that were proposed by the Tăriceanu government in order to fulfil the commitments laid down by the EU in the Treaty of Accession.

⁴⁹ See Art. 146, Romanian Constitution, (Monitorul Oficial, 1991).

As mentioned earlier in this chapter, the three-law package was originally adopted in September 2004, under the PSD-administration, following the EP's open criticism of the rule of law in the country. However, while at the time the Constitutional Court did not raise any concerns on the legality of many of its provisions, in July 2005, it declared unconstitutional four major articles of the amended law, including the provision lowering the retiring age of magistrates that aimed at opening the system to younger magistrates. The Court also opposed the provisions regulating the appointment of head of courts. According the amendments proposed by the government, the heads of courts, most of which had been appointed under the PSD administration, should be dismissed and replaced by judges appointed via open competition. Finally, the Court opposed the provision setting the incompatibility of SCM membership (a permanent position) with other management positions in the judiciary. According to the Constitutional Court's ruling, this provision could only apply to the President and Vice President of SCM, but not to the other members that were allowed to maintain dual status (see Monitorul Oficial, 2005b).

Practitioners and legal experts have been divided on the correctness of the interpretation of the constitutional provisions and the reasoning behind the Constitutional Court's decision⁵⁰. However, there are at least some doubts on the real motivation of the constitutional judges, especially because the decision largely reflected the position of PSD, the main opposition party⁵¹.

⁵⁰ According to information received during interviews, even the members of the SCM who were benefiting most from the ruling had different interpretations on the Constitutional Court's decision, finding discrepancies in the line of reasoning adopted by the Constitutional judges.

⁵¹ In May and June 2005 Adrian Năstase – that at the time was serving as President of the Chamber of Deputies - sent two letters to the European Commission to complain about the changes proposed by

In practical terms this decision maintained the *status quo* with regards to judicial appointments and positions, and for some Brussels officials it aimed at halting the reform process initiated by the Minister of Justice. In the words of a senior EU official interviewed by the author, the Constitutional Court's decision "is a clear sign of resistance to any efforts to bring into the system young and reform oriented magistrates"⁵².

The conservative attitude of many judges, prosecutors and those serving in the legal profession has also represented a major obstacle for the correct implementation of the reforms. During her term in office, clashes between the SCM and Monica Macovei on the direction of the reforms were regular features of the weekly SCM's plenary sessions. For some senior judges, the new Minister did not respect the prerogatives of the SCM and "she had an absurd pretension to change everything", as a former President of SCM told the author when interviewed⁵³. Indeed, the fundamental problem is that despite the efforts to bring young magistrates into the justice system, many conservative judges that were trained under communism have remained in the Supreme Courts and in the SCM, where they now serve in managerial positions due to the seniority requirements.

the Minister of Justice to the three-law package, especially the provisions modifying the statute of magistrates. Attached to the letters there was a detailed list of specific amendments proposed by Ministry that, according to Năstase, were in breach of the Constitution. Most of these amendments were later judged unconstitutional by the Constitutional Court, and for very similar reasons. The author obtained access to these documents but given their sensitivity the source cannot be attributed.

⁵² Private conversation with a senior European Commission's official that for professional reasons has preferred to remain anonymous (Brussels, July 2005).

⁵³ Author's interview with Dan Lupascu, President of the Bucharest Court of Appeal and President of the SCM between December 2004 and December 2005, Bucharest, November, 2006.

The members of the SCM who were nominated in December 2004 were primarily Heads of Courts, and some are known to be close to political networks and have a history of collaboration with the former *Securitate*⁵⁴. As a result, the newly appointed SCM only managed to transform itself from an inactive institution into an effective guarantor of the *status quo*, suffering from huge legitimacy problems, conflicts of interest, lack of accountability and a poor public image. As a 2006 report from Freedom House critically noted:

This SCM did not delay in positioning itself as a defender of corporate interests rather than a reformer and controller of the judiciary. Members insisted on keeping their double capacity as head of courts and controllers of the same courts. They denied the existence of corruption within the judiciary and hired most of their staff from the Ministry of Justice. Many employees of the ministry, precisely those who had been accused for years of delaying early reforms, followed the transfer of power from the ministry to the council and considerable delays were again incurred on long-discussed reforms, such as introducing clear standards for the evaluation and promotion of judges
Freedom House (2006, pp.13-14).

As we shall see in Chapter 5, the conservative attitude of a vast segment of the judiciary has also undermined the fight against corruption, especially high-level political corruption. Because of the normalcy of political interference of the executive in judicial affairs, there have seldom been cases where a judicial decision was issued against the will of the executive. Indeed, despite hundreds of corruption allegations being exposed in the media, hardly any have led to successful convictions, especially when they involved well-known political figures.

⁵⁴ The most notorious case is that of Florica Bejinariu, member of the SCM, who admitted being a *Securitate* informer but did not resign from her position. In 2006 the SCM decided against a request from the Ministry of Justice to have her removed. Other 10 members of the SCM have been investigated by the National Council for the Study of the Securitate Archives (CNSAS), the authority responsible for the administration of the archives of the *Securitate*. See “CSM amână decizia în cazul Băjinariu”, *Ziua*, 6 September 2006; “Zece membri CSM au statut incert de la CNSAS”, *România Liberă*, 17 December 2007.

Besides the successful political and institutional resistance to the reforms, the overall efficiency of the judiciary has also been undermined by a long list of built-in problems that slowed down and hindered the correct and uniform implementation of legislative provisions. A major problem has been Romania's tendency to over-regulation, which produced a constantly changing and uncertain legal framework. Surveys carried out within the judiciary found judges, prosecutors and practitioners mostly complaining that laws changed too quickly, were often poorly drafted and inconsistent with one another (World Bank, 2001a). A cause of these inconsistencies has been the extensive use of governmental decrees, a tendency that has characterised the Romanian legislative process for most of its transition period (Stan, 2002). This affected judiciary efficiency because it often led to inconsistent court decisions and increased courts' workload, especially for the high courts that had to reconsider decisions in appeal cases⁵⁵. The efficiency of the Romanian judicial system has also been undermined by case overloads and long judgements, a problem that resulted not only from legislative instability but also from the chronic shortages of qualified judges and prosecutors, lack of modern equipment, inefficient court procedures and poor enforcement of court decisions. Some of these issues were progressively addressed, and the increase in funds for the judiciary has reduced staff vacancies and has freed-up time for magistrates' training.

However, despite the progress being made, major issues related to the inefficient court procedures and poor enforcement of court decisions have hardly been addressed in successive reforms and, at the time of writing, they remain open questions affecting

⁵⁵ Author's interview with Viorica Costiniu, judge at the Bucharest Court's of Appeal and President of the Magistrates Association, (Bucharest, November 2006).

judicial capacity and the credibility of the Romanian justice system. All in all, the judiciary has suffered from the consequences of half-hearted and largely cosmetic reforms that created inefficiencies and structural shortcomings. The substantial reorganisation and rationalisation of the justice system that has taken place since 2004 has addressed some of the system's key shortcomings, but the picture remains in flux and it will take many years before the impact of most legislative provisions will become apparent.

The systemic weaknesses of the Romanian justice system raise questions on the overall effect of EU conditionality and the extent to which it provoked long-lasting and irreversible changes. As highlighted in the previous section, in the first decade of Romania's post-communist transition the EU failed to address the specific weaknesses of the Romanian justice systems, especially in relation to its dubious independence and accountability. Despite evidence of corruption and effective subordination of a large segment of the judiciary to the political power, for most of the pre-accession and accession period the EU remained mostly silent and at best superficial in its progressive assessment of the rule of law in the country. Indeed, until 2000 the Commission annual assessments focused almost exclusively on problems in court proceedings, case backlog, low staffing levels and poor training for judges and prosecutors but were surprisingly silent on the evident lack of judicial independence and undue interference of the executive in judicial affairs. When the question of judicial independence was finally raised in 2000, the Commission only limited itself to a moderate criticism pointing out that "the Minister of Justice continues to have a significant influence over

judicial appointments and this is an issue that remains to be addressed” (Commission of the European Communities, 2000, p.18).

From 2001 onwards, EU policy-makers and Brussels officials became increasingly vocal in demanding reforms tackling the independence of the judiciary, especially in the concluding phases of the accession negotiations. This forced the Romanian political class to act with drastic measures to calm the EU’s criticism. But despite the mounting evidence of the effective subordination of the judiciary to the political power, in the last decade the European Commission never challenged its assessment of Romania fulfilling the Copenhagen political criteria. In doing so, the Commission failed to appreciate that many of the built-in problems affecting the Romanian justice system and its efficiency were a direct consequence of the political control and undue interference of the political class in judicial affairs. The lack of accountability and independence led in fact to a slow internalisation of the reforms and many of the acute problems still registered today in the justice system are the result of a failure to address these issues in the early years of transition. In the concluding phases of Romania’s accession the EU tried to remedy to these shortcomings, and between 2004 and 2006 the Commission showed less reluctance in using the conditionality stick to put pressure on the Romanian authorities. This proved successful in accelerating the reforms, but changes did come about perhaps too late to ensure that the Romanian justice system would be ready for EU accession.

4. 4. Conclusion

The preceding discussion has examined the scope and limits of EU influence on judiciary reforms in Romania, highlighting the impact of EU conditionality on policy and institutional developments.

The findings of this case study can be summed up as follows. With regards to the first research question - i.e. the impact of the EU's accession conditionality on domestic policies and institutional choices – the reform trajectory in the field of justice since 1989 has substantiated the argument about the importance of EU conditionality and its impact on policy frameworks and institutional structures. The review of judiciary reforms has illustrated, in particular, that the EU impact varied over time and EU conditionality became extremely powerful after the EU's formal commitment to enlargement and the opening of the accession negotiations. As mentioned in the previous sections, in the initial transition period the EU did not exert much of a direct influence on policy changes, primarily because the conditionality attached to the Europe Agreement did not explicitly target judiciary reforms. It is only from the mid 1990s onwards, when the EU began to put forward increasingly specific requests, that most of the institutional and policy changes can be registered.

The empirical argument has also demonstrated that the EU's leverage was most effective during the decision-making phases. For instance, the harsh criticism made by the EP in early 2004 was the determinant factor in the government's reshuffle that paved the way for the passage and approval of the three-law package.

This introduced significant changes to the legal and institutional framework and brought it broadly in line with the EU's accession conditions. Similarly, it was the threat of delaying by one year the date of Romania's accession that compelled the executive to speed up the reform efforts after the closure of the accession negotiations in 2004. The empirical evidence has also shown that the vagueness of the EU's accession conditionality did not prevent Brussels from exercising its leverage, as much of the Europeanization literature would predict. The lack of EU wide-standards on judiciary independence, accountability and efficiency did not prevent the European Commission from spelling out these as requirements for accession nor did not constrain the ability of the EU to exercise its leverage. Indeed, when Brussels showed willingness to sanction Romania for its failure to introduce legal guarantees for the independence and the accountability of the judiciary, it succeeded in provoking domestic changes.

In assessing the scope of EU influence the empirical analysis also looked at whether the EU's leverage brought about durable and effective policy changes. As argued in the preceding sections, the empirical evidence is mixed as a number of questions remain open on the long-term sustainability of many EU-driven reforms. At the moment of accession the Romanian justice system was still affected by chronic inefficiencies and over politicisation. While the extensive reform process launched from 2004 onwards represented an important step forward to improving the functioning of the judicial sectors and enhance legal guarantees for its independence and accountability, these reforms had a very late start and it will take time before improvements in the overall efficiency of the justice system will become visible.

The analysis of judiciary reforms in Romania has also corroborated the research hypothesis on the crucial role that domestic factors had in mitigating the potentially powerful scope of the EU's leverage and in constraining reform potentials. As I have illustrated in section 3, the systemic weaknesses of the Romanian justice system are the product of half-hearted and often cosmetic reforms, resulting from the unwillingness (or inability) of its successive post-communist governments to tackle judiciary reforms coherently. Indeed, a number of key legislative and institutional measures to ensure the full independence, accountability and efficiency of the justice system were long delayed, and when legislation was passed, legal compliance was not always matched by effective implementation. As a result, the Romanian justice system has struggled to transform itself into a credible, efficient and accountable institution and it remains affected by chronic structural deficiencies, many of which will take many years to overcome.

Chapter 5

Fighting Corruption

This chapter continues the line of argument opened in Chapter 4 while assessing the impact of EU conditionality on the framing and implementation of anti-corruption policies in Romania in the context of its accession to the EU. As in the case of judiciary reforms, the fight against corruption was high on the EU's political agenda for its enlargement to CEE. EU policy-makers were especially concerned with the negative impact of corruption on economic and democratic development, as well as on the implementation of EU policies and the misuse of EU funds to support institutional reforms in the candidate states. The fight against corruption was also a central issue during Romania's negotiations for EU accession especially because, for most of its transition, the country ranked as the most corrupt among the CEE candidates and limited efforts have been made to tackle this problem effectively. The main difference between the two case studies lays in the fact that the fight against corruption entered the EU's political agenda already in the mid 1990s and the EU has in place some anti-corruption legislation. This helped the European Commission put forward a more detailed conditionality on the negotiating table.

As in the case of the previous chapter, the empirical analysis looks at the domestic impact of EU conditionality, identifying how the EU's leverage intervened in shaping domestic decision-making.

In particular the analysis scans the empirical material for evidence in support of the two main hypotheses put forward by this study. To reiterate, this thesis posits that the EU's accession conditionality played an important role in shaping domestic policies and institutional structures, including measures targeting the prevention and punishment of corruption. However, this thesis also suggests that EU's powerful leverage was mitigated and constrained by factors emanating by the domestic environment. The empirical analysis will highlight how the lack of political will, powerful vested interests, institutional deficiencies and legal inconsistencies have slowed down internal reforms and undermined the anti-corruption legal framework, thus effectively hampering efforts to eradicate corruption in the country.

To outline my argument this chapter uses the same structure as Chapter 4. Section 5.1 outlines the content of the EU's demands as tabled for the aspiring members of the 5th enlargement. Section 5.2 turns to the analysis of domestic reforms in Romania, tracing the impact of the EU's accession conditionality on policy and institutional changes. Section 5.3 explains Romania's uneven implementation record in fighting corruption, and identifies the main domestic factors that slowed down reforms and undermined the effectiveness of the legal and institutional measures put in place to fulfil the EU's entry conditions.

5.1 Background to the EU's Approach

Corruption has been a major issue of concern for the EU in its relations with the countries of CEE, and curbing corruption one the most urgent requirements for accession. Unlike issues related to judiciary reforms, the question of corruption in the candidate states was high on the EU's agenda already in the mid 1990s, and in its annual Reports the European Commission has been critical and stringent in evaluating efforts in tackling this problem. For example, in its 1998 Composite Report the European Commission noted:

The fight against corruption needs to be strengthened further. The efforts undertaken by the candidate states are not always commensurate with the gravity of the problem. Although a number of countries are putting in place new programmes on control and prevention, it is too early to assess the effectiveness of such measures. There is a certain lack of determination to confront the issue and to root out corruption in most of the candidate countries (Commission of the European Communities, 1998b, p.4).

In a similar vein, the 2001 assessment pointed out:

In most countries anti-corruption bodies have been strengthened, and progress has been made in legislation, in such areas as public procurement and public access to information... Notwithstanding these efforts, corruption, fraud and economic crime remain widespread in many candidate countries, where they contribute to a lack of confidence by the citizens and discredit reforms. Continued, vigorous measures are required to tackle this problem (Commission of the European Communities, 2001b, p.10).

The attention of EU policy-makers to anti-corruption activities in the candidate states is not surprising if one considers the potentially negative impact of corruption on democratic reforms and economic development. It is in fact widely recognised that corruption, especially political corruption, is highly detrimental to democracy and its consolidation because it undermines the proper functioning of

state institutions, affects the efficiency and quality of public services and induces public mistrust in institutions and state representatives (Diamond, 1999; Doig and Theobald, 2000). Moreover, corruption undermines economic development and negatively affects economic growth. Research has shown how corruption hinders investments, distorts the regulatory and legal framework on which businesses rely on, weakens the financial system, strengthens the underground economy and can distort governments' spending decisions (see, Campos et al., 1999; Gray and Kaufmann, 1998; Mauro 1995, 1998; Tanzi and Davoodi, 1997). In a comprehensive assessment published in 2002 Elliot so described the potentially dangerous impact of corruption:

When it is pervasive and uncontrolled, corruption thwarts economic development and undermines political legitimacy. Less pervasive variants result in wasted resources, increased inequity in resource distribution, less political competition and greater distrust of government. Creating and exploiting opportunities for bribery at high levels of government also increases the costs of government, distorts the allocation of government spending, and may dangerously lower the quality of infrastructure. Even relatively petty or routine corruption can rob government of revenues, distort economic decision-making, and impose negative externalities on societies, as dirtier air and water or unsafe buildings. (Elliot, 2002, p.925)

EU policy-makers were also concerned with the potentially negative impact of corruption on the correct implementation of the *acquis*. The EU legal system rests on the assumption that its legislation is implemented, observed and enforced by the courts and the public administration of the member states. Extensive corruption can undermine their effective implementation and enforcement, hence jeopardise the efficacy of EU policies at national level.

Despite corruption affecting to different degrees all modern societies, including the old EU member states, this became a particularly pressing issue during the accession negotiations with the CEE candidate because of the peculiarity of post-communist transition that provided a fertile ground for the proliferation of corruption at the very heart of state institutions. A number of studies have shown how corruption, which was a common phenomenon during the communist period, expanded very rapidly during the early transition period, owing to the weakness of state rules and institutions and the profound economic and political transformation occurring in CEE in the early 1990s (see, for example, Andvig, 2002; Rose-Ackerman, 1999; Sajó, 2003).

Indeed, the transition from socialism brought about a radical restructuring of basic state institutions and market structures, with a massive transfer of wealth from the state to the private sector through the privatisation of public entities. In many countries, corruption has had a significant impact on this process, encoding advantages in the new rules and institutions for narrow vested interests (Ganev, 2007; World Bank, 2000, pp.25-37). Moreover, in post-communist societies the state entered transition as the overwhelming dominant actor in all realms of society, becoming in many instances the principal agent of corruption behind those networks of power and privileges that formed and shaped communist societies.

5.1.1 EU accession conditionality in the area of Anti-Corruption

Strictly speaking, the EU's anti-corruption policy falls under negotiating Chapter 24 on JHA, but EU legislation *per se* is very limited. The instruments developed at EU level have been primarily conceived to protect the EU's financial interest and focus mostly on harmonising bribery legislation, extending the criminalisation of corruption to foreign officials and officials of international organisations as well as progressively promoting judicial cooperation among the member states⁵⁶.

