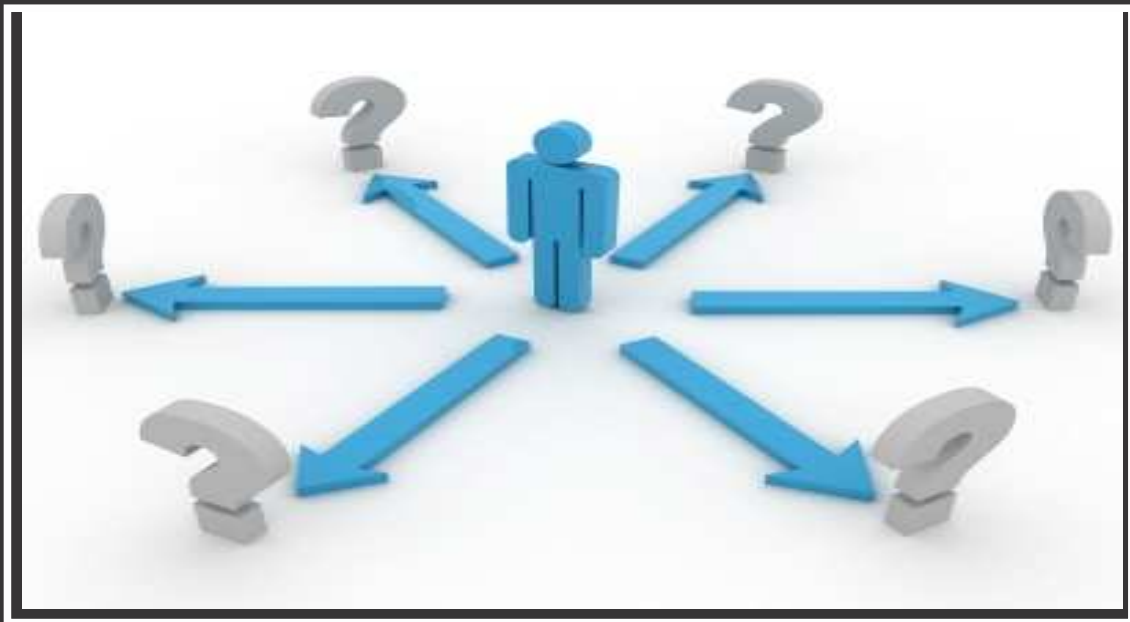


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POLSCI PAPERS

Lessons from a Divided Society: How to Deal with Party Factionalism

Alexandra Ionascu¹

ABSTRACT:

Despite the fact that party dissolutions and degenerative forms of factionalism, no major splits or internal divides shaded the image of the main ethnic based party: the Democratic Alliance of Hungarians in Romania (DAHR). Similarly to other post communist countries, the minority representation in Romania constitutes an electoral success story. In a general framework of fragmentation and organisational instability, the DAHR's political performance and continuity were doubled by an exceptional organisational strength. Although the ethnic based parties do tend to manifest higher levels of external cohesion as a result of their single-issue nature, their organisational continuity constitutes rather a *cas a part* which deserves further investigation. Consequently, the following article focuses on highlighting the mechanisms conducive to the accommodation of different factions considering that the anatomy of such internal arrangements constitutes an important resource for the understanding of party organisational survival. The analysis will show that even if DAHR seems to describe a mixture of party types, with important elements of party centralisation and party discontent among elites and delegates, the internal party regulations, notably the party primary system, balanced the power struggles within the organisation, resulting thus in a general model of auto proclaimed party democracy.

KEY WORDS: *party democracy, factionalism, ethnic party, political elites, UDMR*

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Political parties in new democracies underwent a process of institutionalisation and organisational adaptation. Despite their recent formation, these actors do present similar features with their Western counterparts, preserving at the same time *sui generis* types of behaviour (Van Biezen 2003, 2004). Weak structures of membership and centralised patterns of decision-making and dependence on the state resources seem to summarize their main organisational features. Acting as *public utilities* (Kopecky & van Biezen 2007) and not as chains of representation, the post-communist party organisations were guided by rent-seeking practices and party colonisation of the state (Kopecky 2006).

In a general context of organisational frailty, one notable exception can be identified: the ethnic based parties. Illustrating the divided ethnic composition of the post-communist societies, which resulted in the emergence of an enduring ethnic cleavage, the ethnic parties presented a rather unique trajectory in what concerns their electoral success (Lewis 2001). In the beginning of the 90s their electoral achievements were mainly linked to an initial function: defending ethnic minority interests and acting “as vehicles for seeking redress of particular grievances generated by communist minorities policy” (Millard, 2004: 235). However, in some cases, their continuity on the political scene during the last 20 years, sometimes as key governmental players, suggests the existence of atypical strategies for organisational survival and interest representation. Parties such as the Movement for Rights and Freedoms (MRF) in Bulgaria or until recently, the Hungarian Coalition in Slovakia (until 2010) constituted one of the main players of the post-communist politics. This also seems to be the case of the Democratic Alliance of Hungarians in Romania (DAHR).

The lack of politicised social stratification, the weak programmatic parties (Van Biezen 2003, Kitschelt 2000) describing all the countries in the region, did not block in the Romanian case the articulation of a tension between a nationalistic and antinationalistic discourse (Gallagher 1995, Mungiu 2002, Preda 2003, Preda & Soare 2008, De Waele 2002, 2004). Reflecting a long historical

tradition, fuelled by the heritages of the Ceaușescu's era of high centralisation and forceful homogenisation of ethnic divisions, the post-communist nationalism has been used as a “substitute for social integration” and mobilised by the successor party's representatives as means of blocking the creation of an autonomous space necessary for genuine pluralism (Gallagher 1996:221-222, see also Chen 2003). In the beginning of the 90s, the “ex-communist apparatchiks” promoted radical claims transforming the ethnic minorities into scapegoats (Gallagher 1995, Tismăneanu 1998:41). The unusual strategy of radical populist movements' cooption into the governmental arena applied during 1992-1996 (Mudde 2002:224), allowed the political promotion of parties which combined both nationalism and socialism claims. This also constituted an important weapon in the hands of ex-communist political elites ensuring their electoral endurance (Mungiu 2010:66). Stimulated by poverty, the erosion of confidence in the institutions as well as by parochial structures of the post-communist society, the Romanian nationalism constituted an important gridlock in the democratisation process (Mungiu 2002).

Paradoxically, the salience of the minority issue proved to be quite beneficial for DAHR's internal cohesion and survival on the political scene (Millard 2004: 238-9). Representing the main minority of the country, approximately one million and a half of Hungarians (6.6% of the whole population), DAHR preserved a score gravitating around the share of the Hungarian population (Horvath 2005a:143-67), exhibiting an important capacity of mobilising the ethnic vote concentrated in the Transylvanian counties (mostly in Cluj, Covasna, Harghita and Salaj) (Horvath 2005b:233). As a result, the Alliance became the only political organisation of the Romanian post-communist era which succeeded to pass all electoral tests without concluding any pre-electoral agreements. Starting with 1996, the decision to integrate the DAHR in the governmental coalitions, even when the DAHR ministers were not essential for governmental survival (Gallagher 2001:395), improved the minority participation in the decision making process and diminished the ethnic clashes (Stan 2010: 386). Given the constant parliamentary representation, during the

past 20 years, the DAHR acquired a pivotal role on the political scene by participating in the governing coalitions in 1996-2000 and 2004-2011, but also by supporting the government in 2000-2004. This radical change in the political perception of the Alliance allowed DAHR to fully benefit from its *coalition* and *blackmail potentials* in backing some important reforms concerning the minority rights (Roper 1997:83).

The key role played by DAHR in determining the parliamentary majorities was doubled by an exceptional organisational continuity and external cohesion. Since its creation in 1990, the party had to deal with “a conflict ridden factions game” between *outward-looking* factions which pushed towards the creation of a separate political entity in Transylvania region and the *inward-looking factions* which were more inclined towards demanding general measures of decentralisation and cooperating with the government (Roger 2002: 27,34). The DAHR political representation in executive portfolios was considered one of the success stories of the transition process as far as dealing with the ethnic problems is concerned (Mungiu 2010:69). This measure impacted not only on the statute of the ethnic party on the political scene, but also it imposed a change in the internal balance of power, consolidating the predominance of DAHR moderate elites (Mungiu 2002:207). As a result, the Alliance succeeded to preserve its image as the sole representative of Hungarian minority rights. Neither the eclectic character of the organisation based on different interests and ideological platforms, nor the surfacing of a contender beginning with 2003 (when some party elites left the Alliance and decided to run in the elections on independent lists, subsequently forming in 2008 a new party crystallised around extremist proponents: Hungarian Citizens’ Party (MPP)) did not alter the minority ethnic party’s unity or its electoral support which remained quite strong (Stroschein 2011: 198).

