

# Governance and Corruption



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## POLSCI FOCUS

### ***Beyond perception. Has Romania's governance improved after 2004?***

**Sorin Ionita, Otilia Nutu, Laura Stefan, Alina Mungiu-Pippidi**

#### Abstract:

Romania and Bulgaria encounter today problems in joining the visa-free Schengen area. The main one in the public eye is corruption. Both countries pledged to improve their rule of law when signing their accession treaties in 2005, yet little progress is perceived by observers or captured with governance measurements relying on perception, such as CPI and World Bank Governance indicators. This paper explores real policy, with fact-based indicators, to trace progress in the area – or lack of it – since 2004 to the present.

Keywords: *corruption, Romania, indicators, World Bank, Schengen*

Post-communist countries embarked on their EU accession path with Transparency International scores below the lowest level in Western Europe and their culture was frequently described as entirely corrupt<sup>1</sup>. Surveys on bribing cannot fully capture the systemic nature of East European corruption, which can be defined best as governance by particularism<sup>2</sup>, the systematic discretionary use of authority to the benefit of particular groups or indicator from the survey of governance by World Economic Forum. The 2009 edition did not find great differences across the postcommunist region, suggesting that they may be in size rather than in kind. Czech Republic is 110 in the top of government favoritism, Hungary 112, and Romania 113, worse than Kyrgyz Republic or Kazakhstan. In other words, neither the transition, nor the EU accession has managed to restrain the capacity of the government to distribute benefits in a particularistic manner. Political parties, even in the most advanced countries in

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<sup>1</sup> William I. Miller, Ase b. Grødeland and Tatyana y. Koshechkina, *A Culture of Corruption? Coping with Government in Postcommunist Europe* (Central European University Press 2001).

<sup>2</sup> See for a full description of particularism Guillermo O'Donnell (1996), 'Illusions about Consolidation', In *Journal of Democracy*, vol. 7, no.2, pp. 34-51.

the region, seem to develop capacity and mobilization primarily through clientelism and state exploitation<sup>3</sup>. Spoils include four basic categories:

- a. public jobs, as the public sector is extremely politicized and each winning party fills with his own people not only the political jobs but many civil servant offices as well;
- b. public spending, for instance procurement, but also preferential bailouts, subsidies, government transfers to regional and local branches, loans from state banks;
- c. preferential concessions and privatizations from former state property; and
- d. market advantages in the form of preferential regulation.

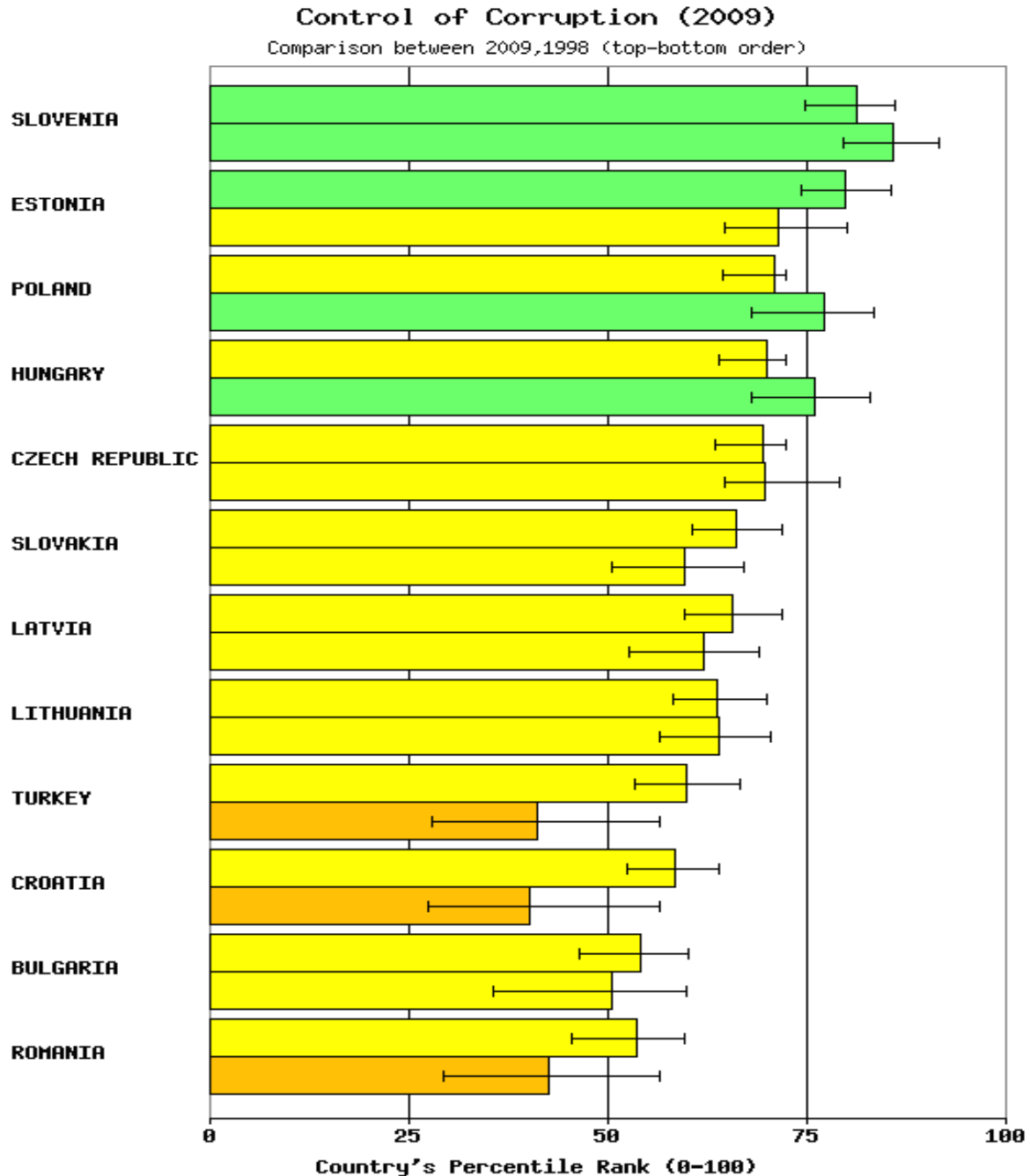
Unfortunately we have very little systematic data collection on any of these areas, except for press reports and some occasional and sector and time limited studies by think-tanks. The only indicator allowing a comparison of 2004 with 2010 is the Control of Corruption (CC) from the World Bank, which aggregates perception scores from different expert sources (subjective sources), so a score comparable with Transparency International's Corruption Perception Index. Which does the same. Unlike CPI, however, CC is based on a methodology which has two advantages. It allows comparison from one year to another (which cannot be done with CPI) and it allows calculating a standard error, which is actually a measurement of the distance between different aggregated sources on a country (which might disagree on progress from one year to another).

According to this indicator (Fig. 1), Romania has progressed from below 50% to above this value (orange to yellow) but the change falls within the confidence interval (at 10%), in other words this is not significant progress unless we increase the confidence interval and we accept greater disagreement among sources (Georgia is the only country to in the region to have evolved significantly in the 1998-2009 interval). Bulgaria progressed even less, but it started from a better position. The two countries are now aligned on the bottom of new EU entrants, their score in absolute figures being slightly below Turkey and Croatia, two candidate countries, (Fig. 2). The differences, however, are small across new member countries on this indicator, with the notable exception of Estonia and Slovenia, which are doing significantly better than the rest.

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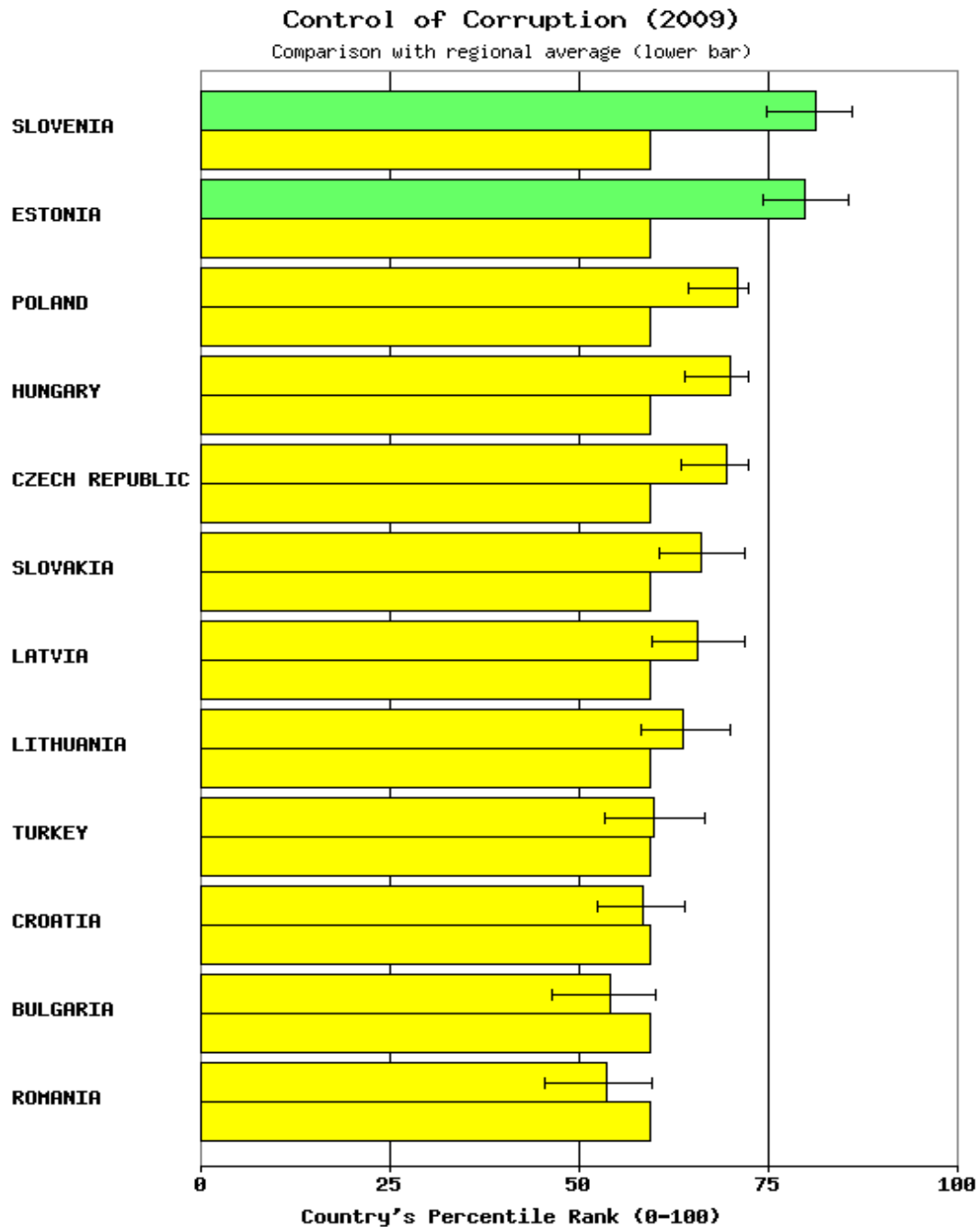
<sup>3</sup> Connor O'Dwyer (2006) *Runaway State-Building: Patronage Politics and Democratic Development*, Baltimore, Johns Hopkins University Press; Anna Grzymała-Busse (2007) *Rebuilding Leviathan : party competition and state exploitation in post-communist Europe*, Cambridge, New York, Cambridge University Press.

**Fig 1-2. Comparison of each SEE country with the regional average on World Bank aggregate indicator Control of Corruption**



Source: Kaufmann D., A. Kraay, and M. Mastruzzi (2010), The Worldwide Governance Indicators: Methodology and Analytical Issues

Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.



Source: Kaufmann D., A. Kraay, and M. Mastruzzi (2010), The Worldwide Governance Indicators: Methodology and Analytical Issues

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These results are inconclusive, showing that experts cannot agree on Romania's progress. Disintegrated scores, for instance Freedom House *Nations in Transit*, show progress in 2005 and 2006, then regress and stagnation. Finding objective indicators is difficult not only due to the elusive and discreet nature of the phenomenon. On top of these, the social, economic and institutional environment has changed importantly in the process of EU accession. The nature and channels of the illicit trade of favors have changed too, which makes it difficult to compare the level of corruption at different moments of time.

To match this challenge, we need to understand that corruption is an equilibrium between resources and constraints. A lot of investment was made in raising legal constraints, but those only provide a part of the picture. A balanced anticorruption formula needs to address both resources and costs of corruption.

*Corruption = Resources (Power discretion + Material Resources – Constraints (Legal + Normative))*

In the formula above under resources we consider power discretion (due not only to monopoly of power, but also privileged access to influence and decision under different arrangements than monopoly, for instance cartels of parties) and material resources (public budget, foreign aid / EU funds, natural resources, state assets, public jobs). The constraints are legal (an autonomous and effective judiciary able to enforce legislation), but also normative (existing societal norms that endorse ethical universalism and sanction effectively the deviance from this norm through public opinion, media, civil society, voters). We will discuss systematically the difference between 2004 and 2009 selecting an indicator illustrative for each category.

## 1. Resources for corruption

The first category, **power discretion**, does not present much change. In 2004, Romania was ruled by Social Democrats who had doubled their number of mayors by recruiting opposition ones through local transfers manipulation. In 2009, the government party managed to form a majority by convincing a significant number of MPs elected on the opposition ticket to transfer their loyalties to the government. The same limited number of parties (3) dominate the political scene, with the same smaller radicals (1), minorities (1) and free rider parties (the Conservatives, who always enter Parliament running on the ticket of either left or right, as it could not pass the threshold by themselves).

An electoral reform in 2008 has not changed anything of significance at the national level: rather, due to passage from closed lists to single unit constituencies the practice to offer pork instead of parliamentary support increased importantly with public bargains going on even in toughest austerity times. While the system is competitive, competition is nevertheless severely limited by a very high entrance threshold for new parties Romania has the highest obstacles for the entrance of new political parties (the highest in Europe): 200 000 signatures are needed to register a new party and 100 000 an



independent candidate, so despite public exasperation with such behavior the current parties had managed a quite successful cartel.

The direct election of the County Council Presidents starting with 2008 visibly strengthened their role, both within their parties and in the formal and informal processes of allocating resources. As a result, both the clean part and the corrupt part of the Romanian administration were substantially decentralized, together with the political decision-making inside each major political party, for good and for bad.

Power discretion has also not evolved due to lack of enforcement of legal accountability mechanisms in the period under study. Although Romanian authorities are compelled by law 544/2001 to produce a yearly accountability report, the government does not enforce this legal provision. The General Secretariate of the government (SGG), which is supposed to be the government's chief implementing body, was unable to offer any statistics on how many such reports were filled in 2010. An independent assessment by the Alliance for Clean Government ([www.romaniacurata.ro](http://www.romaniacurata.ro)) evaluated that not even half such mandatory reports are compiled and that they are never verified or used as control instrument by the higher authorities. Out of 15 ministries, by mid-February 2011 only four had managed to fulfil the legal requirements of publishing their 2010 report on their website. This leaves great latitude to all authorities, as there is no other mandatory reporting on accomplishing goals.

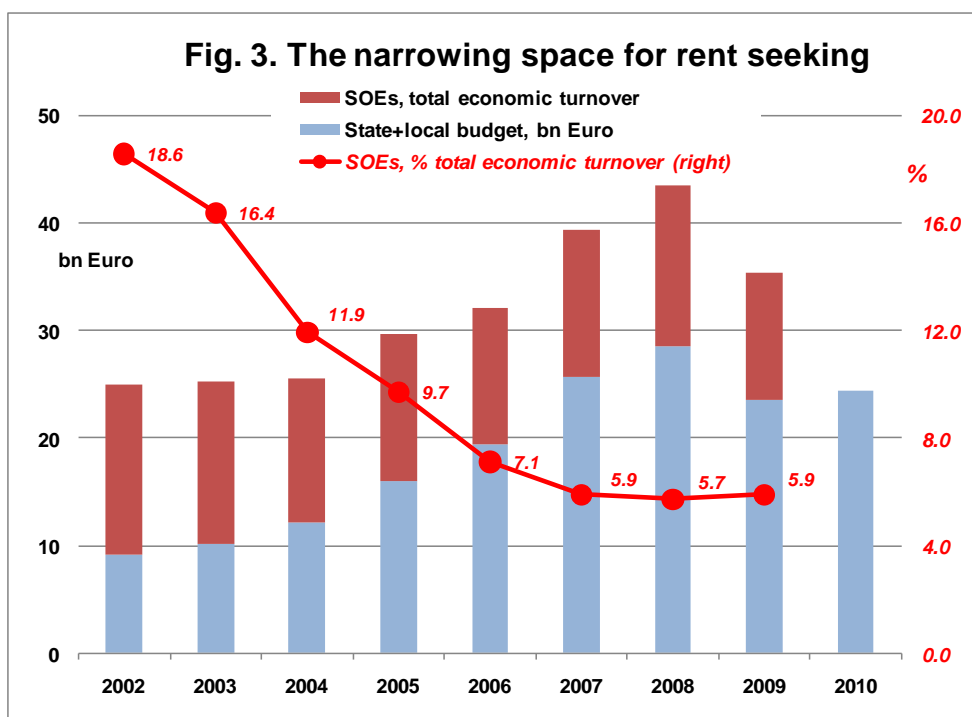
Romania's Audit Court controls only accounting, and has no prosecutorial powers. Despite the existence in quite a few laws of provisions for administrative sanctions for civil servants or sanctions for political executives there are no records of such sanctions. Ionel Blănculescu, former controller in the Năstase government (2000-2004) argued recently that custom officers charged with corruption in February 2011 had been fired before for lack of integrity, but were reintegrated in service after winning in Court due to the over-protective law of civil servants (188/1999).

Romania also has a ministerial responsibility law, but no minister was ever sentenced on its basis, despite quite a few being charged. In a notorious case, the Supreme Court of Justice acquitted the head of the State Forest agency (also a MP) who was proved to have caused damage of millions by acquisitions with blown prices (he bought Versace tiepins for all foresters in Romania at a value of 20 000 more than their shop price). Administrative accountability also does not work.

The government produced during summer 2010 an emergency ordinance imposing social taxes payments to copyright contracts: it was full of errors and contradicted openly its own implementation norms, yet nobody was sanctioned for passing and approving it, despite thousands of people being induced to queue at tax offices over it (the minister alone was reshuffled) The civil servants law has detailed mechanisms on their accountability, but in a system where dismissals are generally political and arbitrary such mechanisms are ineffective

and controversial. As long as nobody pays for anything and only political allegiance – or lack of – is sanctioned, governance is bound to remain poor.

The second category, **material resources**, in other words the rents for private individuals and companies, have undergone important changes due to Romania's EU accession. The processes of privatization and post-communist property restitution have more or less been completed by now (with a few notable items left in the energy sector – see Fig. 3). The networks of extraction and patronage created at the beginning of transition to benefit from them had to shift and find new opportunities. Furthermore, the gradual implementation of the EU *aquis* and, eventually, Romania's accession, has increasingly limited the possibility to dispense openly public resources at will, as it happened in the '90s or shortly after.



The European competition rules (anti-monopoly, state aid) makes it more difficult to simply cancel the debts of certain private operators in 2010 compared with 2003-04, when a string of favored companies thrived on bailouts; the smaller number of state owned companies are under increased scrutiny; and the quasi-*aquis* on administrative depoliticization raises obstacles for the parties taking office which attempt to simply replace members of the civil service. Finally, the brutal onset of the global economic crisis in 2008-2009 has forced the Romanian politico-economic environment to adapt quickly to a contracting volume of public resources available, after a few years of carefree, expansionary mindset; and to the collapse of certain economic channels used for illicit transactions (such as the real estate market).

In order to discern trends in this fluctuant environment we have focused on five indicators:

- the total potential rent;
- the profit of Romanian contractor client-companies of the Government, compared to European ones competing for public funds in Romania;
- the discretionary allocations from the Government's Reserve Fund;
- the loss incurred by main state producer agency Hidroelectrica due to insider trading to preferred companies;
- and the amount of politicization of the public sector.

The first and the last indicators are attempts to capture the overall dimension of the "corrupt market"; the other three offer case studies meant to shed a light on the actual mechanisms at play, which differ very much from sector to sector.

**1.1. Our first indicator is the potential total public resource which can be allocated discretionarily**, followed by the measurement of actual allocation in a few key sectors.

The amount available for rent seeking has steadily declined in industry and the financial sector. The contribution of SOEs to the total economic turnover went down from 19% in 2002, to 12% in 2004 and less than 6% in 2010 (Fig. 3). If privatizations continue, the space from rent seeking from this favorite traditional source will narrow down significantly.

What has not declined – on the contrary – mostly due to growth and the arrival of the EU funds, is the procurement budget, a category not registered as such in the budget and therefore impossible to trace accurately on a year-on-year basis. However, by adding the capital investments from the central and local budgets, with 40% of the current expenditure on goods and services, and with the EU grants, we obtain a rough estimate of 5.8% of GDP in 2004, going up to 7.6% in 2008 and 7.5% in 2010. In absolute values the increase is more pronounced, from 20 bn RON in 2007 to 27 bn RON in 2008; funds earmarked for local and regional procurement also went up, from 5 billion RON in 2006, 11 in 2007, 13 in 2008 and 18 in 2009<sup>4</sup>.

Between 2004-2006 most of the political clientele has re-focused mainly on public tenders (for works, provision of services, etc) and learned how to bend the new, EU-inspired rules, or tried new ways to get preferential contracts from the fewer remaining state-owned enterprises (SOEs). For a few years before the crisis, against a background of buoyant public budgets (rate of increase of 15-20% per year in Euro terms), there was enough space for everyone to benefit and the reconversion was not too painful or indeed visible. And since the execution of a contract, once obtained, can be done transparently, the inordinately high margins of profit have started to show up officially in financial

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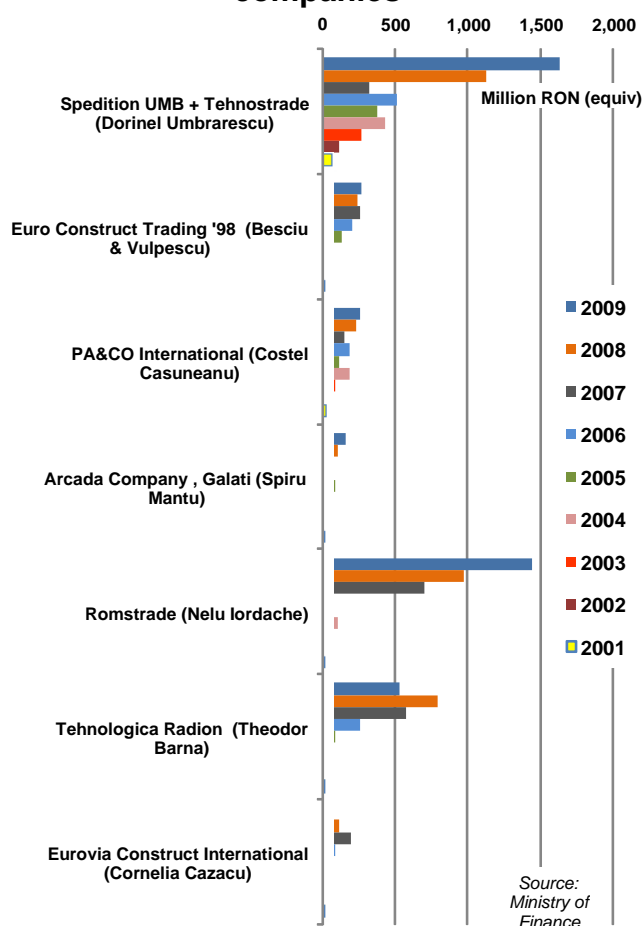
<sup>4</sup> These calculations do not imply that *all* procurements and SOE transactions are corrupt; it only shows the volume available for rent seeking and graft.

balance books: local companies getting preferential contracts in public works or as energy intermediaries run with annual profit rates of 30-40% or more (see Fig. 4).

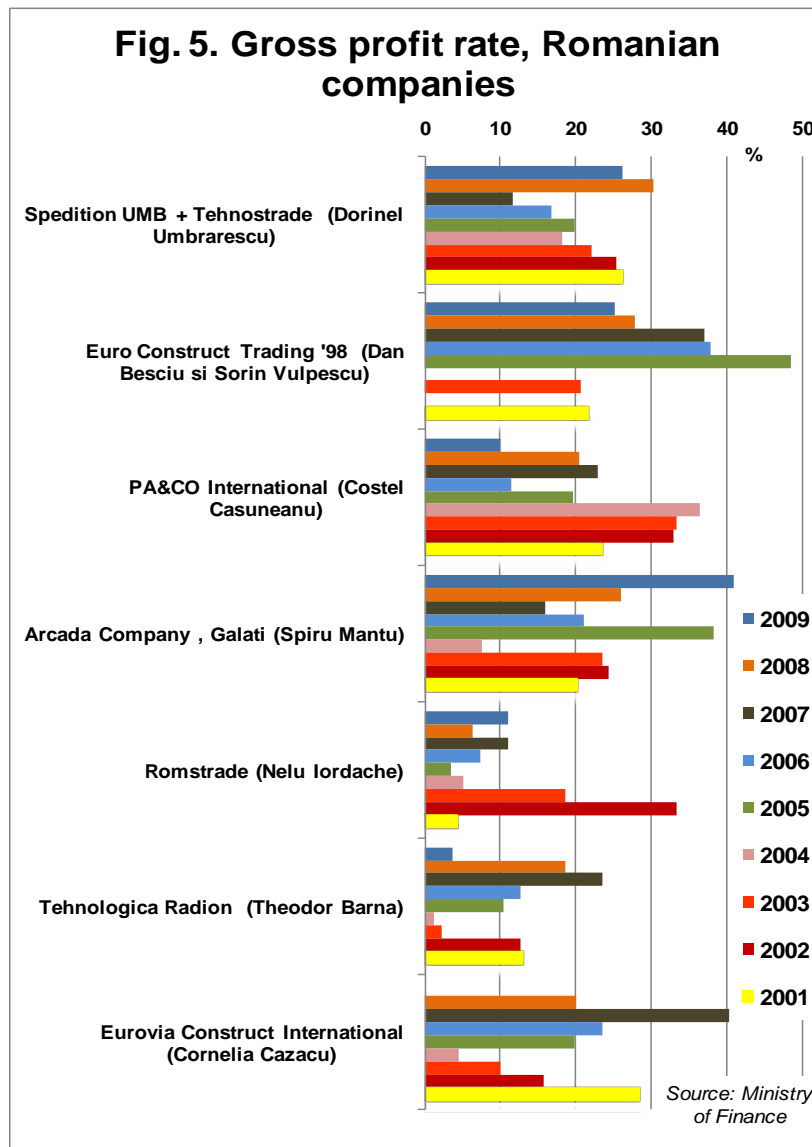
## 1.2. This is our second indicator: profit of politically connected domestic contracting companies as compared to European established ones present on the market.

In the study interval a few Romanian-owned contracting companies (or groups) have grown and came to compete on a par with established multinationals, in terms on turnover of their business in Romania (see Chart 4). Most glaringly apparent, the high profitability was realized by the Romanian contractors, on contracts with the Ministry of Transportation (through the National Roads Company, CNADNR, mainly). By contrast, foreign companies seem to incur mainly losses – including the American Bechtel, on a contract allegedly skewed in its favor.

**Fig. 4. Turnover, Romanian companies**



It is not easy to explain such puzzling trends as those shown in Charts 4-5. It may be that Romanian companies, as upstarts without powerful holdings behind them, were extremely conservative in their investment and expansion strategies and had to realize high rates of operational profits in order to finance their own development, in a period when commercial credit was either expensive or risky. Better knowledge of the local context and access to cheaper inputs, based on long-term or personal relations with their suppliers, are also reasons often quoted by the owners of these companies.