Despite the EU's own limited *acquis*, the candidate states were presented with a broad range of internal and external measures to be introduced as a condition for accession. With regards to *internal measures*, during the negotiations the European Commission especially emphasised: 1) The drafting of comprehensive anti-corruption strategies and implementing Action Plans; 2) The adoption of specific anticorruption legislation; 3) The amendment of the criminal and civil law legislation incorporating definitions and sanctioning mechanisms contained in international and EU conventions; 4) The establishment of anti-corruption bodies; and 5) The reorganization of power and competences of law enforcement agencies responsible for investigating and prosecuting corruption cases (see, Commission of the European Communities, 2003b).

⁵⁶ For example, the 1995 *Convention on the Protection of the European Communities' financial interests* established minimum standards to be incorporated into domestic criminal law dealing with fraud against the EU's budget (Official Journal, 1995a), while the 1997 *Convention on the Fight against Corruption* introduced EU definitions of "active" and "passive corruption" of EU officials, imposing on the member states the duty to ensure national legislation covers all aspects of these definitions (Official Journal, 1997a). In an effort at curbing corruption within EU's institutions, the European Anti-Fraud Office (OLAF) was also established in 1999 with the task of investigating fraud, corruption and misconduct (Official Journal, 1999b).

As for *external actions*, the CEE candidates were requested to sign and ratify several international anti-corruption instruments such as the Council of Europe's *Criminal and Civil Law Conventions on Corruption* (Council of Europe 1999a, 1999b), the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (Council of Europe, 1990), the 2003 *UN Convention against Corruption* (United Nations, 2003) and the 1997 *OECD Convention on Combating Bribery of Foreign Public Officials* (OECD,1997).

The EU has also asked active participation in international anti-corruption mechanisms such as GRECO - the Group of States against Corruption set by the Council of Europe in 1999. Through its regular monitoring reports GRECO has provided detailed assessments of the compliance efforts of the candidate states, including Romania, and these explicitly constituted the benchmarks used by the Commission to assess the progress made in fulfilling the accession requirements (Commission of the European Communities, 2003b).

As an integral part of the accession process, all candidate states were also requested to harmonize their national legislation in areas that are crucial to the fight against corruption, despite the fact that they do not fall, strictly speaking, under the anti-corruption label. These include the harmonization of public procurement rules and reforms of the public procurement systems in order to comply with EU directives and regulations, as well as the introduction of regulations for financial control and state audit for the management of EU funds.

BOX 5.1. Ten principles for Improving the Fight against Corruption

1) To ensure credibility, a clear stance against corruption is essential from leaders and decision-makers. Bearing in mind that no universally applicable recipes exist, national anti-corruption strategies or programmes, covering both preventive and repressive measures, should be drawn up and implemented. These strategies should be subject to broad consultation at all levels.

2) Current and future EU Members shall fully align with the EU acquis and ratify and implement all main international anti-corruption instruments they are party to (UN, Council of Europe and OECD Conventions). Third countries should sign and ratify as well as implement relevant international anti-corruption instruments.

3) Anti-corruption laws are important, but more important is their implementation by competent and visible anti-corruption bodies (i.e. well trained and specialised services such as anti-corruption prosecutors). Targeted investigative techniques, statistics and indicators should be developed. The role of law enforcement bodies should be strengthened concerning not only corruption but also fraud, tax offences and money laundering.

4) Access to public office must be open to every citizen. Recruitment and promotion should be regulated by objective and merit-based criteria. Salaries and social rights must be adequate. Civil servants should be required to disclose their assets. Sensitive posts should be subject to rotation.

5) Integrity, accountability and transparency in public administration (judiciary, police, customs, tax administration, health sector, public procurement) should be raised through employing quality management tools and auditing and monitoring standards, such as the Common Assessment Framework of EU Heads of Public Administrations and the Strasbourg Resolution. Increased transparency is important in view of developing confidence between the citizens and public administration.

6) Codes of conduct in the public sector should be established and monitored.

7) Clear rules should be established in both the public and private sector on whistle blowing (given that corruption is an offence without direct victims who could witness and report it) and reporting.

8) Public intolerance of corruption should be increased, through awareness- raising campaigns in the media and training. The central message must be that corruption is not a tolerable phenomenon, but a criminal offence. Civil society has an important role to play in preventing and fighting the problem.

9) Clear and transparent rules on party financing, and external financial control of political parties, should be introduced to avoid covert links between politicians and (illicit) business interests. Political parties evidently have strong influence on decision-makers, but are often immune to anti-bribery laws.

10) Incentives should be developed for the private sector to refrain from corrupt practices such as codes of conduct or “white lists” for integer companies.

Source: Commission of the European Communities (2003b)

The European Commission also actively called for anti-corruption measures targeting the judiciary and the public administration, demanding the introduction of transparent recruitment rules, high professional standards and increased remuneration levels as means to curb corruption within state institutions.

The full scope of the EU's accession demands in the field of anti-corruption was spelled out in 2003 when the Commission presented the measures for preventing and combating corruption in Europe and proposed ten principles for improving the fight against corruption in acceding, candidate and other third countries (See Box 5.1). Besides legal measures, the Commission emphasised the establishment of anti-corruption bodies, the training of specialised staff, civil service reforms as well as awareness-raising campaigns in the media and party financing regulations. These principles spelled out the full the scope of EU conditionality that Romania was requested to comply with.

5.2 The Impact of EU Conditionality on Anti-Corruption policies in Romania

Romania has consistently been ranked as the most corrupt country among the CEE candidates and among the states worst affected by corruption in the world. The 2002 Transparency International Survey of 102 countries ranked Romania 77th, behind Uzbekistan, Tanzania, Ethiopia and Zimbabwe (Transparency International, 2002). In the following years the country followed an aggravating trend, hitting its worst rank (87th) in 2004 when finalising the accession negotiations for EU accession (Transparency International, 2004).

Various reasons have been given to explain the scale and the persistence of the corruption phenomenon in Romania, from the cultural legacy of its Balkan tradition of bribing officials to the legacy of its communist regime, which deeply impoverished the country forcing ordinary citizens to try to win the favour of the powerful elites in order

to have access to goods and services. This made corruption and bribery a deep-rooted every-day affair affecting all layers of society, from doctors to top party officials (Stan, 2005). Other scholars have pointed to the particularistic nature of Romanian society, with its marked popular mistrust in public officials, high political migration and a protracted control of key positions and resources by a restricted group of powerful individuals (Mungiu-Pippidi, 1997).

Independently of its causes, Romania experienced some of the worst effects of corruption in the first fifteen years of its transition, with irresponsible privations and extensive fraud of public money that enriched a small group of influential individuals but left millions of ordinary Romanians without their lifetime savings. Yet, fighting corruption figured high on the political agenda of all the successive post-communist governments. This raises a number of questions on the political will of Romania's political class to embark in effective reforms as well as the limits of EU conditionality to promote effective and long-lasting policy changes.

5.2.1 EU conditionality and Anti-Corruption policies after 1989

Romania entered post-communist transition with no pre-existing anti-corruption legal framework and the need to satisfy the EU's entry conditions has been the main driver of anti-corruption policies in the country. The first explicit form of conditionality in the field of anti-corruption was put forward by the EU in 1998, when the member states called for "further efforts to implement measures to combat corruption" as a short term priority of Romania's Accession Partnership (Official Journal, 1998).

This was followed by a more stringent assessment of the country's progress in 1999, when the Regular Report from the European Commission defined corruption as a "widespread problem", noting the lack of determination at domestic level to curb corruption (Commission of the European Communities 1999, pp. 13-14). The European Commission's concerns were then incorporated in the revised 1999 Accession Partnership that explicatively called on the Romanian government to "adopt a law on prevention of and fight against corruption" and to establish "an independent anti corruption department" (Official Journal, 1999a).

At domestic level, the CDR coalition that came into power following the 1996 elections showed willingness to introduce the changes demanded by the EU, also because the institutional and legislative measures requested by the member states coincided with the key priority of the newly appointed Ciorbea government⁵⁷. Thus, while before 1996 no legal steps were taken to fight corruption, from 1997 onwards EU-oriented legislative proposals were elaborated, including a civil service law containing more stringent penalties for corruption in the public administration (see Monitorul Oficial, 1999b). In line with the EU's demands, the executive also proceeded with the creation of anti-corruption bodies, with the establishment of the Squad for Countering Organized Crime and Corruption attached to the General Prosecutors' Office as well as several anticorruption sections inside some key Ministries.

⁵⁷ Authors' interview with Valeriu Stoica, Minister of Justice, 1996-2000, Bucharest, December 2006. On the anti-corruption program of the Ciorbea's government see Stoica (1997).

At legislative level, a framework law on the prevention and punishment of acts of corruption was also approved in May 2000 (Monitorul Oficial, 2000), and during the CDR mandate Romania signed the Council of Europe Criminal and Civil Law Conventions on Corruption as part of the international commitments laid down by the EU as a condition for accession. However, as the then Minister of Justice confirmed during the interview with the author⁵⁸, the executive anti-corruption drive soon stalled because of the severe differences between the coalition's partners on the pace and direction of the reforms. This prevented the executive from introducing any further extensive anti-corruption legislation. As a result, by the time Romania formally opened the accession negotiations with the EU in early 2000, the anti-corruption framework was fragmented and unclear and the anti-corruption institutions that had been created were not provided with a sufficiently strong legal basis to begin investigating dubious privatisation cases.

The opening of the accession negotiation translated into a progressive toughening of EU conditionality, with increasingly more critical assessments of the efforts made by the Romanian authorities to curb corruption. For example, in its 2000 and 2001 Annual Report the European Commission warned of the detrimental effect of corruption, calling for "substantial actions" to tackle this "widespread and systemic problem" (Commission of the European Communities, 2000, p. 18, 2001b, p.20).

⁵⁸ Authors' interview with Valeriu Stoica, Minister of Justice, 1996-2000, Bucharest, December 2006.

On the domestic side, the Năstase government did not seem to give priority to the EU's concerns. Only in October 2001, almost 1 year into office, the Năstase executive finally approved a *National Plan against Corruption* which contained, at least on paper, a rather impressive list of legislative and institutional measures the government intended to pursue while in office (Government of Romania, 2000). In January 2002 the government also set up an Anti-Corruption Department (NAPO), and promised to eradicate corruption from its party ranks. However, as in the case of judiciary reforms, the PSD anti-corruption drive proved short-lived and at best rhetorical.

By mid 2002 some institutional reforms had taken place, especially in the public procurement field, and some corruption-linked investigations were also launched (Stan, 2004). But these resembled more Potemkin reforms than coherent strategies, aimed at reassuring the EU and NATO observers rather than at tackling corruption effectively. Indeed, the intensified legislative work did not translate into an improved performance of anti-corruption bodies or a lowering in the perception of corruption and, by late 2002, there was hardly any evidence of the effectiveness of the government's anti-corruption drive. At legislative level, a number of measures envisaged in the anti-corruption strategy had been delayed including crucial issues such as political parties financing, which was originally planned for early 2002 but was not accomplished until late 2003, under pressure from the EU.

In 2002, the Open Society Institute found corruption to be "endemic", highlighting the *de facto* immunity granted to parliamentary deputies and ministers and the massive executive discretion over public spending and taxation, which provided a fertile ground

for the proliferation of corrupt activities within state institutions (Open Society Institute, 2002b, pp. 464-69). The same year the Transparency International Annual Report concluded that Romania lost several billion dollars every year to widespread corruption (Transparency International, 2002).

The most critical assessment came from the Council of Europe. The first GRECO Report published in 2002 highlighted considerable deficiencies in the legislative framework and in the powers of anti-corruption bodies to carry out investigations and initiate corruption cases. The Council of Europe's experts also portrayed a rather gloomy picture of Romania's anti-corruption efforts in the first decade of transition:

Corruption affects the activities of almost all public institutions in Romania and is a worrying phenomenon. The most serious acts of corruption are linked to organised crime, with the attendant risk that government bodies and the judicial system have been infiltrated. In particular several investigations have outlined the existence of corruption within the Romanian courts and police system, and all the levels of satisfaction of these services are the lowest for all public services assessed (Council of Europe, 2002, p.5).

The outspoken criticism of the Council of Europe did not go unnoticed in Bucharest and forced the government to take some measures to tackle corruption. Thus, where before 2003 very little progress had been made, between 2003 and 2004 the Romanian government applied significant changes to the anti-corruption legislation, making the 2004 Commission's Report conclude that the "Romanian anti-corruption legislation is well developed and is broadly in line with relevant EU *acquis*" (Commission of the European Communities, 2004a, p. 22).

One critical moment was the motion presented by the EP in early 2004, which called into question Romania's closing of the negotiations due to its sluggish democratic standards. As in the case of judiciary reforms, fear of a delay in finalising the negotiations compelled the PSD administration to revise the anti-corruption framework in line with the EU's demands. Accordingly, the government approved in March 2004 a new code of conduct for civil servants, providing some clarification in the conflict of interest's legislation (Monitorul Oficial, 2004d). Previously, the Romanian Parliament also approved a new law on decision-making transparency in the public administration (Monitorul Oficial, 2003b).

The so-called "sunshine law" established criteria for citizens' access to information, consultation and participation procedures in the decision making-process both at national and local level as well as disciplinary measures for civil servants failing to comply with the law. During this period, Romania also ratified the Council of Europe's Criminal and Civil Law Conventions on Corruption and introduced an Anti Corruption Act containing more severe sentences for corruption and bribery (Monitorul Oficial, 2004f).

However, the reform drive of the Romanian government did not fully convince EU officials, and many openly expressed dissatisfaction with the failure of the executive to curb corruption⁵⁹.

⁵⁹ See for example the interviews with Baroness Nicholson, the EP Rapporteur for Romania in 'România a fost distrusa din interior de corupție', *Ziua*, 29 March 2004 and the interview with Commissioner Verheugen, "Romania rapped over continued corruption", *European Voice*, 27 May 2004.

BOX 5.2. Postponement Clause: Commitments for Romania in the field of Anti-Corruption

....

(4) To considerably step up the fight against corruption and in particular against high-level corruption by ensuring a rigorous enforcement of the anti-corruption legislation and the effective independence of the National Anti-Corruption Prosecutors' Office (NAPO) and by submitting on a yearly basis as of November 2005 a convincing track-record of the activities of NAPO in the fight against high-level corruption. NAPO must be given the staff, financial and training resources, as well as equipment necessary for it to fulfill its vital function.

(5) To conduct an independent audit of the results and the impact the current National Anti-Corruption Strategy has generated; to reflect the conclusions and recommendations of this audit in the new multi-annual anti-corruption strategy which must be one comprehensive document, in place no later than March 2005, accompanied by an action plan with clearly defined benchmarks to be reached and results to be obtained, as well as adequate budgetary provisions; the implementation of the Strategy and Action Plan must be overseen by one existing, clearly defined, independent body; the strategy must include the commitment to revise the protracted criminal procedure by the end of 2005 to ensure that corruption cases are dealt with in a swift and transparent manner, in order to guarantee adequate sanctions that have a deterrent effect; finally, it must contain steps to considerably reduce the number of bodies which all have powers to prevent or investigate corruption by the end of 2005, so that overlapping responsibilities are avoided.

....

Source: Annex X, Treaty of Accession of Romania, Official Journal (2005)

Romania's unconvincing drive to fight corruption led the member states to impose tough safeguard measures at the moment of the closure of the accession negotiations. As a condition for closing the negotiations, the member states laid down very strict conditions and benchmarks, demanding increased efforts in fighting high-level corruption, effective legal guarantees for the independence of NAPO as well as evidence of a convincing track record in curbing high-level corruption (See Box 5.2).

The presence of a tough postponement clause in the Treaty of Accession would prove instrumental in stimulating domestic changes in line with the EU's requirements. Indeed, the most significant efforts to rationalise the anti-corruption framework and

implement legislation came in early 2005, with the appointment of a centre-right government and Monica Macovei as the head of the Ministry of Justice. As soon as the new Minister took office, anti-corruption activities intensified and several legal and operational steps were taken to accelerate the fight against high-level corruption. Focus was placed on implementation, and the Anti-Corruption Strategy for 2005-2007 contained a number of legislative, institutional and implementation measures to prevent, combat and sanction corruption (Ministry of Justice, 2005a and 2005b).

One of the most important changes was the appointment of a completely new managerial team for the Anti-Corruption Department (DNA) within the General Prosecutor's office to replace NAPO, the main anti-corruption body created by the PSD government, long criticised for its inefficiency and inactivity in investigating high-level corruption cases (see, for example, Commission of the European Communities, 2003a, p.27, 2004a, pp.22-23). The restructuring of DNA was designed to fulfil the requirements set by the EU in the Treaty of Accession. Under the new law – that was originally adopted by Government ordinance in 2005 - DNA became an autonomous body vested with the power of investigating high dignitaries including Members of Parliament (Monitorul Oficial, 2005c), a provision seen by Brussels as an important sign of a newly acquired independence of prosecutors in investigating politicians and of the country's commitment in taking high-level corruption cases seriously. Further legislative and operational measures to curb and prevent corruption included the amendments to the law on funding political parties⁶⁰, control over state subsidies, the

⁶⁰ The new legislation has brought significant legal improvements by establishing, in particular, political parties' obligation to make public, in the Official Journal, their income and expenses. For a

criminalisation of tax evasion, the strengthening of transparency in public procurement procedures and the introduction in May 2005 of new mechanisms regulating the laws on templates for declarations of wealth and interests of high officials, which are reported to be the strictest in Europe⁶¹. In April 2005, criminal immunity for public notaries and bailiffs was also abolished and more stringent penalties were introduced for money laundering offences (Monitorul Oficial, 2005e).

The commitment in fighting corruption was also reflected at implementation level. Under the direction of Daniel Morar, a young prosecutor appointed to replace a PSD affiliate, DNA managed to charge over 1000 defendants including Members of Parliament, Ministers and a deputy Minister, several magistrates and several employees of law enforcement agencies. Investigations have also been opened against members of the current Parliament and high-level dignitaries, including top officials of the President's own party and members of the ruling coalition⁶². After years of inaction, DNA also launched investigations into a series of highly dubious privatisation contracts signed by the PSD government that proved very disadvantageous to the state, with the loss of millions of euros⁶³.

complete analysis see, Transparency International (2007, p.27). For the text of the law see Monitorul Oficial (2006c).

⁶¹ Author's interview with Rupert Vining, Council of Europe's expert and Presidential Advisor to President Băsescu 2004-2007, Bucharest, October 2006. For the text of the law see Monitorul Oficial (2005d).