Consequently, the continuity of DAHR on the electoral scene and its constant presence near the apex of power constitutes an exceptional trajectory in a general context of political instability. As in the case of other ethnic parties, a myriad of systemic factors such as the nature of the electoral system or the

format of the party system (the degree of fragmentation) contributed to the survival of DAHR (Szasz 2003). Although its persistence over the last two decades on the electoral scene can be explained by its single issue dimension or the institutional framework, one cannot ignore that the survival of this party is also linked with the organisational arrangements and mechanisms dealing with the salient issue of party factionalism. Considering the organisational adaptation of DAHR as an example of accommodation to the post-communist realities and its environmental challenges, the present article aims to examine DAHR's internal structure, seeking to identify its main organisational arrangements as means of preventing the emergence of party splits.

The study of DAHR's organisational features will be based both on the Alliance statutory arrangements and the elites' trajectories and representations. The analysis of the party representatives' attitudes (central and local leaders) will be based on a selected set of questions extracted from a survey conducted during the DAHR's 8th ordinary Congress held on the 2nd and 3rd of March 2007 in Arad. The survey is a part of a broader research focus on party organisations developed within the *Centre d'Etude de la Vie Politique* (Cevipol, l'Université Libre de Bruxelles) and it is integrating a research project on party delegates in East-Central Europe (coordinated by prof. J.M. De Waele). The questions were based on a standardised Cevipol questionnaire² which was distributed immediately after the delegates' registration and filled in during the Congress session. The identity of the respondents remained anonymous. The return rate was of 190 valid responses, meaning 39,7% of the total number of delegates who were present during the voting procedures for the President of the party. In what follows, the analysis of DAHR's anatomy is conducted along three dimensions. The first part of the study will embrace an institutional perspective, analysing the party through its statutory measures seen as procedural means of

² The survey was done with the Cevipol's financial support (research field mobility and the printing of questionnaires). The adaptation of Cevipol's questionnaire to the Romanian case, the construction of the dataset and the preliminary analyses were accomplished by the author of this article. The questionnaire was translated into Hungarian by Reka Horvath. The author would like to express her gratitude to the representatives of the Democratic Alliance of Romania and their team for the warm welcome and their logistical support during the Cevipol's survey. My infinite gratitude as well to Reka Horvath as to Cristian Preda for their valuable help, in-sights and comments provided during this research field.

coping with internal conflicts. The second part will investigate the party leaders' opinions regarding the internal functioning of the Alliance aiming at identifying the elites' support for the organisational functioning. Finally, the last part of this study aims at mirroring the general images depicted in the first two sections with the outcomes of the recruitment procedures, particularly in what concerns the external representation of the Alliance in public offices.

The ethnic parties and the organisational dimension

The analysis of the ethnic minorities' representation on the political scene unveils a widespread polysemy: ethno-regional parties (Tursan, 1998, De Winter 1998), ethno-political movements (Esman 1994), or ethnic parties (Horowitz 1985:293) etc. The numerous references to the proper name to be given to these organisations do not alter the teleological nature of their definition. Their main attribute is consistent with their ultimate scope: the interest towards a representation of a particular ethnic minority (Chandra 2011:156). Although disposing of rather reduced sizes, the ethnic parties are not necessarily condemned to fulfil marginal roles on the political scene (Delwit 2005: 17). Many of these single issue parties (Budge, Keman 1990) succeeded to gain representation in public offices and to impose different priorities on the governmental agenda.

The success story of the ethnic parties, "by success meaning the degree in which the political party succeeds to capture the votes of a targeted ethnic category" (Ishiyama, Breuning 1998:5-6, Millard 2004), was explained by a cluster of factors. Some of them include the opportunity and institutional constraints such as the electoral systems, the public funding, the European integration or the state configuration (Delwit 2005:14), the interaction between the national minority conflicts and the international ones, as well as the articulation of the minority collective identity (Roger 2002:27). Considered as a dependent variable, the success of these small political movements was a major topic of research, being conceived as resulting from a complex model. The

combination of cleavages, external and internal constraints (Tursan 1998:14, Esman 1994) converged in these explorative studies in order to clarify the trajectories of the ethnic parties. Additionally, the organisational strength, the political cohesion displayed by these parties (despite the inerrant tendency of the ethnic party to represent at the same time left and right positions and a secular-ecclesiastic dimension (Delwit 2005:15, Horowitz 1985:303) were seen as important independent variables supporting their electoral and political performances.

The vast literature on the subject suggests that ethnic based party unity and its capacity of mobilisation are playing an essential role in party survival. This happens especially because of ethnic minorities' predispositions towards specific incentives meant to prevent fractionalisation or the emergence of new independent candidates in the electoral game (Stroschein 2011:194). Nevertheless, little attention was given to an in-depth analysis of the manner in which these organisations are shaped in order to deal with the internal tendencies of division. No parsimonious answers were given to the following question: *How do the ethnic parties actually cope with the ideological diversity and the need of representing different sectors at the organisation level?* In what follows, our study aims at providing an answer to this under-scrutinised topic, by focusing on the party organisational arrangements in a post-communist country. Theoretically more inclined towards internal diversity of interests, representations and competition, these parties can be considered as illustrative examples for the overall understanding of organisational survival and stability.

The very few references to ethnic parties' organisations (conducted mainly on the Western European countries) pointed to the tendency of adopting mass party models (Seiler 1999:93, De Winter 1998: 226). In these organisations the grassroots political participation is more direct and the degree of centralisation is higher than in traditional parties (De Winter 1998: 228). Contrary to the general evolution of political parties in Western democracies (that developed patterns of cartelisation (Mair& Katz: 1995, Blyth & Katz 2005) or at least signalled a general trend towards a decrease of traditional roles of the party members (Dalton &

Wattenberg 2000, Van Biezen & Mair 2001), the ethnic parties tend to preserve rather distinct features and trajectories. As long as they are vulnerable to internal divides, these political organisations are characterised by intra party democratic procedures. Their “umbrella” character reuniting eclectic ideological positions and different social strata produced more organisational stability than the classical parties, although besides the ethnic character very few elements seem to contribute to the integration of the party members and their political elites. Vulnerable to the creation of powerful fighting camps within the internal organisations, these antagonistic subunits are far from generating disruptive divides.

In the ethnic party’ case, the tendency towards factionalism, (meaning for the purpose of this study the partitioning of a political party into subunits sensitive to different incentives (Sartori 1976:75) seems to be conducive to internal democratisation. From this sartorian perspective, the factionalism acquires a positive role, enriching the party competition by providing different subgroups with an arena for debate and thus for voicing intra-party discontent, but also by capacitating the party in adopting a pivotal role on the political scene. The constructive role of the party internal diversity, comprised by different forms factionalism such as cooperative or competitive ones, is already known. A recent analysis of factionalism emphasises the existence of a structure of cooperation between intra party separated groups needed in order to reach consensus and to accelerate party integration for organisational continuity (Boucek 2009:469). By the same token, the competitive forms of factionalism encountered in consolidated democracies, in parties described by polarised opinions are generally conducive to an increased internal democracy. According to Boucek (2009:477) the internal diversity of a party could create organisational discontinuities only when it comes to degenerative forms of factionalism representing disruptive configurations that characterise a context of privatized incentives, such as clientelism and patronage seen as the main reasons for party deadlock and eventually party splits.

The application of the theoretical distinction between the cooperative, the competitive and degenerative forms of factionalism (Boucek 2009: 476) would suggest that, at least in the case of the Western democracies, the ethnic parties although not lacking factions, are more inclined towards its competitive forms. The articulation of a sound intra-party competition could explain the organisational stability and the democratising trend, as well as the *sui generis* trajectories of these parties. Their grassroots' importance did not decrease and the rank and file's roles were not entirely abolished. However, rejecting the tautological explanation which states that the ambition for electoral success, or the electoral support is sufficient in order to explain the idiosyncratic organisational stability of the political ethnic representation, as well as the statement that cohesion is a sign of a certain pattern of elite behaviour at the organisational level, this study considers the party internal arrangements as valuable independent variables needed in order to explain the adjustment of the ethnic organisations to their environmental challenges. Furthermore, although the similarity between the political parties in Western Europe and the ones emerging in new democracies cannot be *a priori* presumed, the distinct trajectories of the ethnic parties in East-Central Europe suggest some common features in articulating their internal balance of power.

Our contention is that, in a general context of weak party system institutionalisation (Pridham 1994, Olson 1998), the main party characteristic which makes an ideological conglomerate viable and perennial consists in adopting early mechanisms of internal democratisation. The articulation of cooperative and competitive forms of factionalism - promoted in the statutory provisions - allowed for the organisational continuity and a certain pacification of conflicts. However this organisational continuity needed to be founded on open recruitment procedures and inclusive mechanisms of decision-making.