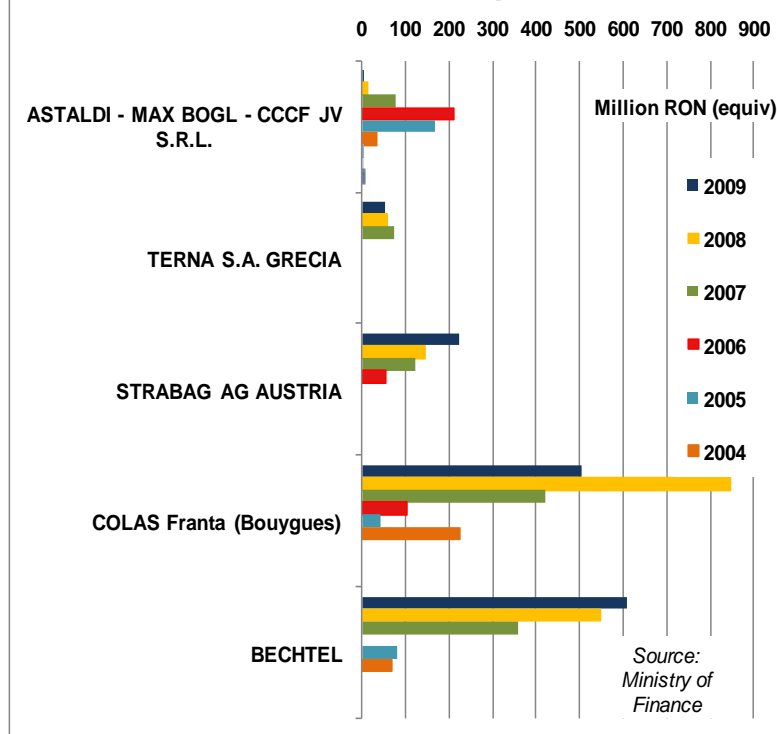


What is more, the Romanian managers also point to the fact that a large part of their profit is virtual, as many invoices they issue (and hence, have to record as realized income) go in fact unpaid for long periods of time. Political, institutional and economic uncertainties create additional costs in terms of financing any operation. In a riskier environment the interest rates are higher, and profit rates even more so. This is the normal trade-off between risk and expected profit in economic operations. Nevertheless, the same dilemma could be said to apply to all

economic operators present in Romania, who all face the same level of risk, so it is not clear why only Romanian companies would require such high profitability in order to operate normally.

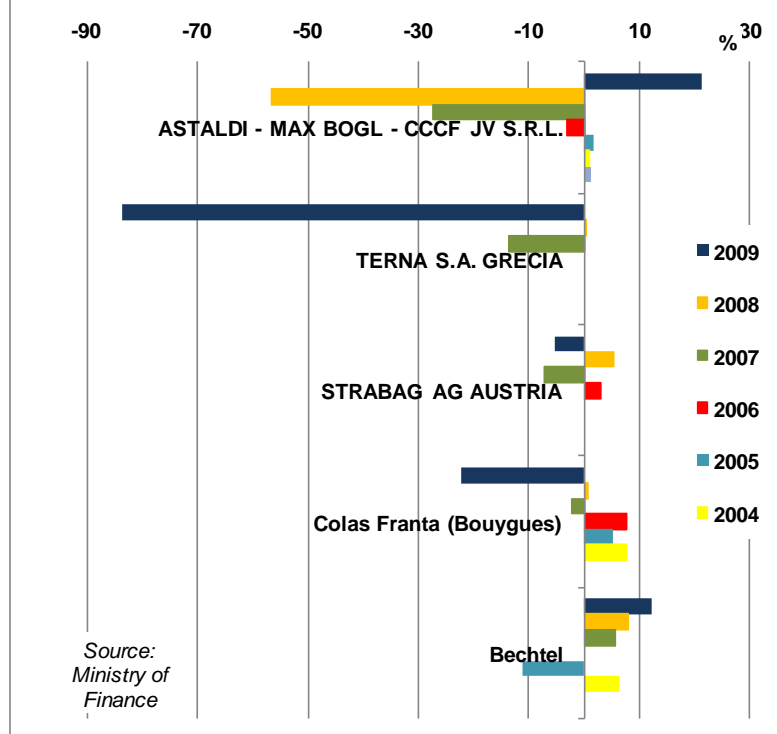
The multinationals have been active mostly on large works contracts financed with EU Funds (ISPA); the Romanian ones, either by choice or because they were not eligible for the big projects, went for a large number of smaller contracts, a good part of which was financed directly from the national budget. In addition, the multinationals tend to get mostly large and relatively difficult works contracts, and very few framework contracts for the regular maintenance of roads (including in the winter season); the Romanians have almost exclusive access to such latter contracts, which are financed fully from national sources and hence are less cumbersome in terms of paperwork and less transparent (if only because no international partner has attributions to verify or approve anything).

**Fig. 6. Turnover in Ro,  
multinational companies**



Several factors may be therefore at work creating the consistent difference between the profitability rates of the two groups. Since maintenance contracts tends to bring more stable revenues over a longer period of time, while the works, especially in EU projects, tend to go in cycles, this may be the reason why the turnover and profit rate of Romanian companies look so solid and stable, when compared with the volatility of their foreign competitors.

**Fig. 7. Gross profit rate in Ro,  
multinational companies**



The source of the money may be very important: when CNADNR is the sole contracting authority it pays from national funds and has no controller, it may act as a much more lenient beneficiary towards its private partners: less scrutiny on quantity and quality of works, more helpful attitude in approving the claims, easier down payments – and, of course, softer when the prices are negotiated.

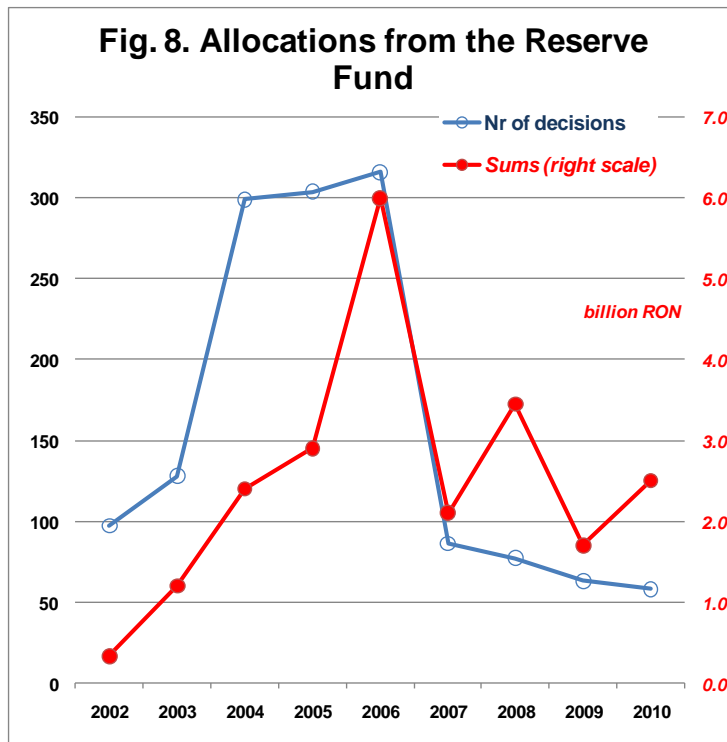
On the other hand, it is also possible that multinationals are better at “fiscal

optimization” for their operations in Romania, while the national companies have less scope for such arrangements. After all, it is hard to understand why the large private operators continue to compete to win tenders for projects which apparently bring them only losses.

Nevertheless, the data makes it very likely that the inordinately high profit rates in virtually all Romanian subcontracting companies are not a reflection of the normal business risk, but of the existence of privileged companies in a relatively closed market, where high provision costs and preferential financial arrangements are accepted by the state, at the expense of the taxpayer.

**1.3. A third indicator of discretionary, politically linked allocation can be found in the area of the Reserve fund**, an emergency buffer provided for since 2002 in the Public Finance Law, for natural disasters or other unexpected situations. The general understanding was that the money from the fund would be disbursed judiciously for the purposes intended. However the law has two major loopholes: (1) it allows the unlimited increase of this fund by government decision only, during the budget cycle, by shifting money into it from other ministries; (2) it is unclear in defining the emergency situation that may justify the allocation. The combined results of the two flaws are:

- Successive governments have taken to the habit of earmarking a small amount for the Reserve Fund when the national budget is approved by the Parliament, and then supplementing it liberally by executive decision. This was increasingly the situation every year after 2002. The peak was reached in the electoral year 2008, when the fund was increased 590 times above the budgeted level, reaching 3.45 billion RON.



- The cabinet can decide at any time to transfer these amounts of money from the Fund, to any central agency or local government, without the Parliament veto, by-passing the existing mechanisms of inter-governmental financing and thus undermining the policies governing local government spending and accountability.

This is bad budget practice on both counts: it reflects a lack of capacity to prepare a feasible budget, which subsequently has to be



amended many times during the execution; and it opens a broad boulevard for discretionary allocations. We therefore treat allocation of the Reserve Fund as an indicator of political partiality.

Fig. 8 demonstrates that the use of the discretionary fund went in a crescendo, both in terms of the number of allocations and sums disbursed, and declined slightly since the advent of the crisis. While the peak in 2006 may be justified by the major floods taking place that year and the year before, those in 2004 and 2008 are purely politically motivated (electoral years). This supports the politicization hypothesis.

<b>Tab 1. Share of preferential allocation versus share of votes in local elections</b>	<b>2004 (PSD)</b>	<b>2008 (PNL)</b>	<b>2010 (PDL)</b>
Share of preferential funds for main govt party %	49	45	62
Share of vote in local elections of govt party %	35.5	16.2	28.8
Implicit "clientelism ratio"	1.4	2.8	2.2

Tab. 1 brings additional evidence, showing that an unwritten rule may have functioned in the last years that dictates that the amount of resources

available must go 75-80% to the party or coalition of parties in power. This seems to be the norm. In 2004 the Social-Democrats exceeded their share of the vote with about a fifth preferential allocation. In 2008 the Liberals exceeded it by over 60%, and in 2010, at a smaller total amount due to the crisis Democrat Liberals exceeded with more than 50%. There is a flagrant lack of government impartiality in the allocation of these funds.

However, if we account for inflation and the exchange rate fluctuations, the total volume of sums disbursed through the discretionary Reserve Fund in 2009 and 2010 was below the level of 2004. The number of decisions – which are in fact back-door, executive amendments to the national budget – were also fewer in 2007-2010 compared with 2003-2004. But in the years with buoyant public budgets (2006-08) additional discretionary mechanisms were created (for example a large investment fund for schools rehabilitation which was allocated directly by the Ministry of Education with no transparent criteria, therefore functioning much like the Reserve Fund and with comparable size).

Who is to blame? The two-tier local government system of Romania generates cross-crossing political alignments, for example when the mayor belongs to the national ruling coalition, but the leadership of the County Council, which plays an important role in transfers allocation belongs to the opposition. In such situations it is hard to disentangle who is favoring (or abusing) whom when the government goes over the head of the County Council Presidents and allocates money directly to local communities: they may favor a well-connected mayor, but also compensate a local government systematically neglected by the county-level



authorities. In other words, discretion in allocation is the rule at both central and county level.

**1.4. The fourth indicator is in the sensitive area of energy**, which has provided ample opportunities for rent-seeking on the past. The main scheme which enriched some of Romania's top billionaires – the so-called 'smart boys' is of great simplicity: buy cheap energy from the state owned companies and resell it expensively to the distributors who do not have direct access.

A top example is **Hidroelectrica**, the major state-owned production company that made headlines in recent years for suboptimal contracting practices and non-transparent deals. Hidroelectrica featured prominently in several media claims that it sells a part of its electricity production at prices below the market level to companies selected without competition. Anecdotal evidence on such practices has appeared in various newspapers. In addition to this, there is evidence that other operations of Hidroelectrica are also suboptimal. Such practices include engaging in sale contracts that exceed the production capacity or estimated production for the year, which means Hidroelectrica is then forced to purchase very costly electricity from other producers to fulfill its sale contract obligations.

Hidroelectrica has often been accused that it does not put its electricity production for competitive sale on the transparent transaction platform OPCOM (essentially, to "auction" its electricity in order to get the highest available price on the market in transparent and competitive terms). Hidroelectrica has always argued that it cannot put up for tender all this production due to the long-term contracts concluded in 2000-2004 which expire gradually in 2009-2014. Therefore, in 2009, all of its production available for the competitive market has been sold in non-competitive terms, on these previously concluded contracts. However, by the end of 2009, some of these long-term, non-transparent contracts had expired and about 2 TWh would have been available for competitive auctioning on OPCOM starting from 2010 onwards.

Nevertheless Hidroelectrica's management approved in 2009 the extension of some of these non-competitive sales contracts to 'smart boys' by another five years. These bilateral contracts, both for the domestic market and exports, are non-transparent, so the clauses are not known to the general public. However, apparently, the price in these contracts is negotiated every year. It is unclear why these on-going contracts cannot be negotiated at prices comparable to those for one-year contracts on OPCOM (the results are presented in the Tab. 2 below). For 2010, Hidroelectrica traded indeed on OPCOM at end-2009 a quantity of 1.7 TWh. However, the manner in which the transaction was organized showed that it is possible to formally follow the law but yet abuse it. Thus, instead of selling competitively, which meant placing an offer for sale and wait for the highest bidder, Hidroelectrica responded to a purchase offer at a very low price (138 instead of 160 RON/MWh average price on OPCOM at the date), making a loss of 37.4 mil RON.

<b>Tab 2. Hidroelectrica: loss from non-competitive bilateral contracts in 2009</b>	<b>RON/M Wh</b>	<b>TWh</b>	<b>Mil RON, total</b>
Average price, bilateral contracts domestic market, 2009	102		
Price for one-year electricity sales on OPCOM, Dec 2008 (for 2009)	170		
Price difference	68		
Quantity of electricity in domestic bilateral contracts		11.6	
<b>Lost revenue on domestic market</b>			<b>788</b>
Average price, bilateral contracts for export, 2009	163		
Price difference	7		
Quantity of electricity sold for exports		1.3	
<b>Lost revenue from exports</b>			<b>9</b>
<b>Total loss on non-competitive sales, 2009</b>			<b>798</b>

Data sources: OPCOM, Money Channel. The table offers a conservative estimate, comparing Hidroelectrica's potential prices with prices on OPCOM for base load energy. In normal market conditions, Hidroelectrica's competitive advantage would be to sell the bulk (up to 2/3) of its available energy for peak consumption, which is more expensive (the premium for peak consumption varies from 20% to 200%).

<b>Tab 3. Value of Hidroelectrica's cross-subsidy to Deva, Termoelectrica and other inefficient producers (and ultimately to their suppliers)</b>	<b>RON/M Wh</b>	<b>TWh</b>	<b>Mil RON, total</b>
Average purchase price electricity for Hidroelectrica	200		
OPCOM average price PCCB	170		
Price difference	30		
Quantity		2.5	
<b>Loss from Termoelectrica, Deva etc. by not selling on OPCOM to Hidroelectrica</b>			<b>75</b>

Data sources: OPCOM, Money Channel

A second problem is that Hidroelectrica buys energy from other producers (notably the very inefficient Deva coal-fired plant, Paroşeni, or ELCEN) to meet its sales obligations. In 2009, Hidroelectrica produced 15.5 TWh, less than its average production in normal weather conditions of 17.4 TWh, but this decline in production was not so much due to draught and actually foreseeable (the reduction was caused by a scheduled interruption for the rehabilitation of Lotru power plant, which led to a decline in Hidroelectrica's production of around 7-8%). So Hidroelectrica should not sell electricity for higher-than-expected production, knowing that for the quantity it cannot produce it will have to purchase expensive energy on the market. 2.5 TWh of the gap in 2009 was covered from purchases from Termoelectrica (at 238 RON/MWh), Deva-Mintia (at 239 RON/MWh), Turceni (179 RON/MWh), or Craiova (195 RON/MWh). These amounts were contracted directly, without being traded competitively on

OPCOM, and are at higher prices than those on OPCOM (205 compared to 190 RON/MWh on average).

The losses from these transactions, caused by the fact that Termoelectrica, Deva etc. do not sell on OPCOM and Hidroelectrica does not purchase competitively the needed electricity (in breach of Executive Order 445) are illustrated in Tab 3 and represent actual cross-subsidies mainly to Termoelectrica and Deva. This in turn allows these operators to continue with their high operating costs, inflated and eventually benefiting a network of private suppliers of the power thermo plants.

The case of Hidroelectrica allows an estimate of the economic loss due to bad governance and corruption. Its total yearly loss due to such practices in 2009 amount to almost 0.9 bn RON, in a conservative estimate, squandered by just one large SOE. Put simply, Hidroelectrica sold electricity below market prices, in quantities that exceeded its own available production, and purchased power at above market prices to cover the gap. Summarizing the tables above, in 2009 Hidroelectrica sold 11.6 TWh at 102 RON/MWh and 1.3 TWh at 163 RON/MWh, for which it needed to purchase 2.5 TWh at 200 RON/MWh. Instead, Hidroelectrica should have simply sold its own available production of 10.4 TWh at the market price of 170 RON/MWh. The difference between the two strategies amounts to a staggering 872.9 mil RON.

The almost 0.9 bn RON in revenues could have gone partly to the state Treasury, and partly in the needed investments – but instead goes mostly to a selected list of domestic insider dealers. On top of those are companies like Energy Holding (meanwhile broken into a few others), Luxten Lightning, Green Energy or Grivco, the company of the free-rider party of Mr. Dan Voiculescu. Some political links are obvious, as the change of government brought losses to some of these companies (for instance to Mr. Voiculescu, a personal enemy to President Traian Băsescu, whose suspension he is currently and publicly seeking), or impressive gains to others. Major traders like Petprod have only three employees, each responsible (for instance in 2008) of sales of nearly 30 mil Euro. So finally and when comparing 2004 with 2010 the difference is not that great. All ministers of industry in the end approved Hidroelectrica's deals with these intermediary companies and when they intervened it was to change the profiteers, but not to change the rules of the game.

Despite a high-profile investigation by organized crime Prosecuting Department DIICOT involving a former economy minister, Codruț Seres, (from Mr. Voiculescu's party), and a discrete investigation by Competition Council, most profiteers have had their contracts confirmed from one regime to another and enjoy remarkable profit rates<sup>5</sup>. A transcript leaked from Mr. Seres' file shows that foreign consultants charged in this case were complaining that domestic insiders are so strong and the network so perfect, including the minister, that they cannot

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<sup>5</sup> <http://www.zf.ro/companii/vanzatorii-privati-de-energie-continua-sa-faca-profituri-uriase-energy-holding-si-a-majorat-castigul-de-pestesase-ori-4828892>

find any way in<sup>6</sup>. The lawsuit is underway, but no charge of corruption was brought, so it is unclear why only these foreigners are pursued (for espionage!) and chronic domestic insider traders are not.

**1.5. Finally, our last indicator is in the realm of public human resource management.** Politicization, manifested in the expensive replacements of many people in a top positions in the public sector at each change in government (and indeed of government coalition composition), has continued undiminished after the EU accession, despite Romania's commitments to the contrary. If anything, transaction costs only increased as the governments had to amend the anti-politicization legislation earlier adopted at EU's bidding, a process disputed by the political opposition, the Constitutional Court and the envisaged civil servants themselves. Thousands of law suits by fired executives from the public sector have been filled after 2007 alone, despite the government solution of offering them to preserve all their privileges (therefore expenses) even when removed from office to another position.

In an exemplary case in 2009, the managers of the Proprietatea Fund were granted half a million euro stipulated in their contracts as a firing clause just to leave the positions vacant for the new government. The fund was not even under-performing at the time. Politicization, a major source of both incompetence and instability has come to include even hospital managers, despite many of them winning in Court against the government and is planned by the new education draft law to go as far as schools principals. An easiest way recently identified to shortcut legislation is seen in the proliferation of short-term contract appointments in senior government positions (directors in ministries, heads of agencies, prefects) or non-political public institutions (ex hospitals management), as such contracts do not require open competition to fill in the office.

To conclude, when we compare 2004 with 2007-08 and 2010 we discover that the types of resources allocated preferentially changed from 2004 to 2008 to some extent, became more subtle and professional or were partly dried up by the crisis.

But preferential allocation and government favoritism remains systemic and practiced openly. The massive distortion, involving the greatest volume of funds is the political allocation of public funds to clients, from the budgets of counties, municipalities or national companies. From counties and municipalities the money then gets to smaller, regional or local client companies.

The system is network based, the main substance of illicit trading being influence, not cash, and many politicians being themselves entrepreneurs (or their direct families). Bribing only appears when direct allocation to clients fails or a new client wants to enter the market. A survey of money spent on electoral campaigns finds a correlation between donations and winning of public contracts,

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<sup>6</sup> [www.adevarul.ro/.../Voiculescu-Seres-privatizarilor-strategie-Tuca\\_0\\_357564854.html](http://www.adevarul.ro/.../Voiculescu-Seres-privatizarilor-strategie-Tuca_0_357564854.html)

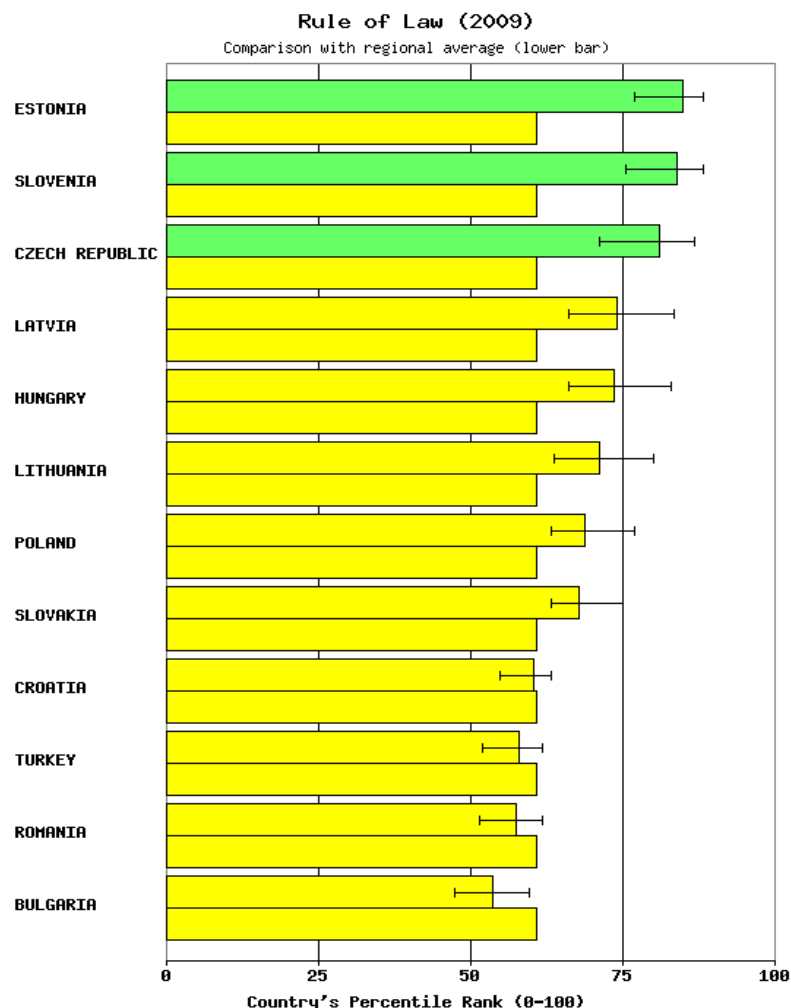
but the amount of donations is so small that the real exchange is clearly not in the transparent realm.

Therefore focusing an anticorruption strategy on bribing cannot yield but limited results. The government had clear administrative instruments that it could have used, for instance in the case of Hidroelectrica, only it has repeatedly decided not to deploy them. Prosecutions should shift from corruption to mismanagement and more than one minister should be charged. As crime becomes more refined, legislation should also follow.

## 2. Constraints to corruption: legal and normative

A major constraint to corruption consists in the existence of an effective and just body of laws and the capacity of the law and order agencies to enforce them impartially and effectively. Romania and Bulgaria had rule of law World Bank Governance scores worse than the other new EU entrants. Romania progressed in 2005-2006 after anticommunists returned to power, but then fell back to the old

practices; Bulgaria started to show good will only in 2009.



Source: Kaufmann D., A. Kraay, and M. Mastruzzi (2010), The Worldwide Governance Indicators: Methodology and Analytical Issues

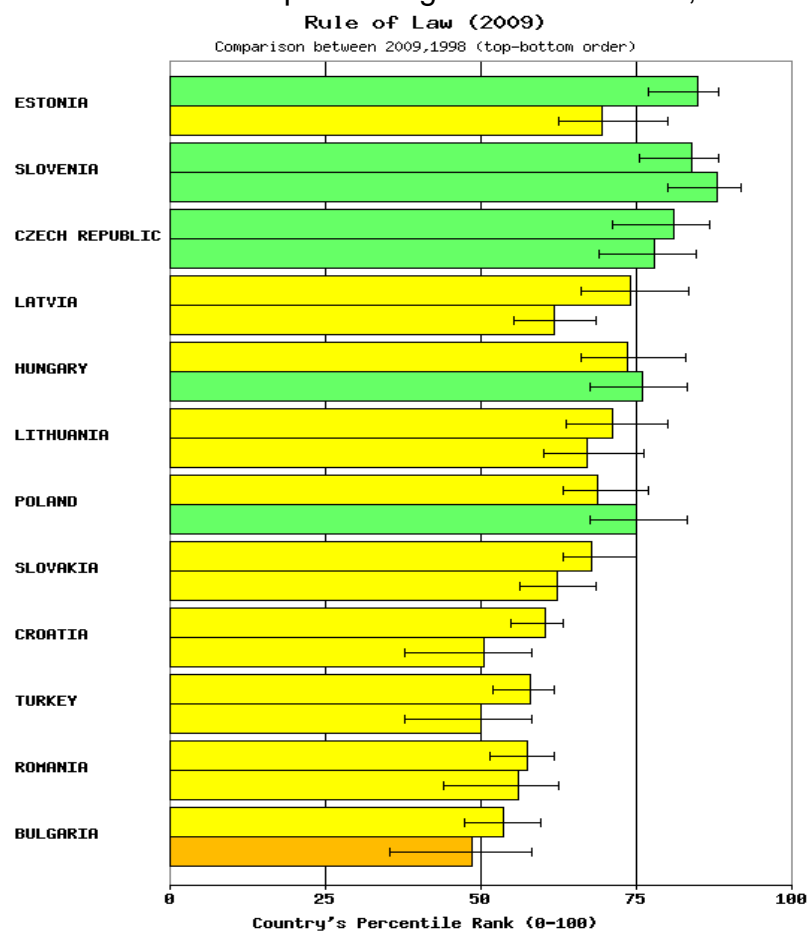
Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

Not only politicians proved reluctant Europeanizers. In both Romania and Bulgaria Judicial Councils and judges in general were not supportive of reforms. Magistrates had been promoters of reform as long their independence from political intervention was at stake; once they became completely independent their *esprit de corps* flourished and no incentives were left to pursue self-improvement. In both Romania and Bulgaria the conservatives in the judiciary managed to

make use of their administrative positions as heads of Courts to be elected into the Judicial Council or Constitutional Court in order to use their office there to oppose substantial reforms to the way these judiciaries operate.

The magistrates' pay was increased to stimulate performance and to curb corruption, but attempts to set up any serious checks on their performance did not succeed and accountability rose to become the salient problem (Freedom House 2005).

By 2007, evidence was pouring in on this count from more than one country, so the World Bank agreed that the most pressing issue has become 'ensuring judicial accountability, given newfound independence'.<sup>7</sup> The European Commission then upgraded its benchmark asking for an accountable, not only an independent Judicial Council. But, unlike the government, which can lose elections for under-performing on EU accession, the Judicial Councils had no EU accession stakes.



Source: Kaufmann D., A. Kraay, and M. Mastruzzi (2010), *The Worldwide Governance Indicators: Methodology and Analytical Issues*  
Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

**Fig 9-10. Comparison of SEE countries with the regional average on World Bank indicator Rule of Law**

The lack of regard of the judiciary for other interests than its own was shown blatantly in the unprecedented 2009 strike of the Romanian judiciary, when they sued and judged themselves a substantial raise of their own pay based on a bonus legally canceled years before, in a moment of dramatic budget deficit. Bulgaria's judiciary leads in 2008 in the Gallup Corruption

<sup>7</sup> James Anderson and Cheryl Gray (2006) *Transforming Judicial Systems in Europe and Central Asia*, <http://siteresources.worldbank.org/EXTECAREGTOPJUDREF/Resources/ABCDE.pdf>, at 333.



Barometer, a global survey by Transparency International as the most corrupt judiciary in the world.<sup>8</sup> Fig. 9 and 10 show that the two countries have recorded insignificant progress from 2004 to 2009, being still perceived below the level of Croatia and Turkey.

Leaving aside perception and going to direct indicators, we now examine the progress made by Romania's main anticorruption prosecutorial office, DNA since 2004 (Tab 4). There seems at first sight to be no significant improvement in the numbers of indictments and final convictions.