⁶² Investigations have been opened against the former deputy Prime Minister and head of the UDMR, Marko Bela for an alleged bribe; against George Copos, at the time serving as deputy prime charged with tax evasion; Dinu Patriciu, a wealthy PNL member and close friend of Prime Minister Tăriceanu who was being investigated by prosecutors for money laundering and other charges related to his own company Rompetrol and Dan Ioan Popescu, industry and commerce Minister in the Năstase cabinet under prosecution for his failure to explain the origin of assets worth more than €1.25 million.

⁶³ This includes the Energy Case involving Hidroelectrica along with other 11 companies, where energy was delivered to certain firms at preferential rates, well below market price, and the so-called

The new anti-corruption framework also targeted the judiciary - with a new code of conduct and declaration of wealth - as well as the public administration both at central and local levels by strengthening the operational capabilities of the Anti-Corruption Department of the Ministry of Interior (DGA), and through awareness campaigns carried out with the support of local NGOs. The steps taken by the government showed increased political will and commitment in tackling corruption. The opening of high-profile investigations against well-known politicians, including former Prime Minister Năstase, was perceived as a positive sign that the centre-right coalition was serious about the reforms⁶⁴.

The motivations of the newly appointed government for complying with the EU's tough deadlines were largely domestic, reflecting at least initially, the reformist credentials of the DA-Alliance. Curbing high-level corruption and reforming a highly discredited justice system were the cornerstones of the Alliance's electoral promise to set Romania on a new course after years of misrule and bad governance, which damaged the country's image in the eyes of foreign observers. Securing Romania's accession in 2007, by complying with EU-related commitments, was seen as crucial in this respect. However, from 2006 onwards, when it became clear that the Commission would not delay Romania's entry, political consensus began to fade and profound disagreements on the direction of the reforms undermined the coalition viability, marking the end of the DA-Alliance just two months after accession.

Frigates Affairs, related to the acquisition in 2003 of two second-hand frigates from Britain's BAE System. For media coverage see 'Noi suspiciuni de corupție legate de BAE Systems', *Hotnews*, 13 November 2006; 'Turbina de făcut bani a băieților deștepți', *Evenimentul Zilei*, 14 April 2007.

⁶⁴ 'Netting the untouchables', *The Economist*, 4 February 2006.

Conscious of the fragility of the reform momentum, the European Commission put in place in December 2006 a post-accession mechanism to monitor progress in fighting corruption. As in the field of judiciary reforms, Romania is required to address a number of benchmarks amid the risk of safeguard measures being introduced by the Commission in the field of JHA. These benchmarks are:

- “Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken (Benchmark 2).
- Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption (Benchmark 3).
- Take further measures to prevent and fight against corruption, in particular within the local government (Benchmark 4)”.

(Commission of the European Communities, 2006a)

The introduction of the post-accession monitoring mechanism effectively extended EU conditionality into the post-accession period, allowing the EU to maintain pressure on the Romanian authorities to ensure the implementation of the reforms. Yet, the introduction of a post-accession monitoring mechanism in the field of corruption shows that many in Brussels were aware that progress was accomplished thanks to the determination and commitment of few and largely isolated forces, lacking the necessary broad political consensus to ensure that efforts at curbing corruption would not stop at the moment of accession.

5.2.2 EU conditionality and Romania’s implementation record

Romania’s track record in curbing corruption leaves much to be desired for. Over the past decade, several scandals involving members of Parliament, high-ranking officials and wealthy businessmen were exposed by the media, such as the BANCOREX crash –

the biggest financial disaster in Romania, and the RAFO affairs that involved PSD affiliates and close allies of Iliescu⁶⁵. Yet, only a small number of cases were investigated and very few have led to successful convictions. Anti-corruption bodies have also proliferated but these proved mostly ineffective in fighting corruption. For example, NAPO - the anticorruption department set up in 2002 by the PSD administration as the flag of Romania's anti-corruption reforms – proved inadequate in initiating high-profile prosecutions because it lacks the legal instruments and the human resources necessary to launch investigations⁶⁶.

Various assessments by the EU and other international organizations repeatedly portrayed corruption in the country as endemic and systematic, with no significant changes being registered over the years (see, for example, Council of Europe, 2002; Freedom House, 2005a; Open Society, 2002b; World Bank, 2001b). No significant change has also been registered in the perceived level of corruption despite the change in the political elites following the 1996, 2000 and 2004 elections. In 2001 a World Bank study found that corruption was perceived as a normal and widespread phenomenon, with about two-thirds of the Romanian respondents believing that “all” or “most” officials were corrupt and firms reporting frequent unofficial payments for a variety of state services (World Bank, 2001b).

⁶⁵ The RAFO affairs involved the formerly state-owned oil refinery awarded in 2001 by the then PSD Government to Corneliu Iacobov, a close friend of Iliescu, later sold to a British company after it accumulated in three years almost 30 billion USD in unpaid taxes. It was later discovered that the London based company was owned by an associate of Iacobov and himself close to Iliescu and two of his key advisors, a general of the intelligence services and a senator. It later emerged that the same people were behind the Bancorex crash, the biggest financial disaster in Romania. The collapse of the formally state owned bank has resulted in a loss of over 20 trillion USD, which was passed over to taxpayers. The state has yet to recover the debt.

⁶⁶ Author's interview with Marian Săntion, Prosecutor and Director General of DGA, the Anti-Corruption Department in the Ministry of Interior between 2004 and 2007, Bucharest, 2006.

TABLE 5.1. Transparency International Annual Perception Corruption Index (PCI)

Country	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998
Bulgaria	64	57	55	54	54	45	47	52	63	66
Czech Republic	41	46	47	51	54	52	47	42	39	37
Estonia	28	24	27	31	33	29	28	27	27	26
Hungary	39	41	40	42	40	33	31	32	31	33
Latvia	51	49	51	57	57	52	59	57	58	-
Lithuania	51	46	44	44	41	36	38	43	50	71
Poland	61	61	70	67	64	45	44	43	44	39
Slovakia	49	49	47	57	59	52	51	52	53	47
Slovenia	27	28	31	31	29	27	34	28	25	-
Romania	69	84	85	87	83	77	69	68	63	61

Source: Transparency International (www.transparency.org)

Transparency International, in its annual comparative study of the perception of corruption, constantly ranked Romania as the most corrupt country among the post-communist states of CEE (Table 5.1). Given the difficulties in measuring corruption, surveys on its perceived level do not necessarily reflect in full the situation on the ground. Yet, Romania showed a limited track record in prosecuting corruption cases and many of the high-level corruption scandals reported in the media were never fully investigated.

This is even more surprising if one considers that the country has developed one of the most complex and comprehensive anti-corruption legal frameworks in Europe and that, from 1998 onwards, several anti-corruption campaigns and programmes have been financed by the EU and its member states. According to the independent audit of the anti-corruption situation in Romania carried out by Freedom House in early 2005, Romania had developed “an impressive arsenal of legal instruments of transparency, accountability and anticorruption” (Freedom House, 2005b, p.7).

Yet, the audit found that the anti-corruption legislation has effectively not been implemented and prosecutors had very limited autonomy and independence in conducting investigations (Freedom House, 2005b, p.8).

The legal changes introduced by the Tariceănu executive to strengthen the independence of prosecutors and the implementation capacity of the anti-corruption institutions have brought some improvement. For instance, some visible results have been registered after the appointment of Daniel Morar as the head of DNA, with the opening of high profile cases involving well-known politicians, high-ranking officials and wealthy businessmen. The reorganisation of this institution into an autonomous department of the General Prosecutor's Office, and the legal guarantees extending its competences and powers to investigate high-level and political corruption cases have much contributed to these results. Similarly, after DGA became operational in 2005, over 2000 investigations have been opened against civil servants, police and customs officers, and more than 7000 cases of bribery and corruption were reported by the general public via *Telverde*, the free anti-corruption phone line set up in 2006 (see Ministry of Interior and Administration, 2007a). However, the implementation of the anti-corruption reforms has had a very late start and it will take many years before results become visible.

5.3 How Domestic Factors affected compliance

Several factors help explain Romania's poor performance registered in eradicating corruption. From a strictly legal perspective, the effectiveness of the anti-corruption framework has been hampered by several legislative inconsistencies and significant loopholes in the law that have nullified some legal provisions in place. For example, although Romania ratified the UN Anti-Corruption Convention in 2002, it was unable to implement the key requirement to establish "illicit enrichment" as a criminal offence because this clashed with the Constitutional provision according to which the acquisition of assets is always presumed to be legal. As a result, several high profile investigations could not be initiated because of insufficient evidence of the dubious origin of wealth (Open Society et al., 2006, p. 9).

The fight against corruption has also been weakened by inadequate control and sanctioning mechanisms, which proved ineffective in deterring and punishing corruption. For example, despite Romania introducing one of the most detailed asset and interest declarations in Europe, no audit or institution was put into place to monitor and verify the declaration of public servants and public officials. In addition, the failure to submit interest declarations attracts virtually no penalty and until 2006, an official was only requested to declare his/her own assets, and not those of his or her own family members.

From an institutional point of view, the fight against corruption has been hampered by institutional weaknesses, a low administrative capacity in preventing and fighting corruption, a lack of inter-institutional cooperation, inefficient administrative jurisdictions and a lack of rationalization of competences and coordination among the many bodies involved in the fight against corruption⁶⁷. The lack of policy experience in devising legal, institutional and operational measures to prevent, fight and sanction corruption largely contributed to a number of these institutional and legal weaknesses, as senior officials of the Ministry of Justice confirmed during interviews⁶⁸. However, the reform trajectory shows that the effectiveness of anti-corruption policies has been hampered primarily by the failure of the political elite to tackle corruption seriously.

Despite all successive post-communist governments declaring the fight against corruption as their outmost priority, most reforms have been half-hearted and generally ineffective, and repeated criticism from the EU and other international organizations were carefully bypassed by largely cosmetic legal frameworks that fell short of any implementation effort. When EU –compatible rules were introduced, reforms often lacked the necessary cross-party political consensus to ensure their long-term sustainability.

⁶⁷ Author's interview with Rupert Vining, Council of Europe's expert and Presidential Advisor to President Băsescu on anti-corruption issues, Bucharest, November 2006.

⁶⁸ Author's interviews with personnel in the Ministry of Justice and SCM including Simona Teodoroiu, State Secretary (2000- 2004), and Ionut Codescu, former Director of the Department of European Integration in the Ministry of Justice and Secretary (2004-2007). Bucharest, October- December 2006.

For example, when the National Council of Struggle against Corruption and Organised Crime by President Constantinescu, the opposition denounced it as an instrument for hunting down political opponents, and deep internal divisions inside the governing coalition on the scope of the anti-corruption reforms undermined efforts to establish effective legislative and institutional mechanisms to address corruption in the country (Shafir, 2001, p.89).

The most blatant evidence of inaction can be found under the PSD administration between 2000 and 2004. Despite corruption being at the top of the list of the executive's electoral promises, hardly any effort was made to tackle corruption effectively, and most anti-corruption bodies remained inactive and ineffective. Instead, between 2001 and 2004, the PSD government intensively and actively pursued a deep politicisation of the judiciary, of the public administration and of key executive positions in all state sectors, from hospital directors to school principles (Stan, 2005). In the public administration, for instance, a number of EU-funded programmes to bring qualified young professionals inside the Ministries and the public administration at national and local level were used as instruments for political favours, to locate young party affiliates into the Ministries' streamlined civil services⁶⁹. This practice reinforced the network of political patronage and control, allowing corrupt politicians to maintain a firm grip on all key areas of society.

⁶⁹ Author's interview with a senior EU expert who for professional reasons has asked to remain anonymous, Bucharest 2006.

The reason why political parties reap private gains for themselves or their allies, and seek patronage by engaging in a deep politicization of the public administration and other state sectors has recently attracted academic attention (see Ganev, 2007; Grzymała-Busse, 2007; O'Dwyer, 2006b; Meyer-Sahling, 2006 and Haughton 2008 for a review). According to Grzymała-Busse (2007, p.3-4), when political competition is “robust” - that is when an opposition “is clearly identifiable, plausible as a governing alternative, and vociferously critical” – the elite in power is constrained in its ability to reap private gains for themselves and their allies. By contrast, when political competition is less robust incumbent politicians “could more freely extract resources and create new formal institutions that would allow further exploitation (Grzymała-Busse, 2007, p.13).

Indeed, in Romania the PSDR/PSD and Ion Iliescu enjoyed a comfortable majority in Parliament, while the centre-right parties that emerged from the disastrous electoral performance in 2000 did not act as a viable or credible political alternative to the ex-communist leadership until 2004. Yet, the commitment of the DA-Alliance to break rent-seeking behaviour, corruption and mismanagement of public life is also questionable. The anti-corruption campaign launched after 2004 served as a narrow political agenda, merely to ensure EU accession in 2007. As it became evident that Justice Minister Macovei was serious about the anti-corruption reforms, and their implementation, she grew increasingly isolated and openly opposed to by a large segment of the political class, including members of the ruling coalition⁷⁰.

⁷⁰ See interview with Monica Macovei, “Din martie, am simtit ca guvernul nu mai e o echipa”, *Evenimentul Zilei*, 8 November 2006; 2006; ‘Cum am ajuns inamicul public’, *Revista 22*, No. 866, 10-16 October 2006.

Key reforms were slowed down or blocked in many areas by powerful vested interests and concrete actions to fight corruption have been the matter of a forceful fight between the conservative and reformist wings inside the ruling coalition. This became even more evident after the rather encouraging Commission's Monitoring Report in October 2005, that was perceived by some Romanian politicians in the ruling coalition as a lessening of the EU's pressure, and of the Commission's more positive stance towards Romania⁷¹.

Major obstacles to anti-corruption reforms have also come from the Romanian Parliament. In the first two years of the DA administration (2005-2007) it repeatedly showed a clear inclination to block or slow down the anti-corruption package. The most blatant attempt by Parliament to undermine anti-corruption efforts was the refusal in early 2006, to allow a search warrant for the home of former Prime Minister Adrian Năstase, who at the time was also Speaker of the Chamber of Deputies. No effort was made to justify this refusal, despite the fact that it concerned one of the most spectacular examples of unexplained wealth to be found in Romania, and the indications pointing towards corruption would have been regarded as overwhelming in most EU member states⁷². In early 2006 the Senate also failed to ratify the reform of DNA, putting the country on the verge of a political crisis. Although the ordinance was rejected primarily because of the massive absence of senators, coalition members, including some from PNL and UDMR, joined forces with the opposition and voted against the ordinance.

⁷¹ Author's interview with Monica Macovei, Minister of Justice 2004-2007, Bucharest, December, 2006.

⁷² This was the opinion expressed by a senior expert from one EU member state in the Peer Review assessment on anti-corruption and money laundering reforms that took place in Romania in March 2006. The author was given access to this document but given their confidential nature the source cannot be attributed.

For the European Commission this represented a clear lack of political consensus in fighting corruption. As a senior EU official told the author, the rejection of the ordinance by the Senate “shows there is a cross-party interest group of individuals, including members of parliament, who feel threatened by the stepping up of the fight against corruption, because they have personal reasons”⁷³.

Apart from these major issues, obstruction has also occurred on other important aspects of the anti-corruption draft-laws, such as the efforts to amend the law concerning the declarations of wealth - basically aiming to render the templates useless and ineffective - and the rejection of a Government emergency ordinance on the powers and roles of the judiciary police in corruption cases⁷⁴. As mentioned previously, political resistance to anti-corruption reforms has not been confined to opposition parties but also came from within the ruling coalition and some individual Ministers, who openly opposed during the executive meetings key anti-corruption measures, such as in the case of the National Integrity Agency (ANI)⁷⁵ - the controversial agency to verify assets and incompatibilities of public officials. Members of the ruling coalition also openly criticised the activities of DNA, accusing prosecutors of using corruption investigations as political tools against politicians and businessmen.

⁷³ Author’s interview with a senior EU official that for professional reasons has asked to remain anonymous. Brussels, 2006.

⁷⁴ Private conversation with a senior EU official who for professional reasons has asked to remain anonymous Brussels, 2006.

⁷⁵ Author’s interview with Monica Macovei, Bucharest, December 2006. The ANI law, was only supported by the Liberals and Democrats but weakened by UDMR, PC who joined forces with the opposition to severely limit its actions. After the draft law was presented by the Minister of Justice, there have been numerous attempts by the Parliament to render this institution ineffective causing endless postponements of the law. See ‘Democrații, împotriva Guvernului’, *România Liberă*, 1 November 2006; ‘Ipocriziile UDMR’, *Evenimentul Zilei*, 11 September 2006.

The most outspoken critic of DNA and Monica Macovei has been Dan Voiculescu, president of PC, who has a long history of collaboration with the *Securitate* and has been under investigation for fraud and corruption⁷⁶. Yet, the attempts by the Romanian Parliament and members of the ruling coalition to undermine and block further progress in the fight against corruption is a clear indication that the fight against corruption had little if no support by a significant part of the political majority. This also highlighted how, for a large segment of the Romanian political class, including those belonging to the governing coalition, compliance with the EU's demands was at best rhetorical, aiming at securing EU membership in 2007 but with little or no genuine interest in continuing the reforms after accession.

On its part, the European Commission did not spare criticism. In its final report published in September 2006, the Commission noted how “in the Parliament there has been some attempts to substantially reduce the effectiveness of such [anti-corruption] efforts” (Commission of the European Communities, 2006c, p. 5). For the Commission, “[t]here needs to be a clear political willingness of all political actors to demonstrate the sustainability and irreversibility of the recent positive progress in the fight against corruption (Commission of the European Communities, 2006c, p.35). Moreover, EU and other foreign officials openly supported the efforts made by Monica Macovei in fighting corruption.

⁷⁶ For example, on 27 September 2006, the day after the Commission gave the green light for Romania's accession in January 2007, Voiculescu went on National television declaring that he had evidence that Monica Macovei had collaborated with the *Securitate* when she was a prosecutor in the Bucharest courts during the communist period. See also ‘Macovei manipulează demnitari europeni’, *Jurnalul Național*, 12 September 2006.

For example, during his visit in Bucharest in March 2006 European Commissioner Franco Frattini declared: “I want to mention the fact that the progress achieved in the justice field, in the fight against corruption are due to the efforts which Minister of Justice Mrs. Monica Macovei has made and whom I want to particularly thank⁷⁷”. Nicholas Taubman, the US Ambassador to Romania also stated: “Minister Macovei is a leader in operating such reforms. Some foreign observers would see her leaving the Ministry as a step backward”⁷⁸. However, this support fell on deaf ears and the Minister was sacked two months after accession as a result of a bitter in-fight between the President and the Prime Minister.