The procedural dimension: the internal construction of DAHR

The capacity of the party to reflect and to cope with internal diversity is primarily a function of organisational arrangements, depending on the way in which political parties succeed in managing diversity (Duverger 1964, Boucek 2009:475). From this perspective, since its creation in 1990 and despite subsequent transformations DAHR's general description remained unchanged: „a coalition of territorial and political autonomous organisations aiming at the defence of minority rights, ensuring both local and national community representation of the Hungarian minority” (Horvath 2005b:234). Considered to be a way of unifying and encouraging different forms of self-association, offering real independence to the local branches, the political construction of the organisations granted autonomy to its electoral strongholds and was perceived as preserving in the same time the internal tensions and the party unity (Roger 2002:32). As a result, the DAHR was considered rather a coalition of several ethnic parties and cultural organisations mainly concerned with questions such as local self-government, regional autonomy, right of expression, education (Roper 1997:114). These common objectives were however differently conceived by party elites and factions. The divergent views were not uniquely based on the radical versus consensual stances regarding the minority rights but they were also ideologically driven. Although members of the European Popular Party since 1999, DAHR incorporated eclectic positions in what concerns the ideological representations as liberal and social-democratic platforms coexisted under the same umbrella. Constructed to stand for the interests of all the Hungarian population in Romania, the party had to deal with the religious division and the social status differences, as well as with different ideological options of the local leaders. Starting from these premises the Hungarian minority party in Romania had to cope at the level of its party organisation with two main sources of potential conflict: (1) social and political heterogeneity resulting from the eclectic character of membership and (2) the relationship between the party in central office and the local branches in ensuring the political representation.

During different phases of the Romanian post-communism, DAHR adopted several internal documents in order to ensure a process of adaptation to the changes of the political scene, but also to its specific status as an umbrella organisation and not as a genuine political party. In line with procedures implied by the Government decree 90/1992 and the Law LXII of 2001, DAHR was transformed into the manager of the Hungarian minority registration which resulted in a certain overlap between the official registers of the Hungarian population and DAHR membership rolls (Ionascu, Soare 2011). This exogenous institutional factor transformed the Alliance in the second biggest political organisation in Romania with 400.000 members representing 2.71% of the registered voters. Furthermore, the open recruitment framework of party membership was doubled by another type of diversity. Several platforms within the Alliance claiming distinct ideological orientations (for example a liberal circle or a forum for the new left) or different interest representation (such as the Movement for the Women or the Small Enterprises Platform etc.) gained in time representation, despite the increased requirements imposed on them over time (if in 1995 they needed 100 signatures of support and “a solid social base”, today they have to include at least 750 members, with at least 150 members deployed in three counties). The associate members, part of DAHR disposing of autonomy are different NGOs representing some professions or other interests and displaying a plurality of civic profiles.

Although faced with a heterogeneous composition, DAHR chose not to substantially reform itself during the last 20 years. Starting with 1995 the guidelines of the internal party functioning remained mostly unchanged, generally following a general logic of “subsidiarity and pluralism”, emphasising a deep concern over the internal interest representation. The direction of DAHR is collegial, safeguarded by a series of instances disposing of different functions (consultative, executive and control): The Council of Representatives (CRU), the permanent Council of the Union (CPU) and the Presidium of the Union (PU) (see table 1).

The Council of Representatives (CRU) acts between two Congresses as the main deliberative body. Through the past 20 years, little modifications were made concerning the general structure of the Council of Representatives. However, one key moment that reached in 2003 narrowed down the representativeness of the CRU. According to the new statute, the CRU was deprived of 21 of its representatives (previously selected by the Congress). Additionally, the vice-presidents of the territorial organisations were also excluded from this deliberative body. In addition to this, the representatives of the local elected persons were no longer selected by territorial conferences, but by the local branches through direct elections. The two representatives of the party members of the alliance and one representative of the party platforms were also eliminated from the new CRU (see the table in Horvath 2005b:236). Seen as measures of internal democratisation, these transformations impacted on the role of the local branches by reducing the size of the local leadership present in the CRU, discouraging at the same time the emergence of a controlled majority in designating certain delegates during the territorial conferences. The transformations at the statutory level coincided with the moment of the articulation of an external alternative to the party. Even if, some of the reforms adopted in the statutory provisions were corrected at a later stage, as the local dimension has been again reinforced, this time with a special emphasis on party representatives in county public offices and the internal heterogeneity remerged (by adding the platform representation in the CRU), the evolution on the electoral market of a more vocal alternative was preserved ever since.

Table 1. General configuration of the present statutory framework of the DAHR

	Main Attributes	Structure
CRU	<ul style="list-style-type: none"> - Long term strategies & policies (ex: participation in government) - Selection of the consultative bodies' members - Evaluating the activity of all party representatives in central offices 	<ul style="list-style-type: none"> - MPs, MEPs, Presidents / vice-presidents of the County Councils; presidents of the territorial branches and 74 persons directly elected by the territorial cells; Youth delegates 15%; two delegates political platforms

	- Decides the exclusion of certain platforms	
CPU	- Modifies the decision of the county organisations (2/3 of votes) and decides in the cases where there is no agreement on the candidates for the presidency of the County council or the county councilmen -Approves the budget.	- 26 members: members of the Presidium, the president of the Committee on the Cultural Autonomy, and the one of the Regional Committees, two representatives of the platforms (by rotation), two representatives of the county diasporas council (by rotation)
PU	- Current activities of the DAHR -Ensures the coordination between different representatives of the party in public offices	- 18 members: the party leadership, the leader of the parliamentary groups, the youth leader, the presidents of the organisations in counties where the Hungarian minority represents more than 15% of the population, two representatives of the Diaspora organisations, and the presidents of the Council of Mayors and the Councilmen of the Union.

The other main decisional structures of the DAHR are consistent with the function of ensuring the Alliance’s decisional continuity. The Council of the Union meets at least once every two months and its decisions should follow the logic of the previous consultation with territorial leaders. Meanwhile the operative decision-making process within the party is ensured by the Presidium members that meet at least once a month. In addition to this, the territorial leaders, the party mayors and the platform of representatives play consultative roles in all the main decisions of the Alliance. The inclusiveness of the decision-making process is also ensured by the existence of a Coordination Council aimed at granting the pluralism of representation and comprising different professional, social and cultural organisations and religious, cultural and scientific leaders. As a result, the only centralisation element designed as a mean to reach effectiveness consists in the existence of the executive bureau (presidium) under the direct supervision of the president of the party.

Finally, in the case of the party’s public office component, namely the selection of representatives in state offices, the same idea of subsidiarity was

preserved. DAHR is the only political organisation that adopted a fully operative process of party closed primaries in the candidate selection process. The democratic selection process, allowing the candidacy of simple party members is however doubled by highly formalised procedures. In the most recent statutes of DAHR it is specified that, in order to campaign in the internal elections, the party candidates need a number of support signatures that overpasses at least 25 times the number of existing mandates. Moreover, the candidates to the party leadership positions present their autobiography, their political activity before and after 1989, a declaration of non collaboration with the Romanian secret service prior to 1989, as well as a detailed report of their party activity. This narrowing procedure can be read in connection with the high degree of the MPs' autonomy in public offices. DAHR's MPs have to obey the deliberative organisational bodies' decisions, but they are able to make choices concerning their daily initiatives and activities within the parliamentary group.

From an institutional perspective, DAHR's profile exhibits the consolidation of internal democracy and openness towards the members of the Hungarian community. The closed primary system in the candidate selection process suggests the existence of decentralised recruitment procedures. At the same time, these highly inclusive mechanisms of selection as well as the deliberative mechanisms within party do encourage the political participation within party (Rahat 2007: 166). The candidate selection process simultaneously implies a scrutiny over the integrative nature of these procedures. The eclectic composition of the party, comprising different party platforms and associate members testifies of a broader pool of selection. The inclusiveness and the integrative nature of recruitment support the idea of a democratised recruitment in DAHR's case (Rahat 2007, Rahat & Hazan 2006: 109-122). Furthermore, the integrative nature of CRU and of CCU, the party deliberative structures, implies that the main decisions of the Alliance need to gather a real support from all the main actors representing different categories and ideological positions. This collegiality logic is doubled in statutory documents by party layers' autonomy, but also by extensive degrees of decentralisation in the decision making process. As a

result, although certain decisions are still centralised at the executive level, from an institutional perspective one can argue that DAHR presents the adaptation of a new mass party model, with decentralised and inclusive mechanisms of recruitment and decision-making.

Representations of party elites and the model of party democracy

From an institutional perspective, the general image of DAHR is one of a democratic organisation allowing open recruitment as well as integrative processes of decision-making. Nevertheless, statutory provisions could be misleading and institutional mechanisms assigned to ensure political representation of all the important party actors can often fail in practice. At the same time, the perception of internal democracy and the degree of consensus revolving around the party functioning are the main elements conferring party cohesion. In order to estimate the way in which the DAHR's internal organisation is shaped, one should take into consideration the general perception on party democracy and the internal cohesion of those directly involved in the party activity (Putnam 1976:107, Ionascu & De Waele 2008). Consequently this section will focus on the results of a survey conducted on party delegates at DAHR's Congress in the year 2007 preceding the official registration of its contender for the general elections in 2008. Considering the party Congress as the main integrative body of the Alliance, reuniting both CRU and CCU representatives, but at the same time the representatives of the local branches, the analysis will focus on the internal cohesion and agreement of these party elites in respect to DAHR's party democracy model.