<b>Tab 4. Lawsuits</b>	<b>Indictments</b>		<b>Final convictions</b>	
	<b>Files</b>	<b>#pers</b>	<b>Decisions</b>	<b>#pers</b>
<b>2004</b>	169	451	73	165
<b>2005</b>	111	744	73	161
<b>2006</b>	127	360	80	155
<b>2007</b>	167	415	63	109
<b>2008</b>	163	683	63	97

However, if in 2004 no high-level official was investigated by the DNA, by the end of 2010 numerous current and former Members of Parliament, Government Ministers, Mayors and County Council Presidents have been charged, some of them while in office, and sent to trial. The counter-reaction to this anticorruption campaign included political attempts to dismantle the DNA and to fire the management of the specialized body. The Constitutional Court played a very important role in two instances:

- a. In 2006 the institutional set-up of the then Anticorruption Prosecution Office was deemed unconstitutional, thus forcing an institutional re-designed which slowed down the operational activity of the DNA.
- b. In 2007 it extended the immunity of ministers provided by the Constitution also to ex-ministers, thus triggering a wave of retransmission of cases involving such persons from courts to the DNA. The prosecutors were requested to obtain an approval for the start of criminal investigation and to re-administer all evidence.

<sup>8</sup><http://www.transparency-bg.org/?magic=0.5.0.2&year=2007>

In several cases, the Parliament decided to protect its members against criminal investigation. The most notable cases regard the PSD ex-prime minister Adrian Năstase and the PDL sports and youth minister Monica Iacob-Ridzi. In both cases the Parliament refused to lift the immunity against criminal investigation for these ex-ministers which were also Members of the Parliament. In another case, the Parliament refused to allow the arrest against Mr. Păsat, a member of the Chamber of Deputies, also investigated by the DNA. However, in most cases the Parliament allowed criminal investigations to commence against ministers and ex-ministers and for arrests against MPs to be requested to courts. The President issued approvals in all the cases where he was entitled to decide upon the lifting of immunity.

Another criticism voiced throughout the years was that the sentencing practice of courts is not harmonized and that sentences do not have a dissuasive effect as most of them consist in on-probation sentences, especially when they involved high-level officials. To address the first issue, two judges of the Bucharest Court of Appeal published sentencing guidelines which may be used by judges when deciding what would be the correct sentence in a given case.

Another useful tool for the unification of jurisprudence is Jurindex – a database of court decisions which allows judges to review decisions issued by their colleagues in similar cases. On the second issue, in 2010 the courts started to pass harsher decisions, including with regard to high-level officials (the mayor from Baia-Mare – 2 years and 6 months – the mayor of Râmnicu-Vâlcea – 3 years and 6 months, ex-senator Vasile Duță – 5 years).

While medium level corruption cases are handled by courts in less than three years, high-level corruption cases involving ministers and MPs are dragging behind in the High Court of Cassation and Justice for several years without reaching even a first instance decision. This contributes to the general opinion that high-level corruption cases benefit from special treatment from the courts. It remains to be seen if the elimination of the automatic suspension of trials when a challenge of constitutionality is raised (a method to delay trials excessively used in high-level corruption cases) will indeed speed-up the trials. Initial assessments show that the challenges of constitutionality are raised less frequently after the elimination of the automatic suspension.

The massive transfer of legislation prompted by EU did not yield the expected results. Romania, Bulgaria and Macedonia turned during their accession into the world leaders of anticorruption preparedness according to Global Integrity Index, but their systemic particularism was barely touched<sup>9</sup>. A compiled index of anticorruption laws and regulations<sup>10</sup> shows that tenths of laws were adopted

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<sup>9</sup> See <http://report.globalintegrity.org/globalindex/results.cfm>;  
<http://www.globalintegrity.org/documents/KeyFindings2008.pdf>

<sup>10</sup> Monica Dorhoi (2004), 'Anticorruption Assessment Index. A Comparative Review of Anticorruption Strategies', Paper presented at Midwest Political Science Association, Palmer House Hilton, Chicago, Illinois, April 15.



since 1998, not only by candidate countries, but also by countries like Albania, who surpassed some of the new EU member countries, actually increasing the distance between the 'real' country and the 'legal' country.

As to **normative constraints**, the picture is also mixed. Romanians are very vocal in surveys against corruption and there is an overwhelming majority complaining of inequality in front of law and claiming all politicians are corrupt. However, the rally to defend Justice Minister Monica Macovei in 2007 when she was sacked, registered only about 3000 people in a city of two million inhabitants. For a more systematic analysis we reviewed the work of 50 nongovernmental organizations between 2004-2010, looking at the number of court actions against state institutions<sup>11</sup> and their outcome, at *watchdog*-type activities, the development of web platforms and surveillance campaigns.

The main mechanisms by which NGOs act as a *watchdog* is requesting information under FOIA, law 544/2001. Although there is no centralized database to reveal what is the exact percentage of applications submitted by NGOs, we can produce an overview over the annual reports, prepared by the National Agency for Government Strategies and published on [www.publicinfo.ro](http://www.publicinfo.ro). If in 2003, the proportion of entities accessing public information was 80% individuals and 20% legal persons, the direction has changed visibly during 2004-2008 in favor of the latter<sup>12</sup>. While in 2004, individuals accounted for 69.99% of the requests compared to 30.01% the legal entities, in 2006, the ratio was 2-1, 65% of requests were submitted by individuals and 35% by the legal entities. The 2006 report notes that "differences on the requests of legal persons according to the administration level (39% in central government compared to over 24% in the local one) can be explained by the fact that NGOs monitor constantly, in particular the work of central institutions". In 2009, the ratio was 71% individuals compared to 29% legal entities.

The lawsuits activity is deployed most intensely in the Capital. This is due to the significant concentration of organizations in urban areas (87%) and Bucharest-Ilfov region, almost 22% of the total number<sup>13</sup>. NGOs such as APADOR-CH, Romanian Academic Society, Save Bucharest, Pro\_Do\_Mo etc are examples of active actors that use legal procedures. However, there are also local organizations that have acted in court public institutions for legislative issues. An example is Pro Democracy Association Craiova, which in 2008-2010 had 33 lawsuits with public institutions, of which nearly one quarter were won, 14 suspended and five dismissed. The organization producing this report (Romanian

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<sup>11</sup> The selected reasons for the actions are only related to laws such as 52/2003, 544/2001, therefore treating transparency and access to information, but also norms of ethics and integrity, corruption, public acquisitions.

<sup>12</sup> This category contains other legal entities also. Still, the 2006 report acknowledges the role of NGOs in accessing public information. Moreover, the intense activity of the nongovernmental organizations is proved by the significant number of monitoring reports that are based on requesting information

<sup>13</sup> Civil Society Development Foundation, *Nongovernmental sector...*, p. 23.

Academic Society) had better results<sup>14</sup>. Another indicator is the traffic on dedicated webpages – the leading , a forum on local governance with some watchdog activity only counts 27 000 users per day, and this is the best traffic of any NGO in Romania.

These poor results are explained by the fact that the bulk of Romanian NGOs is mostly focused on social issues, and as most EU funds come only through local or central government they avoid being involved in any activity which can be seen as critical towards government. Even from the core Coalition for a Clean Parliament, the strong alliance which contributed decisively to a change of government in 2004 due to a anticorruption campaign half the members have joined various political parties or secured official positions. NGOs involved in heritage issues and urban policy have grown from 2004, but the participation to their activities remain limited. There are no open sources of funds for anticorruption activities, as businesses are understandably reluctant to lose the favor of government.

The European Social Fund alienates the organizations from watchdog activities. The situation has worsened, as funds are rarer and harder to get, especially due to the economic and financial crisis and the redraw of the international donors. In other words, not only are normative constraints low and few anticorruption activists exist who are still in business and enjoy public trust, but the trend is negative, as there seems to be not enough funding for such activities, either from donors and Romanian business community or simply by volunteers. Romania had an active and dedicated anticorruption community only in the capital, and in insufficient numbers even there.

## Conclusion

The methodology of this paper departs from classic studies of corruption on sectors, or of classifications such as administrative or grand, as we believe such approaches are grossly misleading. What we have tried to research here is the modus operandi of the state, to discern if it is based on ethical universalism, as any modern state should function, or rather on privileged allocations. Particular allocation seems to be the norm in Romania, and here lies the chief corruption mechanism which has not changed since 2004. Addressing sectors instead of targeting the main – political – mechanism has been the approach of all anticorruption strategies of far. They do not seem to have worked.

The Romanian health system, for instance, is under financed and is characterized by a staff deficit. Physicians in the public sector make on the average under 400 Euro per month. Therefore surveys like the 2005 study conducted by the World Bank for the Romanian Ministry of Health concluding that so-called informal payments amounted to \$360 million annually only show the extent to which the state mismanages this sector. Even in percentages, Romania has the lowest budget for health in Europe, with ripe evasion of

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<sup>14</sup> <http://www.againstcorruption.eu/story/ngo-coalition-wins-major-battles-for-transparency>

contributions paying to the politically controlled national insurance company. As hundreds of doctors were charged with petty corruption over the years and more thousands emigrated since 2007, the solution to Romania's health system is not in the realm of anticorruption. A radical reform of the sector and of its financing are the ways out. In other words, anticorruption approaches cannot be confined to prosecution, as this by itself has proved unable to solve such a gross problem.

Finally, despite the apparent lack of sustainability of European conditionality in the case of Romania's rule of law and anticorruption reforms, we believe that instruments exist to challenge these rules of the game. The Mechanism for Cooperation and Verification should continue, and postponing Romania's Schengen accession and tying it to an improvement on corruption is justified.

A successful strategy would reunite grassroots monitoring of government impartiality with top down (including from Brussels) intervention when red flags are out. EU should combine careful watching of Romania's market and act immediately when evidence exists of privileged actors. It should also encourage the funding of grassroots watchdogs, especially outside the capital, particularly when EU funds are concerned. The anticorruption legislation also must evolve in order to cover better the insider dealings which make most of transactions and not just bribing. Finally, since all government parties have proved unwilling to change the rules of the game, new political challengers are needed or the system will continue reproducing itself. These political challengers have already their program laid out: changing the current policies which only feed lack of accountability and corruption. Ironically, a "reform of the state" for better governance was also the program of President Băsescu and the current government when taking office in 2009.

## ***Europeanization and Effective Democracy in Romania and Bulgaria***

**Mihaela Racoviță**

### **Abstract:**

By 2007, Romania and Bulgaria registered the slowest progress in terms of transparency, accountability and rule enforcement among Central and Eastern European candidate countries. This article reviews the impact of EU political conditionality since the 1993 Europe Agreements. It relies upon primary data to examine the variation of corruption trends between 1993 and 2007 in the context of EU led reforms. This article argues that national elite tactics of window dressing and backtracking led to little change in terms of effective democracy. This article finds that reforms due to Enlargement-led Europeanization had not impacted upon public perception on corruption during the pre-accession period.

**Keywords:** *Europeanization, effective democracy, corruption*

The drive towards Europe has been part of Romanian and Bulgarian political agenda, the syncope of communism apart, since the early days of state building and nation-building in the nineteenth century. This “geocultural Bovarism,’ a disposition to leap frog” into Europe, was motivated by the “fear ... that the country would fall right off the edge into another continent altogether” (Judt 2001, 10). Post-1989 however, these aspirations did not automatically translate into ability to change and conform to European standards. The road to EU membership was rocky for both Romania and Bulgaria. Political instability and lack of political will, despite public consensus across party lines over EU accession, led to relative slower economic and political reforms and poorer record of *acquis* implementation (Dimitrova and Dragneva 2001; Phinnemore 2006). The two neighboring countries made all too often the headlines in Western media not because of their Europeanness but because of corruption. The Telegraph called Sofia “Europe’s corruption capital” (Freeman 2008), and the New York Times wrote that “Romania defends record on corruption” (Dempsey 2008). As their notoriety as corruption heavens increased, so did the scrutiny of the European Union as part of the integration process. Since mid-1990s, the European Commission annual reports repeatedly pointed at the

inefficiency and lack of will of national actors, spread across branches of power, to curb corruption.

By 2007, lack of progress in addressing high level corruption threatened to derail Romania and Bulgaria's bid for EU membership. This article relies upon the theoretical framework provided by literature on Europeanization to examine the pre-accession impact of EU political conditionality upon effective democracy by adjusting readings of rule of law, transparency, quality of bureaucracy, government stability with corruption. Among Central and Eastern European (CEE) candidate countries,<sup>15</sup> Romania and Bulgaria registered the slowest progress in terms of transparency, accountability and rule enforcement. This article argues that successive government tactics of window dressing and backtracking and reluctance by national political elite to implement reforms are responsible for delaying and sometime neutralizing Enlargement-led Europeanization upon the quality of democracy in these countries. This article reviews the track of EU political conditionality from the signing of the Europe Agreements in 1993 to their accession, investigates the variation of the corruption trends between 1990 and 2007, analyzes the problems posed by corruption at the micro level and proposes some explanations. The findings show that public perception of corruption and levels of effective have changed little between 1993 and 2007 despite EU political conditionality, European Commission monitoring system through annual country reports, roadmaps and regular feedback.

### **Europeanization and Domestic Change**

Over time, theoretical and methodological approaches of the ever increasing field of Europeanization have diversified, from macro to micro analysis and from case studies to cross country studies (Cowles et. al 2001; Featherstone and Radaelli 2003; Borzel 2005). Europeanization, understood here as “processes of (a) construction (b) diffusion and (c) institutionalization 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 subnational) discourse, identities, political structures and public policies” (Radaelli 2003), has been since the early days of post-communist transition the key variable in determining domestic reform in CEE. Scholars are by and large in agreement that through the policy of conditionality (reforms in return for funds and membership) the EU has been able to influence domestic change (Grabbe 2006). Theoretically, the “external incentive model (Schimmelfenning and Sedelmeier 2004)” (which was EU driven) has proven more useful in explaining the EU's ability to influence domestic change and rule adoption than models of socialization and/or lesson-drawing, which are CEE driven (Borzel and Rise 2000).

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<sup>15</sup> “Candidate countries” is used here for the countries part of the 2004, 2007 enlargement waves.

Enlargement-led Europeanization happened through the policy of conditionality developed by the European Councils of Copenhagen and Madrid and enforced in practice through the Commission's Annual Reports and the screening processes. In time, the Commission expanded the areas monitored as part of the rule of law dimension, including corruption and judicial reform. Through 'active' (i.e. conditionality) and 'passive' (i.e. membership) leverage (Vachudva 2005), the EU directly influenced changes in CEE domestic politics due to the speed and breath of measures it required and the willingness of candidate countries to comply (i.e. Grabbe 2001; Dimitrova 2002; Papadimitriou and Phinnemore 2004). However, the EU impact was neither continuous nor definitive. While the EU did shape, direct and occasionally determine change, the CEECs were not passive recipients of Brussels rules and regulations (Vachudova 2005; Jacoby 2004; Hughes et. al 2004). Cross-country and cross-policy studies (e.g. Schimmelfenning et al. 2003; Schimmelfenning and Sedelmeier 2004; Borzel 2005) have found that during pre-accession the Europeanization of CEE was sensitive to similar variables as in the case of old member states plus variables specific to post-communist politics (i.e. weak institutions, political fragmentation and instability, central planning). Meanwhile, the adoption costs and veto players only explained variation in the timing of rule adoption (Schimmelfenning and Sedelmeier 2005). The EU strategy towards Romania and Bulgaria was characterized by a mix of threats and rewards, mediating pressure to reform through the provision of financial assistance and the prospect of membership per se (Spendzharova 2003). In these two countries, the EU ability to influence domestic reforms was hampered by the evolutionary and contested nature of EU conditionality as well as the considerable EU discretion in its implementation (Papadimitrou and Gateva 2009).

In Romania and Bulgaria implementation in particular was hindered by political instability, high level of politicization of the judiciary as well as the economic sector and the presence of organized crime. The level of implementation is dependent upon "the degree of ambiguity and the level of conflict related to the decision that is supposed to be implemented (Sverdrup 2007, 208)." Some scholars have argued that implementation of the *acquis* prior to accession has been a question of bureaucratic problems rather than political veto-maneuvers (Hille and Knill 2006). Other cross-country studies show that key to successful political conditionality were high EU credibility and low government adoption costs (Schimmelfenning et al, 2003) as adoption costs "increase the more EU conditions negatively affect [...] the government's domestic power base" (Schimmelfenning and Sedelmeier 2005, 29).

While Enlargement-led Europeanization has promoted the democratic and liberal elements of government (Vachudova 2005), the EU ability "to penetrate domestic institutions is not perfect, universal or constant," as "adaptations reflect variations in European pressure as well as well as domestic motivations and abilities to adapt" (Olsen 2002, 356). In Romania and Bulgaria the impact of Europeanization was truncated by corruption, traffic of influence and the survival



of organized crime networks. Since the Copenhagen criteria mentioned rule of law, transparency and separation of powers and given corruption ability to distort them (corruption in legislative bodies reduces accountability and representation; corruption in the judiciary suspends the rule of law; corruption in the public administration results in unequal provision of services) corruption became subjected to EU monitoring mechanisms. Romania and Bulgarian country reports increasingly pointed out lack of progress in addressing high level of corruption as well as lack of political will.

For the purpose of this article, this article operates with a definition of corruption as “any conduct or behaviour in relation to persons entrusted with responsibilities in public office which violates their duties as public officials and which is aimed at obtaining undue gratification of any kind for themselves or for others” (PMG 2003). In CEE, governmental corruption is a protracted problem, present during communism, when the “communist autocracy was tempered by corruption” (Levin and Satarov 2000), and continuing after 1989 because of the “moral chaos” and opportunities for corruption created by privatization and transition more generally (Campos and Fidrmuc 2003). This article investigates the impact of corruption and deficiencies in government accountability on the quality of democracy and operates with a concept of ‘effective’ versus ‘formal’ democracy. The spectrum of democratic definitions expands, throughout literature, from minimalist - based on a “procedural minimum” that features free and fair elections, universal suffrage, and basic civic and political freedoms (Collier and Levitsky 1997), to maximalist ones (including bureaucratic quality, government accountability, etc.). This article operates with the following definition of effective democracy: a system where “democratic practices have spread throughout society” and are free of “patrimonialism and clientelism” which “eat away at democratic authority” (Heller 2000, 488).

### **Model of Analysis**

Operating with the assumption that “hidden” (outside overt electoral fraud picked up by other indices) and widespread corruption distort the traditional readings of democracy, this article follows six determinants of effective democracy: political competitiveness, quality bureaucracy, low level of corruption, high level corruption, law and order, democratic accountability and government stability. The resulting patterns will also reflect the extent of the impact of Europeanization in time.

The database concerning EU conditionality and the measures implemented by states is largely based on the European Commission’s country reports, starting in 1999, the opening of the negotiations for EU accession, and ending in 2007, the year of Romanian and Bulgarian EU accession. Additionally, the paper relied upon *Euractiv*, the Europa database, mainstream Romanian and Bulgarian written press as well as international press reports and analysis. Secondly, the data for the corruption variables is largely based on the PRS International

Country Risk data (PRS 2007), specifically, on the weighted variables from the Political Risk index. These are: “government stability” (ranging from 0 = ‘very high risk’ to 12 = ‘very low risk’), “corruption,” “law and order,” “democratic accountability” (for all three 0 = lowest quality to 6 = ‘highest quality’), and “quality of bureaucracy” (where 0 = lowest quality and 4 = highest quality).

The first variable of “elite corruption” looks specifically at “excessive patronage, nepotism, job reservations, ‘favor-for-favors’, secret party funding, and suspiciously close ties between politics and business” (The PRS Group 2007). However, as scholars have argued that the PRS-ICRG index of corruption fails to capture structural or endemic corruption (Linder and Santiso 2002) and in order to increase the validity of the findings, this study also examines two other indices of corruption: the CPI (the Corruption Perception Index, developed by Transparency International which is designed to account for small level corruption) and “control of corruption” indicator (devised by Worldwide Governance Indicators). Besides the supply-demand sides of corruption, there is also the problem of the lack of enforcement of existing legislation (failure to apply the norms and mechanisms set out by the formal layer of democracy). As Mishler and Rose (2005), and Rose and Shin (2001) argue, the existence of corruption within a system and the inherent violations of the rule of law lowers the “standard of political performance” of a regime. The stability of the regime, defined as “the government’s ability to carry out its declared program(s), and its ability to stay in office” (PRS Group 2007) can also impact turnout, since is often linked to corruption scandals of politicians which cause demission or resignation of government officials (destabilizing the cabinet). Lambsdorff (2003, 234) further argues that “a strive for corrupt income among politicians is commonly in contrast to the declared program,” which in effect “reduces popular support and threatens the ability to stay in office.”

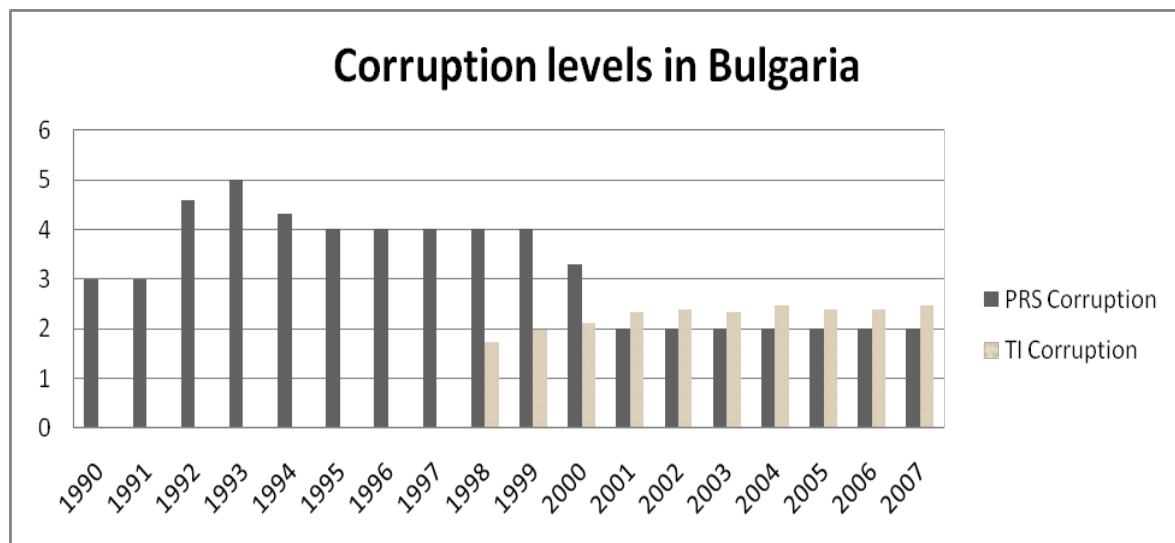
The impact of corruption at the level of the bureaucratic apparatus and its subsequent impact on voter turnout, a fourth variable is introduced: ‘quality of bureaucracy.’ Functioning with the notion of a multi-layered democratic government, this variable impacts upon the quality of democracy in that it replaces regular networks based on kinship with an efficient and meritocratic form of organization (Etzioni-Halevy 1983). Although Downs (1965) and other scholars of bureaucratization emphasize the pitfalls of overdevelopment of bureaucracy and its potential for degeneration, this investigation is largely based on the initial stage of bureaucratization in CEE, and deals with the problems of dysfunctional/incomplete expansion rather than excessive growth. Thus, it looks at the existence of meritocratic appointment (emphasized by Weber for its “egalitarian potential”), bureaucratic efficiency (defined by citizen satisfaction), and low level of corruption. Since the PRS ratings are monthly this article operates with an annual score representing the average of 3 months: February, June and November (chosen to minimize the impact of disturbances on the ratings: end of the fiscal year, holiday time, etc.).



## Corruption trends from 1993 to 2007

Romanian and Bulgarian post-communist politics has been plagued by high level of corruption largely due to opaque privatization procedures, rampant petty corruption, excessive hurdles to entrepreneurship, perceived lack of political will to address corruption “at the top”. The ability of previous networks of influence (be it party, secret police but also informal practices of traffic of influence diffused throughout social structures) to recycle themselves and adapt to the new political and economic environments have contributed to the politicization of public institutions, privatization of public interests and functions, and subordination of the judiciary to leading political and economic interests. This was arguably due to the “superimposition of communism on traditional rural societies, which led to neotraditionalist societies organized around status (“status societies”) and governed more by unwritten rules than by formal laws” (Mungiu-Pippidi 2003, 82).

In Bulgaria, corruption has reached the status of “pervasive” or endemic corruption (see below), that manifests itself both in a large degree of state capture by other interests, as well as societal corruption (from small bureaucrats to doctors, to policemen). The TI score of corruption shows that public perceptions are hovering around 2. As the adjusted scale is from 0 (worst corruption) to 6 (no corruption), the value of 2 and below demonstrates the poor record Bulgaria has maintained over the years in fighting corruption. The incidence of corruption and the extensiveness of informal networks, based on paternalism and clientelism, are legacies of a past where product scarcity made survival dependent upon informal networks. The corrupt character of national elites in Bulgaria has expanded in time, to the point that “now it is taken as a given” (Krastev 2002, 49).



**Figure 1: Corruption Levels in Bulgaria 1990-2007**

Public perceptions of widespread corruption are furthered by the failure of the judiciary to prosecute cases of high corruption, and by the often blatant corrupt behavior of some of its ministers (Fish and Brooks 2000, 63). By 2002, none of the investigations initiated by the state prosecutor's office into the one-hundred largest privatization deals involving most leading political figures was completed: "The evidence winds up not in court but in the media. The result is not the triumph of the rule of law, but a state of total insecurity and the use of the prosecutor's office as an instrument of political pressure (Krastev 2002).

Between 1990 and 1997, corruption became part of a semi-legal transition to democracy and a market economy where self-serving, anti-social behavior was directed toward the state itself, undermining trust in public institutions. In Bulgaria, corrupt schemes included but were not limited to the draining and subsequent collapse of state and commercial banks (a specific form of "privatization" involving open plunder with the tacit participation of state officials), "entry-exit" economy (a corruption scheme where the profitable activities of state-owned enterprises such as supply of raw materials and machines, realization of the production are taken over by private companies, while the losses are covered by the state budget), participation of public officials in smuggling schemes (drugs, weapons, people, goods), financing of political parties and election campaigns (anonymous contributions in return for immunity), misuse of licensing and permits, and lack of transparency of public procurements (Bulgarian Working Group 2001).

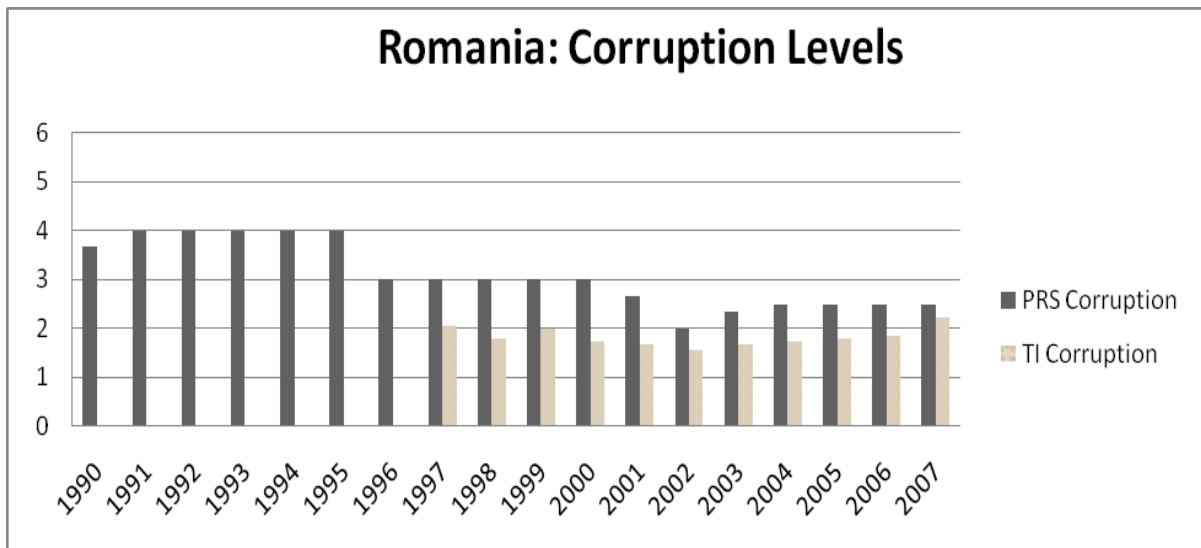
The 1997 elections in Bulgaria followed the far reaching economic crisis, and brought a centre right government with a reformist agenda. However early steps to introduce good governance mechanisms (enacting several anti-crime and corruption laws and amending the Privatization Act to improve transparency) enhancing institutional efficiency and transparency diluted in a cloud of corruption scandals by the end of the Kostov's government mandate.<sup>16</sup> The 2001 elections were won by the newly established National Movement Simeon II on a predominantly anti-corruption electoral platform. By 2005 this government was also embroiled in several corruption scandals (among which the less than transparent privatization of Bulgartabac) and despite successfully concluding the EU chapter negotiations, it was penalized by the electorate. As successive governments promised change, achieved little and by the end of their mandate had more to show in terms of corruption scandals than anti-corruption measures, the average Bulgarian seems to have given up on the ability of the politicians to deliver and doubts there is political will to address corruption. Low trust in political elites translated in low levels of trust in national political institutions which ranked constantly well below the EU average and decreased constantly. By 2007, levels of trust registered the lowest score since Bulgaria's inclusion in Eurobarometer

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<sup>16</sup> Shady privatization deals such as Bulbank and the sale of the Bulgarian Telecommunication Company, dubious business deals such as the Cigarette Affair, the Alcohol Affair and receiving party donations from firms that had acquired the money by draining off value-added tax revenues from the public budget.

surveys: trust in political parties is expressed by 7% of the population, in national parliament by 11% (down 3 points from the previous year) and in the government by 16% (Eurobarometer 68 2007).