Further serious impediments to the success of the anti-corruption strategy have come from other powerful veto players, first and foremost the Constitutional Court. For example, in March 2005, just a few months after the tough closure of the negotiations with the EU, the Constitutional Court decided that DNA (then NAPO) could have no competence to investigate Members of Parliament, despite the fact it had been created for this very same purpose. The anti-corruption strategy also stalled because of the conservative attitude of a vast segment of the judiciary. Despite several scandals being reported in the media, no high-profile investigation case has so far led to a successful prosecution and the legislative attempts to increase the integrity of the judiciary and of the broader justice system have been met with great resistance.

⁷⁷ Joint Press Conference by Prime Minister Tăriceanu and Vice-President of the European Commission Franco Frattini, Bucharest 13 March 2006 (Government of Romania - Press office).

⁷⁸ Quoted in “US, Europe stand up for Macovei”, *Nine O’Clock*, 12 February 2007. See interview with Herbert Bosch after his visit to Romania ‘Corupția politicianilor români - o problemă gravă pentru UE’, *Evenimentul Zilei*, 24 September 2006.

All in all, the fight against corruption has been undermined by over fifteen years of missed and half-hearted reforms. Reducing corruption would have required challenging vested interests that benefited from the status quo and this largely explains why little effective progress was made to tackle this problem.

5.4 Conclusion

This case-study examined the framing and implementation of anti-corruption policies in Romania from the collapse of the communist regime in 1989 to the country's formal accession to the EU in January 2007. As in the case of the previous chapter, the empirical analysis traced the impact of the EU's accession conditionality on policy and institutional developments and examined the outcome of this influence. It further assessed how domestic factor constrained the reform potentials and hampered efforts to eradicate corruption.

With regards to EU influence on domestic policy choices, the analysis presented in this chapter has corroborated the hypothesis on the importance of EU conditionality as a stimulus to domestic reforms. The empirical analysis of anti-corruption policies has revealed a causal link between the EU's accession requirements and a number of domestic institutional and policy changes. Moreover, the analysis has shown how the limited EU anti-corruption legislation did not prevent Brussels from exercising its leverage, and the EU 'carrot and stick' conditionality approach created considerable pressure on the Romanian authorities to introduce EU-compatible rules.

As discussed in section 2, the greater changes to the anti-corruption legal framework and its institutional structures came in response to EU pressure, especially when the EU showed willingness to sanction Romania for its sluggish efforts in putting in place a sound anti-corruption legal framework. As argued, from 2001 onwards the progressively outspoken criticisms from the EU and other foreign institutions proved crucial in stimulating progress in targeting corruption both at legislative and institutional level. One crucial moment was the EU's Copenhagen summit in October 2002 when Romania, along with Bulgaria, was not included in the list of countries set to join the EU in 2004. The decision gave an unprecedented credibility to the EU's conditionality stick and showed that unless important changes were made, there would be no conclusion of the negotiations. The harsh criticism from the EP in 2004 also made the Năstase executive revise the anti-corruption framework in order to avoid a delay in finalising the negotiations. The most significant example of the power of EU's leverage in pushing reforms at domestic level is perhaps the introduction of the postponement clause in the Treaty of Accession that allowed the Commission to push conditionality to its limits and compel the Romanian government to live up to its commitments.

The preceding discussion of the evolution of anti-corruption policies has also provided empirical support to the second hypothesis put forward by this research regarding the role and impact of domestic factors. The reform trajectory in the field of anti-corruption has highlighted how powerful veto players at governmental level, coupled with a number of legal and institutional deficiencies, played a determinant role in slowing down the introduction and implementation of EU compatible rules.

As specified in section 3, there have been several obstacles to the successful fight against corruption. The most significant has been the lack of political will to introduce durable and effective measures. The fight against corruption has also been hampered by pockets of corrupt and politically aligned judges and prosecutors that often prevented the successful prosecution of a number of corruption cases. Although Romania made progress in the establishment of a sound anti-corruption legal framework, this was primarily conditioned by the EU's pressure and the EU's monitoring rather than national will, with little political consensus on the scope of anti-corruption reforms. Yet, since achievement owes much to the pressure from the EU, questions remain open on the long-term sustainability of these reforms efforts.

Chapter 6

Securing the EU's External Borders

This chapter examines the domestic impact of the EU's accession conditionality in the field of external borders control, which comprises the Schengen *acquis* and the EU's restrictive visa regime within the negotiating Chapter 24 on JHA. This policy area was high on the EU's political agenda during the accession negotiations with the CEE candidates because of the political sensitivity of border issues and the security implications arising from the shifting eastward of the EU's future external borders (Grabbe, 2006, p. 150). Border security was also one of the most important items during the accession negotiations with Romania due to the length and location of its borders that raised concerns over the country's ability to implement EU policies effectively.

As in the case of the preceding chapters, the empirical analysis looks at the interaction between EU conditionality and domestic reforms, tracing the impact of the accession requirements on border policies in post-communist Romania. When compared to the other two case studies, this is one policy area where the EU had, from the outset, considerable potential leverage to intervene in domestic decision-making. Unlike issues related to judiciary reforms and the fight against corruption where the EU mostly lacked legally-binding instruments, the Schengen *acquis* is detailed and legally complex and covers an extensive list of policy measures regulating border management as well as visa, asylum and immigration policies.

The extensive and detailed *acquis* meant politicians in Romania had little margin for negotiating the terms of accession, especially since full compliance with Schengen was set as a pre-condition for membership. Moreover, Romania entered post-communist transition with underdeveloped JHA policies and obsolete border structures and equipment. While the process of EU integration offered Romania the opportunity to benefit from EU funds and the technical expertise of the member states, it also gave the EU ample room for intervening in defining the content of its domestic policies. Perhaps more significantly, unlike the other two policy areas, politicians in Romania had strong incentives to introduce EU-compatible rules. Beside the ‘carrot’ of membership, the EU explicitly linked border security to the lifting of visa restrictions for Romanian citizens wishing to travel to the Schengen area. This was an important incentive for politicians in Romania because compliance with EU conditionality brought about immediate benefits.

If we follow the Europeanization logic outlined in Chapter 2, we should therefore expect a relatively high level of compliance in this policy area because the EU put forward on the negotiating table a detailed *acquis*, and domestic actors had sufficiently strong incentives to comply with the EU’s requirements (see, for example, Grabbe, 2006; Schimmelfennig et al., 2003; Schimmelfennig and Sedelmeier, 2004). The evolution of border policies in Romania confirms this expectation, but only in part. While the wide scope and precision of the EU’s demands helped achieve policy convergence at a legal level, the actual implementation of EU legislation has been uneven, flawed by low administrative capacity, lack of expertise and poorly established practices and methods.

Indeed, unlike judiciary reforms and anti-corruption policies where the implementation has been hindered by powerful veto players, the fundamental problem here has been the country's low state capacity – that is the inability of the public administration and law enforcement agencies to implement EU policies correctly.

To examine the scope of EU influence on border policies in Romania, this chapter proceeds as follows: Section 6.1 outlines the external border conditionality put forward by the EU for the candidate states of CEE while section 6.2 looks into detail at the impact of the EU's accession demands on the framing of domestic policies in Romania. Section 3 examines how domestic factors undermined the correct implementation of EU legislation.

6.1 Background to the EU's policy

External borders control has been one of the most important and politically sensitive areas of the EU's enlargement policy to CEE, and the strict implementation of the Schengen *acquis* was set as a pre-condition for accession for all the candidates, including Romania. The EU's negotiating position was strongly influenced by security concerns over their ability to guard the future external borders, and reflected widespread fears among the member states of crime and uncontrolled migration from beyond the EU's territory as well as from the candidate states themselves (Apap et al., 2001).

The predominance of the security rationale partly stems from the very same nature of the Schengen cooperation (Townsend, 2003). The Schengen Agreement – originally signed by France, Germany and the three Benelux countries in 1985 - created in fact a common territory inside the then European Community without the existence of traditional national borders, but to compensate for the security deficit resulting from the abolition of border checks, a number of common measures were also introduced in the fields of asylum, immigration and visa policies⁷⁹. Yet, security concerns became exceptionally predominant in the context of the EU's enlargement to CEE due to the length and location of the future external borders of the Union. Given their geographical location and low economic development, the CEE candidates became to be perceived as transit points and a potential source of a whole range of security threats, from immigrants and asylum seekers to organized crime, smuggling and trafficking in human beings (Mitsilegas, 2002, p. 668).

There is a generalised consensus in the literature that the EU's negotiating position vis-à-vis the candidate states reflected an increased 'securitization'⁸⁰ of JHA issues, whereby problems such as organized crime, illegal immigration and asylum became increasingly perceived after the end of the Cold War as security threats in most Western countries (Grabbe, 2002; Huysmans, 2000; Mitsilegas et al., 2003).

⁷⁹ These include measures regulating the movement of third-country nationals, the issuing of entry visas, a division of responsibilities for processing asylum applications, and the creation of the Schengen Information System (SIS) - a computer database containing information about people crossing borders, wanted criminals, failed asylum applications, stolen cars and stolen property. The list of common measures to implement the Schengen Agreement is outlined in the Schengen Implementing Convention that was signed in June 1990 and came into force in March 1995 (see Official Journal, 2000b).

⁸⁰ On the concept of securitization of JHA issues see Bigo (2000) and Waever (1995).

These security concerns had also heavily shaped the framing of common asylum, immigration and border policies, and help explain the rapid development of the JHA *acquis* at EU level. The refugee crisis of the 1990s after the breakdown of the former Yugoslavia highlighted the flaws of individual responses to asylum and immigration crisis, and brought JHA cooperation onto the EU's political agenda during the negotiations of the Maastricht Treaty (Geddes, 2000; Marshall, 2000). This led in 1992 to the creation of a third JHA intergovernmental pillar of the EU in the Maastricht Treaty and the gradual institutionalization of migration, asylum and border policies at EU level⁸¹. Similarly, the application for membership of several eastern European countries in the mid 1990s heavily influenced the decision to bring the Schengen intergovernmental cooperation into the EU's legal framework, with the incorporation of the Schengen *acquis* into the Amsterdam Treaty in 1997⁸². As Friis and Jarosz (2000, p. 50) noted, enlargement to CEE implied in fact a shift eastward of the future external borders, hence the need for aspiring members to align their national policies and standards to the JHA *acquis*.

With this background in mind, it comes as no a surprise therefore that JHA took a central stage during the accession negotiations with the countries of CEE and full compliance with the Schengen *acquis* became a precondition for membership.

⁸¹ See Title VI (articles K to K. 9), Treaty of the European Union (Official Journal, 1992).

⁸² With the entry into force of the Amsterdam Treaty in 1999 border and visa policies have become of community competence under Title IV of the EC Treaty. Article 62 provides the legal basis for the adoption of measures related to the absence of border controls, the crossing of the EU's external borders (such as standards and procedures to carry checks on persons) and the definition of the conditions for entry of third-country nationals. In addition, Article 63(3) establishes a community competence to act in the area of migration, including the conditions of entry and residence of third-country nationals, as well as measures to combat illegal immigration, such as repatriation. See Official Journal (1997b).

Indeed, while flexibility was accorded to some old member states – notably the UK, Ireland and Denmark⁸³, the candidate states were presented with a non-negotiable *acquis*, without the option of derogations or opt-outs. According to the terms of accession the *acquis* had to be implemented in full upon accession with the sole exception of those measures directly linked to the lifting of border checks at the internal border and full accession into Schengen. This was clearly spelled out in Article 8a of the Protocol integrating the Schengen *acquis* into the EU's framework attached to the Amsterdam Treaty, which stated that “for the purpose of the negotiations for the admission of new Member States into the European Union, the Schengen *acquis* and further measures taken by the institutions within its scope shall be regarded as an *acquis* which must be accepted in full by all States candidate for admission” (Official Journal, 1997b). The Tampere European Council in October 1999 reaffirmed this condition for accession, stressing the importance attached by the EU to “the effective control of the Union's future external borders” (European Council, 1999b).

6.1.1 EU conditionality in the field of external borders control

The Schengen *acquis* that the CEE candidates were required to implement as a condition for accession is laid down in more than 3,000 pages of legal rules and technical implementing measures regulating the crossing of the EU's internal and external borders, entry and movement of third-country nationals into the EU,

⁸³ The UK and Ireland have negotiated opt-outs from Schengen but participate in the areas of police and judicial cooperation in criminal matters, SIS and the fight against drugs. Denmark is a member of Schengen but retains opt-outs with regards to measures taken under Title IV of the EC Treaty, with the exception of measures related to common visa policy. On JHA flexibility see Monar (1999) and den Boer (2001).

information exchange and data protection, responsibilities for processing asylum applications as well as measures related to police and judicial cooperation in criminal matters (Official Journal, 1999c).

Broadly speaking, the EU's accession conditionality in the field of external border controls can be divided into three main areas: (1) Compliance with the EU's border management *acquis* (i.e. rules and procedures regulating border checks at the internal and external border; (2) Harmonization with the EU's restrictive visa policy and; (3) Introduction of compensatory measures in the field of asylum, immigration, fight against cross-border crime and corruption.

With regards to *border management*, the EU demanded the candidate states to achieve, upon accession, a 'high-level of external border controls' both at sea and land borders. The basic requirements to achieve a high-level of external border controls are outlined in the *Schengen Implementing Convention*⁸⁴ and the *Common Manual* on external borders, a document that contains a wide range of technical standards and procedures to be introduced at the external borders (Official Journal, 2002d). Another key document is the so-called *Schengen Catalogue* elaborated in February 2002 by the Schengen Evaluation Working Party, the Council's body responsible for evaluating the implementation of Schengen rules in member countries and aspiring Schengen members (General Secretariat of the Council, 2002).

⁸⁴ Article 6 of the 1990 Schengen Implementing Convention states that border checks must be systematic, equal along the entire border and must be carried out in accordance with uniform principles. The Convention further stipulates the formal details for crossing borders and for issuing short-term entry visas to third-country nationals. See Chapter 2 of Title II, Schengen Implementing Convention, Official Journal (2000b).

Despite its non-binding nature, it contains a set of best practices and recommendations for the correct application of the Schengen *acquis*. According to the Catalogue, to achieve a high-level of control at the Union's external borders, national policies should be based on an *Integrated Border Security Model* "spread over four complementary tiers" (General Secretariat of the Council, 2002, pp. 9-15).

The first of these tiers concerns a number of activities to be carried out in third countries, such as the inspection of documents related to visa applications by consular offices and the detection of forged documents. The second relates to international cross-border cooperation, including bilateral and multilateral agreements with third countries, such as readmission agreements. The third tier refers to measures directly linked to external border controls. For example, the catalogue indicates that all persons and vehicles must be checked systematically, and effective border surveillance must be ensured between all the authorised border-crossing points. The final tier relates to activities to be carried out inside the Schengen area, such as measures to prevent illegal immigration as well as checks, surveillance and expulsion of third-country nationals (General Secretariat of the Council, 2002, pp. 9-15). The Catalogue also requires that, upon accession, a sufficiently high-level of control is ensured at the temporary external borders, namely the national borders between the new member states and the remaining candidate countries, between the candidate countries themselves, and between the new member states and the current Schengen members. In the case of Romania the temporary external borders refer to those with Bulgaria and Hungary.

The second area of formal accession requirements relates to the harmonization with the EU's *restrictive visa policy*. During the accession negotiations the applicant states, including Romania, were asked to harmonize national rules regulating the entry and stay of third-country nationals, and modify pre-existing short-term visa regimes in line with the *acquis* (Official Journal, 2000). In practical terms this has involved the introduction of visa requirements for third-country nationals that require an entry visa into the EU (the so-called EU negative list), and the elimination of visa restrictions for those who do not (EU positive list). The candidate states were also required to harmonise their national legislation and adapt their institutional and administrative procedures to the *acquis* on visa fees and on the methods for issuing visas to third-country nationals (see, Official Journal, 1995a).

Finally, compliance with the EU's Schengen conditionality has required alignment to a whole range of *compensatory policy measures* in the field of asylum and immigration, police, customs and judicial cooperation (to allow cross border activities such as pursuing suspects), as well as compliance with SIS, data protection and enhanced documents security. For example, in the field of asylum the candidate countries from CEE had to comply with the rules governing the responsibility for the examination of application by asylum seekers as laid down in the Dublin Convention (Official Journal, 1997c).

It is important to recall that despite compliance with the Schengen *acquis* being a precondition for accession, EU membership does not automatically grant full participation into Schengen. This is in fact governed by a separate two-stage procedure.

The first stage starts when joining the EU and involves a period of close monitoring and evaluation, by the Schengen members, of the correct implementation of the external border policies (the so-called Schengen evaluation process). The second stage, which is full participation of the new member state into Schengen, occurs some time after accession to the EU and is subject to a separate and unanimous decision by the Council (Commission of the European Communities, 2002a). The implementation of the Schengen *acquis* at national level also takes place as a two-stage process. A substantial part of the *acquis* needs to be in place at the latest by the time of accession (so-called *Category I* measures), whereas other elements only need to be applied after accession into Schengen (*Category II* measures). In 2001 the European Commission published an information note, clarifying the distinction between *Category I* and *Category II* requirements (Commission of the European Communities, 2001b). The latter includes, for example, the separation of extra and intra-Schengen passenger flows at international ports and airports and measures regulating the lifting of controls at the internal borders⁸⁵.

If the Schengen *acquis* represented the formal membership requirements, EU conditionality for the CEE candidates has been broadly and extensively defined, to include all binding and non-binding documents agreed upon by the member states. Moreover, the Commission requested during the negotiations a whole range of administrative and institutional measures touching directly the formation of state

⁸⁵ See Art. 2 (crossing the internal borders) and Art. 4 (checks at airports), Title II of the Schengen Implementing Convention, Official Journal (2000b).

policies, the organization and functioning of the institutions in charge of border management as well as the working of law enforcement agencies.

Research carried out on the CEE candidates has highlighted how, owing to the limited development of JHA policies in many aspiring members, the breadth of the accession requirements has allowed the EU to play a major role in shaping their border policies, well beyond the scope of its intervention in the domestic policy processes of its existing member states (Grabbe, 2006; Henderson, 2005). At the same time, the volume and the legal complexity of the Schengen *acquis* created considerable political, financial, institutional and administrative challenges to most candidates, much greater than those experienced by the EU's old member states (see Duleba, 2005; Henderson, 2005; Mitsilegas, 2002; Piorko and Sie Dhian Ho, 2003). Perhaps the boldest challenge faced by the candidate countries has been compliance with the EU's restrictive visa policy, because it involved drastic changes to pre-existing and often favourable visa regimes with neighbouring countries (Amato and Batt, 1999; Jileva, 2002; Piorko and Wolczuk, 2001; Wolczuk, 2002). Moreover, the candidate states were confronted with a particularly "speedy and fuzzy target", as Grabbe noted (2006, p.151). The significant changes brought about by the Amsterdam Treaty did not fully settle the scope of the EU's accession requirements, and much uncertainty remained on the actual content and implications of the JHA *acquis* at domestic level. Compliance was further complicated by the confidential nature of the *acquis*, and it was not until 2001 that the Commission explicitly clarified which part of the *acquis* had to be implemented upon accession (Monar, 2000, pp. 27-30).