The analysis of the general representations of the delegates concerning their organisation unveils a strong attachment towards the Alliance. DAHR is seen as a modern and responsible party synchronised with European values. Generally, the delegates present positive views on the internal functioning of the Alliance. Almost 90% of the respondents declared that the decision-making process at the local level is democratic. The same positive perspective is

encountered in what concerns the internal promotion of political actors, the selection procedures being perceived as democratic, both in what concerns the local and the central offices. 87.9% of the delegates consider that the candidate selection process for the parliamentary elections is democratic. Although the selection for the executive positions is made within a narrow circle of DAHR, 74% of the delegates tended to appreciate the effectiveness of the appointment procedures in public offices. These general expressions of confidence in the flawless recruitment process make that only 16.10% of DAHR's representatives thought that the party abandoned its principles. However, even in these cases, the general approach of the delegates did not concern possible party splits but they are rather expressions of the need for a change in the Alliance's political strategy. As a result, rather mixed opinions were formulated on specific issues regarding the internal organisation. Although DAHR statute supports the imperative of subsidiarity one third of DAHR's delegates declared the need to increase the President's prerogatives. On the other side, half of the respondents declared that the local levels do not have enough independence at their disposal in the decision-making process. Nevertheless, as already mentioned, the main criticism of the party delegates to the Congress revolved around the need of redefining the Alliance's strategy on the political scene as 73.2% of the delegates estimated that the party guidelines/strategy had to be changed.

Consequently, voicing discontent regarding the party leadership or functioning was not associated in DAHR's case with the balance of power within the party, but rather with the Alliance's central politics strategy and leadership choices, especially in a general pre-electoral configuration. Nevertheless, this internal criticism was not superfluous. The main challenging ideas of the party delegates regarding the *status quo* did not concern the governing statute of the Alliance, as one should expected given the literature regarding the existing factions within ethnic parties, but it targeted another aspect, mainly an internal tendency nurtured, in Janda's terms, by tactical or strategic reasons (Janda 1993: 153).

Table 2. DAHR's Delegates to the Congress. Representations on the internal democracy

	Party Layers	Median	Van Der Eijk Index Agreement	Int. Median	Arith. Mean	Std. Deviation	Variance
The MPs candidate selection process within DAHR is a democratic procedure (N=182)	L1	1	0.61	1.41	1.58	0.76	0.58
	L2	2	0.47	1.58	1.7	0.84	0.7
	L3	2	0.48	1.84	1.93	0.88	0.77
	Tot	2	0.48	1.69	1.79	0.85	0.72
The selection and the appointment procedures in public offices are efficient (N=173)	L1	2	0.61	2.05	2.13	0.72	0.52
	L2	2	0.38	1.9	2.03	0.97	0.93
	L3	2	0.32	2.15	2.33	0.96	0.92
	Tot	2	0.4	2.04	2.18	0.93	0.86
The president of the Union should have more power (N=171)	L1	3	0.27	3	2.9	1.03	1.06
	L2	3	0.23	3	2.84	1.11	1.23
	L3	3	0.4	2.71	2.74	0.83	0.69
	Tot	3	0.21	2.84	2.81	0.97	0.94
The local levels do not dispose of a sufficient independence comparing with the central party leadership (N=177)	L1	3	0.35	3.31	3.03	1.08	1.17
	L2	2	0.06	2.24	2.46	1.1	1.21
	L3	2	0.11	2.46	2.59	1.06	1.13
	Tot	2	0.02	2.47	2.62	1.09	1.19
At the level of local branches, the decisions are taken in a democratic manner (N=184)	L1	2	0.49	1.61	1.71	0.82	0.68
	L2	1	0.72	1.29	1.43	0.63	0.4
	L3	2	0.47	1.66	1.79	0.87	0.76
	Tot	1	0.57	1.48	1.64	0.8	0.64
DAHR statute should be modified (N=171)	L1	2	0.53	2	2.1	0.84	0.71
	L2	2	0.5	2.18	2.29	0.8	0.65
	L3	2	0.52	2.08	2.17	0.79	0.62

	Tot	2	0.5	2.1	2.2	0.8	0.65
The general party lines should be redefined (N=176)	L1	2	0.01	2.36	2.55	1.12	1.26
	L2	2	0.4	2.1	2.24	0.91	0.83
	L3	2	0.55	1.99	2.04	0.76	0.58
	Tot	2	0.41	2.08	2.2	0.9	0.82

Party Congress survey Dataset, 7-8th of March 2007 in Arad, CEVIPOL (Universite Libre de Bruxelles). The distribution of the 190 respondents on the party strata was the following – L1: MPs, ministers, county councilmen- 31, L2- mayors, vice mayors, local councilmen-69, party members, local leaders without public offices L3-90). Van Der Eijk Agreement – index designed to measure the agreement in order rating scales (1-the highest level of agreement, 0- no agreement at all). The spreadsheet for calculating the index of Agreement provided by the prof. Van Der Eijk.

Despite the general political context, the party delegates displayed moderate critical views both on the recruitment procedures and the decision-making within the party organisations. The same observation cannot be formulated as for their internal cohesion. Following the Van Der Eijk index of agreement (Van Der Eijk 2001) for the answers provided by the different party layers several differences can be observed, (which are not systematically consistent with the thesis of a divide between party elites and grassroots). There is a lack of cohesion in general replies suggested by important disagreement concerning the party functioning: the most conflicting representations regarded the decisional independence of the local branches, the presidents' power and the effectiveness of the appointment procedures in public offices. A closer look at the data shows, that if the party leadership and representatives in public offices at national and county level do present similar positions in what concerns the recruitment procedures and are more inclined on cohesively supporting the *status quo*, the lower party strata are more divided in their replies and more inclined in granting additional autonomy to the local organisations in shaping their decisions. Furthermore, it will be shown that the only layer considering that the

party should follow its track without changing the external strategy of DAHR is represented by the party representatives in public offices (national and county representatives) but, at the same time, these elites exhibit the highest level of disagreement and thus the possibility of conflict regarding this issue.

Party delegates' opinions unveiled the existence of moderate and critical views on the DAHR's internal functioning. Taking into account the delegate's opinions several opposing positions are identifiable. Only one fifth of the delegates were unconditional advocates of the organisational functioning and party external actions. If generally the wide majority of delegates tend to appreciate the existence of a transparent and meritocratic organisation, several groups within the Alliance tend to criticise the appointment procedures and the decision-making process. Regardless of the articulation of these forms of criticisms, DAHR's organisation was not affected by degenerative forms of factionalism. The nature of opposing camps was more related with the explicit choices which were to be made within the party. In this case, the positive view on the existence of party primaries and the high degree of local democracy seem to balance the important discontent regarding the Alliance central strategies. The cooperative/competitive behaviours were the ones ensuring the organisational continuity.

The outcomes of recruitment: what type of representation?

The general positioning of party delegates regarding the internal functioning of DAHR suggests the existence of intra party discontent and the articulation of internal opposing camps. The existent forms of criticisms are however pondered by a reasonable appreciation of the promotion procedures within the party and the local branches decision making. The closed primary structure suggests the opportunity for the party activists and territorial branches of rewarding party loyalists with elective offices and acting thus as *ex ante* mechanisms of screening selection. The overall elites' consensus regarding the decentralised decision-making and the democratic recruitment define this party

organisation. Although differences can be depicted within the middle level elites of the Alliance, the *elites' "settlement"* concerning the basic principles of the party organisation functioning seems to favour the emergence of competitive forms of factionalism. Consequently, the internal party mechanisms are successfully designed in order to hinder party splits or massive defections. But are the institutional arrangement and the perceived fairness of selection reflected in the outcomes of representation? In other words, when looking to DAHR's representatives can one infer the integrative and inclusive nature of the Alliance's functioning?