In Romania, elite change began with a preemptive coup led by actors within the communist party. After the first election in 1990, as power remained concentrated in the state and with the former communist elite who re-organized itself under a different political umbrella, turnover of elite was restricted to a few executive positions (Higley et al. 1998). Since corruption was linked to the perpetuation of former party and secret police officers in the state structures after 1989, the screening of elected and appointed high level officials was linked with the anti-corruption reform agenda for certain political parties and civil society organizations. In 1999, the law 181/1999 provided for the creation of an institution (CNSAS) responsible for conducting such screening process was watered down and contained no provision for lustration that it had little impact upon the political elite.<sup>17</sup> Like in Bulgaria, by 2000 electoral campaigns were fought and won on anti-corruption tickets only to disappoint an increasingly despondent electorate. In the few cases where prosecution of high level officials (ministers, former ministers or former prime ministers) for corruption, bribery, abuse of public office or traffic of influence got under way, they were repeatedly rebuffed by parliament who refused to strip them of parliamentary immunity.



**Figure 2: Corruption Levels in Romania 1990 – 2007**

Since 1993 (signing of the Europe Agreements), and especially since 1999 (opening of accession negotiations), this muddy, politically and economically clientelistic environment, where social norms outmaneuvered legal constraints, cohabitated with the process of EU accession. Given the public support for

<sup>17</sup> In 2007 the law was challenged on constitutional grounds following verdicts by CNSAS that involved high profile public figures and politicians.

European integration (the 1996 Eurobarometer registered 97% support among average Romanians and since then support among both Romanians and Bulgarians has averaged between 60-70%), it seems that for average Romanians and Bulgarians Europeanization during pre-accession was both a promise for economic prosperity but also for good governance. Meanwhile, in response to Brussels demands or criticisms, reactions from national establishments to EU criticism were reactive rather than preemptive. When reform moved ahead too quickly or too far one can observe either legislative backtracking through post-ante amendments or foot-dragging in implementation.

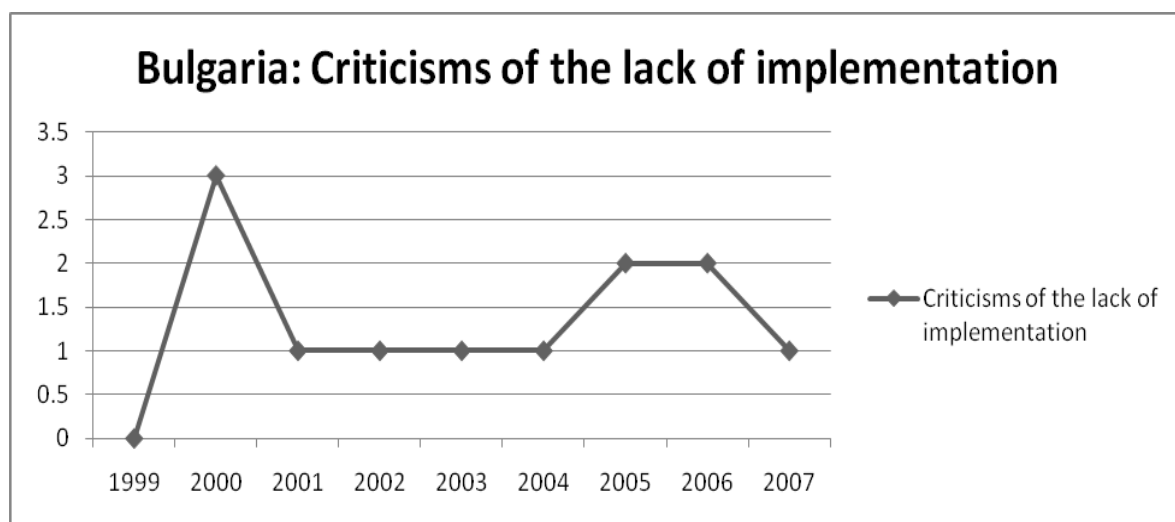
### **EU Conditionality and Domestic Change**

Like all Europe Agreements, Romania's and Bulgaria's conditioned the relationship between the Community and the candidate countries upon political developments such as consolidating its democracy by setting up "institutions suitable to make the association effective" (European Commission 1994, 184). Between 1993 and 1998 monitoring of political reforms was done through political task forces who provided regular feedback of reforms. Despite some political and economic reforms, by 1997 the Opinion on Romania/Bulgaria's Application for membership of the European Union found that the countries were unable "to assume the obligations of membership in the medium term" (European Commission, 1997, 184). For example, the Opinion stated that "Romania had neither transposed nor taken on the essential elements of the *acquis*," and still needed "considerable efforts in justice and home affairs" (among others) and "substantial administrative reform" (EU Commission 1997, 114).

Since 1998, monitoring was done through the Commission Annual Reports and chapter negotiations. Yet despite the fast pace of negotiations and chapter closings (all of them occurring in the time span on 2003-2004) the slow pace of judicial reforms and lack of results in the fight against corruption continued. Frustration of EU officials translated into the freezing of the negotiations on the chapter for justice and home affairs with Bulgaria in the Spring of 2003 until progress was shown by the government" (European Commission 1997). This arrived in the form of amendments speeding up legislative adoption. While criticized by some scholars for "significantly limiting judicial independence" (Smilov 2006, 313), the move did facilitate the resuming of negotiations.

In response to Brussels criticisms, the two countries opted for different strategies though aiming for similar outcomes: protecting the status quo while simulating adoption of EU standards. In Bulgaria legislative reform advanced in small installments followed by amendments to improve the scope of reform or its transparency. In Romania projects of law adopted to meet EU standards were soon amended under pretext of improving efficiency while in fact restraining the scope and power of created bodies to tackle corruption. In Bulgaria several laws were enacted ensuring the independence of the judiciary or strategies of tackling corruption (2002 and 2004) and organized crime, such as the "National strategy

for combating organized crime” (1998). Though it did not seek to amend or dilute the legislation through formal means to the same extent as in Romania (this happened to a certain degree with the amendment to the Penal Procedure Code in 2005 that limited the possibilities for police investigations and was subsequently subject to criticisms in the EC 2005 country report), it made little to no progress in implementing the legislative reforms. Thus, the gap widened between formal rules and the situation on the ground or in other words, between the real country and the legal country. This lack of progress in implementation did not escape the European Commission which commented in its 2004 report that “political influence still interfered” in judicial procedures and mentioned delayed or poor implementation yearly (see below) but these comments did not prevent the amendment to the Penal Procedure Code in 2005.



**Figure 3: Timeline of Criticisms of lack of reform implementation in Bulgaria 1999- 2007**

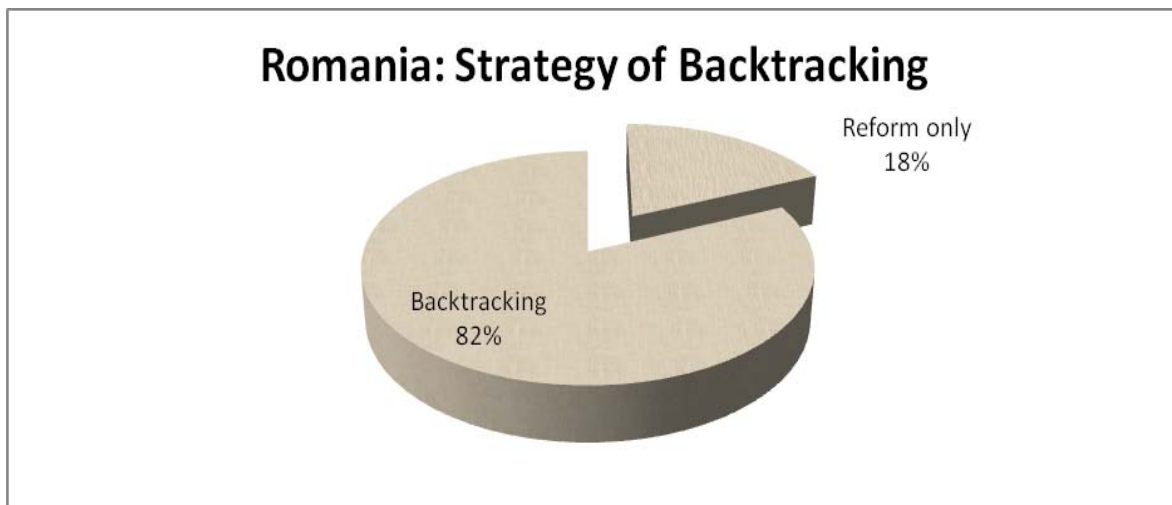
A sharp increase in the number of criticisms of the lack of implementation occurred in 2000 and then in 2005-2006 periods. The first spike in 2000 is due to EC frustrations over the delays in implementing the amendments to the Criminal Procedure Code, which were adopted in 1998 and 1999 respectively. The EC pressed for the amendments to be enforced so that to minimize the possibilities for adjourning cases, facilitating quicker proceedings, and strengthening the independence of magistrates (EC 2000 country report). Criticisms also involved the failure to increase the capacity and staff of courts to effectively deal with the number of cases, provide for physical security or the availability of legal aid (EC 2000 country report). By 2001, the Bulgarian Parliament passed the statute of the State Administrative Commission, creating a framework, but continuing to drag its feet in allocating sufficient resources for its functioning (EC 2001 country report). The second spike of intense criticisms recorded for the period of 2005-2006 corresponds to the series of mafia murders in central Sofia. Most recent victims included Bulgaria’s top banker, the owner of a first division football team

and a leading customs official. Klaus Jensen, a EU-mandated investigator into the mafia killings and the ability of Bulgarian justice to tackle them declared that “crime busting efforts in Bulgaria were a total mess” and warned that contract killings would spread to other EU countries, making them the new “turf” (Smith 2006). Despite EU pressure and criticisms, most of these assassinations remain unsolved.

While Romania also suffers from lack of implementation, it does not receive the same volume of yearly alerts on the lack of concrete results as Bulgaria, because it compensates through a different strategy. The judicial reform follows a one step forward-two steps backwards track. Signs of life in this area trigger almost immediate reactions of raising barriers to protect the status quo. For instance, immediately after adopting the Anti-Corruption Strategy and creating the National Anti-corruption Directorate (DNA) in 2005, the Constitutional Court ruled that only the General Prosecutor may investigate members of Parliament (EC 2005 country report). This was followed by wide reshuffling, with the Director and all three Deputy Directors of the Directorate-General for Protection and Anti-Corruption (DGPA) dismissed (EC 2005 country report). Similarly, after the transformation of PNA in the National Anti-Corruption Department (DNA) in 2006 through a government ordinance, and its passing under the authority of the National Prosecutor Office, which effectively meant that “deputies and senators could now be investigated,” the government ordinance was rejected by the Senate in February 2006. These were only the latest movements in the chess game which was even older. The transformation of the PNA into the DNA was triggered by a decision of the Constitutional Court which did not allow PNA to investigate members of the Parliament. This move had allowed the reopening of high corruption cases, such as “the Zambaccian file” in which Adrian Nastase was prosecuted on charges of bribery and corruption, and where the Minister of Economy, Dan Ioan Popescu was tried in a file involving the national electricity provider. Though Romania was placed under a monitoring mechanism in 2007 and the introduction of a judicial safeguard clause in the Accession Treaty, the Constitutional Court persisted in protecting high level officials from prosecution. In 2007, the Constitutional Court established in relation with another Nastase centered investigation (the ‘Tamara Affair’), that former members of government or parliament cannot be investigated as average citizens; their prosecution requires approval by the president and parliament. These types of practices show that the national political elite has learnt to protect itself from the law through the law.

In Romania, the trends regarding legislative reform and institutional creation in the areas of judicial, administrative and anti-corruption reform between 1999 and 2007 shows that backtracking (i.e. amendments that dilute the reforms, annulment of government ordinances by Parliament, or any other measure with the purpose of diminishing the capacity and scope of reforms) occurred in 49 of the 61 cases of legislative adoption or institutional creation.





**Figure 4: Strategy of Reform Backtracking in Romania**

Thus backtracking occurred in 82% of the reform initiatives in Romania, with only 18% keeping their ground (see above), these being more benign creations, such as the mediation council established on 2006 through the Law of Dispute Mediation that provided an alternative to civil courts for settling claims or disputes.

Corruption does not only interfere with due process through legislative means, but also through political pressures. A 2004 survey showed that a majority of Romanian judges has experienced some form of political pressure in the exercise of their function (2004 country report). Despite changes to the law introduced following comments in country reports, in Romania, as in Bulgaria, the appointment of judges and their independence remained flawed throughout 2000-2007. In Romania, political interference was especially visible in those cases where the Parliament proceeded to stop or impede investigations of its members by refusing to strip members of parliament under investigation of their parliamentary immunity. In 2006 the Romanian Parliament rejected a request made by the DNA to search the property of a Member of Parliament in a high corruption case (mentioned in the 2006 country report by the European Commission). The Parliament was also responsible for attempting to reduce the effectiveness of the newly created National Integrity Agency (ANI, responsible for the verification of public officials declaration of assets) by modifying the nomination procedure of its director as well as the nomination of the Prosecutor General to make them more politically dependent (2006 country report). Despite Brussels warnings of reform, the Romanian Senate impeached a month after accession the minister of justice largely credited with advancing judicial reforms, securing autonomy for prosecutors, and changes of personnel (through appointment of new, younger chief prosecutors) which led to the opening of several high profile corruption investigations (eight of which former and current ministers). Overall, many of the anti-corruption mechanisms in Romania



remained subordinated to the political, acting under the auspices of a series of high status institutions.

In Bulgaria attempts by political actors to influence and pervert the course of justice are intertwined with organized crime. While in early 2000 microphones were discovered in the home of the Prosecutor General (2000 country report), contract killings remained severely under-investigated (2006 country report). In 2007, political interference in judicial investigations involved a Socialist economy and energy minister (Roumen Ovcharov) who was accused of interfering in a high-level corruption investigation to protect a friend (Burmwasser 2007). Although the Bulgarian Parliament as an institution does not practice the same level of political involvement in pushing back reforms (possibly because of a higher fractionalization of parties in Bulgarian political arena as compared to Romania), individual political parties have done their share. In 2005, the announcement by the then minister of Economy Lidia Shuleva to sell state-owned Bulgartabac to British American Tobacco (BAT) triggered threats of motion of censure from the ethnic Turkish party (Movement for Rights and Freedoms). Given that most producers of raw tobacco are ethnic Turks who benefited from guaranteed higher minimum raw tobacco prices set by the government of which the MRF was a member, the party opposed the privatization of Bulgartabac so that to protect its electorate (Karstev 2006). While a partner in the coalition government negotiating EU's accession, MRF has been frequently linked to corrupt business deals and accused of using political blackmail to advance private interests.

Much of existing corruption was facilitated by existing opportunities or loopholes in the legislation. The over-used practice of the executive ruling by decree, effectively by-passing parliament, not only circumvents the constitutional legislative process but also creates a reflux effect, in that many government ordinances are later rejected by parliament. In Romania successive governments repeatedly relied upon government ordinances to legislate, especially during periods of political instability such as in 2000 when only 59 of the 453 draft laws were approved by Parliament (2000 EC country report). This practice favours legislation centered upon securing and protecting group interests rather than being reform oriented. Moreover, it prevents the emergence of coherent pieces of legislation. In 2005, the EC country reports noticed that the most basic procedural principles were dispersed across several pieces of legislation making it difficult for a fair and clear application of the law. The 2006 EC report for Bulgaria pointed out that there was still no legal provision to suspend magistrates who are under internal disciplinary investigation. The 2006 Freedom House report on Bulgaria stressed that "many other opportunities for corruption remain, especially in tax collection, licensing regimes, registration of firms, and safety and other regulations, as well as in public procurement tenders" (Krastev 2006).

In response to Brussels accelerated demands and increased pressure for judicial reforms and curbing corruption, Romanian and Bulgarian governments chose

different approaches. While Romanian governments opted for creating a network of institutions whose areas of responsibility overlap and confuse rather than contribute to curbing corruption, Bulgarian governments opted for development of strategies and methods. Consequently, in Romania observers may notice a flurry of institutional creation, especially designed to tackle widespread corruption. More than a third of the bodies created between 1999 and 2007 in the political realm were meant to deal with corruption, among which the National Council for Action Against Corruption and Organized Crime (1997), the Anti-Corruption Criminal Investigation and Criminology Section (1998), special Anti-corruption and Organized Crime Unit within the General Prosecutor's office (2000), National Anti-Corruption Prosecutor's Office (2002), the National Anti-Corruption Directorate (DNA 2002) and the Directorate General for Anti-corruption answering to the Minister of Interior (2005). While their number served to account for progress in annual reports, these institutions failed to enact concrete reform, because of their constant overlapping in functions, the absence of a clear distribution of responsibilities and the continuous reshuffling they underwent following government changes. The EU country reports show that the National Council for Action against Corruption and Organized Crime "never played its envisaged role" (1999 EC country report), while the 2001 National Anti-Corruption Prosecutor's Office (NAPO) remained largely subordinated to the Ministry of justice, and its functions continued to be ill-defined and overlap with the other existing institutions (2001 EC country report). Effectively, these institutions served as smokescreens to hide backwards steps in enforcement of judicial reform and anti-corruption standards.

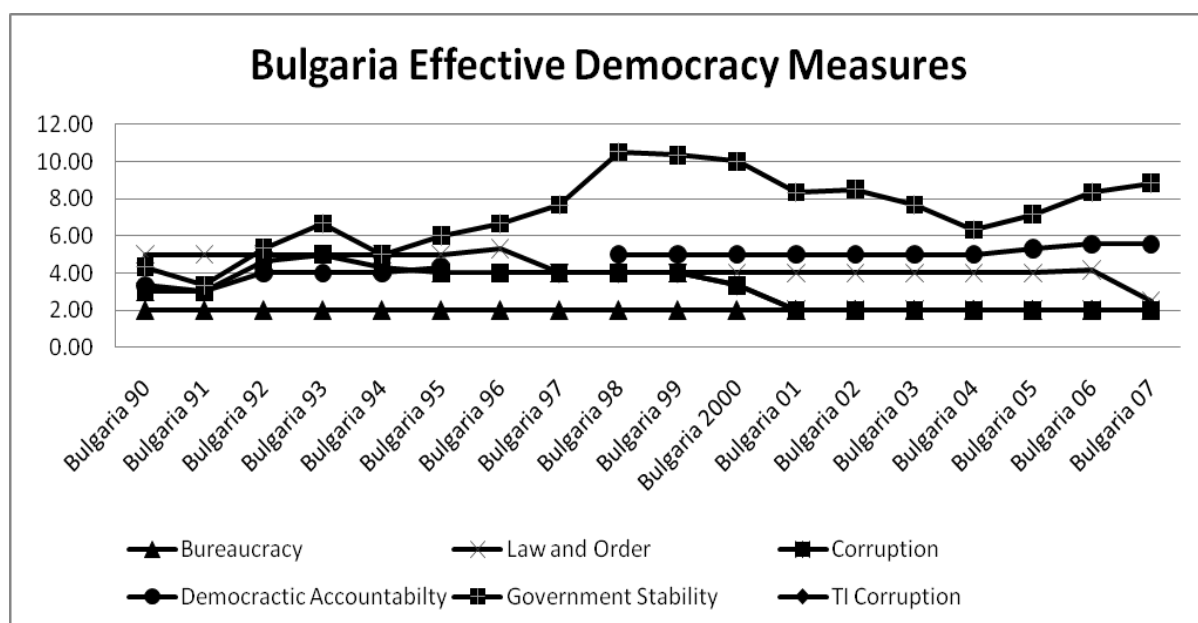
The number of agencies, bodies, institutions created with the declared purpose of fighting corruption does not translate into indictments, trials, results. Opinion polls also show that the increased quantity of anti-corruption mechanisms has done little to convince the public of improvement. Evidence also suggests that records depend upon the person in office and less upon the statute or range of activities of a particular body. The political turmoil surrounding nominations, appointments and resignations of central figures of the anti-corruption battle (from ministers of justice to chief prosecutors of the DNA or the Prosecutor General), pitting political camps against each other show that the fight against corruption remains defined by politics. The personalization of these offices also visible in the different records under different leadership also point out the weakness of the institutions.

While institution building carries little evidence of efficient anti-corruption fight providing mostly for forms without substance and an increase in public administration, it has one advantage. It provides for grander marketing strategies of reforms in Brussels. Meanwhile, the Bulgarian option for strategies and actions plans is less spectacular and more difficult to parade, reason for which it was more easily a target of non-compliance mechanism or EU criticisms. Rather than create new bodies to tackle corruption (with few exceptions, such as task forces or the national Ombudsman- European Commission), Bulgaria focused more on

work strategies and agendas to tackle corruption, such as the “Action Plan for Implementation of the Strategy of Anti-Corruption” in 2002 and 2004 respectively. However whether institution building or strategy development, the perception of corruption remains largely unchanged, with the exception of the period between 1998 and 2002 possibly due to the reforms introduced by the Kostov government.

### Elusive Change in Effective Democracy

During the pre-accession period, pressure exercised by the European Union as part of its conditionality mechanism was countered and even sidetracked by domestic tactics, from backtracking to smoke-screening or politicizing anti-corruption measures (i.e. national political elite has learnt to settle scores while accounting for EU reforms: the political colours of the high officials placed under investigation for corruption, traffic of influence or bribery is indirectly related to the political colour of the government in office). This translated into low levels of improvements in terms of effective democracy for both Romania and Bulgaria.



**Figure 5: Timeline of Effective Democracy Variables for Bulgaria 1990- 2007**

Thus, in Bulgaria the quality of effective democracy remained largely constant from 1993 to 2007. On the basis of information in each country reports, one could conclude that formal democracy (i.e. distribution of power, rule of law, free elections) improved and progress was made towards fulfilling the Copenhagen criteria. By contrast, effective democracy adjusts for corruption and measurements show a less optimistic picture. Despite EU conditionality, EC monitoring mechanism and creation of anti-corruption institutions and/or measures, little change is visible in terms of rule of law, democratic accountability, quality of bureaucracy, government stability. This shows that while

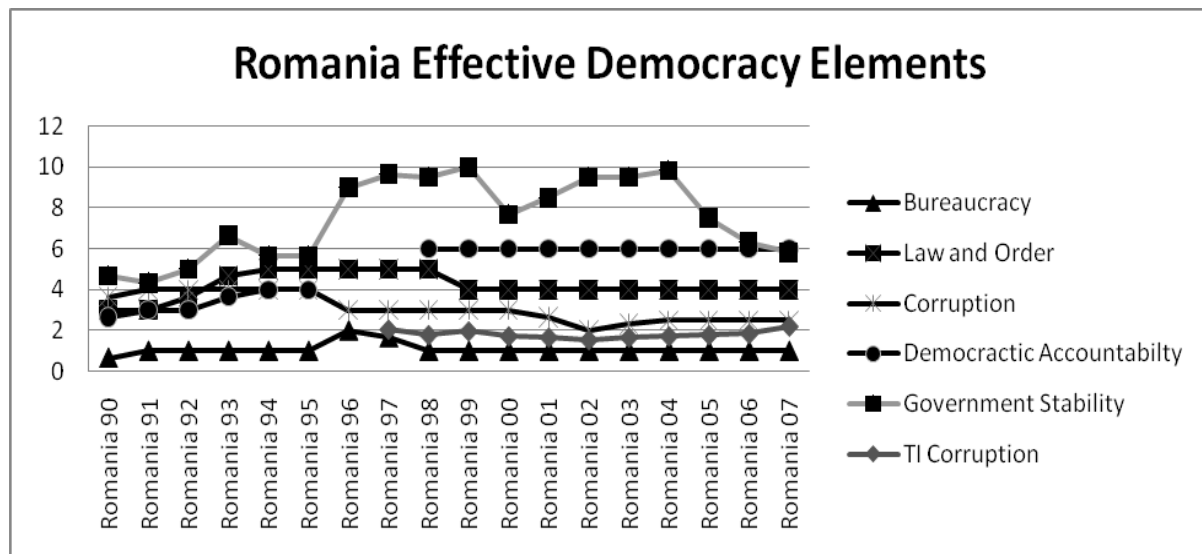
EU conditionality impacted upon formal democracy, it had little traction when implementation and “soft measures” (i.e. styles, ‘ways of doing things,’ beliefs and norms) were concerned (Grabbe 2006; Radaelli 2003).

In certain cases, not only has the country failed to register positive change, but also some indicators of effective democracy actually displayed negative values. The low score for rule of law in Bulgaria is supported by statistics pointing to the resilience of organized crime networks and by reports of inter-clan killings, such as those in 2005 or 2007. Coupled with some of the corruption scandals in the press, this could account for some of the variation in government stability (which is defined by PRS as government unity, the legislative power and the popular support it benefits from).

Other readings remained constant, showing little change as a result of reforms initiated under the framework of Europeanization through conditionality. Thus, the variable of the quality of bureaucracy (which expresses the “strength and expertise,” the autonomy from outside pressures and meritocratic recruitment – PRS Methodology) maintains a constant, low score of 2. This happens despite the multiple legislations adopted by the Bulgarian Parliament aimed at reforming public administration such as the Law on State Administration (1999), the Civil Service Law (1999), the Statute for Civil Servants (2000), the Code of Ethics for Civil Servants (2002), the Strategy for the Modernization of the State Administration (2002).

The variable “government stability” registers the largest variation: increasing in the period between 1998 and 2001, decreasing sharply between 2001 and 2004, and increasing progressively from 2004 onwards. These variations are due largely to the failure of the ruling coalitions to tackle the problems of corruption and organized crime and to show a significant improvement or reform in anything from public administration to rule of law. The dates for the shifts correspond to changes in government, as 1997 registered a large victory by the UDF, which enjoyed a honeymoon period only to decrease 2 years later, despite the positive progress registered in terms of European Union accession (the beginning of negotiations). The sharp decrease between 2001 and 2004 could be owed to Bulgaria’s failure to enter the European Union in 2004, together with the other 10 Central European countries, and to the internal divisions in the governing coalition.

In Romania the situation is largely similar. Although the country registers slightly more variation, especially in the middle of the 1990s (possibly because of the change in government in 1996), the improvements are only temporary, as they decline after 1998 and stabilize at low levels.



**Figure 6: Timeline of Effective Democracy Variables for Romania 1990-2007**

Both the rule of law and bureaucracy variables show a slight increase. The quality of bureaucracy registered a sudden rise in 1995 that lasted until 1998. This fluke is not the result of an effective reform plan, but a result of the initiation of a law on state bureaucracy by the Stolojan government. Observers continue to qualify the period as presenting “a highly politicized state bureaucracy,” which together with internal fighting and corruption ended the public’s hope of reform (Carothers 1997, 4). The graph confirms this reading, as it shows no change occurring after 1998, despite the flurry of administrative legislation, the creation of training for public administration or of new codes of ethics (such as the Laws on Public Administration in 2001, the Law on the Rights of civil servants in 2005). The quality of Romanian bureaucracy remains however, lower than Bulgaria’s, with the median score of 1 (Bulgaria has a constant score of 2).

The variable “rule of law” registered a two point increase from 1991 to 1998, when it declined to level 4, only to stabilize there for the period between 1998 and 2007. Many attribute the higher scores from 1991 to 1998 to a period of hope that implementation of laws and the effective tackling of corruption will occur, first with the emergence from communism and the first elections in 1992 and then with the election of the first center right president (former President Constantinescu) in 1996. If in 1997 opinion polls showed a 63% satisfaction with the anti-corruption efforts, by June 1998 only 29% of Romanian citizens still believed in it (Romanian Academic Society, 2001). This downward trend is visible with all other variables, after 1998, despite the positive steps towards EU integration. It suggest that by 1998 the average electorate did not anymore believed that change in government will equate with change in practices and that political elites regardless of party affiliation will continue corrupt practices. In other words, by 1998 the average Romanian citizen was convinced of the ability

of the system to perpetuate itself and did not credit the EU with powers to reform it.