If the complexity of the Schengen *acquis* has been a major source of challenge for most of the candidate states of CEE, the specificity of their domestic conditions also represented a significant stumbling block in achieving speedy compliance with the EU's border conditionality. As several studies have pointed out, during communism there was little or no formal structure to deal with immigrants or asylum seekers, borders and immigration policies were under-developed, state institutions were weak and infrastructures and technologies were outdated (see, for instance, Grabbe, 2000; Lavenex, 1999; Monar, 2000). Preparing for accession to the AFSJ often translated into a massive, and costly, legal and institution-building exercise to introduce the necessary legislative and administrative measures to comply with the EU's entry conditions (Grabbe, 2000; Piorko 2005). As we shall see later in this chapter, Romania experienced similar challenges to those faced by many of the other candidates, although the length and location of its external borders meant greater financial costs and more complex institutional adjustments.

6.2 The Impact of EU conditionality on External Border Policies in Romania

The EU's negotiating position vis-à-vis Romania was not different, in substance, to that of the other candidate states. At the opening of the accession talks in 2002, Romania was presented with a non-negotiable JHA *acquis* requiring the full harmonization and implementation of the EU's restrictive border and visa policies.

MAP 6.1. Romania's National Borders



Yet, security concerns played a significant role in shaping the EU's agenda during the negotiations, primarily due to the length and geographical location of the country's national borders. Indeed, geography mattered profoundly in the case of Romania. The country is geographically located between two highly volatile and politically unstable regions: the Western Balkans and the Black Sea. Beyond its borders lay several weak democracies, some of which have become 'safe havens' for organized crime, such as the uncontrolled territory of Transnistria in neighbouring Moldova.

Romania's national border is also long and notoriously difficult to patrol - stretching for over 3100 km - a third of which is now the EU's external border, the second largest segment under the responsibility of one single member state⁸⁶. Moreover, Romania has traditionally been a country of origin of migrants (legal and illegal) and asylum seekers, as well as a source and transit country of human trafficking from neighbouring countries (Lăzăroiu, 2000). As a result, Romania came to be perceived as a potential trouble spot for transnational crime and a source and transit area for illegal immigrants and asylum seekers. These security concerns led to the introduction of severe restrictions on the movement of Romanian citizens inside the EU and a stringent monitoring of the country's ability to implement the EU's external border policies.

6.2.1 EU Conditionality and border policies after 1989

Romania entered post-communist transition with a highly dysfunctional border system. The entire national border that stretched with the former Yugoslavia, the former Soviet Union and the countries under its influence resembled a heavily militarised no-man's-land zone, with watchtowers, barbed wire and electric fences. As in many other post-communist states, strict laws regulated cross-border movement and border structures and equipment were obsolete, especially when compared to western standards.

⁸⁶ The total external border under the responsibility of Romania amounts to 2070,6 km (681,3 km with Moldova, 649,4 km with Ukraine, 546,4 km with Serbia and 193,5 km of sea border on the Black Sea).

After 1989 some steps were taken to regulate the legal relations with neighboring countries, with the conclusion of different bilateral agreements on cross-border movement. But the border regime inherited from the communist period remained mostly intact throughout the 1990s, until the prospect of Euro-Atlantic integration pushed border security issues on to the domestic political agenda. This led, from 1999 onwards, to a profound restructuring of the legal, institutional and administrative frameworks regulating the national border regime.

In terms of incentives, the EU had “two important carrots” to offer the Romanian authorities in return of increased security at the future EU’s external borders: the opening of membership talks and visa-free access for Romanian citizens wishing to travel to the Schengen area (Papadimitriou and Phinnemore, 2008, pp. 132-133). These incentives proved an important stimulus for domestic reforms. To show the executive commitment to fulfil the EU’s priorities on border security, in 1999 the Vasile government (1998-1999) launched the first restructuring of the legal and institutional framework regulating the national border regime, by replacing conscripts with professional officers hired under contract and by demilitarizing the Ministry of Interior and Administration (MIA). These were two key short-term priorities of the 1998 Accession Partnership (Official Journal, 1998). Similarly, to secure visa-free travel for Romanian citizens, the administration which came into power after the 2000 elections (Iliescu and the PDSR – later renamed PSD) immediately tightened the conditions of entry of third-country nationals, introduced passport requirements for Moldovan citizens wishing to enter Romania and promised a speedy adoption of a new Alien Law to replace the 1969 communist-era legislation.

NATO membership also mattered for the Năstase executive, and this stimulated reforms of the military and the security services. It also kept on the political agenda the fight against trafficking in human beings, organized crime and corruption, which emerged after the 9/11 terrorist attacks as key issues of concern for NATO's members. However, with regards to external borders policies it was primarily the need to satisfy the EU's entry conditions that spurred domestic reforms, while border security did not systematically figure as a condition for NATO membership (see Papadimitriou and Phinnemore, 2008, p. 132).

The most profound developments of the national border regime can be traced back to the formal opening of the accession negotiations on Chapter 24 in January 2002. Like the other candidate states, Romania was asked to comply in full with the whole JHA *acquis* including the Schengen *acquis* as incorporated into the EU's legal framework by the Amsterdam Treaty. At the opening of the negotiations Romania declared it was ready to adopt the entire *acquis* and did not request any transitional periods or derogations (Government of Romania, 2001b, p.1). This implied a commitment to implement the entire Schengen rules upon accession with the sole exception of those measures directly linked to the abolition of the internal borders.

The opening of the negotiations allowed the European Commission to formulate more explicit and detailed demands, hence shape more actively the content and timing of domestic reforms. For example, the 2002 Roadmap for Romania laid down rather specific benchmarks for assessing the progress made in implementing JHA policies (Commission of the European Communities, 2002b, p. 39).

TABLE 6.1. PHARE Funds Allocation for Border Management 1998 - 2006

Year	PHARE Funds – M€
1998	0,59
1999	10,50
2000	13,49
2001	3,45
2002	10,88
2003	9,90
2004	36,80
2005	29,03
2006	26,39
TOTAL	143,05

Source: Romanian Border Police (www.politiadefrontiera.ro)

With regards to the Schengen *acquis*, the Commission requested the introduction of a specific number of measures. These were:

- Amendment and regular update of the Schengen Action Plan;
- Adoption of an integrated border management strategy;
- Recruitment of additional border police officers;
- Enhance the administrative capacity of the central authority for issuing visas;
- Amendment to the Alien Law in line with the *Acquis*;
- Adoption and implementation of a national strategy to fight organized crime

With the opening of the accession negotiations, EU financial assistance under the PHARE program was also increased (€113million for the period 2002-2006) and this also served to finance several twinning projects designed to help the country elaborate legislation and develop the necessary institutional capacity to implement the *acquis* (see Table. 6.1).

At domestic level, the launch of accession translated into an increase in legislative activity to set up the legal and institutional framework for the implementation of JHA policies.

In April 2002, a new Law on the State Border came into force harmonising the provisions regulating the internal border with the Schengen Code (see Monitorul Oficial, 2002a). The law also clarified the concept of internal and external borders and established a calendar and procedures for the entry into force of the measures related to the lifting of internal border checks at the moment of full accession into Schengen. Parallel to the amendments to the legal framework regulating borders, the government also committed to increase frontline staffing levels at the external borders to improve the effectiveness of border controls. Bilateral negotiations were also initiated for cross-border cooperation treaties with Ukraine, Hungary and Bulgaria, while international police cooperation agreements were concluded with EUROPOL, the EU's member states and several neighbouring countries.

With regards to the harmonization with the EU's visa policy, in 2002 the PSD administration approved a new Alien Law that regulated the conditions of entry and stay of third-country nationals and introduced a clear distinction between short and long-term visas (See Monitorul Oficial, 2002b). Modelled on the EU *acquis*, the law substantially modified the Romanian visa regime that had been in place since 1969. In order to comply with the EU's visa policies, from 2002 onwards visa restrictions were removed for all the countries on the EU's positive list and visa requirements were introduced for all those on the EU's negative list. This process was finally concluded in 2004, when Romania introduced visa requirements for Russia, Turkey, Ukraine and Serbia and Montenegro. The only exception is Moldova, which enjoyed a visa-free regime until 1 January 2007.

From 2002 onwards Romania also aligned its legislation to the *acquis* on issues related to visa fees and procedures for issuing visas to third-country nationals, with the setting up of an online visa system connecting the National Visa Centre and the Alien Authority. Within the negotiating Chapter 24, measures were also taken to harmonize national legislation with the EU's asylum and immigration policies, judicial cooperation in civil and criminal matters, and the fight against organized crime, drug trafficking and trafficking in human beings.

A number of scholars have pointed how the extensive and detailed *acquis* and the absence of pre-existing policies in the fields of border and visa policies in most CEE gave the EU ample leverage to define extensively its accession conditionality (see, for instance, Grabbe, 2006; Henderson, 2005; Monar, 2000). This included areas regulating the organization and functioning of states institutions, the working of law enforcement agencies as well as the formulation of security-related state policies. In the case of Romania, one area where the EU intervention is mostly evident is the conditionality attached to the re-organization of the border police and of other law-enforcement agencies. The Schengen rules foresee that the effective control of the EU's external borders must to be carried out by specialized, properly trained and properly equipped officers (Official Journal, 2000b). Yet, during the negotiations the EU went further in its demands, asking for extensive measures to regulate the management of careers for border guards and customs officers - such as recruitment, promotion and demotion - including the introduction of appointment criteria and the revision of salary levels for public officials (see, for example, Commission of the European Communities, 2003a, 2004a).

Similarly, the EU intervened in directing state policies on a number of security-related areas, such as fight organized crime, drug trafficking and fighting corruption among the law enforcement agencies. The latter included demands for specialised institutions responsible for investigating and prosecuting corruption at administrative level and among border and customs officers (Commission of the European Communities, 2003a). This led to the creation of DGA, the institution responsible for investigating and prosecuting corruption cases involving MIA's civil servants and law enforcement officers. This additional conditionality was mostly framed as administrative and institutional measures to implement the *acquis*, but it allowed the Commission to play a major role in devising the details of the EU's border conditionality for Romania.

Another way the European Commission used its leverage to stimulate reforms was the threat of introducing sanctioning mechanism, especially from 2002 onwards, when Romania began to lag behind in the implementation of the Schengen *acquis*. The major issues of concern for EU officials were the delays in modernising border infrastructures, filling staff shortages, training border guards, implementing measures to fight illegal immigration and cross-border crime as well as improving cross-border cooperation with neighbouring countries – a key pillar of the Schengen *acquis* (see, for example, Commission of the European Communities, 2001a, 2002a, 2003a and 2004a). Romania was also criticised for the inconsistencies in its Schengen Action Plan - a key planning document for the implementation of external border policies.

According to the 2003 Report from the European Commission, it showed a lack of understanding of the content of the accession requirements:

The updated Schengen Action Plan needs to be modified substantially in order to show full awareness of the two-stage process in implementing the Schengen acquis. Romania must also continue its efforts to establish an operational national information system containing Schengen-compatible data. There are no clear linkages between the various strategies that have been elaborated as regards external borders (National Border Security Strategy, Integrated State Border Management Strategy and Schengen Action Plan). Limited practical co-operation casts doubt on the value of the current Integrated State Border Management Strategy, which is already rather vague, and lacks timeframes for implementation or budgetary allocations (Commission of the European Communities, 2003a, p.104).

The Commission's assessment largely reflected the conclusions of a large-scale JHA peer-review mission that found major shortcomings with regards to the quality and professionalism of the border police and the implementation of procedures and methods for external border security⁸⁷. These concerns led to the introduction of safeguard measures in the Treaty of Accession, with a detailed list of requirements to be fulfilled as a condition for accession in January 2007 (Box 6.1 below). As in the case of judiciary reforms and the fight against corruption, the postponement clause was a wake up call for the Romanian authorities to step up the preparations for accession, and was indeed perceived as a credible threat.

As a document of the Ministry of Interior pointed out:

The main objective of the Romanian Government is the accession to the European Union on January, the 1st, 2007. There is no plan B. We do not take into consideration the option of delaying the accession to the EU. We do not want Romania to become the precedent for activating the safeguard clause (Ministry of Interior and Administration, 2005).

⁸⁷ Author's interview with Sabine Zwanepoel, Desk Officer for Romania and Bulgaria, DG JLS, Brussels, 2006.

BOX 6.1. Schengen *Acquis*: Specific commitments undertaken by Romania

....

I. In relation to Article 39(2)

(1) To implement without further delay the Schengen Action Plan, as published in M.Of., p. I, nr. 129 bis/10.II.2005, amended in line with the *acquis* and in accordance with the deadlines agreed upon.

(2) In order to ensure a high level of control and surveillance at the future external borders of the Union, to speed up considerably efforts in terms of modernising equipment and infrastructure at the green border, blue border and at border crossing points, and to further enhance the capacity of operational risk analysis. This must be reflected in one single multi-annual investment plan to be tabled no later than March 2005, which must allow the Union to measure progress on a yearly basis and until the decision referred to in Article 4(2) of the Protocol is taken in respect of Romania. In addition, Romania must considerably step up its plans to recruit 4 438 border police agents and officers and in particular ensure that a staffing level as close as possible to 100% is reached along the borders with Ukraine, Moldova and at the Black Sea coast already upon accession. Romania must also implement all necessary measures to effectively combat illegal immigration, including strengthening cooperation with third countries.

....

(6) To ensure by March 2005 a clear legal framework for the respective tasks of, and cooperation between, gendarmerie and police including as far as implementing legislation is concerned, and to develop and implement a clear recruitment plan by the middle of 2005 for both institutions with the aim of having made considerable progress in filling the 7 000 vacancies in the police and the 18 000 vacancies in the gendarmerie by the date of accession.

(7) To develop and implement a coherent multi-annual anti-crime strategy including concrete actions to curb Romania's status as a country of origin, transit and destination of victims of trafficking and to submit on a yearly basis and as of March 2005 reliable statistics on the way this crime phenomenon is being tackled.

Source: Annex X, Treaty of Accession, Official Journal (2005)

Moreover, the member states were quite precise in their demands, leaving little margin for discretion to the Romanian authorities on how to interpret EU conditionality. The Romanian government responded to this assessment by adopting a new Schengen Action Plan along with an Integrated Border Management Strategy in line with the EU's specifications. Staffing levels at the borders were increased, additional surveillance instruments were purchased and the authorities stepped up efforts to fight corruption, cross-border organized crime and trafficking in human beings, with the creation of the

National Agency for Preventing the Trafficking in Human Beings, a specialised structure to prevent human trafficking and monitor victims' support assistance. Since 2005 the number of detected illegal crossings and cross-border offences (such as smuggling, falsified documents, drug and cigarette trafficking) has also increased, showing greater effort to implement the EU's Schengen requirements⁸⁸. Thanks to these efforts, as well as those accomplished in reforming the judiciary and fighting corruption, Romania was able to secure accession in 2007. A key priority for the government is now to ensure a speedy entry of Romania into the Schengen area. Romania has signalled its intention to join Schengen in 2011⁸⁹ and will now be closely monitored by the member states to verify that standards and procedures to secure the future external borders are fully implemented. Huge progress has been made in the past decade to modernize the Romanian borders, but it will take considerable commitment and efforts to ensure that EU standards and procedures are maintained across the external borders of the EU.

6.2.2 The nature of the Schengen *acquis* and the challenges of compliance

To comply with the EU's border and visa policies Romania had to harmonize its national laws with EU laws and undertake a whole range of measures to build institutions and policies to implement them. This has entailed elaborating legislation to regulate border and visa regimes, creating adequate infrastructures and facilities to deal with asylum seekers and illegal immigrants, purchasing costly surveillance equipment,

⁸⁸ These were the main conclusions of a peer-review mission involving member states' experts that took place in June 2006. The author was given access to these documents but given their confidential nature the source cannot be attributed directly.

⁸⁹ "Romania and Bulgaria prepare to join Schengen List", *Southeast European Times*, 27 January 2008.

hiring and training professional border guards as well as conclude several bilateral and multilateral visa and readmission agreements with the EU's member states and neighbouring countries.

Compliance with the Schengen conditionality turned out to be a complex task for Romania. Schengen is perhaps the most politically sensitive and financially demanding policy area of the whole JHA *acquis*. It is broad, voluminous and complex, renowned for its obscurity and lack of transparency (Grabbe, 2000, p.503). Moreover, Schengen is not a static compendium of rules but it is in constant evolution and the EU's accession demands have expanded progressively, especially since the Amsterdam Treaty provided the legal basis for the development of common visa, asylum and immigration policies among the EU's member states.

As previously pointed out, research carried out on the experience of accession of the CEE countries has shown how the transposition and implementation of the Schengen *acquis* posed most candidates significant challenges. In particular, the analyses on the national experience of individual countries have drawn special attention to the considerable financial, socio-economic and socio-political costs faced by aspiring members in fulfilling EU requirements in this policy field (see, Duleba 2005; Jileva 2002, Mitsilegas 2002, Piorko and Sie Dhian Ho 2003; Piorko and Wolczuk 2001). In one of the first pioneering works in this field, Jorg Monar (2000) also highlighted how the diversity in legislation and policy approaches as well as in organisational structures and implementing conditions represented significant stumbling blocks for the correct implementation of the *acquis*.

Similar challenges can also be observed in Romania. The rapidly changing and legally complex nature of the Schengen's legal framework posed significant *policy making* challenges to the Romanian authorities, since it involved the elaboration of complex and politically sensitive security-related measures, from the reorganization of law enforcement agencies to the framing of EU-compatible asylum, immigration and visa policies. Adapting to the rapidly changing Schengen *acquis* was not an easy task for Romania, mainly because civil servants and law enforcement authorities lacked the necessary policy experience to elaborate and implement comprehensive JHA policies. The country benefited from the expertise of the EU's member states and several twinning projects focused on drafting legislations and setting up institutions. However, according to many civil servants interviewed, the variety of national solutions across the member states often made it difficult to identify the best model or practice to follow in order to meet the accession demands⁹⁰.

Meeting Schengen's requirements has also involved for Romania a large-scale *institutional and administrative* effort. After 1989, border structures and equipment were obsolete and the country lacked the most basic infrastructures to process asylum and visa applications. As a result, a new range of institutions had to be created either from scratch (such as the Visa Information Centre, the National Refugee Office and the Authority for Aliens) or had to be strengthened (such as consular posts)⁹¹.