From the inclusiveness perspective, the primary selection process allows the representation of all social segments in the main decisional bodies. In this manner, following the classical definition of representation (Katz 2006), the internal structure of the Alliance is expected to mirror the social structure of the Hungarian minority population (considered from a legislative perspective as overlapping with DAHR's enrolment figures). Nevertheless, despite the very integrative structure of the Alliance, when analysing the general profiles of different party layers, one can depict high disparities at the level of political representation. The underrepresentation of women is obvious. If, according to the 2002 census, 51% of the Hungarian adult population is constituted by women, only 16% of the party delegates are women. Furthermore, until 2008 DAHR had no woman as an MP. The same discrepancies can be observed in the cases of the ratio between urban and rural populations. If 47% of Hungarians were living in rural areas, only 27% of the delegates were actually living in villages. Similarly, only 10 out of the 32 Hungarian MPs from 2004-2008 legislatures were originally from rural areas. The differences encountered in the DAHRs structure are highly visible when speaking about the political actors' education and employment. In this manner, if only 13% of Hungarian population were university graduates, over 90% of the delegates and all of DAHR's MPs possess a university degree. The high education levels of these leaders are underlined by their postgraduate formation: 52 delegates (24.7%) and 6 of the 32 MPs disposed of a MA or/and of a PhD degree. The same inequality of access is

suggested when taking into account the employment structure. If the political actors and high civil servants represented less than 4% of the whole population, they are over 54% in the composition of the party Congress. The overrepresentation of the intellectual occupations, of the administrative civil servants is quite spectacular in the case of DAHR's delegates. Furthermore, the employment structure of DAHR's parliamentary component reveals that, prior to their elections, all these political actors were actually exerting an intellectual occupation (for example in 2004-2008 legislature there were eight professors, three civil servants, five persons with a judicial background, three physicians, two journalists etc.). The only aspect in which there is a certain degree of representation regards religion. Consecrating a phenomenon installed immediately after the breakdown of communism, the DAHR is the only party that nourished and maintained strong ties with the main minority faiths (Gallagher 1996: 221) at the same time reflecting such interest within the party layers. If 41% of the population is catholic and 47% protestant, at the level of party delegates, 50% are Romano-catholic and 38% are Protestants. A certain parity between the two confessions is presumably present in Parliament where the protestants seem to be a little overrepresented (the lack of complete data regarding the confession all of the DAHR's MPs does not however allow such inference without further inquiry).

A first analysis of the effective recruitment process suggests that even with a very varied internal structure, the access to different central offices is restricted by indirect filters or mechanisms. However if the discrepancies concerning the social background of political actors are a well known phenomenon in all developed democracies (Eldersveld 1986, Prewitt 1970, Norris 1997), the close primary structure should at least allow the inclusiveness of the selection thus facilitating the access in different offices within and outside the party. When analysing the political profile of party delegates, one can notice that over 72% (137) of the delegates were actually representatives of the party in different offices. The way in which the Congress was formed including members of the Council of Representatives can explain the high presence of these officials

among the Congress members. In this regard, the distribution inside the Congress is important: 18 persons were directly linked to central politics 9,5 % (ministers, junior ministers or MPs), the rest of them representing either county or local interests. The same situation is observed when looking to the MPs.

As a result, the reproduction of political elites suggests that despite the close primaries and very inclusive procedures of selection the promotion within the party in central offices is rather informally blocked. If the promotion in legislative positions is the result of important local assets (16 out 32 of DAHR's MPs from the 2004-2008 legislature were already local or county level leaders before entering into Parliament) the permeability of central decisional layers is lacking other credentials. Note should be made however that the institutionalisation of ascendant trajectories started at the local level traces a general trend in the career patterns of the Romanian MPs (Stefan 2004) and it is not a DAHR's idiosyncrasy. Similarly to other Romanian parties, the party adopted a pattern of rotation of the parliamentary elites (Ionascu 2008). In the Chamber of Deputies: 59.26% (1992-1996), 48% (1996-2000), 66.67% (2000-2004) and 63.64% (2004-2008) of the legislators have had a previous parliamentary experience. The same situation is encountered at the level of the Senate where four out of 12 MPs in 1992-1996, six out of 11 in 1996-2000, six out of 12 in 2000-2004, and nine out of 10 senators were exercising at least their second mandate. Concentrating only the 2004-2008 Chamber of Deputies' legislature, out of 22 MPs, eight already had four mandates, three of them had three mandates and other three persons already had two mandates. If these trends testify of a stabilisation of DAHR's party in public office component, puzzling in the DAHR's case is the process through which these MPs are selected. Their recruitment based on party primaries, partly confirms R. Katz's (2001) hypothesis that an open process of recruitment through this procedure can be conducive to the reinforcement of the *status quo* (however, without implying a decreased importance in the middle level elites and local branches' role). At the same time, the main difference between DAHR and the other parliamentary parties consists in the degree of party discipline of DAHR

members. No major deflections from the parliamentary group (Ionascu 2008) or for that matter, disloyalties in voting behaviour (according to the Institute of Public Policy monitoring the level of loyalty of DAHR's MPs is over 90% of all MPs) were registered in their case. The same pattern can be observed in the selection of the governmental personnel, where the selected ministers and junior ministers are displaying a long party experience and high degrees of party discipline (Ionascu 2011).

If the institutional analysis of DAHR suggested the existence of democratic procedures of recruitment and the study of the party delegates to the Congress unveiled a positive attitude towards the internal party democracy, when looking at the recruitment outcomes, the results are quite unbalanced. No inclusiveness and no integration seem to be exhibited by the general profiles of the middle level elites or by DAHR's MPs. The general analysis of the basic forms of representation identified only two criteria that are decisive in the DAHR's case: territoriality (the local branches representation) and religion. This also explains the fact that the only temporary split inside the Alliance was constructed on confessional basis. At the same time, the elite rotation in public functions sometimes for several mandates, and the continuity of the party in central office component (the DAHR had the same President during eighteen years (1993-2011) favoured the creation of an unperceived hiatus between the party leadership/ the party representatives in public offices and the members of the Alliance.

Concluding remarks: perceived democracy as a cohesion tool

The party politics in East-Central Europe was marked by endemic discontinuities in party organisational trajectories. Numerous parties in the region failed to preserve their organisations and to cope with internal competition and elite dissent. Within this framework, the atypical example of DAHR's longevity and electoral success on the Romanian political scene constituted a meaningful field of inquiry in analysing party organisational stability. During the last 20 years,

the party accomplished not only the organisational survival but also subsequent electoral victories with scores around 7%. This political performance was supported by the cohesive image of the Alliance which presented itself as the sole representative of Hungarian minority interests. Considering the ethnic party as the most probable case for the emergence of internal tensions due to its heterogenic nature (ideological eclectic views, competitive interests), the article focused on the party organisational arrangements as the main explanatory factor for party cohesion and continuity.

The main lesson drawn from the analysis of this ethnic based party suggests that the organisational success is directly dependent on specific internal articulations. The DAHR statutory provisions reveal the portrait of a decentralised organisation both in what concerns the recruitment and the deliberative means of a collective decision-making process. These characteristics are also complemented by highly inclusive mechanisms of selection meant to foster the party roots within the Hungarian community. The configuration of a partial party layer autonomy (following the subsidiarity logic) seems to describe highly democratic forms of internal organisation. This also embodies the shared opinion of the party delegates (representatives of local branches and party public officials). Despite some criticism voiced at the Congress, disruptive forms of factionalism are not identifiable within the organisation, even in a period of political turmoil. The articulation of an alternative to the DAHR's political offer for its electorate did not entail the formation of powerful factions within party. Despite the integrative nature of the party Congress, based on a territorial representation of party branches, no visible camps were configured in order to contest the party leadership or the DAHR's functioning. The main criticism raised by the party representatives targeted rather the party short term strategy on the political scene. It appears thus that the mass structure, the decentralised and collegial mechanisms of decision-making along with the closed primaries contributed to the prevention of party splits. The elites' basic agreement on the overall functioning of the Alliance provided the necessary framework for taming possible conflicts.

Conversely, the statutory provisions and the elites' support for party functioning are not mirrored with the recruitment process' outcomes. The party delegates at the Congress and the party representatives in national offices describe distinctive social background profiles in comparison with the rest of DAHR's members. The representativeness of party elites relies solely on territorial representation and religion (as common features). Despite the presence of eclectic membership structure and internal pluralism, the DAHR's leadership fails the test of inclusiveness when it comes to the representation of different social strata (or interests). Furthermore, a close scrutiny to the main party leaders' career patterns shows that the decentralised selection procedures are not conducive towards the permeability of different party layers and the elite circulation within the party. The political rotation of the parliamentary personnel and the high presence in the Congress composition of the party representatives in public offices suggest a high degree of informal centralisation of power.

Consequently, our analysis pointed rather to the importance of elites' representations on party democracy. The basic formal arrangement and the elites' agreement on the party codified practices can balance the power struggles between moderate and extreme wings of the party and ensure party survival. The mass membership, the flexible internal procedures and the increased roles of the territorial branches suggest the creation not only of horizontal links between different party leaders, but also the articulation a vertical process of representation. The consolidation of these communication channels between different party subunits (at least at the level of party members' representations), created the premises for developing cooperative or competitive forms of factionalism, preserving in this manner the Alliance's unity. Although there are some elements suggesting that in DAHR's case, one can speak about the "auto-proclaimed democratic party model" rather than of a genuine internal democracy, the Alliance's post-communist continuity can be best explained by its specific organisational arrangements. As a result, revisiting Panebianco's (1988) work on organisational survival, the continuity of party organisation is founded on two axes: the consensus established between the political elites on one side (elite

stability) and the degree of cohesiveness between different layers within the party. The DAHR's case shows that what is important in the pacification of different factions within the Alliance is a perceived model of party democracy (and political representation), coupled with elites cohesion in office and mechanisms of collaboration between the centre and the local branches. Although several other cases should be investigated in order to support this claim, it appears that the auto-perceived degree of *decentralisation and autonomy* within a party (selection procedures and decision-making processes) and not the *inclusiveness* of the representation (the diversity of political elites representing different interests and segments of society) constitute the key factor in the continuous fight against party splits.