With the continuation of the old elites there was a continuation of old practices, most importantly, of high corruption. Figure 6 shows the extent of corruption in Romania, both governmental corruption (since 1997 it is below 3) and endemic, low end corruption (which is below 2). Opinion polls registered the public disappointment with the government performance: between December 1997 and June 1998 the level of approval for government policy of reducing corruption fell from 59 percent to 29 percent and finally to four percent in November 2000, which was below the 1996 approval ratings (8 percent) of the ruling Socialist government. Between 1996 and 2000, several high corruption scandals hit the media implicating several high profile politicians (i.e. the then minister of transport, current president Basescu, and the selling of the Romanian naval fleet) including president Constantinescu (i.e. the 'Cigarette Affairs' I and II). While some have blamed the opposition (particularly the social-democrats) for politicizing dubious business deals and stressing political links when not there, these nuances were lost for the general public who registered the key information: high level politicians use their public office and state resources to secure private gains.

The public perception of corruption (measured by the TI index) might not be a fair reflection of realities on the ground. After all, by 2007, due to EU pressure (who benefited and supported the work of certain civic organizations, the case in Romania with the Romanian Academic Society Campaign for a "Clean Parliament") there are public declarations of assets by public officials, investigations of their fortunes when discrepancies are noticed, and even resignations of ministers accused of mismanagement of public funds, EU funds, bribery or traffic of influence. However, in time, citizens become "accustomed to being abused by their governments, with less than 1/3 looking for the means to defend their rights and dignity" (Mungiu-Pippidi 2003, 84). It is not only dissatisfaction with the political and public elites, but that the average citizen have lost the ability to believe that they can influence decision-making (Pop-Eleches 2001). Given that everyone (national media, politicians, EU officials, EU country reports, international media) points to the high levels of corruption and that the only political actor arguing occasionally that corruption levels have decreased is the government, whose ministers become embroiled in corruption scandals, it is highly unlikely that public perception can be affected.

## Conclusion

This article finds that between 1993 and 2007 EU political conditionality has impacted upon domestic change in the area of the fight against corruption at formal and institutional level, though approaches between Romania and Bulgaria differed (i.e. Romania created bodies, agencies, institutions, while Bulgaria put in place strategies and mechanisms). Bulgaria's inability to deal with organized



crime accounts largely for more critical country reports. While Romania ranked better in terms of window dressing, both countries showed a chronic lack of results at the level of implementation. For example, though the number of investigations and trials started was higher in Romania than in Bulgaria for this period, there is little difference between these countries in terms of definitive verdicts in courts. By 2007, EU political conditionality has taught these two countries to “talk the talk” without “walking the walk” (Jacoby 2000).

Domestic constraints less than EU’s mix of hard and soft law instruments, conditionality policy and stick and carrot tactic (reward for reforms) seem to explain resistance to Europeanization in terms of improving effective democracy. There seems to be little difference between political actors in office or type of approaches chosen to fight corruption in terms of variations of outcome. This impacts upon public trust in national political elite and state institutions as well as explaining the relative success of newly created political parties in elections by claiming to come from outside a corrupt establishment (particularly visible in Bulgaria in the 2001, 2005 and 2009 elections). Given that opinions polls have linked in the past public expectations of good governance with EU accession, the limited impact might in time diminish public support for the EU. This may be further impacted by the fact that following accession, the EU has lost its most significant pressure mechanism for reform (i.e. membership) and there is little evidence that the replacement compliance mechanism (safeguard clauses and the Commission Cooperation and Verification Mechanism) is successful in obtaining progress.

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## ***Governance Reforms and Anti-Corruption Commission in Bangladesh***

**Syeda Naushin Parnini**

Abstract:

In the last few years, international anti-corruption activities and campaigns have become increasingly prominent in Western efforts to promote political reform and 'good governance'. Since 1990s, proponents of governance reforms i.e. the donors linked political corruption to the explanation of developmental failure, thereby identifying the arguments for democratization and 'good governance' with those for liberalization. Governance reform has been a recent trend for Bangladeshi Government to take anti-corruption measures and to operate Anti-Corruption Commission (ACC), which has been considered as a distinct national agency charged with combating corruption. The donors have all promoted the establishment of such ACC in Bangladesh, claiming that it can form an integral part of a country's "national integrity system." However, the experiences of Bangladeshi anti-corruption measures and the role of ACC are mixed. The question remains whether the anti-corruption commission represents a genuine commitment on the part of Bangladeshi government in its anti-corruption strategy, or whether it is merely a façade, established to simply placate the international donors. This paper explores the way in which corruption has been understood in the 'governance' agenda and the efforts that have been made to control it by improving institutional performance and policing for greater transparency and accountability particularly through ACC in Bangladesh.

*Keywords: Good governance, governance reforms, anti-corruption, political underdevelopment*

### **Introduction**

The era of globalization witnessed concerted anti-corruption efforts to promote political reforms by reducing the costs of corruption, which has become a major governance issue nowadays. This effort has been particularly directed at developing countries like Bangladesh undergoing economic restructuring and democratic change. In recent years particularly since 1990s, political corruption - the misuse of public office or public responsibility for private (personal or sectional) gain - has been an important theme of the neo-liberal policies of adjustment, donor conditionality and governance reforms. Having identified the state as 'the problem', and liberalization and 'good governance' as 'the solution'

to that problem, it was inevitable that efforts to eradicate and control the widespread corruption characterizing post-independence Bangladesh got high priority. From the outset, proponents of governance reform i.e. the donors linked political corruption to the explanation of developmental failure, thereby identifying the arguments for democratization and 'good governance' with those for liberalization.

Bangladesh in South Asia inherited an elitist and centralized public administration – first from the British in 1947 when it became part of a united Pakistan, and then from Pakistan in 1971 (Islam, 2005). Attempts to run the public administration and governance system along democratic lines in Bangladesh have been thwarted by a number of military interventions since 1975. Today, Bangladeshi government has embarked on public sector reforms of various kinds, engaging in rhetoric that resonates with global paradigms of 'new public management' (NPM) and 'good governance'. There are different areas of public sector reforms particularly connected to improving governance system called 'governance reforms'. The governance reforms respond to different challenges so are they motivated by different concerns and results in different outcomes. Thus, the 'old' public administration regime has largely coexisted with the 'new' public management approaches and tools. Apart from economic and fiscal pressures from western donor agencies, there have also been domestic political changes, including regime changes, which have resulted in a new articulation of governance, and have helped shape the new institutional arrangements. The influence of national administrative traditions, such as the British colonial legacy, should also be taken into account in the context of Bangladesh.

The weak bargaining position of Bangladesh, where debt, poverty and underdevelopment make the country dependent on international aid donors, has led to a variety of direct, unsubtle pressures to force the state to undertake 'governance' reforms. While many of these measures address important problems undermining development, the donors sometimes have deficiency of proper understanding of the nature of corruption as a problem in two important ways. First, the donors frequently prescribe rules and norms of proper public behavior, developed for and within the Western world regardless of the recipient country's unique conditions. And, second, they threaten the autonomy of the recipient government to make decisions and draw long-term plans.

There has been a recent trend for Bangladeshi government since early 2002 to establish anti-corruption commission – distinct, national agencies charged with combating corruption. The donors have all promoted the establishment of such bodies, claiming that they form an integral part of a country's "national integrity system." The recent United Nations Convention Against Corruption (UNCA) also makes specific provision for their establishment. However, the experience of anti-corruption commission is mixed, and it often attracts criticism for being ineffective and a waste of resources. The question remains whether this agency represents

a genuine commitment on the part of a government in its anti-corruption strategy, or whether they are merely a façade, established to simply placate the international donors. Thus, this paper explores the way in which corruption has been understood in the 'governance' agenda and the efforts that have been made to control it by improving institutional performance and policing for greater transparency and accountability in Bangladesh. Therefore, the formation and role of the ACC will also be critically discussed in this paper.

## Literature Review

Despite the aid regime's recent shift to new areas of interest in Bangladesh, the impact of the new governance agenda through anti-corruption efforts on the political economy of Bangladesh have hardly been subjected to any comprehensive analysis. The publication of two landmark books on foreign aid pertaining to Bangladesh should be noted here: *The Crisis of External Dependence: the Political Economy of Foreign Aid to Bangladesh* (Sobhan, 1982) and *Revisiting Foreign Aid: An Independent Review of Bangladesh's Development* (Sobhan, 2003), both the books are written by Professor Rehman Sobhan. The publication of a well-known book in Bangladesh titled 'Towards Good Governance in Bangladesh: Fifty Unpleasant Essays' written by Kamal Siddiqui (1996) should also be mentioned here. These books mostly deal with internal dynamics of several general issues such government, politics as well as civil bureaucracy and problems of particular organizations and sectors, in order to ensure good governance.

There is still the need for a fresh look at novel issues with regard to the governance reforms through anti-corruption efforts by establishing ACC as a new approach of development aid towards recipient countries like Bangladesh. It is an appropriate time for both the foreign aid donors and recipients to take stock of the foreign aid experience and anti-corruption measures. The Centre for Policy Dialogue published an independent review of Bangladesh's development in 2003 (Sobhan, 2003), which also captured the issue of foreign aid and corruption issues in Bangladesh.

Due to rampant corruption in many institutions and many forms of economic transactions, the socio-economic, political and administrative development of Bangladesh has been severely impeded. This has been noted by Zafarullah and Huque (2001), who have identified several problem areas in governance and public management in South Asian Countries like Bangladesh. They include (i) bureaucratic dominance (ii) generalist specialist conflicts (iii) fragmented civil service structures (iv) conflict between merit and equity (v) tension between professionalism and political patronage (vi) a widening gap between the people and the administration and (vii) problems of administrative ethics. Aminuzzaman (1996) also said that aspirations to create a transparent and sound system of governance have suffered numerous setbacks in Bangladesh brought about by administrative corruption, the centralized and elitist character of the civil service, a lack of strong leadership and political commitment, conservatism and



bureaucratic resistance, and so on. However, this work does not capture the issue of the governance reforms prescribed by donors and anti-corruption measures of the Government of Bangladesh.

In contrast to previous studies, this work tries to explore a direct link between 'governance reforms' and anti-corruption measures by referring to Anti-Corruption Commission (ACC) in Bangladesh; it examines anti-corruption efforts in Bangladesh and the role of ACC within the overarching framework of 'good governance', while at the same time criticizing the western notion of governance reform as a 'new approach' of development aid. Governance reform in Bangladesh is being advocated and defined by the donors, which has great implications for public policy making in the country. Bangladesh's current anti-corruption measures through ACC, as prescribed by the donors, are not always linked to actual local demand and necessity arising from the creation of the Bangladeshi state in 1971. Therefore, this study argues that the demand for anti-corruption efforts should come from domestic necessity as dictated by the unique circumstances found in Bangladesh, rather than being imposed by the donors as a component of the governance agenda based on new-liberal ideologies and NPM principles.

## **Research Methodology**

This study employed qualitative techniques as its research methodology. However, some findings are presented in quantitative form. A descriptive and exploratory case study approach was utilized for this policy study because the researcher had little control over the events and the focus was on contemporary phenomena (Yin, 1994). The questions were generally of a "how, what or why" nature about anti-corruption drive. This work is based on both primary and secondary documents. A field survey conducted both at the national and local levels in Bangladesh between August and December 2009. At the central level, 91 persons were interviewed from the government, donor agencies, academia, media and civil society. Within the ACC some officials were interviewed. Staffs and members of The Transparency International in Bangladesh were also interviewed. In addition to this, other professionals and people were interviewed in order to find out the stakeholders' perceptions regarding anti-corruption drive and effectiveness of the ACC in Bangladesh. Stakeholders were selected on the basis of random sampling. The method of data collection was face to face interviews of officials based on guidelines of the open ended questions. In the case of most of the stakeholders, a survey was conducted on the basis of a close ended questionnaire. Therefore, primary data were collected through a structured interview using both closed and open-ended questions. Secondary data were gathered from various published documents (i.e., articles, books, study reports, etc.) and from the internet.

When the first round of unstructured interviews began, the author asked the informants to describe their viewpoints and experience about the donor-driven governance reforms and the role of ACC in Bangladesh. Multiple interviews were



also conducted with several informants and their opinions and comments were compared both at the central and local levels on a given issue to address consistency and validity of the data (Yin, 1984). All the above research techniques helped the author to understand the dynamics of donor-recipient relations and their perceptions with regard to anti-corruption drive as well as the activities of the ACC in the context of Bangladesh.

Very few of the interviewees were optimistic about the actual purpose of the contemporary anti-corruption measures and the critical role of the ACC. This process confirms that the 'nature and scope' of corruption and governance problems tend to get defined externally and, in particular, in a highly 'economistic' way, with the poor being considered as a 'stock' of people rather than a 'flow'. There was also criticism among the interviewees about the rhetoric of the donor driven governance agenda and reforms, as well as the Government's lack of participatory practice and genuine political will to combat corruption.

### **Some Conceptual Underpinning**

Mick Moore argues that the states of the 'South', although diverse, tend to be underdeveloped in the political sense: neither authoritative and effective nor legitimate and accountable to citizens. The conventional response of aid donors is institutional transfer: trying to align the institutional configurations of Southern states even more closely with those of Northern polities. He warns that this may not be the best approach. He correctly says that the political underdevelopment of much of the South largely results from the ways in which Southern states have been created and political authority shaped through economic and political interactions with the wealthier countries of the North.

'Political underdevelopment' is claimed by Moore an outcome of uneven economic development. These arguments of Moore are very relevant to the situation of Bangladesh currently at play. Moore further argues that better appreciation of the nature of these processes could lead to more appropriate policy. He argues that we must note that we cannot reverse the history. This work echoes with what Moore says about the donor-recipient relations in the context of North-South discourse in world politics. Moore added that more attention could be paid to the ways in which Northern states currently help sustain political underdevelopment through aid conditionality in the South. This is notable in case of perpetuating the conditions under which state elites in the South can remain too independent of their own citizens by creating new avenue for corruption through the arguments in favor democratization and 'good governance' with those for liberalization and privatization.

International aid and development agencies have identified 'bad governance' and corruption as major obstacles to economic growth and to improved welfare in poor countries. They are putting significant resources into trying to change that situation. Increasingly, aid is being conditioned upon performance and intentions of recipients in relation to 'governance' issues, whether labeled corruption, institutional development, democracy, capacity building, transparency, rule of

law, human rights, or something else. It is striking that this degree of intervention into politically sensitive issues has taken place without stimulating a more vigorous search for an explanation of the underlying causes of the problem.

The question is asked, why should 'poor governance' or 'corruption' be relatively concentrated in poorer countries? The aid and development agencies themselves appear not to have asked this question in a much sustained way (Moore, 2000). Insofar as an answer to the question is implicit in their behavior, it would appear to be some notion of institutional deficit: poor countries lack the appropriate governance institutions, that are found in rich countries, in the shape of auditor-generals, police academies, independent central banks, legislative committees, freedom of information laws, judicial autonomy, public policy research institutes, and many other things. Actually donor strategy of institutional transfer is flawed. The donor agencies have failed to address the major causes of governance problems.

The argument of this work accepts the view of Moore when he says that the roots of political underdevelopment could show the donors better ways of dealing with the South and it is ironic that aid donors should focus on institutional transfer when the institutional configurations of poor states are in most cases already very similar to those of rich states. In historical perspective, the states of the world have never appeared as similar to one another as they do at present (Tilly 1992: 195). This emphasis on institutional transfer of course in part reflects the absence of alternative ideas about how usefully aid money can improve governance. (Olsen 2000). This work reflects the view that weak governance and underdevelopment in the poor 'third world' are the results from the ways in which 'Southern' states have been created and political authority shaped through interactions with the wealthier Northern countries in the context of global economic and political systems (Olson, 2000).

### **Paradoxes of Corruption and Governance Agenda**

Colin Leys argued that it was important to ask who was calling who corrupt and what was being described as corrupt (1975:53-8). Therefore, it is now right time to ask who determines prevailing views about what is acceptable and what is not. An important indication of the answer to this question can be found in the annual Corruption Perception Index (CPI), published by Transparency. This provides an index score and rank for countries according to their perceived levels of corruption. Although the Index has no official status, it influences the way countries are perceived internationally. A poor CPI score like Bangladesh is unlikely to be helpful to governments seeking aid, debt relief or approval of their progress on adjustment. It has come to be cited regularly by media and by policy-makers alike and is thus significant in creating an international anti-corruption climate and in influencing how various countries are perceived in terms of corruption. The 2009 CPI ranks 180 countries from the most honest (New Zealand, Denmark) to the most corrupt (Somalia worst, Afghanistan next and

Bangladesh third) and in 2010 CPI ranks Somalia and Afghanistan as the most corrupt countries again.

The CPI rankings confirm (despite a few notable exceptions) widespread perceptions that corruption is worst in developing countries, authoritarian regimes and the former communist states and least troublesome in the most developed economies. To this extent the Index reinforces the traditional view that corruption is a 'phenomenon characteristic' of developing countries, authoritarian regimes or, at the outside, 'Mediterranean' societies in which the value system favored clientelism, vertical relationships or neo-patrimonialism' (Della Porta and Vannucci, 1999:5). Not surprisingly, this rough divide between an honest North and corrupt South is largely how those who were surveyed and whose views were aggregated in the Index. The CPI presents an index score which calculates how corrupt each country is perceived to be by influential individuals. They are overwhelmingly the perceptions of western business executives, politicians and media correspondents.

When one considers individual cases of corruption, the distance between 'most corrupt' and 'least corrupt' does not seem as great as is implied by the CPI scale. Given the narrow interests defining the governance agenda, it is not surprising that the consensus of the early '90s quickly evaporated. Dealings between donors and recipients came to be conditioned by a degree of mutual suspicion and no little acrimony. Why this has not been adequately explained. To a large extent the lack of such an analysis is because most recent emphasis has been on trying to understand the consequences, rather than the causes, of corruption.

The donor strategy creates both opportunities and problems for petty bourgeois politicians: by forcing local markets to open to global capital flows, it provides new opportunities for accumulation outside the state, not least through new aid funds, privatization of state assets and some trade opportunities; but it also threatens the large proportion of the petty bourgeoisie who are dependent on the state - by reducing budgets, retrenching public employees, attacking patronage and punishing attempts to appropriate public resources for private purposes. To the extent that the state has been the main source of accumulation for many, anti-corruption measures can threaten livelihoods. As the state's resources shrink in circumstances of crisis and austerity, those shrinking resources may become all the more important for those dependent on them. Poverty and corruption ensures the dependence of elites on political power for accumulation of capital. Far from arresting the upward spiral of corruption, liberalization and governance reforms imposed by the donors have encouraged the development of new forms of corruption in a new way just like putting old wine in a new bottle.

### **Anti-Corruption as a Contested Strategy in Bangladesh**

If 'governance' rests on crude simplification of the role of the state, there are problems also with its assumptions about the nature of Bangladeshi politics. The lack of clear separation between the public and private spheres, which

encourages corruption, is often ascribed to 'neo-patrimonialism'. This is the personalized character of politics, in which formal constitutions and organizations are largely subordinate to political parties in power and personal relationship. Such systems are typically clientelist and use state resources to gain political support', which can be called a crisis of clientelism' (Parnini, 2006: 190). Although 'neo-patrimonial practices can be found in all polities, it is the core feature of politics in Bangladesh' (reference-Bratton & van de Walle, 1997:62).

The modern state is somehow alien and corruption is somehow a 'foreign' concept invented to fit western political practice, which is of little relevance to the values in everyday Bangladeshi politics. Most of the times, the notions of the separation of public duty and private interest lie somewhere outside the cognition of Bangladeshi politicians and administrators. It is a premise that chimes with anti-corruption measures adopted by the governance agenda, an assumption that values of honesty and transparency must be 'taught' through the pressures imposed by globalization and by persuasion, conferences, educational materials and, if necessary, sanctions and public condemnation. This kind of view is found in much western writing about corruption in non-western societies.

However, anti-corruption measures in Bangladesh need to contend with entrenched interests and existing lack of capacity. Investigating corruption is one thing, bringing miscreants to book quite another. A bloated bureaucracy is likely to resist attempts to reduce its share of the social surplus. Nor is it surprising, given low salaries and rapid inflation, that petty corruption is widespread among rank-and-file civil servants, a problem worsened by continuing economic crisis.

In part, however, the resilience and increasing scale of corruption, particularly high-level corruption, owes something to the disruptive nature of the reforms being imposed on Bangladesh and the weakness of the remedies against corruption which these reforms embody. Seminars, handbooks and education are important and uplifting, and economic sanctions worrying for governments, but they are unlikely to influence individuals being offered thousands of dollars by multinationals or by drug dealers. More importantly, structural adjustment, privatization and liberalization under the banner of 'governance reforms' have played significant part in weakening the regulatory capacity of the state by removing oversight capabilities. The problem here is that the donors proceed from the ideological assumption that political corruption is simply the product of growing state intervention (Heywood, 1997:12, quoting Rose Ackerman). But it is also clear that liberalization and privatization create a set of new problems while they are not always eradicating the old sources of dishonesty. The use of patronage and bureaucratic 'rent-seeking' have not been ended by market reforms i.e. governance reforms; rather they have been joined by new kinds of graft.

As a way of ensuring accountability and reducing corruption, the governance reforms imposed by the donors and the anti-corruption strategy seem seriously flawed. Firstly, 'civil society' namely NGOs are seen as a means of counterbalancing the interventionist state and so reducing rent-seeking behavior. The crude antithesis of state and civil society has no basis in reality; democracy rests

on a dynamic and effective state as much as on 'civil society' (Glaser, 1997). Secondly, it is difficult to believe that this watchdog role can be performed by a donor-sponsored 'civil society' of civic and human rights associations dependent on foreign funding (Allen, 1997). Thirdly, and most important, efforts to reduce the size of a state that is 'too big' also undermine a state that is 'too weak' (that is, lacking in capacity to implement policy or provide strategic direction for development). Conditionalities require a reduction in the size of the state (through 'Public Sector Reform' programmes) but do little to improve its strength. It is telling that governance reform is classified as an economic conditionality, not as a governance problem; the policy is to reduce its activities to make space for capital and has little concern with its possible role in a sovereign, democratic country. The governance agenda thus risks promoting what it seeks to eradicate - more corruption and greater instability in Bangladesh and elsewhere.

### **Anti-Corruption Efforts in Bangladesh**

Corruption is claimed to be all-pervasive in Bangladesh. It is said that not only do citizens have accepted corruption as a part of their daily life experience but also more frighteningly they feel themselves powerless to address the phenomenon at any level. It is also claimed by the World Bank that the reason for such helplessness is to the presence of corruption in almost all levels of government. Information obtained from the Finance Division of the Ministry of Finance show that over a period of twenty-two years, i.e. between 1971 and 2009, 18 billion US dollar was lost in the public sector due to misappropriation of public funds and theft. But, in order to understand the immense diversity of corruption and its origins, we need to focus on the roles of both the "internal stakeholders" (such as politicians, business cliques and corrupt bureaucrats), as well as external actors (International Financial Institution, Western multinational companies) and their conspiracies.

In contrast, the World Bank and other donors argue that privatization and deregulation would reduce aid dependence and ensure better utilization by increasing trade and investment in the country. This is proved to be flawed in the context of Bangladesh, which contributes to persistence of aid dependence as an economic norm with a thriving exclusive class of political, military and bureaucratic elite along with nouveau riche created by the long spell of autocratic rule as well as corrupt democratic regime. Because the statistics that support the argument is that—Bangladesh received approximately US\$3000 billion in the last 3 decades, of which US\$2250 billion went back to the donors and the rest of the money absorbed by local beneficiaries . Bangladeshi economy loses more than US\$ 100 million dollars a year as a result of corruption representing roughly 25 percent of its GDP. (Transparency International, 2009).

The Bureau of Anti Corruption (BAC )had the prime responsibility to combat corruption since the independence of Bangladesh in 1971. BAC virtually became ineffective in curbing widespread corruption in the country. Against the backdrop of BAC's failure, the *Jatia Sangsad* (Bangladesh Parliament) enacted the *Anti Corruption Commission Act* on February 17, 2004, which came into force on May



9, 2004. The Anti Corruption Commission (ACC) was established on November 21, 2004 under Section 3 of the ACC Act to replace the BAC with the aim of ensuring good governance by eliminating corruption. Besides institutions of ACC, office of Tax Ombudsman is also formed. ACC has spent about US\$1 million for the Asian Development Bank as the consultation fee under the 'Supporting Good Governance Initiative Agreement' from the public exchequer to make it truly active. At that time, no thought was given for the first time to the aspects of organogram under the changed circumstances and the framing of regulations to ensure the appropriate functioning of an independent and watchdog body. Because the ACC was created in order to meet the donor's conditionality and to obtain the consequent financial assistance.

As ACC began operating, it faced political and logistical obstacles. Lack of organizational rules and role clarity, fragile leadership, weak investigative capacity, together with an unfriendly political environment affected the ACC's independence and its ability to redeem its mandate. A change in the perception and commitment to fighting corruption occurred after January 11, 2007 as the State of Emergency was declared to resolve the political crisis prevailed during that time. Along with other institutions, the ACC was reconstituted in February 2007. The ACC initiated a vigorous drive against corruption in 2007 after reconstitution. In its early stage, ACC focused on prosecution, bringing corruption charges against many high profile politicians, government officials, business institutions. A number of individuals were convicted on charges of corruption, which is unprecedented in the history of this country.

Another significant milestone was Bangladesh's accession to the United Nations Convention against Corruption (UNCAC) on February 27, 2007 and subsequent ratification of the convention. The convention is the first global legally binding instrument, which addresses the full scope of institutional and legal settings that need to be in place to effectively combat corruption, ranging from prevention and criminalization to international co-operation and asset recovery. This establishes a foundation for the government to address corruption both nationally and globally.

### **Recent Establishment and Rationale of ACC**

Despite the existence of a specialized agency like the Bureau of Anti Corruption (BAC) since 1957, corruption in Bangladesh slowly worsened over time. Although there were discussions on corruption during the reign of every government, the issue became a burning one once Bangladesh was placed at the bottom of the TI's Corruption Perceptions Index (CPI) in June 2001. Donors and international organizations expressed serious concern over widespread corruption in Bangladesh. In many instances foreign assistance were tied with the effectiveness of the anti-corruption measures of the Government of Bangladesh (TI, 2004:23). The BAC was criticized as a toothless watchdog, which mainly served as a political weapon for the ruling party against the opposition (Khan: 2004). Consequently, the Anti Corruption Commission was established in

November 2004. However, there were twists and turns that led to its establishment (TI, 2004:23).

In accordance with Anti Corruption Act, 2004 a three-member Anti Corruption Commission was established on November 21, 2004 and the BAC was abolished. But at the beginning the Commission could not be effective in dealing with corruption due to the reluctance of the government in providing necessary legal, administrative and institutional supports. Moreover, conflicts of opinion among the members of the newly constituted Commission contributed to its sterile performance. After the imposition of emergency on January 11, 2007, the Care-taker Government took initiative to reconstitute the ACC.

Ratification of the UNCAC makes it a binding for Bangladesh with obligations to prevent corruption, criminalize and engage in international co-operation against corruption. Some forms of corruption, such as bribery through intermediaries, harassment of citizens with a view to soliciting bribes, bribery of foreign public officials etc. remain outside the scope of penal provisions (ADB, 2006:37). Corruption between private sector entities, commonly referred to as private-to-private corruption, is also not an offence in Bangladesh. It appears that the punishments are also lenient: imprisonment ranges from three to 10 years. In contrast, corruption can result in up to twenty years of imprisonment in Malaysia. Some forms of corruption entail lifetime imprisonment in Indonesia and even capital punishment in Peoples Republic of China (ADB, 2006:37).

As Bangladesh does not have a strong whistle-blower <sup>18</sup>and in the ACC Act there is no appropriate provision for that, informants prefer to remain anonymous and consequently concerned persons cannot be consulted for the purpose of inquiries. In case of South Korea, its Anti-Corruption and Civil Rights Commission (ACRC) took measures for ensuring confidentiality, physical safety and employment guarantee to whistle-blowers. The *ACC Act, 2004* has not only given the Commission wide-range of responsibilities but also extensive powers in terms of inquiry, investigation, hearing and even arrest. In fact, the Act gives the ACC a monopoly to investigate and prosecute corruption. As the Commission has extensive powers, it must be held accountable so that these powers are not abused. However, the ACC Act, 2004 provides no effective accountability mechanism other than submitting annual report on the activities completed in the previous calendar year to the President. The annual report to the President is subsequently forwarded to the Parliament. Although the ACC Act underwent two amendments in 2007, still there are loopholes in the Act. Conceptual ambiguity in some provisions, as seen in section 19(2) for example, may give rise to confusions and complications not tenable for anti-corruption drives. This necessitates further legal reforms in some areas.

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<sup>18</sup> The term 'whistle-blower' has come to mean someone who publicly denounces illegal, fraudulent or wasteful practice usually from inside an organization.