⁹⁰ Author's interviews with senior civil servants from the Ministry of Interior and Administration, the Ministry of European Integration and the Romania Border Police Directorate. These included Claudia Big, JHA negotiating expert in the Ministry of European Integration and Mircea Bacalu, Deputy Head of Department for European Integration, Ministry of Interior and Administration, Bucharest, November 2006.

⁹¹ Author's interview with Radu Dobre, JHA Counsellor, Permanent Representation of Romania to the European Union, Brussels, April 2006.

To meet the negotiating needs, the Ministry of Interior and the Border Police underwent a major restructuring both at central and regional level. This process involved the hiring of experts in EU affairs and the creation of specialised units to manage the accession process. In the Border Police alone, six new general directorates were created at regional level, along with 22 Police Country Inspectorates, 80 Border Police Detachments and 2 Border Naval Groups. This proved to be a complex exercise both financially and in terms of human resources. For example, the full demilitarisation of the border police involved more than 20,000 officers, all of which had to be trained on a complex range of issues such as risk analysis, drug trafficking and goods smuggling⁹². The huge implementation costs of the EU's border policies have also resulted in a major *financial challenge* for Romania. Bringing border structures up to the EU's standards meant huge investments for hiring and training border guards and for purchasing equipment.

According to data provided by the Ministry of Interior, between 1998 and 2004 more than €210 million have been allocated to border security alone, and €54 million of this came from the state budget. Additional funds have also been required to process visa applications (ex. strengthening consular posts both in terms of logistic and personnel), as well as for building reception centers for asylum seekers and for training judges and prosecutors in EC law. The financial challenge is likely to continue after accession.

⁹² Author's interview with Marin Turica, senior officer in the Border Police Directorate, Bucharest, December 2006.

TABLE 6.2. Migration Trend : Long-Term Visa Applications (Q1 2006 - Q1 2007)

Country of Origin	Q1 2007	Q1 2006	% Difference
Turkey	850	499	70,3 %
China	461	505	- 9,0 %
Moldova	408	15	2720,0 %
Ukraine	212	153	38,5 %
India	88	37	137,8 %
Syria	15	26	- 42,3 %
TOTAL	2049	1235	65,9 %

Source: Ministry of Interior and Administration (2007b)

An additional €559 million have been allocated by the EU under the Schengen Facility for the first three years after accession⁹³. However, as the economy develops and the standard of living increases as a result of EU accession, Romania is likely to turn from a country of origin and transit into a target country for asylum seekers and immigrants, both legal and illegal. Migration pressure has risen since accession, especially from Moldova (see Table 6.1), and this is likely to further increase the financial costs for integrating migrants and refugees into Romania's society.

Finally, Romania has faced the *political challenge* resulting from the obligation to accept, without the option of derogations, the EU's restrictive visa policies. Like most of the other candidates, this involved a drastic change to pre-existing and rather favourable visa arrangements for neighbouring countries, with significant political implications for Romania's bilateral relations with its neighbours, especially those with Moldova (Dura, 2006).

⁹³ See Article 32 Treaty of the Accession, Official Journal (2005).

Already in 2001, bilateral relations were strained by the decision of the Romanian government to introduce mandatory passport requirements for Moldovan citizens. To mitigate the impact of the new provisions on cross-border contacts Romania provided Moldova with a 1 million USD non-repayable financial contribution to cover the passport costs for certain categories of Moldovan citizens, such as students, tourists and inhabitants of border regions. However, the introduction of these restrictive measures led to an unprecedented number of citizenship applications being filed by Moldovan citizens. Further problems have emerged since the introduction of the visa requirements for Moldovan citizens on 1 January 2007. During the accession negotiations Romania was successful in postponing visa requirements until the day of accession, but despite the fact visas are now issued free of charge for Moldovan citizens⁹⁴, cross-border contacts have been made more difficult, causing tensions at political level⁹⁵.

Harmonisation with the EU's visa regime was a condition imposed by the EU not only for accession, but also to ensure the removal of Romania from the EU's negative list. In fact, until January 2002 Romanian citizens had to go through lengthy, expensive and complex visa procedures to travel to the EU⁹⁶. To reassure some reluctant member states who feared uncontrolled migration, the Năstase executive introduced restrictive exit policies, whereby Romanian citizens would only be allowed to travel abroad if they

⁹⁴ In early 2007 Romania introduces free of charge visas also for Ukrainian citizens travelling to Romania.

⁹⁵ In the first 60 days after accession, the Romanian consulate in Chisinau has been overwhelmed with visa requests, and online visa applications in the first few days after Romania's accession have paralysed the consulate's Internet site. See 'Moldovans rush for Romanian visa', *BBC News*, 4 January 2007. With regards to citizenship applications, an estimated 700,000 citizenship applications have been filed in the months prior to Romania's accession causing tensions between the two countries. See 'Moldova Protests Romanian Citizenship Program', *RFERL*, 7 March 2007.

⁹⁶ Mandatory visa requirements for Romanian citizens have remained in place for travelling into the UK and Ireland until 1 January 2007.

fulfilled exit requirements towards the EU – that is sufficient funds, medical insurance and a valid return ticket (Monitorul Oficial, 2002b). In addition, the government modified the passport regime for Romanian citizens, introducing the possibility to retain passports and to suspend the right to use the passport for up to five years for those who committed criminal offences abroad. Following the introduction of the new conditions for exit, the Romanian authorities were confronted with the largely unexpected challenge of ‘keeping its own nationals in’. In 2002, when the provisions entered into force, almost half a million citizens were refused exit⁹⁷. At the same time, a drastic increase in the number of returns of Romanian citizens from the EU’s member states was registered, making the European Commission conclude that the elimination of visa restrictions had produced “mixed results” (Commission of the European Communities, 2003a, p. 104).

Large-scale emigration of Romanian workers into the EU has been, and continues to be, an issue of concern for some member states. Tough restrictions have already been put in place on labour migration for Romanian (and Bulgarian) citizens, most notably to the UK and Ireland, which maintained their labour market open for the 2004 new-comers but restricted access for Romanian and Bulgarian workers⁹⁸. Although this decision caused outcry in both countries, with Romania openly accusing the British authorities of discrimination⁹⁹, it reflects a negative perception of both countries as source and transit

⁹⁷ According to unofficial data of the Border Police, a substantial number of these people were attempting to emigrate in the EU. Interview with a senior official of the Ministry of Justice who for professional reasons has asked to remain anonymous, Bucharest, December 2006.

⁹⁸ Most of the other member states have introduced similar restrictions for Romanian and Bulgarian workers as the one already in place for the new countries that joined in 2004.

⁹⁹ See ‘Suntem europeni de categoria a doua’, *România Liberă*, 25 October 2006; ‘Tăriceanu: Este o decizie nefericită pentru Marea Britanie’, *România Liberă*, 25 October 2006.

areas of illegal immigrants and asylum seekers, and highlights a limited trust that some member states have in Romania's ability to act as effective guardians of the EU's borders.

6.3 How Domestic Factors affected compliance

In the previous section I have highlighted some of the key challenges faced by Romania in transposing and implementing the EU's external border conditionality. Yet, when we look at Romania's experience in a comparative perspective, the problems faced by the country in meeting the EU's border conditionality were not different, in substance, to those most of the other countries of CEE had to confront. As I have outlined in section 1., most candidates started from scratch in setting up EU-compatible border policies and administrative structures, as the communist regime left behind mostly underdeveloped border policies and obsolete structures and equipment. As it was the case for most of the other CEE candidates, Romania was presented with a complex and fast evolving *acquis* that posed similar institutional, policy, administrative and political challenges.

The obvious additional complication for Romania has been the length of its national borders that makes its experience only comparable to that of Poland, which is now responsible for over 1600 kilometres of the EU's external border. Iwona Piorko's analysis of the challenges of accession in the Polish context has shown how the size of the country and the length of its state border translated into higher financial costs to set

up and modernize infrastructure and greater institutional and administrative adjustments (Piorko, 2005). As previously noted, the size of the country and the length of the Romanian border had a huge impact on the country's capacity to implement the *acquis* as it created additional financial costs and greater institutional and administrative challenges. Moreover, Romania's geographical location meant extra monitoring on the part of EU officials, because it exposed the country to greater risks of cross-border criminal activities – such as trafficking in human beings, forged travel documents, drug trafficking and trafficking in stolen cars. But if the problems of compliance observed in Romania were not exceptional, the accession negotiations have been far more problematic than with any other CEE applicant, and the EU had to resort to introducing a special postponement clause to compel the Romanian political class to address serious shortcomings in implementing the JHA *acquis*. How can Romania's compliance problems be accounted for?

One observation stands out when we look at Romania's record of compliance and domestic reforms: the major delays in putting into place an adequate legal and implementation framework regulating an EU-compatible border regime. Although some reforms were launched in 2000 and 2001 to secure visa-free travel for Romanian citizens, internal preparations did not actually begin until late 2001, just a few months ahead of the scheduled opening of the accession negotiations for Chapter 24. In 2001 the entry and movement of third-country nationals was still regulated by the communist-era 1969 Alien Law and the overall legislative framework underpinning the regime of the state border and the status, organization and function of the Romanian border police was so fragmented that the Năstase executive (2000-2004) had to resort to

a flurry of emergency ordinances to settle the legal foundations of JHA policies. This included key pieces of legislation such as the Law on the State Border, which was approved via emergency ordinance only in June 2001, and this did not become state law until mid 2002 (see Monitorul Oficial, 2001).

Similar delays were also registered at administrative and operational level. It is only in late 2001 that specialised units in charge of the EU's integration process were created inside the MIA¹⁰⁰. At operational level, the demilitarisation of the border police that was launched in 1999 proceeded slowly, and at the end of 2001 only 1,326 conscripts (of the 3,314 envisaged) were actually replaced with staff hired under contract¹⁰¹. Lacking sufficient preparations, it is perhaps unsurprising that Romania remained trapped in a persistent catching up effort with significant delays being registered by the European Commission in its annual reports.

What is even more striking is the fact that, being part of the second wave of the EU's eastward enlargement, Romania was potentially in a far better position to mitigate some of the challenges stemming from the nature and volume of the Schengen *acquis*. A considerable part of the accession *acquis* was clarified by the time Romania opened the accession negotiations in early 2000, and the Romanian authorities could also draw on the experience of other CEE candidates, both in terms of what the EU's requirements actually were and the domestic challenges involved. JHA was a 'moving target' also for Romania.

¹⁰⁰ Author's interview with Mircea Bacalu, Deputy Directory of the Department of European Integration, Ministry of Interior and Administration, Bucharest, November 2006.

¹⁰¹ These data were provided to the EU by the Romanian Government in the Accession Conference's Position Paper for Chapter 24 negotiations. See Government of Romania (2001b, p. 6).

However, with the incorporation of the Schengen *acquis* in the EU's legal framework it was clear that JHA was emerging as an area of concern for the member states. EU conditionality might have been vague in some of its parts but the European Commission was clear in its criticism when assessing the delays in jumpstarting internal preparations. For example, in its 1999 Regular Report, the Commission noted:

Romania must now urgently implement the important measures announced by its authorities. Some important pieces of legislation have to be adopted or amended and the restructuring and modernisation of the relevant administrations, especially those depending from the Ministry of Interior, have to be completed so as to ensure the effective implementation of the legislation. In particular, the demilitarisation of the Ministry of Interior and its subordinated institutions, primarily the Police and the Border Police General Inspectorate is a priority which must be implemented without delay (Commission of the European Communities 1999, p. 56).

Yet, the domestic political elite seemed to have underestimated the importance attached by the EU to external border policies and the scale of the challenges the country would face in fulfilling the EU's demands. Contacts were established with the other CEE candidates but there is little indication that the Romanian authorities benefited from this relative advantage.

Besides starting late, the preparations for accession have been complicated by a number of structural and built-in problems, which affected the speed and quality of the legal approximation and implementation of the Schengen *acquis*. The most significant of these structural problems is the weakness of Romania's administrative capacity, reflected by the country's low policy-making capacity, lack of strategic vision in policy elaboration, uneven internal consultation and coordination across ministries and state agencies, and limited evaluation of the financial impact of executive and parliamentary decisions.

While low state capacity was a common issue to many CEE candidates, several EU officials interviewed argued that this was a particularly acute problem in Romania¹⁰². The quality of the public administration improved over time, but it was generally perceived as over-politicised and unprofessional, a factor that contributed much to develop a negative perception of the country in many EU quarters.

The weaknesses of the administrative capacity in Romania has affected the preparations for accession across a whole range of policy areas, but its impact is particularly evident when looking at complex policy areas such as the JHA *acquis*, where implementation requires considerable internal institutional coordination and highly qualified civil servants. Romania “failed on both fronts”, as a senior EU official told the author¹⁰³. Other officials have pointed out during interviews how strategic documents and draft legislation often lacked long-term vision and showed poor policy understanding, with a clear tendency to ‘cut and paste’ policy models rather than developing policies reflecting domestic needs¹⁰⁴. These shortcomings were also reflected in the Commission’s annual Reports. In the 2003, the Commission’s Regular Report noted:

There are no clear linkages between the various strategies that have been elaborated as regards external borders (National Border Security Strategy, Integrated State Border Management Strategy and Schengen Action Plan). Limited practical co-operation casts doubt on the value of the current Integrated State Border Management Strategy, which is already rather vague, and lacks timeframes for implementation or budgetary allocations. Co-operation between all the agencies involved in border management remains largely ineffective and unfocused (Commission of the European Communities, 2003a, p.104).

¹⁰² Author’s interviews with EU officials and member states’ experts including Enrico Grillo Pasquarelli, Director, DG Enlargement, European Commission, Brussels, April, 2006, and Richard Lucking, pre-accession advisor, Bucharest, November, 2006.

¹⁰³ Author’s interview with a senior EU official who for professional reasons has asked to remain anonymous, Brussels, 2006.

¹⁰⁴ Author’s interviews with three EU officials who worked closely with the Romanian authorities during the negotiations. For professional reasons they have asked to remain anonymous.

Implicit in the Commission assessment was a more generalised criticism made to the Romanian authorities for their failure to reform the Romanian public administration into a modern, efficient, accountable and professional institution. Already in 1997, the Commission pointed out how the low efficiency of the public administration and the lack of qualified civil servants in Romania represented “a major problem compromising both the pace and the quality of legislative approximation” (Commission of the European Communities, 1997a, p. 49). However, as in the case of anti-corruption and justice reforms, successive post-communist governments managed to bypass EU’s criticism with half-hearted and superficial measures, which failed to address many of the public services’ structural deficiencies (Hințea, et al, 2004).

Finally, another major stumbling block to the effective implementation of the EU’s border policies has been, and continues to be, the widespread corruption among border guards and customs officers. In 2001, a World Bank report commissioned by the Romanian government found that customs and border officials were perceived as the most corrupt among state institutions (World Bank, 2001b, p.5) and several high profile cases uncovered in recent years have reinforced this perception. Since DGA - the Anti-Corruption Department of the MIA - became operational, efforts have been made to fight corruption among border officers. The number of investigations and prosecutions for corruption cases has risen but the increased effort to prevent and eradicate corruption has also highlighted the real scale of the corruption phenomenon among law

enforcement officers, many of which were discovered to be on the payrolls of organized criminal groups¹⁰⁵.

Arguably, some of the problems observed in Romania in the field of external border controls mirror a more generalised failure of the political class to understand the complexity of the accession process and the pre-requisites for EU integration. When the Romanian political class finally recognised that preparing for EU accession had more to do with managing deep internal reforms than conducting a sophisticated diplomatic exercise with Brussels, most of the country's deficiencies had emerged, and politicians found themselves struggling to repair the negative image the country acquired in many EU quarters.

6.4 Conclusion

This case study examined the development of external border and visa policies in the context of Romania's preparations for EU accession. As in the case of the previous chapters, the objective of the empirical analysis was to trace the impact of the EU's accession conditionality on policy and institutional developments. It further identified and explained how factors emanating from the domestic environment slowed down internal reforms and mitigated the scope of EU influence.

¹⁰⁵ Off-the-record information obtained by the author during an interview with a senior official of one of the main anti-corruption institutions in Romania, Bucharest, 2006.

As regards to the first research question - i.e. the impact of the EU's accession conditionality on policy and institutional developments – the empirical analysis presented in this chapter has demonstrated the importance of EU conditionality as a stimulus to institutional and policy reforms.

The evolution of external border policies has in fact shown how the profound transformation and modernization of the Romanian border regime can be mostly explained by the strong and persistent pressure by the EU. This was linked to the rather explicit accession conditionality and worked with a mix of 'carrots and sticks'. In particular, the empirical analysis has demonstrated how the EU's accession conditionality heavily influenced the pace and content of domestic reforms. The most significant policy and institutional developments coincided with critical moments in EU-Romania relations, highlighting that EU leverage was most effective during the decision-making phases. For instance, it was the prospect of opening the accession talks in 2000 that jump-started domestic preparations both at legislative and institutional level. Similarly, the decision to maintain restrictive visa policies on Romanian citizens compelled the political class to step up the process of the modernisation of the border regime. Moreover, the EU's tough stance toward Romania at the closure of the accession talks in 2004 also forced the government to address several shortcomings in implementing JHA policies.

The empirical discussion has also shown that extensive and detailed *acquis* and the absence of any policy legacy in the fields of border and visa policies gave the EU both leverage to define the accession conditionality and the space to suggest specific

institutional and policy changes. It also limited the negotiating power of politicians in Romania because full compliance with the Schengen rules was, from the outset, a clear condition for membership. Moreover, this was one policy where domestic politicians had sufficiently strong incentives to fulfill the EU's entry conditions equally before and after accession - such as the lifting of visa restrictions and, in the post accession period the full participation into the Schengen area. This helped overcome the considerable adaptation costs and the political, institutional, financial and administrative challenges linked to the transposition and implementation of EU rules in this field.

With regards to the second research question, the analysis of border policies in Romania has also corroborated the research hypothesis on the crucial role that domestic factors can have in mitigating the scope of the EU's leverage. As mentioned in section 2, some of the difficulties observed in the implementation of EU rules can be attributed to the size of the country and the length of its national borders. These have caused greater administrative and institutional adjustments and increased financial costs. However, the empirical discussion has also highlighted how internal preparations to comply with the EU's external borders *acquis* started late, and these have been further complicated by the weaknesses of the country's administrative capacity that has affected the implementation of the *acquis*. This suggests that the specific implementing conditions have played a significant role in undermining the correct implementation of EU rules at national level.

Chapter 7

Conclusion

This thesis has examined EU influence on JHA policies in Romania up to the moment of its accession on 1 January 2007. Its objective was to provide a detailed and empirically rooted assessment of the impact of the EU's membership conditionality on policy and institutional changes, thus adding to existing research on EU influence in post-communist countries, especially studies on EU conditionality and Europeanization.