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Clientelism: Electoral Forms and Functions in the Romanian Case Study

Clara Volintiru³

ABSTRACT:

The ambition of the study is to provide a description of the forms and functions of clientelism, thus looking at the differences between “rural” forms of clientelism that still rely on familiar brokerage, and their implications in terms of the power status of local bosses, and the “urban” forms of transactional exchanges, that are less efficient by comparison, and require more innovative monitoring mechanisms. In order to assess the likelihood of structurally embedded long-term clientelistic relationships, which take the form of patronage, or discretionary use of state resources, the second part of the empirical analysis uses such proxies as the levels of corruption or political incohesiveness. The present paper serves as a starting point for further research on these more pervasive and more contentious aspects of clientelism within state structures.

KEY WORDS: *clientelism, elections, patronage, corruption, Romania*

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Clientelism—generally taken to mean contingent direct exchanges between patrons and clients, has the potential to be a major factor of power wielding in the political process of a democracy. This paper explores how the electoral process in a new democracy may become embedded with clientelistic practices. The Romanian case study offers the opportunity to explore the forms and electoral functions of such practices, considering the contextual incentives and limitations that political parties are facing when attempting to mobilize their electorate. The first three sections of this study engage with the theoretical framing of clientelism within the discipline of political science. This discussion is structured along the significance of the topic in terms of its practical implications, the evolution of the concept, and the classification of its different forms. It is highly necessary to pinpoint these conceptual references, as clientelism is one of the most loosely used labels both in the academia and in public discussions. The theoretical claims made in this paper spread a much larger web than what can be supported with this study's empirical scope. Nevertheless, they do not remain unsupported, as they draw on the wider research on clientelism conducted in different contexts across the world, thus mapping similarities and converging in a common theoretical base for topical research.

The fourth section proposes a working model for the different types of electoral mobilization. The question is not whether an electoral system is programmatic or clientelistic, as informal exchanges usually take place in parallel with the programmatic ones, but whether or not clientelism prevails. Therefore, the programmatic political action is here considered to belong to the Formal Electoral System (FES), and the clientelistic electoral mobilization attributed to the Parallel Electoral System (PES). Thus, within this framing of electoral practices, the hypothesized distinctions between short-term and long-term clientelism are explored.

1. Why is clientelism pervasive for the democratic process and public institutions?

Patronage and preferential spending are indeed occurrences of our everyday lives. They are not always malign endeavors, in both practice and intent, and more so, they can often be perceived as honest, or justified actions. Merton (1968) considered clientelism to be “humanizing and personalizing all manner of assistance to those in need”, while Muller (2006) and Hopkin (2006a) observe its integrative function, in linking the citizens to their political representatives. That is why the significance of studying such practices is sometimes questioned. The relevance of studying clientelism, for a political scientist, is sourced in the distortion that iterative linkage mechanism might cause on the accountability relationship between elective representatives, and the citizens of a polity. Thus, as this research endeavor supports, the reverberating effects of such practices are profound, and alter to the core the accountability relationships in a democratic society.

The literature finds common ground in what concerns the negative effects of clientelistic practices, as many assessments revolve around three dimensions: electoral, economic, institutional. Along the first dimension, clientelism distorts electoral competition, by generating “incumbency effects” (Wantchekon 2003), and thus diminishing significantly the contestation chances of the opposition. This means that even if a person is discontented, or disillusioned with the performance of her elected representative, she will most likely be inclined to vote and support him/her the second time around, because of the conditionality of the networks of resource distribution. The costs of changing the *status quo* become apparently, or in the short term, too steep in a clientelistic society, and thus, the accountability relationship loses its main strength—the ability to impose sanctions. On the long term, clientelism may also affect electoral competition by provoking a populist backlash (Muller 2006), which is equally dangerous considering that it is often only a change of actors, not of habits, as the case of Romania demonstrates it.

Secondly, there are also economic implications of clientelism. It leads to economic inefficiency, by discouraging the government from pursuing growth (Medina and Stokes 2007). As Chubb (1981/1983) points out in the case of Italy, the economic crises may actually enhance the role of the party as the privileged channel of access to resources. As the multiplier effects of the economy diminish, more and more citizens become reliant on informal channels of resource distribution. This type of resource hoarding may include jobs in the public sector, public contracts for entrepreneurs, or simple distribution of goods—food, cloths etc.

Finally, although clientelism and corruption are two separate phenomena, they are interlinked, as the first may incite the latter. The rationale through which the clientelistic relationship is maintained—“primacy to the distribution of individual, selective benefits to citizens, to the detriment of the provision of collective goods” (Hopkin 2006a), is itself a prescription for venal use of state resources. Kitschelt (2000) asserts that high scores of corruption are a good indicator of the prevalence of clientelism. But, clientelism’s impact and effects on society are not always clear-cut. While electoral competition is straightforwardly affected by informal exchanges, in the case of corruption or economic deprivation, it is hard to say which is the cause of which. In this regard, Stokes (2009, 623) underlies, clientelism is “intimately linked to poverty and inequality, of which it is probably both a cause and a consequence”. For this reason, in-depth, exploratory case studies like this one may shed more light on the mechanisms that reinforce such practices.

2. Evolution of the Concept

Through historical and cultural assessments, patron-client relations were seen in the 70s-80s literature, as being typical for pre-industrial societies—a primitive form of organization that would be destroyed by democratization or strengthening of states. In this conceptual frame, Scott (1972: 92) defines patron-client relationship as:

□ *a special case of dyadic (two-person) ties involving a largely instrumental friendship in which an individual of higher socio-economic status (patron) uses his own influence and resources to provide protection or benefits, or both, for a person of lower status (client) who, for his part, reciprocates by offering general support and assistance, including personal services, to the patron* □

This definition portrays an asymmetrical relationship between the patron and the client. As explained by Lande (in Schmidt et al 1977:xiii) □ dyadic relationships are composed of only two individuals, and thus are micro-level entities □. Such personal ties are necessarily based on mutual, and general social trust (Eisenstadt and Roniger 1984). Tilly (2004) refers to such basic units of social organization as “trust networks”.

The redefinition of clientelism in the past decade is encouraged by the fact that the prophecy of self-defeat turned out to be false. Clientelism persisted in developed countries as well as less developed one, disregarding the system of rule (authoritarianism, democracy). Piattoni (2001) explains this fallacy by observing how “democracy strengthens the clients’ bargaining leverage vis-à-vis brokers and patrons”. Therefore, clientelism was not crushed by democracy and programmatic platforms, but rather forced to evolve into a more “complex pyramidal exchange network of client-broker-patron exchange” (Kitschelt and Wilkinson 2007:8). Hopkin (2001) emphasizes the distinction between the “old” and the “new” clientelism. He argues that this mass party clientelism involves parties distributing state resources to groups, areas or individuals in exchange for their votes, and is less unequal, less personalized and more explicitly materialistic relationship than the old clientelism (2001:3). Kitschelt and Wilkinson (2001:4) underlie other changes: “clientelism thus evolves into a more symmetrical (rather than asymmetrical), instrumental-rational (rather than normative) and broker-mediated (rather than face-to-face based) exchange relationship”. In accordance to this new mechanism of clientelistic dominance, they also develop a new definition of clientelism as a transaction — “*the direct exchange of a citizen’s vote in return for direct payments or continuing access to employment, goods and services*” (2007:2).

This new definition accounts for three major changes in perspective. Firstly, it captures the symbiotic relationship between the patron and the state, which is the first supplier of the goods and services that the patron/broker transacts. It thus portrays a full-scale social hierarchy. Secondly, this definition accounts for Piettoni's emancipation of the client. In theory, it is no longer an asymmetrical relationship of dominance, but rather a commercial transaction between equal parts each offering what the other desires. Still, in practice, the fact that the broker/patron has political or economic monopoly (Medina and Stokes 2007) (or at least is part of an economic or political oligopoly) demonstrates the persistence of an asymmetrical relationship. Apparently, it is also a shift from vertical relationships, to horizontal ones. The citizenship offers a bargaining leverage to the client, but it is not always respected or applied and therefore, the dependency of the client remains significantly higher than that of the patron in the absence of bottom-up, popular mobilization. Thirdly, this new definition accounts for the need of intermediation in modern clientelistic networks. Electoral clientelism requires vast mobilization structures that can no longer be served by Scott's dyadic relationship.