ACC's workforce constitutes less than 0.1 per cent of the total number of posts in the civil employment in Bangladesh, which is 11, 82765 (GoB, 2007). A total of 1264 staffs seems to be inadequate to fight against corruption in a country with a population of about 140 million (BBS, 2008:3). In the context of huge population in Bangladesh and successful experience in other countries, it appears that the ACC is running with inadequate staff in combating corruption. It is also recognized that adequate staff even cannot effectively check corruption if they themselves are not honest and competent. To ensure its integrity, honest and competent personnel must be appointed in the ACC. However, in reality, ACC absorbed the staffs of now defunct BAC personnel without any screening process. Eighty-five percent of staffs of BAC are now working in the ACC. Apart from civilian staff; officials from the armed forces are also deputed in the top positions.

Per capita expenditure for curbing corruption in Bangladesh stands at Tk.1.93 (US\$0.03) in 2008-09. In comparison per capita expenditure in Hong Kong and Singapore, where the population and level of corruption are much lower, are US \$12.14 and US\$1.79 respectively (Quah, 2008:20). These are much higher than that of Bangladesh. Compared to successful countries of Asia, ACC's budget appears to be inadequate in Bangladesh. The Commission could not fully utilize the fund allotted to it. There is always a huge gap between budget allocation and utilization. Section 30 of the *ACC Act, 2004* creates a scope for retaining financial control of the ACC in the hands of the Government. Government not only retains the power of budget allocation but also specify the items on which it is to be spent as mentioned in Section 25 of the ACC Act. This limits the autonomy of utilization of funds are visible. Unlike constitutional bodies, such as the Election Commission or the Public Service Commission, ACC gets its budget as 'other expenditure' that is subject to vote of Parliament. These provisions are contrary to financial independence of the ACC.

## Performance Review

Against the backdrop of BAC's failure, establishment of an independent Anti-Corruption Commission in 2004 was viewed as a positive step towards curbing corruption in Bangladesh. After the establishment, ACC was not that effective. (TI, 2008:182). The ACC initiated work after it is reconstituted in 2007. The Commission investigated and prosecuted a significant number of cases against political leaders and prominent citizens particularly during the period of Caretaker Government in 2007-08 who were perceived to be corrupt by the public and the government.

In spite of the few accomplishments, fact remains that the ACC addressed only a small part of its mandate. ACC organized rallies and opinion sharing meetings led by a few notable personalities. Local Corruption Prevention Committees (CPCs) do not have support from the ACC. They do not have a sense of empowerment and they lack experience at community development activities and are not sure if they are allowed to take initiatives in developing a local strategy.

The preventive activities covered only a limited area of community development. In fact, due to lack of direction and resources, local CPC's could not be effective and the initiatives taken by them remained ad-hoc. Whatever preventive initiatives the ACC undertook that were also influenced by external organizations like TIB, not originated from within. No structure or institutional support was set up to sustain these campaign activities. It is observed that ACC's preventive activities are centered on functions like promoting the values of honesty and integrity and taking measures to build up mass awareness against corruption.

Corruption may be seen as a crime of calculation. It can be reduced if public perceives it as a "high risk, low reward" activity that is those involved in corruption are likely to be caught and severely punished. A total of 129 accused was convicted in 113 corruption cases filed by the ACC till December 31, 2008. Apparently, it seems to be a success on part of the ACC in punitive enforcement. However, analysis of the type of offences in convicted cases reveals that conviction has been predominantly limited to offences where burden on the prosecution is elementary and burden of proof is somewhat shifted to the accused.

Convictions in cases involving scheduled offences are successfully challenged in a number of occasions in the High Court Division. This manifests weak or faulty foundations of the ACC cases involving scheduled offences. Detection and investigation, however effective, cannot credibly increase the risks of punishments for corruption if there is no effective prosecution. The ACC needs to develop its punitive enforcement capacity for more complex cases that are subjected to rigorous legal challenges.

### **Independence and Transparency**

One of the prerequisites for success of an ACA is its independence. The independence of an ACA is characterized by the absence of any undue extraneous influence. It is the key component to creating credibility. If an ACA is dependent upon any particular branch or department in the government (as it was seen in now defunct BAC), it creates an opportunity for compromising investigations and prosecutions of corruption offences. Lack of independence also prevents an ACA from pursuing corruption offences in all strata of society and sectors of the government. The study examines independence of the ACC from legal and operational point of view.

The Preamble and Section 3(2) of the ACC Act mandate that the ACC shall be an independent, self-governing and neutral Commission. A number of sections of the *ACC Act* are not in line with the intent of the Preamble provision of Section 3(2). Section 25 clearly makes room for dependence of the Commission on the government for its budget and financial power to use the same. Section 30 states that Commission's organizational structure and budget will be determined by the Government, which poses limits to Commission's independence. Section 34 subjects the exercise of the power of the Commission to make rules to the prior approval of the President. Section 36 allows the government to intervene and

resolve difficulties that may arise due to the vagueness of the ACC Act as to the power and responsibilities of the Commission.

The operational independence of the Commission cannot be fully ensured if legal loopholes remain unaddressed. Again, the shape and independence of a Commission is determined how the officeholder is appointed or removed. If the appointing mechanism ensures consensus support for an appointee through parliament, rather than government, and an accountability mechanism exists outside government (e.g., a Parliamentary Select Committee on which all major parties are represented), the space for abuse or partisan activities can be minimized (TI, 2000:97). The selection and appointment of the executive(s) of the ACA should be a shared responsibility of several institutions (UNDP, 2005). This did not happen in case of the ACC. Apart from selection of ACA leadership, an ACA should also have the freedom to hire its own staff. However, as has already been mentioned, ACC had to absorb more than eighty per cent of the now defunct BAC staff whose honesty and integrity were not beyond question. Government set up the National Committee for Coordination of Grievous Offence (NCC) as a support body for the ACC headed by the then Communications Adviser and its subsidiary Task Forces. With the support of joint task force of military officials ACC embark on a high profile anticorruption drive. As there was ambiguity regarding the functions and responsibilities of the two entities, it was regarded as detrimental to the image of the Commission's independence.

Linked to independence is accountability-- the greater the independence, the greater will be the demand for accountability. A watchdog body created in public interest by public money must be accountable to the people; rigorous self-regulatory as well as external accountability mechanism must be in place. In Hong Kong, there are oversight committees to monitor the activities of the ICAC. Three oversight committees are--the Operations Review Committee, the Corruption Prevention Advisory Committee and the Citizen Advisory Committee on Community Relations (Stapenhurst et.al. 2006:137). The oversight committees seek to ensure that ICAC's investigations are undertaken with highest level of integrity. Australia (New South Wales) has established two internal oversight committees and two external oversight committees. The internal committees review the organisations policies and procedures on prevention, education, research and investigation, while the external committees ensure that it remains accountable to the public (IGS, 2007:32). In Bangladesh, no such committees exist to hold the ACC accountable. In fact, the ability of an anticorruption agency to work in an unbiased way also depends on appropriate checks and balances as well as constant scrutiny through various oversight mechanisms.

In Bangladesh, low levels of transparency and accountability characterize the functioning of institutions in both the public and private sectors (GoB, 2008:2). The ACC is no exception. ACC lacks transparency on many counts. First, it is not clear how it chooses the corruption case targets (e.g. some are being targeted some are not without any apparent distinction). Second, how it selects 'special'

cases, chooses pursuable cases among thousands of complaints. Third, the source of funding and expenditures for public rallies are not known. Fourth, how it recruits lawyers in its panels and distributes cases among them are also not clear.

The true transparency of the ACC is dependant upon the objectivity, predictability and consistency of the operations of the Commission. In absence of any oversight committee people have no scope to oversee the activities of the Commission. Another way to enhance transparency is to make the Commission accountable to more than one authority. If the commission were accountable to a Parliamentary Standing Committee on Anti-Corruption Commission, where all the major parties represented, that might help in minimizing the scope of partisan influence. Moreover, the Commission should publish clear and comprehensive written policies to let people know about methods and procedures of the ACC.

### **Dilemmas and Challenges**

Given the context of poverty and the power of foreign capital, political office in Bangladesh becomes a means of entry into business (particularly commerce, finance and services). Given the depth of the debt crisis and rising inflations, the ability to use office to access and manipulate state resources and foreign aid opens up possibilities of entry into the bourgeoisie. Iyayi (1986) has suggested that corruption might represent a form of primitive accumulation in which the plunder of state resources was a means of transferring surplus from peasants and workers to bureaucrats and businessmen. The process also works the other way around; the state is a resource through which capital can seek market privileges, public contracts, monopolies or other rents.

The respondents during the field survey also opined that most of the political elites and bureaucrats do not care about the role of the anti-corruption measures and ACC in Bangladesh. They deem themselves more powerful and consider themselves beyond the reach of the ACC or any kind of anti-corruption actions. As a result, sound anti-corruption measures are hardly possible. The current function of the ACC illustrates that the authority of ACC does not have absolute independence to investigate any anti-corruption case or to actions against the corrupt but powerful elites. Owing to a lack of proper monitoring and discontinuation of the flow of fund of different development project works, corrupt practices continue unabated.

Government officials and other professionals from the donors, private sectors and civil society were asked in the interview to comment on anti-corruption drive through ACC in Bangladesh. They were also asked to view the issue of the existing relationship among different government institutions, which creates environment conducive to corruption in policy implementation. In response, the majority of the respondents (77%) expressed their concern about anti-corruptions measures and view that the existing drive is largely inadequate and controversial.

Moreover, the respondents are pessimistic about the role of ACC, which is not functioning properly and more often it becomes the vehicle of the political parties in power to serve their interest against the opposition parties. In particular these non-transparent relationships among the government institutions and the failure to comply with governance conditionality affect the release of funds by the donors for the implementation of plans to run the development projects. If funds are not available, projects become delayed and are often not completed. If funds become available at a later stage of project implementation, implementers are in a hurry to complete the project often with an adverse effect on quality and standards. Moreover, ACC has been frequently used to target the opposition party leaders and their followers. In such a situation, the role of government offices is limited. Many government officials had strong words to say about this situation during the interview.

The leadership in the ACC and other anti-corruption agencies are more or less selected through a non-transparent process, which for obvious reasons did not act as per rules and laws. The Bangladesh Parliament is empowered as per article 76 of the Constitution and rules 187 - 266 of Rules of Procedure of the Parliament to discuss, investigate, inquire, call for any files and recommend actions against any corrupt practice. However much of this power had not been used, rather grossly misused. Lack of anti-corruption awareness among people is a major hindrance as well. The civil society has also failed in its role to take up a united stand against politically corrupt leadership and motivate public opinion to take effective measures against them.

### **The Way Ahead**

Corruption has become an increasingly important issue for Bangladesh and other countries in the aftermath of the cold war. For the World Bank, corruption flourishes where 'institutions are weak and government policies generate 'economic rents'. For Mauro its causes are found in trade restrictions, subsidies, price controls, multiple exchange rates and foreign exchange allocation schemes, which permit rents to be extracted, and in low civil service wages which encourage rent-seeking activities. the World Bank argues that corruption will reduce macroeconomic performance, undermine Foreign Direct Investment (FDI), harm small business and the poor and endanger the environment. The implications are clear - the alternatives to corruption and rent-seeking are the same, namely, deregulation, less state and more market. It is not surprising, then, that the international financial institutions concerned with adjustment and restructuring should be concerned about corruption.

Anti-corruption commission forms just one component of the Bangladeshi Government's anticorruption strategies. As discussed above, an effective strategy should undertake a holistic approach aimed at strengthening all pillars of a national integrity system (Transparency International, 2009). Accordingly, it is difficult to isolate whether a reduction in corruption can be attributed to an anticorruption commission or to other factors. The application of a national



integrity system approach further provides a basis to assess the levels of a corruption in a given state and identify areas of institutional weakness. While interdependent, each institution should be weighted equally.

In connection with adequate financial resources, the effectiveness of anticorruption commission also depends on adequate technological support; corruption investigations often require sophisticated interception of communications and surveillance devices, as well as financial intelligence software for the tracing of assets and the prevention and detection of advance fee fraud. In connection with high levels of integrity of staff and gaining public confidence,

Governance reforms deals with stabilization of what might be called 'a bourgeois order' (markets, private enterprise, and the liberal state, urban and middle class 'civil society'). The process of accumulating private property is not a problem in its discourse. More seriously, it leads to those tackling corruption largely ignoring the role of political economy, electoral competition and inherited institutions in corruption. The concern is with the role of state intervention, not with crises of underdevelopment and debt peonage in the context of international accumulation, still less with the opportunities for corruption which markets, privatization and deregulation create. Corruption has survived and prospered despite efforts at institutional political reform such as formation of ACC in Bangladesh, precisely because such change has not affected the structural forces which give rise to it and, frequently, has not even addressed it.

A Joint Cooperation Strategy (JCS) agreement between the Bangladeshi Government and the development partners was signed on June 2, 2010 with a view to making aid more effective in the coming years to reach the real development goals. From now on the government and the development partners will work together to strengthen mutual accountability and also to define and monitor priority actions to address the identified aid effectiveness challenges in Bangladesh. The JCS is supposed to ensure better cooperation between the government and the development partners keeping in view the government's different programmes like the anti-corruption strategies, Poverty Reduction Strategy (PRS), the 6th five-year plan and Vision-2021. This JCS should be committed to bring about a fundamental change in Bangladesh in every respect by reducing non-coercive interventions of the donors through conditionality.

Against the backdrop of the above discussion it is visible that only a cosmetic change imposed by the donors through 'governance agenda' by establishing ACC and by undertaking other largely ineffective anti-corruption strategies can hardly combat corruption in Bangladesh. That is why, a much more fruitful approach to understanding the combination of clientelism, centralized rule and corruption so frequently found in Bangladesh (but not inevitably or exclusively) would need to include a more holistic and coherent view of the various forces that shaped them historically.

## Conclusion

Corruption emerged as an issue of international concern in the mid-1990's as the international community became increasingly cognizant of its crippling effects. The immediate post-Cold War period also marked a rethinking on the part of the international aid community, whereby Western government donors no longer needed to focus support on corrupt regimes for strategic purposes, and further realized that the effectiveness of aid programs depended on fiscally responsible leaders (Kpundeh, et.al., 2006). Anti-corruption projects currently feature in the action plans of some of the largest government aid agencies, including those of the United Kingdom, the United States, Denmark, the Netherlands, Ireland and Canada (Doig, et.al. 2005). Support for such projects range from funding infrastructure and construction to providing technical assistance in domestically implementing international anti-corruption obligations to providing capacity building in the training of law enforcement and prosecutors in the handling of anti-corruption cases. A form of "anti-corruption mainstreaming" also emerged on the part of the multilateral development banks. In 1996, the then President of the World Bank, James Wolfensohn, delivered a speech at the Annual Meetings of the World Bank and International Monetary Fund, where he referred to "the cancer of corruption" (Riley, 2000).

The overarching fact is that while Bangladesh has had a demographic dividend through better food harvest, yet 6% GDP growth dividends have not reached the vast majority of our people. It is the wealth distribution pattern riddled with corruption, expropriation and flight of capital that has increased the gap between the rich and the poor. If it yawns, it could further disrupt social stability to the peril of our polity. However, the paradox is that most call attention to the petty corruption of low-paid civil servants, not to the grand corruption of wealthy multinationals. Most focus on symptoms such as missing resources, not causes such as deregulation of state enterprises. Most talk about bribe-takers, not bribe-givers. Thus multinationals, supported by Western governments and their agencies, are engaging in corruption on a vast scale in North and South alike. Donor governments and multilateral agencies such as the World Bank and IMF frequently put forward anti-poverty and anti-corruption under "good governance" agendas, but their actions send different signals about where their priorities lie.

There is no doubt that anti-corruption commission is a necessary factor that should be advanced for their effectiveness in a proper way regardless of the donor's prescriptions to fight against corruption. Therefore, the anti-corruption commission, a part of donor policy, that has emerged in Bangladesh today should no longer bury the problem rather it should elevate its importance. ACC in Bangladesh should design its form and function by redefining its ability to combat corruption by taking anti-corruption measures, which should be based on home-grown initiatives and endogenous governance process. Only this can meet the real needs and demand of the Bangladeshi people to ensure justice.



The experiences of the anti-corruption commission in Bangladesh illustrate its varied shortcomings in practice. This is in part due to internal factors, such as those associated with “organizational paradoxes,” as well as external factors associated with “governance and political rhetoric” worldwide. In general, however, legal and administrative reform has produced disappointing results and corruption has flourished and increased even though the ACC is in operation in Bangladesh. Failure has compounded cynicism and weakened faith in democratic changes. Such failures suggest: firstly, that the anti-corruption strategies pursued by international donors and imposed on recipients like Bangladesh are inadequate because of weaknesses in their conception of the state; secondly, that the reforms introduced through liberalization (a weakening of the state, deregulation and privatization) create new conditions in which corruption can flourish; and, thirdly, that fundamental features of Bangladeshi politics will need to change before such anti-corruption measures and ACC can hope to succeed. Thus home grown initiatives and indigenous policies with strong ‘political will’ as well as the shift of donor’s policies towards more genuine commitment to recipients instead of applying non-coercive intervention policies through flawed governance conditionality can help combat corruption in Bangladesh and make anti-corruption commission effective.

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## POLSCI PAPERS

### ***The Ideological Institutionalization of the Romanian Party System\****

**Sergiu Gherghina, George Jiglău**

#### Abstract:

The Romanian party system suffered significant changes in the past two decades. Initially characterized by high levels of electoral volatility and fragmentation, it has gradually reached continuity and stability. To what extent is such a pattern reflected in the ideological developments within the party system? Through a longitudinal analysis of the three main political families in Romania – the conservatives, the social-democrats, and the liberals – we reveal the degrees of ideological institutionalization within the party system.

**Keywords:** *ideology, party system, institutionalization, post-communism, Romania*

#### **Introduction**

Twenty years after the fall of communism and the rebirth of multiparty politics in Central and Eastern Europe, the party systems evolved from high levels of fragmentation and volatility characterizing the 1990's (Mair 1997; Rose et al. 1998; Lewis 2000; Birch 2001; van Biezen 2003) to a general continuity and stability visible in the most recent decade (Kolarova 2002; Enyedi 2006; Rose and Munro 2009). The Hungarian and the Czech party system appear to be the least electoral volatile (Sikk 2005; Tavits 2005), whereas in longitudinal terms starting with the third elections in the Czech Republic, Hungary, Poland, and Slovakia (Sitter 2002), and with the fourth in Romania (Gherghina 2009). In this entire process of stabilization, the ideological stances of political parties and their positioning in the political space play relevant roles. Kitschelt (1992) argues that the dynamics of post-communist politics indicates, from the beginning, a clear orientation towards the spatial dimension of party competition. The major

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explanations provided by previous studies for the electoral instability of post-communist parties partially or totally touch upon the role played by spatial positions in achieving specific electoral outcome: the initial institutional choices (Elster et al. 1998 ; Kostecky 2002; Birch 2003), the structure of cleavages and the incumbency effect to be reflected in the socio-economic conditions (Evans and Whitefield 1993; Bielasiak 1997; Tworzecki 2003), and new party entries (Spirova 2007; Tavits 2008; Rose and Munro 2009). On the other hand, there is evidence that the citizens of these countries use pure value-based voting to attach party loyalties (Tóka, 1998). Whitefield (2002) finds evidence for the social and ideological divisions in the post-communist societies, with socio-demographic factors making a difference in/when choosing ideologies.

The Romanian party system witnessed a relatively slow but solid stabilization, being positioned between the extreme cases of fast (e.g Czech Republic and Hungary) and slow and tedious institutionalization (Bulgaria and Poland). Therefore, its investigation provides relevant information on the dynamics of party politics within moderated cases. Three further particular elements of the Romanian party system make it relevant for scrutiny and highlight an apparent paradox. First, it displays a continuous decrease in the number of successful political competitors. The May 1990 elections allowed 16 political parties to get into Parliament (second Chamber), the 1992 elections reduced this number to seven, in the 1996 elections there were six parties, one less in 2000, whereas for the 2004<sup>19</sup> and 2008 this number stabilized to four.<sup>20</sup> Second, the number of entries in the Romanian party system is very small. Three out of four parties from the current legislature are in Parliament from their initial creation, whereas the last entry in the range of successful competitors was registered in 2000 (due to a coalition with the social-democrats). With newly created parties having little if any chances to enter the system, we can expect a sharp ideological separation between the existing actors, clear positioning in the ideological space (to maximize their votes). Third, the contemporary development of the party system partly contradicts such an expectation and reveals the necessity of continuous ideological clarifications among the political parties. The Democrat Liberal Party, one of the three main actors in the current party system undergoes ideological changes following its shift from social-democracy to conservatism in 2005. Moreover, the system currently faces the creation of a new leftist party, based on a group of independent MP's, who left the liberal and social-democratic opposition and now support the government. Whether we speak of major ideological shifts of parties or individual transfers from one party with a particular ideology to another, the poor politicians' attachment to particular ideologies impedes the creation of electoral loyalties among voters on the long-run (Mair 1997). The direct consequence of this situation is a volatile situation at the level of representation where political identities and organizational loyalties are recomposed every electoral cycle (Roberts and Wibbels 1999, 575).

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<sup>19</sup> This number corresponds to the beginning of the parliamentary term, there were five parties starting 2007 when the Truth and Justice Alliance split.

<sup>20</sup> Alliances and coalitions are calculated as homogenous political parties.

Summing up, a puzzle is visible: the Romanian party system gains stability although there is an apparent quest of some political parties for their ideological identity. Is there any stability in terms of ideological competition going on in Romanian politics? This article seeks an answer to this question, by revealing the evolution of the Romanian party system from an ideological perspective. In doing so, we aim to determine the degree of ideological institutionalization during the two decades of post-communism. Our enquiry is theoretically driven and we use process-tracing as major methodological tool. The unit of analysis is the ideological family (i.e. a concept situated between parties - legally "palpable" structures - and a party system – purely theoretical structure). In an ideological family there can be one or several parties and in any viable party system there should be at least two ideological families. We analyze the entire post-communist period, starting with the first free elections in 1990 and ending with the most recent 2008 elections.

The article begins with a review of the concept of institutionalization, identifying the position of the current article in the existing theoretical debates. The second section presents the methodological framework of the analysis, with an emphasis on the used tools. The analysis from the third section uses process-tracing to explain the Romanian electoral results. Finally, the conclusions summarize the main findings and open the floor for further research.

### **The Theoretical and Conceptual Frameworks**

The institutionalization is considered either a dichotomous phenomenon that may appear or not<sup>21</sup> (Sartori 1976) or a process through which parties and party systems transform and make steps towards becoming institutionalized or the reverse (Mainwaring and Torcall 2006, 206). Huntington (1965; 1968) defines institutionalization as "a process through which organizations acquire value and stability". Following this line of argument, institutions can be regarded as stability conducive mechanisms, having the capacity to derive stable outcomes (Shepsle 1989). stability represents one key assumption within the current study and can refer both to internal aspects, to be found in the formal institutionalization of parties, and to external aspects related with the effect that party institutionalization has on voters. Three pillars reflect diverse party features that are relevant in the formal institutionalization process. Thus, the regulative pillar refers to constraints and regulations coming from the institution towards its members. Through these, the party establishes rules, monitors activities, and sanctions behavior. The normative pillar includes both values and norms<sup>22</sup> on which the party was built and wants to be perpetuated or adjusted. When norms and values are attributed to certain specific actors: these institutionalized positions become roles (Scott 2001, 55). The cultural-cognitive pillar implies "the

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<sup>21</sup> Including here the conceptualization of Welfling (1973, 13) who considers institutionalization to be not only a process, but also a property or a state.

<sup>22</sup> Values are "conceptions of the preferred and the desirable, together with the construction of standards to which existing structures or behavior can be compared and assessed." Norms "specify how things should be done; they define legitimate means to pursue valued ends" (Scott 2001, 54–55).



shared conceptions that constitute the nature of social reality and the frames through which meaning is made" (Scott 2001, 57).

Mainwaring and Scully (1995) argue that institutionalization is "the process by which a practice or organization becomes well established and widely known, if not universally accepted". With respect to party institutionalization, Huntington (1968) identifies four dimensions: adaptability, complexity, autonomy and coherence. Adaptability refers to the capacity of a party to resist in time and to survive its leaders. Organizational complexity refers to the number of subunits. Autonomy deals with the degree of differentiation between the party and the behavior of other social subgroups. Coherence regards the capacity to reach consensus and to resolve the disputes inside the party.

Panebianco (1988) sees institutionalization as a "solidification" of a political organization, which becomes "valuable in itself", and its survival becomes the "goal" of its followers. Institutionalization should be understood as the process by which the party becomes established in terms both of integrated patterns of behavior and of attitudes, or culture. We suggest further that it is helpful to distinguish between internal and externally related aspects of this process. Internal aspects refer to developments within the party itself; external aspects have to do with the party's relationship with the society in which it is embedded, including other institutions. Within each of these aspects there will be a structural and an attitudinal component." (Randall and Svasand 2002, 12) In the life of an organization there are three phases: genesis, institutionalization and maturity (Panebianco 1988, 19). The particular combination of organizational factors from the genesis phase influences both the degree of institutionalization and the forms of institutionalization. Thus, some parties become strong institutions, others hardly institutionalize at all. (Panebianco 1988, 19).

Randall and Svasand (2002) believe the term *systemness*, in Panebianco's understanding, overlaps with the concepts of complexity and coherence, as understood by Huntington, while autonomy is regarded in the same manner by both authors. Janda (1980) does not consider autonomy to be an essential feature of institutionalization of parties, bringing as an example the Labour Party in the UK, which exists in strong connection with the unions. The alternative concept put forward by Janda is "external institutionalization", by which a party becomes a point of reference in the actions of all other social and political actors. Levitsky (1998) puts forward the concept of "value infusion", while Randall and Svasand speak of the attitudinal dimension of institutionalization, both expressing the idea that a party becomes institutionalized, with a stable and loyal electorate, if the values it promotes are constant and coherent from an ideological perspective, thus making the party a predictable one.

We notice that these definitions and operationalizations of institutionalization emphasize not only the persistence over time (Riker and Ordershook, 1973; Scott, 2001), but also touch on the idea of ideological stability. Transposing them

to the intention of determining the degree of ideological institutionalization at the level of a party system, we can say it deals with the capacity of a particular ideological stream to acquire stability and intrinsic value. However, there is a difference of nuance to be pointed out. While we do not discuss directly the institutionalization of parties, they remain at the heart of our conceptualization as the vehicles through which ideological streams become institutionalized or not. An ideological stream does not have an own will, it is not “a living body” that can make decisions as it is the case of political parties. This is why we speak of ideological institutionalization solely based on the actions and results of the parties that reflect a particular ideological stream and on the reactions of the citizens, expressed through the votes they cast in elections.

The organizational component plays an important part in the discussions about party institutionalization, but for the purpose of this study it is less important what happens inside the parties that form a particular ideological stream; the actions of the party as a whole matter. Hence, we approach institutionalization from two perspectives. First, it is the process by which parties behave coherently from an ideological perspective (Przeworski 1975; Mainwaring and Scully 1995; Mainwaring 1998). In other words, the actions of a party must be predictable and stable from the point of view of its ideology. Second, it is the process through which the electorate affiliates and stabilizes from an ideological perspective, through which ideological links between parties and citizens are formed, meaning that citizens constantly vote for the party or the parties that represent a particular ideology. In other words, we can speak of ideological institutionalization when parties become stable by creating ideological roots in the society.

One further theoretical clarification is necessary. There is an extensive theoretical debate regarding the overlap between the institutionalization of parties and the institutionalization of party systems. Authors slowly agree that one does not necessarily imply the other (Casal Bertoa 2007). In this article, we refer mainly to the ideological institutionalization using analogies with the institutionalization of parties (having in mind the clarifications made above). As the core of a party system is represented by the patterns of interaction between and within its subunits (i.e. political parties), the stability in the rules and nature of inter-party competition are the crucial components of party system institutionalization. The fundamental precondition raised by Sartori (1976) when defining a party system has to be recalled: in order to speak of a “system” we must have at least two parties, because a system implies the existence of at least two components interacting and mutually influencing their actions. The more stable the system (i.e., structured inter-interaction), the more institutionalized it is (Przeworski, 1975; Mair, 2000).

### **Research Design: Operationalization, Data, and Method**

The institutionalization is operationalized in this study as low electoral volatility and lack of fragmentation. Our unit of analysis (i.e. the party family) corresponds

to Bartolini and Mair's (1990) concept of block as the intermediate level of representation between the party system and party. A block of parties can be either a party family or a group of parties occupying a common place on the left-right continuum or old vs. new and opposition vs. government continuum (Pennings et al., 1998). At block level, we can distinguish between intra- and inter-block dynamics with the first involving the changes between parties from the same bloc, whereas the second catches the behavior between blocks. For instance, when calculating the electoral volatility and the effective number of parties within a party family, we use the mathematical formula applicable to parties. The ideological stream/family is regarded as a miniature party system. As we will see, there are instances when inside an ideological stream there is only one party representing it, in such cases the effective number of parties being 1.