This thesis has addressed two sets of research questions. First, it asked whether the EU's accession conditionality shaped JHA policies in Romania and if this was conducive to effective and long-lasting changes. Secondly, this thesis investigated how factors emanating from the domestic environment affected compliance. To answer these research questions and unpack the nature and scope of the EU's leverage, this thesis has analysed policy and institutional developments in three areas under the JHA umbrella: judiciary reforms, anti-corruption and external border policies. These case-studies were selected because of their political relevance during the negotiations for accession of Romania to the EU. As specified in Chapter 1, all three policy areas were high on the EU's political agenda in the framework of its enlargement to CEE. At the same time, these were areas of the EU *acquis* where significant delays were registered by Romania in the transposition and implementation of EU rules. Therefore, they have provided a good test case to evaluate the potential, as well as the limits, of the EU's leverage.

This concluding chapter draws together the key arguments and findings of the individual empirical chapters, summarising the domestic impact of EU conditionality as well as the role that domestic factors had in mitigating EU influence. At the light of these findings, I then evaluate how this thesis contributes to academic knowledge and identifies avenues for possible future research. This chapter also looks at the most recent developments in EU-Romania relations, raising questions on the scope of the EU's leverage in the post-accession period. This thesis concludes by examining Romania's experience of integration through the lens of the EU's enlargement policy, identifying some of the key lessons the EU learned from its enlargement to Romania along with the likely implications for the current and future candidates.

7.1 The findings of the case studies

The first question of this research asked whether the EU's accession conditionality influenced domestic policies and institutional choices in the three cases under consideration. The literature on Europeanization and EU conditionality reviewed in Chapter 2 posits conditionality and the process of EU integration as explanatory factors for domestic change in the post-communist states of CEE. Since Romania was part of the EU's enlargement process to the region, it was reasonable to assume that the need to fulfill the EU's demanding entry conditions was an important lever in domestic policy-making.

When looking at the reform trajectory throughout the pre-accession and accession period, the case studies have provided ample evidence of the impact of the EU's accession conditionality on policy and institutional developments. A detailed analysis of the evolution of domestic policies in the field of justice, anti-corruption and external borders control has, on a number of occasions, revealed a causal link between the EU's demands and domestic reforms. In particular, as much of the Europeanization and EU conditionality literature would predict, the impact of the EU varied over time and it was mostly effective during the decision-making phases, especially when the EU signalled its intention to resort to sanctioning mechanisms because of the limited compliance achieved by Romania in implementing EU rules. For instance, both in the fields of justice and anti-corruption, some of the most significant reforms were launched few months ahead of the closure of the accession negotiations in response to a highly critical motion by the EP that threatened to call for a freeze in the accession negotiations. As noted in chapters 4 and 5, the fear of a delay in finalising the negotiations led to the adoption of the three-law package in the field of justice and a substantial revision of the legal framework regulating the power and competences of anti-corruption institutions. Equally important to spur reforms was the presence of the postponement clause in the Treaty of Accession. In the field of justice and anti-corruption, the credible threat of a delay in Romania's accession led to intensified legislative activities to meet the benchmarks set by the EU. Similarly, the EU's tough stance towards Romania at the closure of the accession talks in 2004 forced the government to address the several shortcomings in implementing external border policies.

The interaction between EU conditionality and domestic politics has revealed that EU influence worked primarily because the costs of non-compliance with the EU's conditions were perceived to be too high for the Romanian political class to ignore. In all three cases, the credible prospect of membership, coupled with the credible risk of a delay in the accession process, emerged as powerful incentives for reforming state structures, policies and institutions.

In evaluating both the scope and limits of EU influence, this research also looked for indications of the sustainability of the reforms introduced under the impulse of EU integration. Here the empirical evidence is mixed. Significant steps have been taken by Romania to bring its policies and institutional structures in line with the EU's entry conditions. Yet, judging by the compliance record at the moment of Romania's formal accession to the EU on 1 January 2007, a number of questions remain open as to whether many of the reforms introduced have actually taken root at political and institutional level. As I have pointed out in Chapter 4, the legal framework to ensure the independence and accountability of the judiciary was progressively put in place. But the Romanian justice system continues to be affected by chronic built-in problems and weaknesses and is yet to transform itself into a credible and efficient institution guaranteeing the rule of law. Corruption, especially political corruption, is still regarded as a widespread and endemic phenomenon despite Romania now possessing one of the most comprehensive anti-corruption legal frameworks in Europe. In the field of external border controls the EU's accession tools have had a visible impact in bringing policies and institutional structures in line with western standards.

However, the actual implementation of EU policies remains uneven and it will take some time before Romania will be able to act as an effective guardian of the EU's external borders. The introduction of a post-accession mechanism to monitor the implementation of JHA policies after accession is in itself evidence of the fact that the EU failed to entice full compliance with its conditionality demands prior to Romania's formal accession in January 2007.

The case-studies also offered the opportunity to examine whether the clarity of the EU's accession demands enhances compliance. As specified in Chapter 2, the Europeanization and EU conditionality literature predict greater policy and institutional convergence when the EU's entry requirements are clear and unambiguous, especially when the EU provides institutional and policy models to follow or emulate at national level (Grabbe, 2006; Hughes et al., 2004; Jacoby, 2004; Schimmelfennig et al., 2003). By contrast, when the EU's demands are vague and open to interpretation, such as in the case of democratic conditionality, the literature predicts limited compliance because domestic political elites have more discretion in accepting or bypassing the EU's entry conditions (Schimmelfennig and Sedelmeier, 2005).

When applied to the case-studies, the empirical record did not fully reveal a direct correlation between the clarity of the EU's demands and the level of compliance one might expect at domestic level, suggesting that this relation may not be as 'causal' as the literature seems to suggest. Firstly, the case studies have highlighted that clear accession requirements and the presence of policy and institutional models do not necessarily lead to successful compliance.

As noted in Chapter 6, while the precision of the EU's demands in the field of external border controls helped achieve policy convergence at a legal level, the weaknesses of the country's administrative capacity, poor internal coordination and the lack of sufficient financial resources slowed down internal preparations and affected the pace and quality of the implementation, thus undermining the overall efficacy of EU rules.

Secondly, the case studies have highlighted that vague membership criteria and the absence of pre-defined policy and institutional templates do not necessarily limit the potential influence of the EU. As Noutcheva (2006a) argued, vague membership conditions can actually strengthen the EU's position, because they give the Commission and the member states greater discretion and flexibility in certifying compliance and demand more reforms. Indeed, as highlighted in Chapter 4 and Chapter 5 (which dealt respectively with the reform of the justice system and anti-corruption policies) the vagueness of the EU's accession conditions gave the Commission ample room for setting higher thresholds for accession, and demanding greater institutional and policy changes than Romania had originally subscribed to at the closure of the accession negotiations. Here, the factors which have emerged as critical for the success of EU influence were (1) the importance attached by the EU to compliance, and (2) the extent to which the EU was prepared to use strategically its leverage mechanisms to push for domestic changes. In the cases of judiciary reforms and anti-corruption (two critical issues on the EU's agenda), when Brussels showed willingness to sanction Romania for its failure to introduce EU-compatible rules and implement reforms, it succeeded in provoking domestic changes in spite of the fact it lacked substantial legally binding *acquis*.

As I have argued, in both instances the EU's leverage worked primarily because the costs of a delay in the accession were perceived as too high for incumbent politicians to ignore or bypass, and this shifted political consensus at domestic level in favour of state reforms in line with the EU's accession demands. In this respect, the reform trajectory in the field of justice and anti-corruption policies has revealed the variety of mechanisms through which the EU can influence domestic decision-making. By raising the costs of non-compliance EU policy-makers can prevent veto players from obstructing reforms. Yet, the EU's leverage is most effective when the EU succeeds in building "informal coalitions" with domestic actors, by empowering and strengthening domestic reformers (Jacoby, 2006). In both instances the EU was able to accelerate reforms prior to Romania's formal accession also thanks to the presence of reformist sources inside the governing coalition, that used conditionality and the threat of postponement as a leverage in domestic politics, to push to the top of the domestic political agenda extensive policy and institutional changes.

The second research question put forward by this research asked how domestic factors affected compliance and constrained the EU's potentially powerful leverage. Romania's laggard status in the process of EU integration had made it possible to hypothesise that, albeit powerful, the influence of the EU was mitigated by factors emanating from the domestic environment. The findings of the empirical analyses largely corroborated this hypothesis, showing how domestic factors played an important if not significant role in slowing down internal reforms and in constraining the potentially powerful influence of the EU.

In particular, it has emerged that insufficient political will, half-hearted commitments, the desire to protect vested interests by powerful veto players and the weakness of the country's administrative and judicial capacity have affected the pace and quality of domestic reforms, leaving Romania struggling to bring its policies, institutions and practices in line with the EU's accession demands.

As I have pointed out in Chapter 4, the systemic weaknesses of the Romanian justice system are the product of half-hearted and often cosmetic reforms, resulting from the unwillingness (or inability) of its post-communist elites to tackle judiciary reforms seriously. With regards to the fight against corruption, the legal framework was progressively put in place but this largely remained an empty shell, often designed more to 'please' foreign officials rather than to tackle corruption effectively. Despite all successive post-communist governments claiming that the fight against corruption was their top priority, reforms did not lead to an improved performance of anti-corruption institutions or a reduction in the perceived levels of corruption. With regards to external border policies, the domestic implementing conditions specific to Romania have emerged as a considerable stumbling bloc for the correct implementation of EU rules. Implementation was further undermined by structurally built-in problems such as the weakness of the country's administrative capacity, the lack of sufficient financial resources and poorly established practices and methods.

One of the key conclusions that can be drawn from these findings is that the policy priorities of domestic actors matter for compliance. In the field of external border policies, the Romanian authorities had sufficiently strong incentives to fulfil the EU's

conditions as this was explicitly linked to the opening of the accession talks and the lifting of visa requirements for citizens wishing to travel in Europe. In the other two cases however, compliance with the conditionality involved considerable political costs, and politicians in Romania were not always prepared to pay the price of initiating reforms that would challenge their power base. When external pressure from the EU forced politicians to commit to extensive state reforms, they did so but mostly ‘on paper’, and defected from their promises in the process of implementation. This was especially the case for those reforms that should have enhanced the independence of the justice system, empower institutions with the legal tools to fight corruption as well as improve the efficiency and independence of the public administration.

In these areas, simulating change was less costly than introducing sound state reforms because it still allowed corrupt politicians to maintain control over political institutions and guarantee impunity for themselves and their close allies from corruption charges. Simulating reforms was also politically ‘wiser’ than just ignoring the EU’s demands, because of the risk of being excluded from the EU’s enlargement process. Yet, bad reforms and cosmetic commitments have created obstacles at implementation level and have made it difficult to move forward with the correct implementation of EU policies. More significantly, doubtful democratic and economic commitments and the persistent delays in fulfilling the EU’s requirements ultimately complicated the process of accession because they negatively affected Romania’s image in EU quarters and influenced the way EU institutions intended, and framed, the accession conditions for Romania (Pridham, 2007, p. 527).

By exploring the process of accession of Romania in the field of JHA this thesis aimed at making a contribution to the academic literature on Europeanization and EU conditionality as well as to enrich the understanding of the reform process in post-communist Romania in the context of its accession to the EU.

Academic research on external influence in post-communist countries has flourished in recent years and the study of Europeanization has emerged as one of the most vibrant research agendas in IR and comparative politics. Yet, studies exploring the impact of the EU's accession conditionality on policy and institutional development are still scarce and most of them have been carried out at a comparative level. The originality of this thesis is that it traced the link between EU conditionality and domestic reforms in three policy areas and in one single case study thus providing detailed and extensive empirical evidence of EU influence.

This research has also contributed to the literature on EU conditionality by highlighting the different mechanism through which EU influence interacts with domestic politics. One of the findings of particular significance is the ability of the EU to devise new leverage mechanisms and re-invent its conditionality strategy to accelerate reforms and intervene more deeply in domestic decision-making. The empirical analysis has also confirmed that the credibility of conditionality - both in terms of incentives for compliance and disincentives for non compliance - is of crucial importance for the success of the EU's leverage especially in the case of contested reforms. This thesis also demonstrated how domestic factors matter for compliance, showing that the outcome of EU influence is contingent upon the existence of facilitating actors at

domestic level. By studying how the domestic environment affects compliance this research has thus enhances academic knowledge on the domestic conditions under which conditionality is likely to be more or less effective.

This research has also made a contribution to the academic literature on Romanian politics. When compared to some of the other countries of CEE, research on Romania is relatively abundant. Yet scholarly attention has generally focused on the country's communist experience and post-communist transition with only few references to its preparations for EU integration. In this respect this thesis fills a lacuna in the literature. Moreover, this research has provided a comprehensive overview of the framing of three important policy areas since the collapse of the communist regime, highlighting the development of key political and institutional structures in the country. The findings of this study could thus be used as background for further research.

Finally this thesis has addressed a gap in the existing JHA literature. Although the academic interest towards the JHA field has been growing rapidly in recent years, this remains one of the newest domains of EU cooperation and the expertise in this field is still developing, especially with regards to the area of justice and anti-corruption. By exploring these policy areas this thesis thus adds to the current knowledge on the JHA *acquis*. Moreover, this thesis contributes to the JHA literature in the context of the EU's enlargement by studying an important yet largely unexplored case-study.

The results of this thesis could be usefully applied across policy contexts and within a broader comparative perspective. For example, it would be instructive to examine the EU influence in other areas of the *acquis* as the process of Europeanization in less politically sensitive areas might reveal different dynamics both at EU and domestic level. Further research could also be directed towards a comparison of the Romanian case with new and future candidate states. A second line of possible research development is the question of interaction between EU conditionality and the leverage of other international organizations whose role has generally received little attention in the literature. Some few tentative connections were made by this thesis but extensive research would much advance knowledge in this field.

Beyond its contribution to academic knowledge, the detailed assessment of the framing of EU conditionality in the field of JHA offered in this thesis, and awareness of the challenges experienced by Romania in fulfilling the EU's entry conditions, have also a policy value. As a difficult case much can be learned from its experience, with regards to the challenges of fulfilling the EU's entry conditions, the nature and scope of EU conditionality, and the way in which the EU conducted, and is likely to conduct, the negotiations vis-à-vis other aspiring members. This is especially important for JHA policies, which have already emerged as a key priority area in the accession talks with Turkey and the countries of the Western Balkans. Section 3 reflects upon these issues, highlighting some of the lessons learned by the EU from its enlargement to Romania and the likely implications for the current and future aspiring and would-be members.

7.2 EU leverage after accession

In December 2004 Romania closed the accession negotiations despite serious shortcomings in guaranteeing the rule of law, fighting corruption and securing the EU's future external borders, as well as in implementing the EU's competition policy - one of the key pillars of the Single Market *acquis*. The member states tried to remedy these shortcomings by threatening a one-year delay in Romania's date of accession. I have pointed out throughout this thesis how the presence of the postponement clause gave the EU an unprecedented opportunity to speed up domestic reforms and ensure Romania would be ready for accession. I have also shown how the European Commission skillfully used the threat of postponement to maximise its leverage, by stretching conditionality to its limits and demanding more reforms than the country had originally subscribed to. Did the EU's leverage work? Are there any sufficiently convincing signs that the reforms initiated under the impulse of the EU's pressure have taken root? As argued in the previous section, when looking at the reform trajectory after 2004 there is ample evidence to suggest that on several occasions the EU's conditionality strategy was instrumental, and indeed successful, in accelerating policy changes in lines with the accession requirements. However, two years after Romania's formal accession to the EU there are some doubts as to whether many of the reforms introduced under the impulse of European integration have taken root.

Romania is now required to report every year on a set of benchmarks devised by the European Commission in the fields of justice and the fight against corruption, amid the risk of safeguard measures being introduced.

The most controversial and politically sensitive of these benchmarks has been the establishment of the National Integrity Agency (ANI) to verify assets, incompatibilities and potential conflicts of interest of public officials. The Commission has also demanded evidence of continuous effort in conducting investigations on high-level corruption cases, the introduction of measures to curb corruption at local level as well as measures to enhance the efficiency of the judicial process and the accountability of the SCM (Commission of the European Communities, 2006a). As I mentioned in Chapter 3, with the introduction of a post-accession monitoring mechanism the Commission had two objectives in mind: to maintain pressure on reforms after accession and to reassure some reluctant member states that EU institutions would keep a vigilant eye on Romania's democratic credentials.

Stretching conditionality into the post-accession period has set an important precedent for the EU's conditionality strategy, but at the time of writing there is little indication that the EU's leverage has achieved the desired results. The much-debated ANI was established but thanks to the copious amendments introduced by Parliament to the original draft law, this institution is yet to be equipped with the necessary legal and operational means to fight corruption¹⁰⁶. Investigations into alleged cases of high-level political corruption have continued, but in the last two years key prosecutors have been under increased political pressure to abandon high-level corruption cases involving well-known politicians as well as high-ranking officers inside the Interior Ministry¹⁰⁷.

106 'Agenția Națională de Integritate a fost castrată încă o dată în Senat', Hotnews, 31 January 2007

107 'DNA Chief denounces political pressures on prosecutors', Nine O'Clock, 16 July 2007.

The most notorious case refers to the decision taken by Tudor Chiuariu, the successor of Monica Macovei at the head of the Ministry of Justice, to dismiss Florin Tulus, Deputy Head of DNA - the Romanian Anti-Corruption Department - who was in charge of corruption and tax evasion investigations against the media magnate and president of PC Dan Voiculescu, and Marko Bela, leader of the UDMR¹⁰⁸.

Perhaps more significantly, since Romania secured membership, politicians have shown a defiant attitude towards EU compliance, and struggles over power and personalities - rather than reforms - have taken the scene of Romanian political life. One hundred days after joining the EU, the already fragile DA-coalition broke down and key pro-EU ministers were sacked - including Justice Minister Macovei - in a bitter political struggle between the Prime Minister and the President. With overwhelming support from the opposition parties, Parliament also suspended President Băsescu in April 2007 for alleged abuse of power, only to see him back one month later after a popular referendum decided he had been unlawfully dismissed.

The political crisis in the country just a few months after accession worried EU officials, because it called into question the credibility of the EU's enlargement policy as a tool for preparing aspiring members for accession. The Commission was quick to summon the Romanian authorities to continue with justice and anti-corruption reforms¹⁰⁹, although many in Brussels knew too well that with membership secured and

¹⁰⁸ 'Ministrul Justiției a cerut revocarea adjunctului lui Daniel Morar', Hotnews, 8 May 2007.