3. Necessary Distinctions

The more recent understanding of clientelism develops the concept around a market equilibrium of offer and demand, in the political sphere. The offer side may be taken to represent the political parties' offer, which can be either programmatic, or clientelistic. Consequently, the demand side then becomes constituted by the voters' willingness to consume either programmatic, or clientelistic supplies of goods and services. Therefore, an analysis of contemporary political clientelism usually follows a transactional logic. This approach to the issue is rooted in clientelism's transition into the urban space. This is the first distinction that needs to be made—between *rural* and *urban* forms of clientelism. These labels do not encapsulate as much the spatial differences, as they do the process's evolution, and its adaptation to new environmental constraints. Hopkin (2001:3) also captures this distinction when he

refers to old and new clientelism, or traditional and modern forms of patron-client linkages. The old or traditional manifestations started off at the periphery of political preoccupations, as a practical, natural way of organizing the community around the local boss. With the development of national electoral systems, this localized, personalist, hierarchy-instituting relationship started to mutate.

It evolved both intensively, and extensively. The extensive development of clientelism is exemplified by Holston's notion of "insurgent citizenship" (2008), in reference to the clients' emancipation tendency in Brazil. This horizontal extension is achieved through trans-communitarian social ties that link people of the same social status. This process refers mainly to the pyramidal base of the system—the clients, but also to the brokers, or the patrons, as they become integrated under the different political parties' umbrella. Thus, urban clientelism shows also an intensive development, as vertical ties have not disappeared, but rather intensified, and perfected the ways to monitor, and constrain their targeted supporters. Although the new structures constrain the client even more, they have become increasingly harder to grasp to the average clientelistic base—an "anonymous machine politics" (Kitschelt 2000). Therefore, in many instances, brokers/mediators become essential in maintaining a necessary dyadic, face-to-face, trust relationship in areas where traditional social norms are still in place. This study will focus mainly on the political model of modern clientelism, but will test it against the background of both urban, and rural social environments.

A second distinction that needs to be made is between *long-term* forms of clientelistic relationships, and *short-term* ones. The traditional understanding of patron-client linkages presupposes long-term, iterative interactions. Such instances are consolidated over time. As Auyero's depictions of Argentinean instances of clientelism (1999, 2000), these are cases in which the contingent direct exchange of goods and/or services for votes, and general political support, develops into actual relationships. Such social ties affect the exchange logic, as emotional, sentimental factors intervene to support the continuation of clientelistic patronage networks, to the disadvantage of indiscriminate programmatic distribution of benefits. This emotional dimension of loyalty, which goes beyond

pure interest, resembles very much the sincere support any party may receive from its electorate. Therefore, long-term, iterative interactions blur the line between independent party supporters and clients of a machine politics. Still, as Stokes observes, “in the minds of clients, the instrumentalism underlying the friendship is never far behind” (2009:613). Therefore, an assessment of the presence/absence of clientelistic interaction, although more difficult, is still possible.

Reversely, short-term interactions between suppliers and consumers in the clientelistic market, are void of emotions, and do not imply any other behaviour prescriptions beyond the subject of the exchange. For example, exchanging a vote for a sum of money on the Election Day, does not imply continuant political support from that voter. Consequently, it does not imply continuant supply of goods and/or services from the elected representative. Therefore, such non-iterative transactions are primarily driven by the circumstantial interest each party has in obtaining what the other has to offer. They are generally cheaper, compared to long-term patronage. Still, when the stakes are high, they can reach exponential surges, such in the case of Kuwait’s 1996 parliamentary elections, when the price of a vote reportedly surpassed 3,000 dinar (10,000\$) (Agence-France Press 1996 in Schaffer 2007). But, even if these are short-term forms of clientelistic interaction, they carry broader consequences. Because the transaction is fully consumed on the Election Day, the elected representative becomes freed from any responsibility he might have had towards his voters, be they clients or independent supporters, during his term in office. The social contract between the public dignitaries and the electorate becomes null and void. This paper will account for both long-term and short-term forms of political clientelism.

4. Formal Electoral System (FES) and Parallel Electoral System (PES)

Once a party, or a candidate wins elections, there is a choice to be made on how to distribute state’s resources to the population. Through the lenses of a “responsible government party model”, this choice is dictated by the platform on

which a party/candidate has been elected — *programmatic political action*. Therefore, theoretically, the partisans/voters of that party/candidate will receive more resources, simply because their policy preferences will be enacted, not because they are personally rewarded for their support. Although policy choices may comprise an ideological bias, as elected representatives devise laws meant to satisfy their electorate's specific political preferences, they are not discriminately applied, so even people who haven't voted for that party/candidate may benefit from them. Kitschelt and Wilkinson (2007) concur: "Programmatic linkage therefore directs benefits at very large groups in which only a fraction of the members may actually support the candidate". Hence, this type of political exchange, between the politicians and the voters, is *indirect, and indiscriminate*. Considering clientelistic interaction as a form of electoral mobilisation, we must account for another logic of distributing resources—the *clientelistic political action*. Through this type of exchange, specific voters receive specific benefits, as a reward for their support. The beneficiaries are selected based on their voting behaviour—did they, or did not vote for the candidate who has, or is supported by somebody who has monopoly over the resources. Thus, it is a *conditional, discriminate distributional pattern*. The resources take the form of either material, or immaterial—patronage. The first category of resources usually constitutes the basis of *short-term, non-iterative interactions*, as for example one-off exchanges on the day of the vote. Schaffer (2007:2) provides a vast, and diverse list of examples of material incentives used in political clientelistic transactions worldwide:

"soap, tires, chairs, sarongs, watches, chickens, shingles, cement, whisky, coffins, haircuts, cigarettes, fertilizer, bicycles, funerals, vasectomies, dictionaries, fumigators, Viagra, Oxycontin, television sets, free rent, rugby balls, dried meat, mobile phones, birthday cakes, electric fans, cooking oil, bags of rice, barbed wire, corn grinders, plastic sheeting, washing machines, plastic surgery, teeth cleaning" etc.

The second category of benefits, streams from a *longer-term, iterative relationship*. Kitschelt and Wilkinson (2007:11) name in this category benefits

such as “public sector jobs and promotions or preferential, discretionary access to scarce or highly subsidized goods such as land, public housing, education, utilities, or social insurance benefits (pensions, health care), and specific procurement contracts to private enterprises”.

Most studies concerned with political clientelism have incorporated this distinction between programmatic and clientelistic exchange (Kitschelt 2000, Piattoni 2001, Schaffer 2007, Kitschelt and Wilkinson 2007, Stokes 2009), although not all agreed on the range between these two benchmarks. Based on the conceptualization of the two types of exchange, a useful correspondence can be established between them and two other factors. Thus, it is interesting to look at the levels of regulation and the predictability of the benefits’ distribution. In the case of programmatic distribution of resources, the level of regulation is usually high, as well as the predictability of the process — meaning that it is generally known who will get what. If we take the promulgation of legislation, for example, it is always made public, by being publicly debated and published. Therefore, at least theoretically, it is a transparent process. Clientelistic distributional patterns, on the other hand, have an inverse relationship with regulation and predictability. The more selective, and conditional the distributional process is, the less regulated, and subsequently, the less predictable it is.

Extrapolating this correlation from distributional patterns, to the electoral process itself, we may reasonably infer that programmatic linkages build up a Formal Electoral System (FES), while clientelistic linkages cumulate into a Parallel Electoral System (PES). This conceptualization is useful, because very seldom we find elections or democratic regimes, in which there are, either exclusively programmatic, or exclusively clientelistic linkages at play. We often find instances, in which the two are intertwined, and clientelistic exchanges take place in parallel with the programmatic ones. Obviously, they cannot both have the same efficiency, as they are in an inverse relationship to each other. Still, no democracy will entirely forgo, at least the appearance of programmatic distribution of benefits.

In this line of thinking, with the hope of achieving a better grasp of reality, we should look at continuum to substitute the simple dichotomy between programmatic and clientelistic exchange Schaffer (2007). At one end we could find *allocational policies*—indiscriminate distribution of rewards, followed by *pork-barrel spending*—channeling material benefits to selective districts. Allocational policies are components of the FES, as members of parliament (MP), and local officials, enact the platforms on which they were elected. Pork-barrel politics is also a part of FES, as although local officials might receive more funding because of their relationship to the national executives, this does not make them primarily clientelistic in nature. Towards the other side of the range, we can consider *patronage*—iterative, material and immaterial support, which this paper considers to mean long-term clientelistic interaction. Alongside with patronage, another instance of a Parallel Electoral System is *vote buying*—noniterative, one-off exchange at the election time, meaning short-term clientelistic interaction (see Table 1).