The concept of ideological family is used by Klaus von Beyme (1984), who identified ten ideological families<sup>23</sup>, but his categorization combines ideological and theoretical criteria with aspects related more to the practical actions of the parties. Another perspective, used even more widely in the analysis of parties, as well as in journalistic analysis, is the one based on the left-right continuum. This is somewhat an exaggerated simplification of Lipset and Rokkan's (1967) theory on social cleavages, although many authors, most notably Kitschelt (1995), created spatial models for the distribution of parties and party families inside the party system, based on criteria relating to the actions of the parties and the social contexts in which they are active.

Our study considers three major ideological families: social-democracy, conservatism<sup>24</sup>, and liberalism. These families are common all major European party systems and have strong historical and philosophical roots. It is not the goal of this article to establish whether they represent the left or the right or on which side of particular cleavages they are situated in Romania. Also, the three families have been selected for this study because they are the main ideological streams within the European Parliament and hold the most numerous three parliamentary groups. Their presence is continuous within the Romanian party system from its re-emergence: within the system there has always been at least one party claiming to represent each of these families.<sup>25</sup>

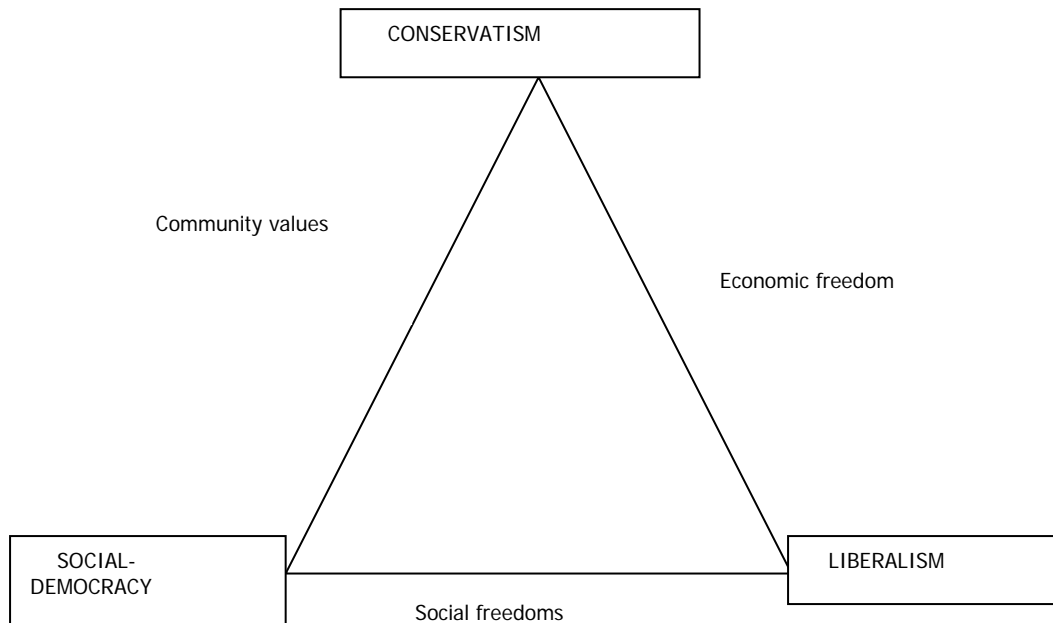
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<sup>23</sup>The ten families are: liberal parties, parties of workers, agrarians, ethno-regionalist parties, christian (christian-democratic) parties, communists, fascists, protest parties and green parties.

<sup>24</sup> In this study, the Christian or Christian-Democratic parties are included in the family of conservative parties. Both streams have as a fundamental feature the traditionalism in their approach of moral values, the difference being that conservative parties believe that these values have a secular origin, rooted in traditions developed in time, while Christian parties believe that Christian morale is the source of moral values. Conventionally, we use the term conservative when dealing with this ideological family throughout this study.

<sup>25</sup> In other European democracies, especially in the West, there are also other ideological families being represented on regular basis in the system, such as the Greens, but their existence in Romania has been significant only in the beginning of the '90s, when they also held some seats in Parliament.

Hence, this study does not use the classical understanding, particularly valid for Romania, that social-democrats represent the left, conservatives the center-right and liberals the right. For the same reasons, we do not take into consideration the relative ambiguity on the identity of the liberals, considered to represent the left in Western Europe and the right in post-communist Europe. We consider the three ideological families to be disposed in a triangle, as reflected in Figure 1, which helps us to better understand the interactions among the three families, each family having in common a particular feature with each of the other two. Social-democrats and liberals share their opening towards social freedoms (as opposed to the conservative traditionalism), liberals and conservatives advocate the minimal state in economic affairs (while social-democrats support the state's involvement in economy), and conservatives and social-democrats emphasize the community as a primordial structure of the society (while liberals consider the individual to be the core component of the society).



**Figure 1: The ideological triangle**

In order to determine the degree of institutionalization of ideological families in Romania, we analyze the electoral results obtained by the parties composing each family in each of the parliamentary elections taking place in Romania after the fall of communism: 1990, 1992, 1996, 2000, 2004, and 2008. For simplicity, we account only for the results obtained by parties in the elections for the Chamber of Deputies.<sup>26</sup> Also, in all six rounds of elections, we consider only those parties obtaining over 5% of the votes and the electoral alliances that

<sup>26</sup> There were no relevant situations in which parties obtained different electoral results in the two Chambers.

passed the specific threshold set for them<sup>27</sup> as established since the 2000 elections. The reason is that we must use the same criteria for selection in all six elections. The electoral threshold varied from 0 in 1990 to 3% in 1992 and 1996 and then to 5% since 2000. The number of parliamentary parties in 1990 was high and including in the analysis all the parties that gain seats by obtaining only a few thousand votes would have a minimal impact and complicate matters without any reason.

In order to determine the parties that belong to each family for each round of elections, we use four elements.<sup>28</sup> The first element is the name of the party. It is self-speaking many times and offers a clear indication on the party's orientation. Thus, the Social-Democratic Party, the National Liberal Party, the National Peasant Party – Christian-Democrat indicate through their name the ideological family they belong to. However, the name can sometimes be misleading or may not offer clear indications. Such examples are the Democratic Party (today the Democratic-Liberal Party), the Greater Romania Party, and the National Salvation Front. Thus, the second element used in establishing the ideological identity is the party's internal documents where the ideological orientation is specified or at least where certain indications are given based on the stated principles regarding the economy or the social matters. A third element is the membership in international associations of parties, be them European parties or the so called “internationals”. Even if in the '90's this element is not particularly useful, because the Romanian parties were not fulfilling the conditions to become members of these associations. After 2000, their belonging to these organizations certified their closeness to particular ideological families. There is also some ambiguity here concerning the Conservative Party (formerly known as the Romanian Humanist Party), which oscillated regarding its international belonging. It tried to become a member of the European People's Party, but it was rejected, so the Conservatives reoriented towards the European Liberal-Democrat, so the first MEP's of this party joined the ALDE group in the EP. However, the program of the Conservative Party recommends it as a member of the homonym family, even if in the 2000, 2004 and 2008 elections it ran in an alliance with the social-democrats and at one point the name of the party included the words “social-liberal”. The final element that helps the ideological classification of parties in a particular electoral moment is the past and the future of the party. For instance, we include the National Salvation Front in the family of social-democrats, having in mind that it evolved in the social-democratic parties. While none of the four elements indicates by itself without doubt the ideological family of a party, taken together they provide an accurate image.

There are three methodological clarifications to be made before the analysis. First, we do not take into consideration the Democratic Alliance of Hungarians in

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<sup>27</sup> For electoral alliances, the electoral threshold is raised to 8% if there are two parties in the alliance and starting from the third party an additional 1% is added, without going over 10%. For instance, this is why the alliance CDR 2000, which in the 2000 elections obtained 5.04%, will not be included in the analysis.

<sup>28</sup> As mentioned, the primordial condition is to be a parliamentary party, which obtained at least 5% of the votes or was part of an alliance which gained seats.

Romania (UDMR). It holds a special position in the Romanian party system, having its own, highly stable, electorate. Although it is a member of the EPP, being recognized as a formation with a conservative orientation (despite the fact that inside it there are several ideological streams), we do not include it in the analysis because it does not effectively compete against the other parties for votes. A good mobilization of its own electorate – the Hungarian minority – is sufficient for passing the threshold. Second, the problem of alliances needs to be clarified. This analysis is based on the percentages of votes obtained by parties in elections, but in the case of alliances we speak of a cumulated score of several parties. For the parties winning seats as part of an alliance, we account for the number of seats gained by the party following the distribution and we proportionally calculate, based on the electoral results of the alliance, the percentage corresponding to the number of seats for each party. The result is the electoral score of the party in the respective round of elections. This approach towards alliances minimizes miscalculations, even if there is always a difference between the percentage of seats and the percentage of votes obtained by a party. The difference, however, is relatively small and it does not influence significantly the results of the analysis. Furthermore, we consider the cumulated score of parties belonging to the same ideological family running in elections as part of the same alliance. This is the case of the liberals in the Romanian Democratic Convention in 1992 and 1996, for instance.

The third aspect that should be clarified here is how the two nationalistic parties appearing in the analysis will be classified: the Romanian National Unity Party (PUNR) and the Greater Romania Party (PRM). PUNR is relevant for the 1992 elections, when it gained 7.72% of the votes. This is a party that was active initially only in Transylvania, being in close connection with the nationalistic organization Romanian Cradle, later merging with other smaller parties and gaining national representation. The main objective of this party was the promotion of “national policies” and in the 90's it was in the sphere of influence of the Party for Social-Democracy in Romania (today the Social-Democratic Party), collaborating in government with it before the 1996 elections. However, it is difficult to place PUNR in one of the three ideological families included in the study as the nationalistic discourse was its main feature without a specific economic program or clear political identity that would help us to include it in one of the three main families. Moreover, following its collaboration with the social-democrats in the '90s, it eventually merged with the conservatives. On the other hand, PRM is also a party with a strong nationalistic discourse, but it is included in the family of social-democratic (or rather socialist) parties. Besides its collaboration with the social-democrats in the '90s, the political program of PRM speaks of “the equality of chances for all citizens, human solidarity and family values” and of “the development of national economy as a condition for a decent living for all citizens”. These elements and the public interventions of its president in favor of the state's intervention in economy or against wealthy businessmen place PRM in the social-democrat corner of our triangle. Table 1 includes the electoral results taken into consideration in the analysis.



**Table 1: The Electoral Results Aggregated for Each Ideological Family**

	Conservatism		Social-Democracy		Liberalism	
	<i>Party</i>	<i>Percentage</i>	<i>Party</i>	<i>Percentage</i>	<i>Party</i>	<i>Percentage</i>
<b>1990</b>			FSN	66.31%	PNL	7.32%
	<b>Total</b>	<b>0</b>	<b>total</b>	<b>66,31%</b>	<b>total</b>	<b>7,32%</b>
<b>1992</b>	PNTCD (CDR)	9.88%	FDSN	27.72%	PAC/PNL-CD	6.35%
			FSN	10.19%		
			PSDR (CDR)	2.35%		
	<b>Total</b>	<b>9.88%</b>	<b>total</b>	<b>40.26%</b>	<b>total</b>	<b>6.35%</b>
<b>1996</b>	PNTCD (CDR)	20.52%	PDSR	21.52%	PNL/PNL CD/PAR (CDR)	8.16%
			PD/PSDR (USD)	12,93%		
	<b>total</b>	<b>20.52%</b>	<b>total</b>	<b>34.45%</b>	<b>total</b>	<b>8.16%</b>
<b>2000</b>	PUR-SL	1.41%	PDSR/PSDR (PDSR) <sup>29</sup>	35.19%	PNL	6.89%
			PD	7.03%		
			PRM	19.48%		
	<b>total</b>	<b>1.41%</b>	<b>TOTAL</b>	<b>61.70%</b>	<b>TOTAL</b>	<b>6.89%</b>
<b>2004</b>	PUR (PSD+PU)	5.27%	PSD	31.36%	PNL (D.A.)	17.86%
			PD (D.A.)	13.39%		
			PRM	12.93%		
	<b>total</b>	<b>5.27%</b>	<b>TOTAL</b>	<b>57.68%</b>	<b>TOTAL</b>	<b>17.86%</b>
<b>2008</b>	PC (PSD+PC)	1.16%	PSD (PSD+PC)	31.92%	PNL	18.57%
	PDL	32.36%				
	<b>total</b>	<b>33.52%</b>	<b>TOTAL</b>	<b>31.92%</b>	<b>TOTAL</b>	<b>18.57%</b>

<sup>29</sup> In the 2000 elections, PDSR formed an alliance with PSDR and PUR-SL, running under the label “Pole for Social Democracy in Romania”, with the PDSR acronym.

Source: The election results, available at Essex Database (last accessed 21 May 2010) and on the Website of the Central Electoral Bureau (last accessed 22 May 2010).

For each round of elections, we add the results of all the parties that obtain seats in the Parliament, regardless if they ran on their own or as part of an alliance. Based on this number we calculate the level of electoral volatility for each ideological family from one round of elections to the next. Birch (2001) calculates the volatility in a relative manner, reporting the difference of vote shares to the total of votes received by the party in both elections. This measurement accurately describes party fluctuations in support relatively to its share of votes. This is the reason for which we use the same formula for our calculations:

$$V_j = \frac{|V_{t1} - V_{t0}|}{V_{t1} + V_{t0}}$$

(1)

$V_j$  = party j electoral volatility,  
 $V_{t0}$  = the share of votes obtained by party j at moment/election  $t_0$  (the initial elections).  
 $V_{t1}$  = the share of votes obtained by party j at moment/election  $t_1$  (most recent elections).

We consider each ideological family as representing a party system and calculate the effective number of parties belonging to each family in order to determine the degree of fragmentation in each family. The formula used to determine the effective number of parties is the following:

$$e_f = \frac{1}{\sum_i^n V_i^2}$$

(2)

$e_f$  = the effective number of parties within a family,  
 $N$  = the mathematical number of parties within the family,  
 $V_i$  = the percentage of votes obtained by party  $i$  relative to the total number of votes obtained by the ideological family.

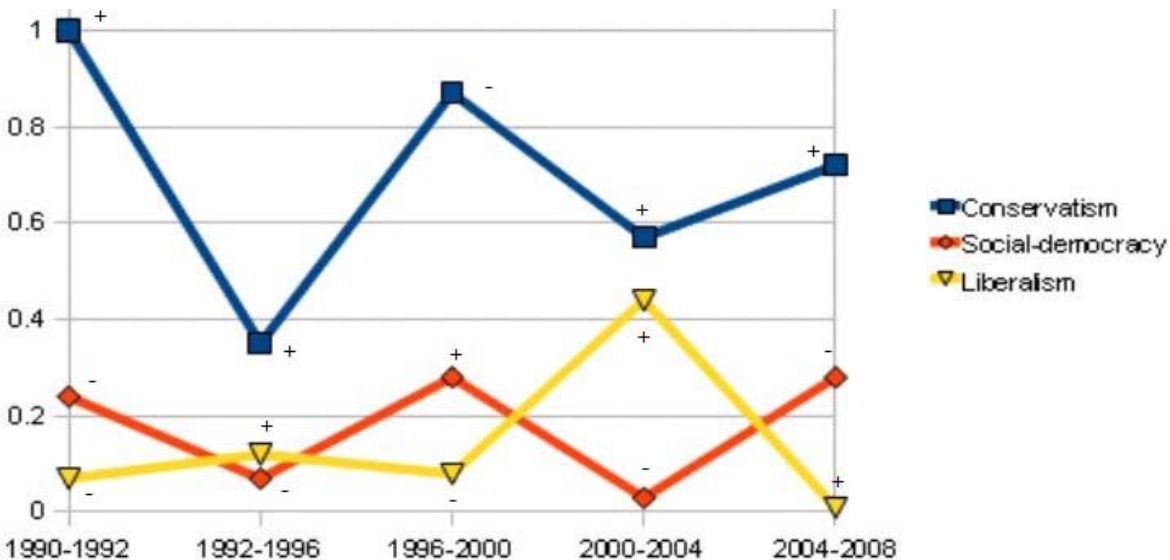
### How Institutionalized are the Romanian Party Families?

This section presents the results obtained after calculating the electoral volatility and effective number of parties for the Romanian ideological party families. After

a general comparison of the observed trends, we delve into details and explain them in a narrative manner. In doing so, we point out the key elements in the evolution of each family following the fall of communism.

Figure 2 graphically depicts the levels of electoral volatility for each analyzed ideological family. Three features are observable. First, the levels of volatility greatly differ between the three families: the conservative family is the most volatile, followed by the social-democrats and liberals. In fact, the latter two have quite similar averages, with alternative peaks. For example, the liberal family is more volatile than the social-democratic block in 1992-1996 and 2000-2004, whereas the social-democrats register higher levels of volatility in the 1990-1992, 1996-2000, and 2004-2008 electoral cycles. Second, all three families register oscillations, there are no consecutive electoral cycles in which the volatility increases or decreases. Third, the conservative and social-democratic families follow similar patterns of increase and decrease. Their dynamics coincides in all the post-communist electoral cycles. Furthermore, the figure shows that whenever one of the two families wins votes, from one election to the next, the other one loses and viceversa, as pointed out by the “+” and “-” signs that indicate increases and decreases in the electoral strength of a family within a cycle. Thus, we see that there has been a constant exchange of votes between the social-democrats and the conservatives, which may in fact represent a bulk of average voters which are regularly the target of catch-all parties and that switch back and forth between the two. However, this study does not bring data on this segment of the electorate.

**Figure 2: The Electoral Volatility of Each Ideological Family**



Source: Compiled on the basis of the electoral results from Table 1 and the formula used by Birch (2001).

Table 2 includes the effective number of parties for each ideological family, calculated for the electoral cycles. We can easily notice that liberalism has one representative for all the elections (the issue will be extensively discussed in the following lines), whereas a similar pattern is visible for conservatism with the exception of the most recent elections when the number increased from 1 to 1.08. The social-democratic family appeared to be the most contested with one effective party in the first and most recent post-communist elections. Apart from those two instances, the number varies from 1.88 in 1996 to 2.63 in 2004.

**Table 2: The Effective Number of Parties for Each Ideological family**

Election Year	Ideological Family		
	CONSERVATISM	SOCIAL-DEMOCRACY	LIBERALISM
1990	-	1	1
1992	1	1.92	1
1996	1	1.88	1
2000	1	2.38	1
2004	1	2.63	1
2008	1,08	1	1

Source: Compiled based on the electoral results in Table 1.

#### *The conservatives*

In the case of the conservative family, we can notice that the effective number of parties is constantly 1, with the exception of the 1990 elections, when no party of this family gained over 5% of the votes, and the slight variation after the 2008 elections. However, the volatility scores are much higher than those of the liberals. The results, again, may seem surprising, given that the conservative ideology and the membership in the European People's Party have been among the main political targets on the political stage in the last decade. The high scores for the electoral volatility are explained by the very poor results of the conservative parties in three of the six rounds of elections. In May 1990 no conservative party gained over 5% of the votes. In 1992, the National Peasant Party – Christian-Democrat (PNTCD) became the main voice of the opposition, as part of CDR.

The electoral result of the PNTCD, still part of CDR and still the only conservative party in Parliament, doubled in 1996. Thus, the score of the conservative family went from 0 in 1990 to over 20% in 1996, hence the high volatility. However, the 1996-2000 cycle, when PNTCD led the government as part of a grand coalition, had unfortunate consequences for this party. In 2000, PNTCD decided to continue the CDR tradition, without having any significant ally. The alliance

gained only slightly over 5% of the votes, insufficient for gaining seats. The conservative family continued to be represented in Parliament by the Romanian Humanist Party – Social-Liberal (PUR-SL), which gained representation for the first time as part of an alliance with the Party for Social-Democracy in Romania (PDSR, today PSD), but gaining just 1,41%. This party strengthened its position in the alliance with PSD in the 2004 elections, when it gained 5% of the mandates in the Chamber of Deputies, despite the fact that after the elections it left its allies and joined a right-wing government. In 2005 it changes its name in Conservative, thus clearly defining its ideological orientation. In 2008, they retied their alliance with PSD, but gained only 1% of the mandates.

However, in 2008 the Democrat-Liberal Party appears in elections for the first time as a conservative party. Formerly a social-democratic party, it changed its ideology in 2005-2006. Noticing the space left after PNTCD lost its electoral power, insufficiently represented by PC, PDL emerged as the main conservative party, gaining 32% of the votes and taking over government. Thus, as opposed to the liberals, always represented by PNL, by factions of PNL or parties that eventually merged with PNL, the Romanian conservatives were represented after 1990 by three different parties. One of them disappeared in 2000, another one gained seats only as part of alliances with the social-democrats and the third one claimed its conservative identity after 15 years as a social-democratic party. Hence, we notice the mechanism which explains why the effective number of parties inside the family is constantly 1, but the variations in the electoral scores of the family is very high.

#### *The social-democrats*

For the social-democratic family, we notice a relatively low electoral volatility, but also the highest effective number of parties inside the family among the three families included in the analysis. The only rounds of elections when the effective number of parties is 1 are the first, in 1990, and the last, in 2008. In 1990, social-democracy was represented by the National Salvation Front (FSN), who dominated the political scene. FSN was a conglomerate of political groups and personalities, some coming from the former Romanian Communist Party, while others were former anti-communist fighters. It is rather difficult to fit such a large political formation in a classical political family, however it is easier to do so given that FSN evolved following the 1990 elections in two openly social-democratic parties – PDSR and PD. The split was a consequence of the rift appeared between the president, Ion Iliescu, and the prime-minister, Petre Roman. Iliescu's followers formed the Democratic National Salvation Front (FDSN), which became PDSR after the 1992 elections. Roman's followers continued under the label of FSN and renamed the party PD after the 1992 elections. Another social-democratic party emerging as an important actor in 1992 was the Romanian Social-Democratic Party (PSDR), the successor of the inter-war, historical, social-democrats.

However, PSDR gained seats after running in elections as part of CDR together with parties coming from other political families, such as PNTCD and PNL. In the 1996 elections, the same three parties continued to represent social-democracy, but PD and PSDR ran together in an alliance and later joined CDR to form a governmental alliance. In 2000 and 2004 a fourth party considered here to be social-democratic had a very strong showing – PRM. Also, in 2000, PDSR and PSDR ran together in an alliance and later merged to form PSD. In 2004, PD ran together with PNL in an alliance which had as its main goal to remove PSD from power. In fact, what characterizes the relations between the parties forming the social-democratic family is the permanent state of conflict.

Since the split of FSN in 1991, PD and PDSR were in a permanent dispute for supremacy on the social-democratic lane of the party system. PD gained international acceptance, becoming a member of the Socialist International and of the Party of European Socialists before PDSR, which was regarded as the unreformed successor of the Communist Party. PRM has always been considered “the black sheep” of Romanian politics and, except a brief period before the 1996 elections, when PDSR used its support to maintain its position in the government, no party was ever willing to associate in any form of alliance with PRM. The competition within the social-democratic family was resolved after PD switched its ideological affiliation from social-democratic to conservative, thus leaving PSD to be the only social-democratic party winning seats in the 2008 elections. Thus, we notice that, with the exception of 1990 and 2008, the competition inside the social-democratic family was the highest among the three families, but the electorate was rather stable throughout time, despite the fact that the social-democrats suffered the biggest quantitative “loss”, with an entire party leaving the family.

### *The liberals*

The data presented above show that the liberals represent the most stable political family in Romania in the past 20 years. This conclusion may be paradoxical to those familiar with the troubled history of the liberals after the fall of communism. After its rebirth in the days of the 1989 revolution, PNL gained 7,32% in the first elections. The liberals showed they were the second political force, after FSN, the main actor of Romanian politics at that time. However, right after the 1990 elections, the liberals went through the first split. *PNL – Young Wing* (PNL-AT), led by prominent young liberals, was formed. When the Romanian Democratic Convention (CDR) was formed in 1991, PNL was one of the founders. Another liberal party part of CDR was the Party of Civic Alliance (PAC). Although it remained a part of CDR for the local elections in 1992, it separated and ran on its own in the general elections later the same year, which led to the second split. A fraction decided to remain part of CDR and thus *PNL – Democratic Convention* (PNL-CD) was formed. PNL's decision to leave CDR proved to be wrong, because it failed to gain any seats in 1992. However, the liberals continued to be represented in Parliament by the two liberal parties inside CDR – PAC and PNL-CD. Following the loss suffered in elections, the leadership



of PNL changed and the former leader, Radu Campeanu, left the party and formed *PNL-Campeanu* (PNL-C). In 1993, PNL-AT becomes the Liberal Party '93 (PL '93). PNL returns in CDR in 1994 and runs as part of it, together with PNL-CD and the Romania's Alternative Party (PAR, later called the Union of Democratic Forces), another newly formed liberal party, in the 1996 elections. In the same time, PL '93 and PAC leave CDR and form their own alliance and fail to gain seats. They later form the Liberal Party (PL). In 1998, the liberal family begins to regroup. PNL absorbs PL and PNL-CD and merges with PAC. In the 2000 elections, PNL leaves CDR again, this time an inspired move, because CDR 2000 failed to gain any seats. In 2001, the liberals merge for the first time with a party coming from outside the liberal family, the Alliance for Romania (APR) being the result of a split in the main social-democratic party and failing to gain seats in the 2000 elections. In 2003, PNL merged with PAR and later the same year the liberal reunification was completed after the absorption of PNL-C.

In 2008, PNL absorbed two smaller parties: the Popular Action, founded by former president Emil Constantinescu, and the Democratic Force, a small social-democratic party, led by former prime-minister Petre Roman. However, there has been another split inside PNL in 2006-2007, when a large faction of the party left, formed the Liberal-Democrat Party (PLD), which later joined the PD and formed PDL<sup>30</sup>. A quick look over this troubled history shows us that the political liberal family went through four splits and nine mergers. Despite these numbers, tables 1 and 2 reveal that the liberals had the most stable electorate throughout the last 20 years. The effective number of parties was constantly 1, because the failure of one party meant the success of other ones. Moreover, the liberals have the lowest level of electoral volatility. The highest variation is noticed after the 2004 elections, the first in which the liberals ran under only one party label, although as part of an alliance with the Democratic Party. However, the liberals managed to maintain their score in 2008 elections, when they ran on their own.

## Conclusions

The results indicate that the liberals have the highest degree of institutionalization among the three political families in Romania. They have both a low level of electoral volatility and the lowest effective number of parties inside the family. The liberal electorate is fairly stable and remained loyal to liberalism, despite the turmoil inside the family. The liberals were somewhat isolated from the exchange of electoral support and even of parties observable between social-democrats and conservatives. The 2008 elections showed that not even the split that transferred a large part of PNL towards PD (later PDL) could influence the position of the liberals. The evolutions of conservatives and social-democrats are strongly connected; an electoral loss for one family is transposed in electoral gains for the other. Nevertheless, we can say that social-democrats enjoy a higher level of institutionalization, considering the relative low level of the

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<sup>30</sup> PLD never ran in general elections. The only elections in which it competed were the 2007 European elections, when it managed to pass the 5% threshold.

average volatility. However, as opposed to the liberals, who did not lose votes following the transfer of a fraction to another family, the social-democrats lost votes after PD switched to conservatism; a large share of the electorate that until then voted with social-democrats were party-oriented rather than ideologically oriented. Finally, we cannot speak in any way of institutionalization in the case of conservatives. The variations in the electoral scores of this family are extremely high and show that the affiliation of the electorate towards this particular ideology is very low. Moreover, it is reasonable to assume that in the 2000, 2004 and 2008 elections the conservatives could have been left without representation if PC had not participated in elections together with PSD. It remains to be seen whether PDL can become a vehicle for the institutionalization of conservatism in the future elections, given that the previous representative of the family, PNTCD, has little chances of regaining its electoral force in the near future, and PC seems unable to become a party capable to sustain itself.

The article shows that a decrease in the number of parliamentary parties does not necessarily mean an ideological stabilization. All the main parties claim to “occupy” an ideological lane within the party system –which may be true - and speak of their “hard-line voters” – which may also exist, however it is clear that the ideological lanes are not encrusted within the electorate, with the relative exception of the liberal family. The electoral support of each family is too fluid and makes it impossible to claim that the ideological families have strong roots in the society. Thus it is difficult to speak of ideological institutionalization within the Romanian party system.

Our analysis uses accessible data and established tools in the field of parties and party systems in an original fashion; thus, although relatively simple, the analysis sheds light and helps to the better understanding of the ideological evolution of the Romanian parties and party system. While political parties may have their own evolution towards institutionalization (or the reverse), the situation can be completely different from an ideological perspective. Also, the article shows that the reduction of the number of parties inside the party system does not necessarily transpose in a higher level of ideological institutionalization, since parties, fractions of parties or individual politicians still move from one family to another one, taking their own electorate with them. Similar studies can be conducted for other post-communist party systems, undergoing similar agitated evolutions, such as the ones in Bulgaria, Slovakia or Poland. This type of studies can help us understand to what extent ideology really matters for parties and for the electorate.