¹⁰⁹ See, for example, 'EC President hopes Romania crisis ends as soon as possible', *Euractiv*, 23 April 2007; 'Commissioner Frattini shows concern on Romania Justice Reform', *Euractiv*, 23 April 2007.

without reformers in key positions the reform momentum was unlikely to continue¹¹⁰. Arguably, since the closure of the accession talks, the country has witnessed a regression in its reforms especially with regards to the fight against corruption.

In early 2007 the Romanian Parliament amended the draft law of the Criminal Procedural Code, making it difficult, if not impossible, for prosecutors to conduct investigations against politicians and find evidence to launch corruption cases. In June 2008 the Constitutional Court also decided that all investigations involving politicians had to be sanctioned by Parliament. Although Parliamentary oversight of investigations against members of Parliament is not uncommon, and similar provisions are in place in some EU member states, this decision was widely perceived as an attempt to safeguard impunity for former Prime Minister Adrian Năstase and former Transport Minister Miron Mitrea, who were both being prosecuted for corruption¹¹¹. The legal committee of the Romanian Senate also approved an amendment modifying the appointment procedures for the heads of the three main institutions involved in the fight against corruption and organized crime – DNA, DIICOT¹¹² and the General Prosecutor - despite the fact this is in breach of the commitments signed up by Romania under the terms of the Verification and Cooperation Agreement introduced in December 2006. This has led to the replacement of Daniel Morar – the head of DNA – in spite of the fact that both the Commission and the Council of Europe made it clear that reconfirming his

¹¹⁰ Private conversations with senior EU officials who for professional reasons asked to remain anonymous, (Brussels, April– June 2007).

¹¹¹ See ‘Lawmakers Derail Romania's Corruption Fight’, *RFERL*, 27 June 2008.

¹¹² DIICOT (Romanian acronym for *Direcția de Investigare a Infracțiunilor de Criminalitate Organizată și Terorism*) is the institution in charge of investigations regarding organized crime and terrorist activities. For media coverage see ‘General Prosecutor’s Office, DNA and DIICOT heads might be named by CSM’, *Nine O’Clock*, 5 September 2008.

mandate would have been a sign of Romania's commitment to fighting corruption¹¹³. According to Willen de Pauw, a EU expert who has been closely involved in assessing Romania's anti-corruption efforts, "instead of progress in the fight against high-level corruption, Romania is regressing on all fronts [...] if the Romanian anti-corruption effort keeps evaporating at the present pace, in an estimated six months time Romania will be back where it was in 2003"¹¹⁴.

What can the EU do to compel the Romanian political class to tackle corruption and improve the functioning of the justice system? At this point there is not much room for the EU to push for more reforms. The Commission has repeatedly threatened sanctions, and in its latest assessment asked the Romanian political class to show responsibility in fighting high-level corruption. For the Commission, "Romanian citizens deserve access to the full benefits of EU membership" and "dispelling doubts about Romania's ability to deal with corruption will enable Romanian citizens to reap these benefits and enhance their confidence in the rule of law" (Commission of the European Communities, 2008, p. 7). Yet, in practical terms the Verification and Cooperation mechanism is a very blunt instrument at the EU's disposal, and with membership secured there is little the EU can do to compel the Romanian political class to live up to its commitments.

¹¹³ Mark Gray, the European Commission spokesperson was quoted as having said: "We expect the reform process to go forwards, not backwards... Reconfirming the chief prosecutor will be a test for the renewed commitments of Romanian authorities". See 'European Commission: Reconfirming Anti-Graft head is a test for Romanian authorities', *Hotnews*, 31 July 2008. See also interview with Drago Kos, the head of GRECO (the Council of Europe Group of States against Corruption) in. 'Seful GRECO: schimbarea lui Morar ar fi o decizie politică foarte proastă pentru România', *România Liberă*, 30 July 2008.

¹¹⁴ Quoted in 'In denial - The European Union conceals Romania's backsliding on corruption', *The Economist*, 3 June 2008.

Activating the safeguard clause in the field of JHA would essentially mean that the judicial decisions of the Romanian courts would not be recognised by judges in other EU member states. This hardly looks a dissuasive instrument for the Romanian political class, since those worst affected will be the Romanian citizens that will be forced to go through lengthier and costly procedures to have their court decisions recognised outside the country. The EU might well withdraw EU funds but with a booming economy at home, this does not appear to be an issue of concern for Romanian politicians. The EU has more leverage when it comes to external border policies, because it can withdraw the significant benefit of membership to the Schengen area. Romania has signaled its intention to join Schengen in 2011 and the process of monitoring the implementation of the *acquis* has recently been launched. What perhaps the EU should do is expressively link anti-corruption results with Schengen accession. This might well turn out to be a sufficiently strong incentive for the Romanian political class to stop paying lip service to the demands of EU institutions and live up to its commitments.

7.3 The EU and future enlargements: Lessons from the experience of Romania

When the EU opened its doors to Romania and Bulgaria on 1 January 2007, it brought to completion the largest, most ambitious and challenging expansion in its fifty-year history. Eastward enlargement has shaped profoundly the EU and its new members. Not only with the accession of twelve new countries the Union almost doubled in size and population – from 15 to 27 members with a total population close to 500 million

people. But since the end of the Cold War the EU has also emerged as a powerful democratizing force, capable of spreading prosperity and stability outside its borders. Indeed, the pace at which transition took place in CEE has been remarkable, and enlargement turned out to be the most powerful and successful foreign policy tool at the EU's disposal (Vachudova 2005, p. 259).

Whilst the general view is that enlargement has been a success story, enthusiasm over further expansions has long been fading. There are some obvious obstacles for future enlargements, as the EU has currently exhausted the legal basis for further expansions and institutional reforms are needed before taking on new members. But after the accession of ten new countries in 2004, the 'absorption capacity' of the EU has repeatedly been called into question by policy-makers across Europe. For some, the Union would be wise not to commit to further enlargements because incorporating poorer and politically unstable countries will end up paralysing EU institutions, undermine the labour market and welfare systems in the member states and further expose the EU to organized crime and illegal immigration¹¹⁵. On its part, the European Commission has continued to defend its enlargement policy. Olli Rehn made it clear to the member states that enlargement should not be made "the scapegoat for our domestic policy failures", because this policy "has been a success story" and "the EU should have all the reasons to be proud of it"¹¹⁶.

¹¹⁵ See 'The shock of the new: will eastward enlargement invigorate the European Union – or leave it paralysed', *Financial Times*, 24 April 2005; 'Unpromising east: why EU expansion could have reached its high-water mark', *Financial Time*, 16 May 2006.

¹¹⁶ Quoted in 'Fighting EU's enlargement fatigue', *International Herald Tribune*, 20 June 2006.

The EU might well be suffering from an ‘enlargement fatigue’¹¹⁷- perhaps unsurprisingly given the scale of its last enlargement. But as Emerson et al. (2006, p.1) argued, “It might be a passing mood. Given some period of rest, and with experience of the recent enlargements and some institutional changes, the European body politic might be refreshed and no longer fatigued”. In the meantime, preparing new countries for membership is still very much ‘business as usual’ in Brussels.

There are currently eight countries queuing for EU membership, albeit in an unspecified timeframe. Negotiations are underway with Turkey and Croatia while the Former Yugoslav Republic of Macedonia (FYROM) was granted candidate status in 2005. The rest of the Western Balkans - Albania, Bosnia and Herzegovina, Montenegro, Serbia and the newly independent Kosovo - are all ‘potential candidates’ according to the EU’s *jargon*, because the Union has made a promise to all of them that one day it will enlarge to the region¹¹⁸. In the meantime, Brussels has been engaged in helping these countries in their transition, by channeling financial aid and expertise to support democratic and economic reforms within the framework of the Stabilization and Association Agreements (SAA). Beyond the EU’s eastern borders, Ukraine, Moldova and Georgia are also lobbying for some form of official EU status, although EU leaders have so far been careful not to encourage their membership aspirations.

¹¹⁷ See, ‘A case of enlargement fatigue’, *The Economist*, 13 May 2006; ‘EU suffers enlargement fatigue after rapid spurt of growth’, *Financial Times*, 4 October 2004.

¹¹⁸ Although they did not specify a timeframe, at the Feira European Council in 2000 EU leaders stated that the EU’s policy objective for the Western Balkans was full EU membership (European Council, 2000). This commitment was further reiterated by the Thessaloniki European Council in October 2003 (See European Council, 2003).

At the time of writing the EU's success record in these regions is mixed. The EU has offered some significant carrots to spur reforms, making it easier for the citizens in the Western Balkans to travel to Europe¹¹⁹. It has also increased financial and political resources to help these countries bring discipline to their economies and political systems¹²⁰. However, so far the Western Balkans and Turkey have proven to be a much less favourable environment for democratic and economic transition, with the EU often struggling to convince domestic politicians that the benefits of EU membership are greater than the immediate costs they face in satisfying its burdensome entry conditions. Anchoring fragile neighbours via the European Neighbourhood Policy (ENP) has yet to produce the desired results, while political developments in some of these countries continue to show how fragile democratic transition is in states confined to the EU's backyard.

It is beyond the scope of this study to assess whether the EU will be able to fully replicate its powerful influence in these regions, or whether chronic economic backwardness, fragile state institutions, statehood issues, ethnic acrimonies and feeble civil societies will constrain the EU's reform agenda in these regions. As regards the Western Balkans in particular several studies have already pointed out how integrating these conflict-prone countries will pose additional challenges for EU policy-makers, both in managing the multi-speed transition of the region and in addressing regional

¹¹⁹ Visa facilitation and readmission agreements have been concluded in 2007 with all the Western Balkan countries, reducing the costs of short-term entry visa (from €60 to €35) and introducing simplified procedures for certain categories of citizens (ex. Businessmen, students and journalists). For an analysis of the content of these agreements see Trauner and Kruse (2008).

¹²⁰ A total of €7.58 billion have been allocated by the EU to support economic and political reforms in Turkey and the countries of Western Balkans for the period 2007-2011. See Commission of the European Communities (2007).

insecurity (see Anastasakis, 2005; Kostovicova, 2008; Kostovicova and Bojicic-Dzelilovic, 2006; Lehne, 2004; Wittkowski, 2000). There are however some important lessons for policy-makers and academic alike that can be drawn from the 2004/2007 enlargement in general and from the experience of the accession of Romania in particular.

Perhaps the most important lesson is that the credibility of the EU membership offer is crucial for the success of the EU's leverage. The remarkable changes that took place in Romania in the last two decades provide ample evidence of how powerful the EU can be in provoking state reforms if a credible offer of membership is at stake, even when subscribing to the EU's conditions bears huge costs for the incumbent politicians and undermines their power basis. Close observers of the country's post-communist politics have long claimed that Romania was never a case for rapid economic and democratic transition. For most of the 1990s it struggled to overcome the legacy of underdevelopment inherited from Ceaușescu's tyranny, and its post-communist political elite showed aversion to democracy and sound economic governance. Yet, most would readily agree that the benefits of EU membership, and the costs of exclusion from mainstream western institutions, were just too big for politicians to ignore. As the empirical analysis presented in this thesis has also highlighted, the benefits of integration coupled with the severity of the accession process, does set the parameters of domestic politics, compelling domestic political elites to introduce EU-compatible reforms.

This should be a sobering lesson for EU decision-makers as they engage with the countries in South East Europe, because when the commitment to enlarge weakens, so also does the opportunity of the EU to exercise its transformative power. As Tim Haughton (2007, p. 244) pointed out: “Officials from the EU and the member states should be well advised to bear in mind the importance of the credibility of the Union’s willingness to absorb new members, as pessimism about prospects for admission decreases the power of incentives”. By the same token, the EU’s attempts to export its policies through the ENP might not be sufficiently strong enough in its incentives to promote reforms and spread prosperity in the EU’s southern and eastern neighbours. Without a credible prospect of membership, the offer of ‘everything except institutions’ might not turn out to be the trump card that the EU has been looking for (Scarpitta, 2006).

Another important lesson to be drawn from the enlargement to CEE, and especially from the experience of accession of Romania and Bulgaria, regards the dynamic nature of EU conditionality (Phinnemore, 2006b, pp. 10-11). The conditions for accession laid down by the EU for the 5th enlargement were already stricter than the requirements put before the applicant states from previous enlargements, with the explicit introduction of the democratic and economic criteria for accession (Grabbe, 2006). As I have pointed out in this thesis, the vagueness of the accession criteria as originally outlined by the Copenhagen European Council, together with the specificity of the accession *acquis*, has given the EU ample room for certifying compliance and demanding more reforms.

This allowed to differentiate between the candidates and flexibility in evaluating progress (or lack of it), and substantially increased the power of EU institutions to shape policy and institutional outcomes in aspiring members (Maniokas, 2005, pp. 34-39). Moreover, the EU has also seen its leverage growing from its experience in CEE, and with Romania and Bulgaria it adopted a tougher and much more interventionist approach to push reforms. With both countries the EU also proved highly imaginative in devising new leverage mechanisms and in reinventing membership conditionality to accelerate compliance (Phinnemore, 2007).

These considerations carry significant implications for current and future aspiring members. The first implication is that enlargement has become a much less predictable and more complicated business. Not only has the EU increased differentiation between aspiring members, but the conditions for accession have been tightened, with Brussels far more willing to address lack of progress with the threat of significant sanctions. This was the case with Croatia in 2005, when the Commission made the opening of the accession negotiations conditional to the full cooperation with the International War Crimes Tribunal in The Hague. With Serbia, the EU went as far as suspending talks on the SAA because of the country's failure to hand over war criminals.

The second implication is that the EU has made it harder for candidates to proceed upwards on the negotiating ladder. It will no longer be sufficient for a candidate state to declare its commitment to reforms – as was common practice during the negotiation process of the CEE candidates - but 'benchmarks' will have to be met before opening, and closing, new negotiating chapters.

As David Phinnemore (2006b, p. 17) pointed out, “whereas with the 2004 enlargement the emphasis was on the adoption of the *acquis*, albeit with evidence of implementation, there has since been greater concentration on the need to prove actual implementation and compliance”.

The enlargement to Romania and Bulgaria has also set an important precedent with regards to safeguarding measures. The member states have already signaled that the accession negotiations are “an open-ended process” and its outcome “cannot be guaranteed beforehand” (European Council, 2004, p.7). Turkey’s accession is the biggest concern in some EU capitals, for its size, geographical location, slow economic development and cultural differences. But this might well apply to all the candidates as they embark on their road to membership.

Finally, the experience of Romania bears important lessons for the current candidates and aspiring EU members with regards to the challenges in preparing for membership and the conditions for successful integration. The most important of these lessons is that joining the EU involves more than just a large-scale transposition of EU laws into national law, but it entails a profound transformation of the state, and its policies. Key to this is the presence of an independent and accountable justice system and an efficient public administration. A well-functioning and independent judicial system is an indispensable pillar in any democratic society and an essential condition for helping to fight corruption and organised crime. The judiciary also plays a crucial role regarding the implementation and enforcement of EU rules, hence the efficacy of EU legislation at national level.

A modern, efficient, accountable and professional administration is also indispensable for the management of the accession process, since civil servants are called upon to devise national policies, implement EU regulations and manage EU funds. As mentioned in chapter 6, a weak administrative capacity can affect the preparations for accession in significant ways, especially when the transposition of EU rules involves legally complex areas such as the JHA *acquis*. Moreover, an efficient legal system and public administration foster confidence in foreign investors, and are crucial for the modernisation and sound economic development of a candidate state.

The reform of the justice system has now predominately entered the EU's political agenda in the context of future enlargement. A new negotiating chapter – Chapter 23 – has been created, also covering anti-corruption policies and the protection of fundamental rights. Thus, political conditionality has been 'institutionalised' in the process of EU accession. In the light of Romania's experience, this is a positive development, as it will give the EU much more room for intervening in and directing reforms, and promoting the introduction of sound institutional and policy changes. The EU has also introduced a tougher monitoring of the administrative capacity to implement the *acquis*, and the new candidates will have to prove they have in place the adequate resources (such as qualified personnel, administrative procedures and institutional arrangements) before they can open or close a negotiating chapter.

For some aspiring members the toughening of EU conditionality might raise questions of double standards since it will pose additional burdens that may delay the accession process.

But as the experience of Romania has shown, the absence of state structures in place to manage EU integration is ultimately counterproductive. As I have argued throughout this thesis, Romania struggled to bring its policies in line with the EU's entry requirements in the field of JHA primarily because much needed reforms were delayed, and did not come into being until very late in the accession process. Yet Romania paid a hefty price for paying lip service to the EU's demands. Simulating reforms might have been less costly than sound democratic and economic governance, but over the long term it frustrated relations with EU officials and relegated Romania to a laggard status in the process of EU integration.

Appendix

List of Interviews

Unless otherwise stated, the title or affiliation listed was accurate at the time of the interview.

Joanna APAP, Administrator, European Parliament “Internal Policies of the Union”, Brussels, 24 April 2006.

Mircea-Ion BACALU, Deputy Director-General, General Directorate on European Integration and International Relations, Ministry of Interior and Administration, Bucharest, 11 November 2006.

Claudia BIG, JHA Negotiating Expert, Ministry of European Integration, Bucharest, 26 October 2006.

Marius BIZĂU, PHARE Implementation Officer, Directorate for European Integration, International Cooperation and Programs, Border Police General Inspectorate, Bucharest, 15 December 2006.

Mihaela BLAJAN, Director EU Affairs, Ministry of Foreign Affairs, Bucharest, 4 December 2006.

Valerică BOJIAN, First Secretary, Ministry of Foreign Affairs, Bucharest, 4 December 2006.

Barbara BRANDTNER, Member of Cabinet of Commissioner Neelie Kroes, European Commission, Brussels, 5 May 2006.

Bogdan BUDEANU, Head of Unit - Fight Against Trafficking in Human Beings, Border Police General Inspectorate, Bucharest, 11 December 2006.

Roxana BURNEU, Counsellor on EU Affairs, General Directorate on European Integration and International Relations, Ministry of Interior and Administration, Bucharest, 1 November 2006.

Ionut CODESCU, Secretary of State, Ministry of Justice, Bucharest, 10 November 2006.

Nusa COMAN, Head of the Schengen Unit, General Directorate on European Integration and International Relations, Ministry of Interior and Administration, Bucharest, 1 November 2006.

Titus CORLĂȚEAN, Vice President of PSD and personal advisor to former Prime Minister Adrian Năstase (2001-2003), Bucharest, 21 November 2006.

Viorica COSTINIU, Judge at Bucharest's Court of Appeal and President of the Association of Magistrates, Bucharest, 27 November 2006.

Madeleine CROHN, Country Director ABA/CEELI, Bucharest, 28 November 2006.

Sarah CULLUM, First Secretary, British Embassy, Bucharest, 17 October 2006.

Alexandru CUMPĂNAȘU, Executive Director, AID-Romania, 22 November 2006.

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