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[www.becparlamentare2008.ro](http://www.becparlamentare2008.ro) (for the 2008 legislative elections)

## ***Implications of the Common Consolidated Corporate Tax Base Introduction on Tax Revenues (case study on Romania)***

**Daniela Pirvu, Logica Banica, Alina Hagiu**

### **Abstract**

For solving the existing difficulties in corporate income taxation, the European Commission proposed the introduction of measures for coordination, solution contested by some Member States but supported by most professionals and many organizations representing the interests of European employers. Disputes in connection with the introduction of the "Common Consolidated Corporate Tax Base" are determined by the uncertainty regarding its effects. Since corporate income tax has an important contribution in forming the central budget revenues, the "Common Consolidated Corporate Tax Base" is a challenge for Romanian public authorities. The Romanian government has not expressed until the moment a choice in this respect. In this paper we intend to take stock of the main points of view about the implications of introducing the common consolidated corporate tax base made by specialists and to estimate the effects of the EU formula apportionment on corporate tax revenues in Romania. For the particular conditions of 2008 we concluded that Romania would register an increase in tax revenue. Accumulating that advantage with the other benefits of the common consolidated corporate tax base we believe that the Romanian authorities should support the actions to coordinate the corporate income tax systems in the European Union.

**Keywords:** *coordination, tax revenues, corporate income, EU formula apportionment*

### **Introduction**

Nowadays, the approach on the corporate income harmonization is the most important issues of debate on the agenda of the European Commission and in the theoretical approaches of specialists. The extreme diversity of these approaches is a eloquent indicator of the complexity of problems that prevent the formulation of solutions widely shared, even in theory and independent of considerations of political feasibility.



The coordination of tax systems for companies with cross-border activities from European Union member countries recorded important steps in early 1990s with the adoption of the "Mergers Directive", the "Parent-Subsidiary Directive," the "Arbitration Convention ", the "Directive on taxation of savings income in the form of interest payment" and the "Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States". These directives have failed to fully regulate the taxation of corporations and solve all the problems facing the Member States and companies with cross-border activities.

Recent guidelines towards a common corporate income taxation are based on a common purpose - to simplify and increase the efficiency of the tax system to ensure a better functioning of the single market. The specific objectives of the new tax system are: reducing associated compliance / administrative costs of the corporate taxation (both supported by companies and tax administrations), facilitating the cross-border business expansion in the European Union and minimizing distortions caused by national differences in terms of investment and bases tax allocation.

To eliminate barriers generated by the existence of 27 different tax systems on the on the efficient functioning of the internal market, the "Common Consolidated Corporate Tax Base" was highlighted by its benefits. The project was promoted by the European Commission and was supported by several Member States of the European Union, the European Parliament, the Economic and Social Council and the European business community.

The "Common Consolidated Corporate Tax Base" system is an ambitious goal of the European Commission. Technical discussions related to this system were launched in September 2004, when was formed a working group to help the Commission to prepare a legislative proposal in this regard (Matei and Pirvu, 2010). Common tax base involves establishing a single tax base for activities of a transnational company, and consolidation means that the income, the expenditure, respectively, the taxable profits to be calculated in one state (the one in which is the company - parent), then the tax to be collected in that state and afterwards to be distributed to other states where the company has activities.

Expected benefits of introducing this model are many (European Commission, 2001):

- the significantly reduction of the compliance costs;
- the disappearance of the double taxation problem within the EU;
- the removing of a major obstacle to free movement of capital and unrestricted exercise of the right of establishment, due to cross-border clearing (but only within the European Union) tax losses by reducing the taxable profits of parent companies;
- the disappearance of the tax avoidance practices by using "transfer pricing", because intra-firm transactions prices can not affect the distribution of taxable income on tax jurisdictions;

- the comparability of effective tax burdens in each jurisdiction (in terms of a single base, the nominal rates are perfectly comparable), with the consequent of quality investment decisions improvement and hence resource allocation to the whole EU.

The advantages of the "Common Consolidated Corporate Tax Base" could create the preconditions for achieving important goals of the EU fiscal policy:

- supporting the success and the common market development by allowing all Member States to compete fairly and to take the benefits of the internal market;
- sustainable reduction of overall tax burden in the European Union, by ensuring a balance between the tax reductions, the investment in public services and sustaining the fiscal consolidation.

Since Romania joined the EU recently, most studies have assessed the impact of the introduction of some measures to coordinate the corporate income taxes in the European Union failed to capture their effect on the tax revenue in Romania. As representatives of the Romanian Government have expressed so far, no pro opinions or views against the European Commission proposal we believe that an evaluation in this regard is useful.

### **Main issues in the "Common Consolidated Corporate Tax Base"**

The "Common Consolidated Corporate Tax Base" system involves consolidated determining of taxable companies with cross-border activity income, as accounting rules. Concrete actions for building this system started at the ECOFIN Council in September 2004, when most EU Member States have accepted the usefulness of some progress towards creating a common tax base and have decided to set up a working group of experts representing the Member States and chaired by the European Commission, which to examine in detail the possible solutions to implement this database.

The main objectives of the *Common Consolidated Corporate Tax Base Working Group - CCCTB WG*, established in 2004, are:

- to discuss on the principles that will govern the "Common Consolidated Corporate Tax Base" system;
- to examine the technical definition of a common consolidated tax base for companies doing business within the European Union Member States;
- to establish fundamental structural elements of a consolidated tax base;
- to formulate a mechanism for allocating the consolidated tax base between entitled Member States.

The resulting documents from discussions in the working group are prepared by the Directorate General for Taxation and Customs and are published on the Web site of the European Commission after each meeting. Until now there were 13 working group meetings.

In the late of 2008, the European Commission hoped to achieve the working group work in a legislative proposal, with effect from 2010, but this objective has not yet been reached (Matei and Pirvu, 2010).

Legislation on the common consolidated tax base will apply to companies paying tax in EU Member States (these will be specified in an annex to the regulation, the Annex will be amended annually) organized in groups, but operating according to individual economic strategies group. Corporations resident in the European Union countries may choose to impose on the "Common Consolidated Corporate Tax Base." In order of allocating the consolidated tax base between Member State entitled to levy taxes on corporate income, the working group for designing the "Common Consolidated Corporate Tax Base" proposed a sharing mechanism, easy to implement and to verify for both taxpayers and tax administrations, fair and equitable for all Member States to not generate undesirable effects in terms of tax competition. To avoid the manipulation of the system by taxpayers, the working group turned to factors that cannot be artificially transferred between different tax jurisdictions: the assets, the workforce and the turnover. Calculations for the taxable distribution will be made annually. A positive consolidated tax base (net profit) will be allocated immediately, and a negative consolidated tax base (net loss) will be compensated in the future with the group earnings. When a company leaves the group of companies which opted for strengthening the tax base or when a company joins a group that has opted for strengthening the tax base, strengthening tax base and its distribution will be made for a fraction of the tax period in which the company was a member of the group (European Commission, 2007).

The problem for which at present wasn't found a convenient solution for solving relates to the accounting rules should be used to define the common base. Discussions at the level of the working group frequently targeted the idea of using International Financial Reporting Standards (IFRS). They have the advantage, in addition to their wide international recognition, of easy adaptation to taxpayers, because - with effect from January 1, 2005 - at Community level is applied a Regulation requiring listed companies on regulated capital market to prepare their consolidated balance sheets under International Financial Reporting Standards requirements.

The introduction of some measures to coordinate the corporate income taxes in the EU member countries is susceptible to have positive effects on some of those states, but also adversely affect others. Results of testing performed in 2004 in order to evaluate the effects of corporate income tax coordination at EU level (Nielsen et al., 2004) pointed the following aspects:

- a total harmonization based on corporate income taxation rules determined through a weighted average of GDP of Member States will generate the greatest benefits to the EU level (an increase of GDP across the EU about 4% ), increasing the welfare of people throughout the Union by 0.1%, while maintaining the same level of tax revenues);

– whatever the scenario applied, some Member States will record losses of tax revenues from corporate income tax harmonization, so that a compensation mechanism was necessary.

On the other hand, however, the states could obtain higher tax revenue (due to higher tax rate and / or tax base) will record a loss of GDP due to distortions occurring in the business, so the compensation mechanism has little chance of implementation.

In 2006, a number of specialists (Brøchner et al., 2006) said that the in EU-wide the necessary consensus of a major reform in the corporate income tax system (the introduction of harmonized rules) will not be achieved, because the corporate tax harmonization will generate antagonistic effect for individual Member States, the scale of changes in GDP (around 5 percentage points), the welfare level (about 0.8 percentage points) and the tax revenue (about 2 percentage points) is quite broad. Instead strengthened coordination between a number of relatively homogeneous countries (in terms of economic development level, tax rates and rules for determining the tax base) in corporate income tax was a viable solution. Such an approach will lead to less radical policy changes but smaller gains from harmonization.

In 2006-2008, the representatives of some member countries (UK, Ireland, Poland, Latvia) expressed against total corporate tax harmonization and also against the introduction of the common consolidated corporate tax base. Some of those politicians claimed the need to maintain the national sovereignty in tax and others have claimed the tax losses that are recorded.

Since the unanimous support of Member States to corporate tax harmonization is unlikely to be achieved, the European Commission decided that the proposal for a Directive which will introduce the "Common Consolidated Corporate Tax Base" could be the subject of an enhanced cooperation between Member States, provided that there are at least eight participating countries (DG ECOFIN Training and Community Assistance, 2008).

In 2010 a further simulation based on the model CORTEX was conducted which generated new results caused by changes in national tax systems (Bettendorf and other, 2010). In a first stage, the simulation analyzed the implications of introducing common rules for determining tax base for all companies (domestic or foreign owned) operating in the territory of the Member States. The simulation results show a modest gain of wealth across the EU: 0.006% of GDP, because the aggregate changes of the tax base were not recorded at EU level but only at individual states. However the absence of differences in the rules for determining the tax base generates an improvement in allocative efficiency of capital within the Union. In terms of living standards, the most important benefits of introducing the common tax base will be obtained from Poland and Spain, and the most disadvantaged countries are Belgium and Estonia. Romania would be located in

a loser position. In the second stage were analyzed the implications of strengthening the tax base and its distribution among Member States entitled to collect income tax. Strengthening the tax base across the EU will create a reduction in the corporate income tax revenues of about 0.1% of GDP due to offset the revenue and losses for companies with cross-border activity. This reduction will have greater amplitude for countries with a high corporate income tax rate (i.e. Malta) or for countries where the corporate segment has a high importance (i.e. Belgium). Other studies have estimated the impact of the use of the EU formula apportionment on corporate tax revenues.

Considering a simple example, we see the very significant impact that the common consolidated corporate tax base sharing will generate on revenue from income tax. We assume that there are a corporation formed by parent company and its subsidiary, which we know the following information:

The parent company		The subsidiary	
Assets (thousand Euros)	1000000	Assets (thousand Euros)	200000
Turnover (thousand Euros)	200000	Turnover (thousand Euros)	50000
Number of employees (persons)	1500	Number of employees (persons)	1200
Payroll (thousand Euros)	30000	Payroll (thousand Euros)	10000
Taxable income (thousand Euros)	0	Taxable income (thousand Euros)	500
Tax rate	25%	Tax rate	16%

**Table 1 - Information about the parent company and the subsidiary**

The situation described above, parent company will not pay anything (corporate income tax) because it has not been earning and subsidiary will pay the income tax in the amount of 80 thousand Euros.

Strengthening and sharing the tax base will generate the following situation:

The tax base of parent company =  $[1/3(1000000/1200000) + 1/3(200000/250000) + 1/6(1500/2700) + 1/6(30000/40000)] \times 500$  thousand Euros = 381.02 thousand Euros

The tax base of subsidiary =  $[1/3(200000/1200000) + 1/3(50000/250000) + 1/6(1200/2700) + 1/6(10000/40000)] \times 500$  thousand Euros = 118.98 thousand Euros

Therefore the parent company will pay tax in the amount of 95.25 thousand Euros (381 x 25%) to the resident State even if has not recorded gains in its territory and the subsidiary will pay tax in the amount of 19.04 thousand Euros (381 x 25%). Overall, the corporation will pay a higher tax, and the two states involved in the distribution will be positioned as a winner or loser.

The first study assessed the impact of the introduction and distribution rules to strengthen the tax base for corporations in the European Union was made by Clemens Fust, Thomas Hemmelgarn and Fred Ramble in 2006. In the absence of a comprehensive database with information on companies in all EU Member States, the authors focused on the work undertaken by parent companies in Germany and their subsidiaries abroad between 1996-2001. Particular conditions of the analysis of the three German authors have generated the following results (Fuest et al., 2006):

- enhancing and sharing the corporate income tax base will generate losses of tax revenue for small states using tax incentives, because the attracted tax bases in these countries are high compared with real economic activity taking place on their territory (measured by assets, turnover and wage fund);
- compensation for loss of income in cross-border activities will generate a significant decrease in the total tax base. In the case of the analysis for 1844 parent company in Germany and 5827 foreign subsidiaries, reducing the total tax base was estimated at 20%.

Starting from the premise that the companies with cross-border activity will not change the location choices by introducing rules to harmonize corporate income in the European Union, Michael P. Devereux and Simon Loretz estimated effects of the EU formula apportionment on corporate tax revenues in the 22 Member States. They have done a complete analysis (for all Member States) because the database used did not contain the information on the number of employees and payroll for companies in certain states (essential for determining the tax base shared by Member States). The study was based on financial results provided by some 400 000 companies that had assets worth at least 2 million and carried on business within the 25 states in 2000-2004.

In addition, Michael P. Devereux and Simon Loretz considered the possibility that some of the companies included in the database to refuse participation in the "Common Consolidated Corporate Tax Base", in view of its optional character. The authors concluded that consolidation and distribution of the tax base will generate a loss of tax revenues across the EU because the corporate income tax revenues would fall by 2.4% due to cross-border offsetting of losses in profits. Most new Member States will register growth of corporate income tax revenues, while the majority of Northern and Western Europe will face a reduction of these revenues (Devereux and Loretz, 2007).

In 2008, Michael P. Devereux and Simon Loretz expanded the analysis on the corporate income taxation coordination impact with focus to the effects of business efficiency. Observations made at the 4567 group of companies (323,442 companies) operating in 27 Member States in 2001-2005 allowed the measurement of change in the ratio of income taxes paid and the value of corporate profits before tax in the current situation, when voluntary consolidation and in the strengthen and sharing tax base situation. When there are different



national tax systems (current situation), the tax burden of companies examined in 2001-2005 showed significant differences among Member States of the European Union (from 40.1% in Malta to 20.9% in Belgium). The introduction of some faculty consolidation rules on losses and income from cross-border activities will considerably diminish these differences (from 29.9% in Malta to 18.3% in Italy). And more favorable results in terms of reducing the tax burden were obtained in the strengthening and sharing tax base situation (from 28.6% to 19.7%). Also, the spread between countries is reduced significantly (from 21.6% in Cyprus to 18% in Italy), by creating the prerequisites to ensure a tax neutral conditions throughout the European Union. The average effective corporate income tax in Romania will be reduced by about 7 percentage points in case of the tax base consolidation and distribution, estimated thus a reduction in tax revenue collections (Devereux and Loretz, 2008).

### **Effect of corporate income tax coordination in the EU on tax revenue in Romania**

In order to evaluate the effect of corporate income tax coordination in the European Union on tax revenue in Romania, we analyzed the existing situation in September of 2008 for 9 corporations with 39 subsidiaries active in Romania. Subsidiaries are representative for non-financial companies with foreign stake in capital in Romania in terms of fields: industry, mining and processing, distribution and telecommunications. The subscribed capital of companies that are part of our sample is 9% of the total subscribed capital of financial and non-financial companies with foreign stake in capital in Romania.

Of the companies sampled are: Carrefour Romania SA (the retail company ranked in the top three retail companies in Romania), Petrom SA (the biggest company in Romania in terms of turnover - a member of the group OMV Aktiengesellschaft of Austria) and Orange Romania SA (the most profitable company in Romania). 18 companies of sample reported losses during 2008. Information about the assets, the number of employees, the turnover, the taxable gross income and the corporate income tax obtained by consulting the consolidated financial statements of companies and the accounting surveys of subsidiaries.

In assessing the position held by companies of sample within the group we present the following information:

Assets of Romanian subsidiaries in total corporate assets	Turnover of Romanian subsidiaries in total corporate turnover	Employees of Romanian subsidiaries in total corporate employees
0.6%	1.8%	2.8%

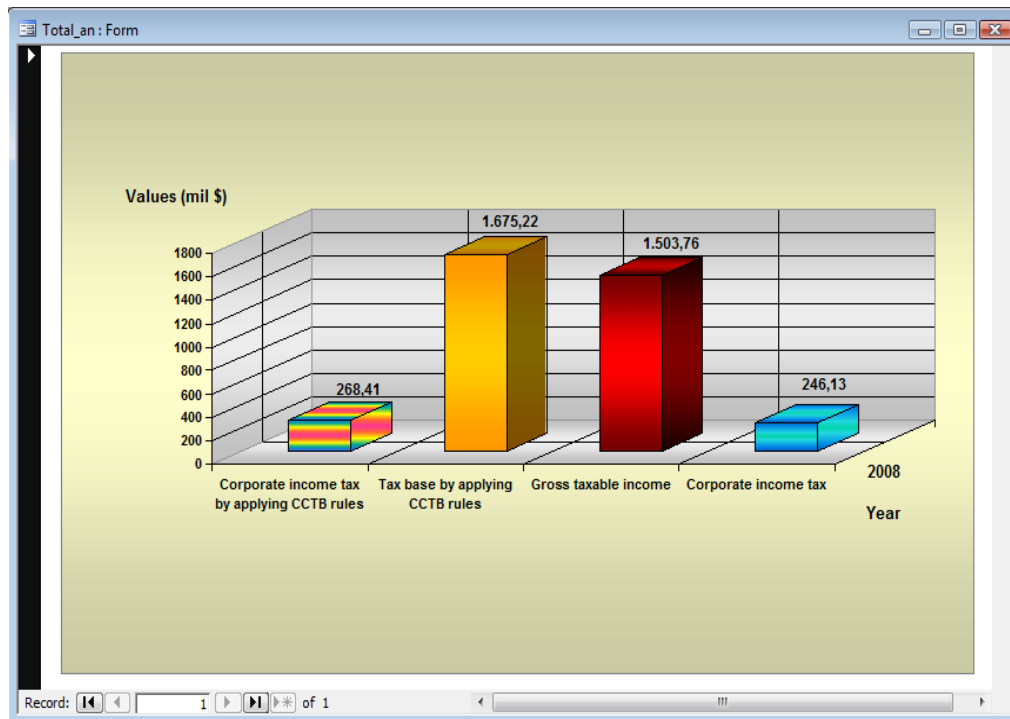
**Table 2 - Information about Romanian subsidiaries**

To obtain the necessarily processed information we designed an information system, which aims at achieving the comparative analysis between the existing

situation in the corporate taxation and apparent situation based on the distribution of the consolidated tax base.

An information system can be defined as a set of interrelated elements or components that collect (input), manipulate and store (processing), and disseminate (output) data and information as well as a feedback mechanism. Our software can be considered a management information system, characterized by the use of information systems to produce reports that help managers to perform their duties. As functional areas, the designed information system has the finance and accounting destination, the activity of analyze the investments and insurance that all financial reports and documents are accurate.

The main focal point of the research was to determine the tax paid by sample companies in the existing situation and the tax that would have to pay if the tax base was consolidated and divided. To determine the tax base divided of the sample branches, we used a formula which gives equal importance to the assets, the number of employees and the turnover (a share of 1/3). Because we had not access to information about the payroll, the labor factor took into account only the number of employees.



**Figure 2 - Corporate income tax differences before and after applying EU Formula Apportionment**

The processing of the information collected shows that the corporate income tax would increase in Romania by about 8% after the application of the EU formula apportionment on corporate tax revenues (see figure 2), thus contradicting the

assumptions made by studying other research in the field (mentioned in the first paragraph of the paper).

Common consolidated tax base introduction should encourage companies to internationalize their assets, because they will no longer incur compliance costs and will have offsetting losses in profits. In this context, Romania who has been geared to only a few years in the process of transnational corporations' expansion would have a double win:

- could become a more attractive market for investment;
- would benefit from increased tax revenues.

## Conclusions

The idea of coordinating the corporate income tax systems is currently an important topic of discussion on the agenda of the European Commission, but also in theoretical approaches of specialists. The extreme diversity of these approaches is an important indicator of the complexity of problems that prevent the formulation of solutions widely shared, irrespective of considerations of political feasibility.

The corporate income tax coordination is likely to cause different effects on the Member States in terms of growth rate of GDP and the level of corporate income tax receipts, but these effects cannot be estimated with certainty.

Our research results reflect partially the gains tax revenue that Romania would have been recorded in 2008 if the sample companies had opted for using the common consolidated tax base because it does not take into account the impact of common tax rules on determining taxable income in all participating Member States.

On the other hand, we should not neglect the negative aspects that come with common consolidated tax base (Pirvu, Banica, Hagi, 2011):

- increasing the complexity of tasks to workers in government service tax or the creation of new jobs, i.e. hiring of additional public financial resources, since the introduction of the common consolidated tax base for corporate income tax implies a new system, besides the 27 that exist currently in the European Union;
- achieving the fiscal control will cause difficulties because the tax authorities of Member States should cooperate and coordinate their activities very well;
- application of the EU formula apportionment on corporate tax revenues can generate disputes between Member States (especially for specific sectors of activity: financial and banking sector);
- implementation of the "Common Consolidated Corporate Tax Base" does not exclude the possibility of increasing tax competition, because to attract foreign investment, national authorities will continue to use the tax rate reduction as a tax incentive.

For the particular conditions of 2008 we concluded that Romania would register an increase in tax revenue. Accumulating that advantage with the other benefits of the common consolidated corporate tax base we believe that the Romanian authorities should support the actions to coordinate the corporate income tax systems in the European Union.

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*Annex 1: Information on companies in the sample*

Company	Assets (mil. \$)	Turnover (mil. \$)	Employees (persons)	Corporate tax (mil. \$)
Carrefour (group of companies)	72769	122804	479072	1030
Carrefour (Romanian branches)	912.6	1667.6	8892	6.6
E.ON AG (group of companies)	218559	143011	91546	1161
E.ON AG (Romanian branches)	781.7	862.2	6841	1.6
France Telecom (group of companies)	123884	69534	30000	3631
France Telecom (Romanian branches)	1581.2	1872.5	2953	120.3
Hewlett-Packard (group of companies)	61649	108303	304000	401
Hewlett-Packard (Romanian branches)	85.1	146.2	1285	2.8
OMV Aktiengesellschaft (group of companies)	277889	33206	41282	1014
OMV Aktiengesellschaft (Romanian branches)	1390	8385.7	30533	109.6
Peugeot SA (group of companies)	55353	75657	201700	134
Peugeot SA (Romanian branches)	84.5	170	798	0.7
Saint-Gobain (group of companies)	56414	56940	209175	829
Saint-Gobain (Romanian branches)	403.1	270.6	955	3
Siemens (group of companies)	78339	112098	420800	1452
Siemens (Romanian branches)	114.4	251.8	2091	0.6
Unilever N.V. (group of companies)	29045	52680	174000	2397
Unilever N.V. (Romanian branches)	105.5	299.6	619	0.8

## POLSCI REVIEWS

***Pierre Manent, Democracy without nations. The fate of self-government in Europe***, ISI Books, 2007, 130 pp

**Cristian Gherasim**

In the tradition of his mentor, Raymond Aron, Pierre Manent has managed to offer a clear-cut approach towards the problems of political philosophy, especially the deadlock of contemporary liberal thought. In his previous books, *An intellectual history of liberalism* and *Cours familier de philosophie politique*, Pierre Manent had taken an innovative approach to the intellectual genealogy of liberalism, stating that the central element of liberal development had been the religious problem. The creation of European nation-states bears hallmarks of our Christian political history. Not only do equality and liberty trace their roots in the same evangelical values, but the modern nation states are organized by a series of separations, the one between state and church carrying the heaviest political impact. Modern democracy rests on these separations. Democracy, as Manent points out, can only be possible within nation states, the only form of political community that can merge civilization with liberty.

In the first chapter, the author takes a look on how democracy evolved from a system that organizes separations to a political regime that levels them. From a Tocquevillian perspective, democracy requires equal conditions for all members of society. Following this line of thought, Manent mentioned the two crucial historical moments in the evolution of this political system: 1848- the social cleavage (the workers social struggle against the state); 1968- social equality (disappearance of social classes). 1968 stood for what Manent called “the sense of human resemblance” (p 25), a Tocquevillian period ended on 9/11 2001. Then, the military actions of the US had reasserted the fact that differences exists, that there isn’t a global community, that there are national diversities fuelled by culture and religious contrasts and by the understanding that laws can only exist at national level and only if connected to a body of authority.

Why this backlash against the sovereign state in the first place? Manent discusses three reasons: liberal skepticism towards authority, strong belief that equality and liberty can do without the sovereign state, and the understanding of democracy not as a principal of separation but a strong sentiment of “human likeness”. The last argument seems to carry a deeper meaning especially regarding European and American approach towards the death penalty. On this sense of “human likeness”, Europe had even accepted that criminals (people that gravely breached the Social contract) should remain within the social structure (even if it means live in prison). On the other hand, the Americans, accepting that a non-punishing state defies the citizen’s trust, stuck with the old Hobbesian



matrix in thinking that the state of nature hadn't been completely overcome: "the general recognition of the legitimacy of the death penalty goes hand in hand in the US with the right of every citizen to carry a gun for self-defense." (p. 43) The Americans still have the feeling that they require the assistance of the sovereign state.

Pierre Manent stresses, in the second chapter of the book, the importance of the nation as the only viable form of political community. Arguing against the expectation that modern forms of communication will unify all the world's nations, Manent points to "the political nature of words"(p 49), underlining the fact that any language, any form of communication can only be understood within the cultural background of its community of origin.

Further on, the author considers that the sovereign state and representative government are the two principles that enable huge numbers of people to live in freedom and civil equality. As with democracy, a representative government requires a sovereign state, otherwise the political body becomes an oligarchy. If the European integration process has weakened state sovereignty, detaching itself from the national political bodies (it took a life of its own), the welfare state had appeased the need for political representation. With the social integration of workers, Manent fears that the need of representing different social classes has died out. And with that, the political elite lost all legitimacy.

In Europe, Manent considers that democratic governance has replaced national governance. Europe's endless expansion, fuel by the universal belief in human rights, has shackled the need for self-governance, paralyzing state action and seating the stage for "political laziness and spiritual inertia" (p.64). Europe's endless and pointless expansion (universalism without limits) is justified by the flawed idea that only general/universal actions are legitimate and moral. Any action that separates and differentiates between individuals is seen as a hateful and repulsive step, a violation of human rights.

Finally, the author offers his judgment on the controversial aspects of religion, Islamic fundamentalism and secularism. Reasoning that religious beliefs can't be quantified because of their subjective nature, Manent points out that religion can be objectively analyzed only as a political fact. The military interventions hastily coined as religious wars or civilization clashes are actions only viable between different political entities.

The main problem of the Islamic community is the absence of any political structure. The difficulties that Islam faces regarding the implementation of democracy are imbedded in the accepted perfectibility of the divine law. *Umma*, "the best community there is", ignores any separation between state and religion and accepts only the authority of the Qur'an. As mentioned above, modernity and self-government are attainable only in nation states, a political structure completely absent in the Muslim world.

On the opposite extreme, Manent finds a secular Europe, ignorant towards its religious past. Again, fearful of differences and separations, accepting only humanitarianism and universalism, Europe renounces religion and only accepts the “European point of view” (p 106) as guiding principle. Consequently, the European identity becomes an ambiguous concept that leaves any effort of defining and limiting the integration process in a permanent state of limbo.

## Call for Papers

PolSci (Romanian Journal of Political Science) is a bi-annual journal edited by the Romanian Academic Society. It is the first peer reviewed journal of political science in Romania and also the first in the field being indexed by ISI Thompson under the Social Sciences Citation Index. The journal benefits from the extensive experience and professionalism of the board members and from valuable contributions of researchers and scholars in the field, being also indexed by other prominent institutions such as IPSA, GESIS, CIAONET, EBSCO, CEEOL and EPNET.

The journal invites academic papers, reviews of recent publications and announcements of forthcoming volumes and welcomes contributions from various fields of research in social sciences. PolSci also accepts a limited number of articles outside its focus to be published in future issues.

For the issue to be published in winter of 2011, authors are invited to submit their work by October 15th, 2011. If you are interested in submitting an article please visit our website for details on authors' guidelines and submission procedure: <http://www.sar.org.ro/polsci>.

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