Table 1. Manifestations of FES vs. PES

<p>Allocational Policies (indiscriminate distribution of resources)</p>		
<p>Pork-barrel Spending (targeted public spending—channeling material benefits to selective districts)</p>	<p>PROGRAMMATIC EXCHANGE</p>	<p>→ FORMAL ELECTORAL SYSTEM (FES)</p>
<p>Patronage (iterative, material/immaterial support)</p>		
<p>Vote Buying (non-iterative, one-off exchange at election time)</p>	<p>CLIENTELISTIC EXCHANGE</p>	<p>→ PARALLEL ELECTORAL SYSTEM (PES)</p>

Source: compiled by the author based on Schaffer (2007)

5. Analysing the PES in Romania⁴

Like other post-communist states of Eastern Europe, Romania has a legacy of collusive intertwinement between the public and the private sphere. Salient issues of electoral fraud, and manipulation of the voters, persist in the contemporary democratic regimes of this region (Kitschelt et al 1999, Myagkov et al 2005, Tucker 2007, Grodeland 2007, Pacek et al 2009). Gledhill (2010) and Grosescu (2004) suggest that the nation-wide clientelist networks, established under Ceausescu, made the transition into post-communist Romania, almost intact. This would imply that the parallel structures of political mobilization and control are well institutionalised in themselves. Such evidence entices different types of institutional failures. On one hand there is the persistence of corrupt practices, at different levels of the state apparatus, from the central to the local administration, leading mainly to inefficient resource allocation. On the other hand, and more significantly, the permanence of clientelistic networks distorts the fundamentals of the Romanian democratic system, by thwarting the accountability mechanisms between elected officials and the population, and implicitly, pervasively affecting the process institutionalization and consolidation of the Romanian political system.

5.1. The clientelistic pyramid

If we take as reference Medina and Stokes' (2007:70) distinction between economic monopoly—over goods that the patron controls independent of the

⁴ For this preliminary assessment, I mostly based my conclusions on the secondary analysis of the data provided by the social research institutes—IMAS, BCS (Social Research Bureau), CIS (The Independent Center for Social Studies and Polls), AEP (Permanent Electoral Authority), BEC (Central Electoral Bureau), SAR (Romanian Academic Society), SER (Romanian Electoral Studies, Soros Foundation) and 3399 others. I conducted 23 unstructured or semi-structured interviews with young party members and professionals, during the period of 20th of December 2009—29th of January 2010. I also used secondary data collected from politicians' blogs, or journalists' blogs. Although inherently subjective and lacking in transparency, these later sources provided a general sense of the political discourse Romania.

outcome, and political monopoly—over goods that he controls only if he retains office, an interesting relationship arises in these cases: in post-communist countries, there is a correlation between economic monopoly and political monopoly. Studies of the Romanian or Russian setting (Volkov 2002, Olah 2004, Varese 2005) show that most examples of local bosses' power range include both economic, and political monopoly in their area, which makes them not only desirable, but also necessary allies for national leaders. Therefore, although in such cases local bosses are intermediaries in the electoral mobilization, they also hold a particularly strong vantage point in the clientelistic chain, as more than resource brokers—resource providers.

In the first, theoretical part of this paper, two important distinctions were made. On one hand, there was a temporal distinction between short-term and long-term clientelistic interactions, which will guide the following sections. On the other hand, it was asserted that “rural”/“old” and “urban”/“new” clientelism present themselves in different forms, while the first is a familiar intermediation, the latter is a faceless transaction. This is a useful reference when analyzing the issue of local bosses, who, apart from their considerable control over resources, also have *persona capital*, as they are at least identifiable, if not always charismatic, leaders of the community. Also, the degree of control from the part of the patrons is significantly higher in rural settings because voters are overall more vulnerable to party mobilization due to smaller community structures, and fewer channels of unbiased information.

Overall, local politics seems to carry more significance than the national one, in the Romanian setting. Based on the available data (IDEA, IPP, INSS), although Romanian turnout for elections is decreasing, the local elections turnout is surpassing since 2007, the national elections one. This would seem to suggest that local politics mobilize better a generally disillusioned electorate, giving it a sense of familiarity and control. But, the correlation between higher turnout and higher interest for local politics is not clear-cut. As it was hypothesized in this paper, parallel mechanisms of electoral mobilization may simply be more efficient in the rural setting of smaller communities.

The overlapping economic and political brokerage power of local bosses makes it difficult to investigate short-term clientelistic exchanges apart from broader patterns of iterative interaction, such as patronage. Nevertheless, the following paragraphs will attempt to identify the available evidence firstly for one-off or short-term exchanges for electoral purposes, and secondly, the evidence for structurally embedded clientelistic networks. This attempt to disentangle the two is mainly based on the fact that for the first there are direct indicators, while for the second, the present analysis is based mostly on proxies, such as corrupt practices or political disengagement.

5.2. Vote-buying

According to the article 55 of the Law nr.35/2008 for the election of the Chamber of Deputies and the Senate, the informal exchanges of goods and service for votes is punishable by law. Still, the range of “*goods with symbolic value, bearing the logo of different political parties*”, which may be the subject of transactions during electoral periods, leaves a grey area that is interpreted by each party as it pleases, with the following goods being granted for electoral purposes throughout the 2008 local and legislative elections, and the 2009 European and presidential elections: buckets, eggs, footballs, mobile phones, oranges, ice-cream, chopped lamb meat, glasses, different plastic bags filled with unknown content, and the list could go on. Such examples are extracted from the empirical research conducted by the author, which means that they are both known and publicly recorded.

Both pecuniary exchanges, and the trading of goods for votes, are examples of short-term interactions between suppliers and consumers in the clientelistic market. But, they may follow different logics of action. The distribution of goods with symbolic value (e.g. oranges, ice cream, buckets) is random, or area based. In other words, it is non-discriminatory. This would seem to make it more expensive, as the distribution of goods is not conditioned on political preference, and the outcome (the vote) is hard to be monitored. Thus, many of the beneficiaries, may end up voting for another party, or candidate. Still, when

it comes to ice cream, or oranges, the cost-ratio is not too high, as the goods aren't expensive, and they serve well as a remainder of other flows of goods or services that party may be willing to grant to its voters. They also serve as a hook—a means to capture attention, for making new or unidentifiable candidates known to the electorate.

If the exchange consists of higher value goods (e.g. glasses, mobiles, lambs), or money, than these are usually discriminately distributed. These would seem to be less expensive, as the beneficiaries would be selected on the basis of predictability— greater probability to vote for the purveyor of those benefits, or monitoring mechanisms (e.g. taking a picture of the ballot-paper). But, again the situation might be different, as the goods are more expensive, and there are also additional costs for selecting, and differentiating the recipients, from the general population. Thus, the discriminatory distribution of goods, and money, besides being more efficient, is also more costly, due mainly to the extra costs of brokerage. Not only are the intermediaries costly, in terms of time, and physical resources, but they also create extra risks of being discovered. And, while many people have knowledge of these practices⁵, they are still illegal, as showed above, and thus penal liable.

If the distribution of money, or goods, would follow a pre-established pattern, or a pre-configured matrix of people, being both selective, and discriminate, then these would no longer be one-off exchanges, but rather clintelistic networks. In an interview with the author, one campaign manager suggested that these are the desirable ties. It starts with a snowballing socialization—the election volunteers try to include their friends and colleagues into the transaction, and ends with a known list of available persons for electoral transactions. This is neither long-term interaction, because it is not a constant relationship (e.g. employment, public contract, taxation benefits), but it is nor a clearly short-term interaction, as it becomes the bases of iterative exchanges.

⁵ See Annex 1 for a compounded list of informal methods to obtain and monitor votes, which were communicated to me by young party members and other interviewees

In a tentative conclusion on vote buying mechanisms, this study aims at furnishing a better understanding of the distinctions between different instances of clientelism. The *short-term, non-iterative clientelistic interaction*, as exemplified above, is a poor electoral tool. It is useful in capturing the attention of the voters. But, as the evidence shows, it consists of low value products, which are distributed indiscriminately in the electoral districts of interest. The conditionality of such exchanges is low, and there is no reason for monitoring mechanisms to be set in place. This study has uncovered another version of vote buying, which can be labeled as *short-term, iterative exchanges* of higher value goods. Thus, the clients are discriminately selected, based on pre-compiled lists of actual and potential partisans, and higher value goods or money is given to them under specific monitoring mechanisms (see Annex 1). Still, in terms of the conditionality and the monitoring potential, *long-term clientelistic interactions*, such as public employment or public contracts, are the better alternative. But, even if patronage serves better for electoral mobilization and predictability of support, it is also more costly, and scarcer—fewer people can receive public jobs, than can benefit from ‘classic’ Romanian electoral goods such as food packages or buckets.

5.3. “Symptoms” of Clientelism

While the occurrence and form of manifestation of vote-buying can be more readily investigated in the field, long-term clientelistic relationships, or patronage, require a much deeper focus on the governmental architecture and activity, which lies outside of the direct reach of this study’s empirical fundamentals. Although such labels as cronyism, favoritism or the politicization of the civil service are frequently attributed to the Romanian state system, few studies have achieved to date a solid, direct empirical basis. Most of the inferences on this subject use proxy indicators. In this regard, Kitschelt asserts that “it is pretty safe to conclude that clientelism prevails in a polity if we find that parties are programmatically incohesive and that experts also attribute high scores of corruption to that country” (2000:871). Consequently, choosing from a wide

range of possible proxies of clientelism, I will discuss in the following paragraphs these two “symptoms” of clientelism: **corruption** and **political incohesiveness**.

5.3.1. Corruption

In terms of the first proxy—**corruption**, one can find convincing evidence of high levels of corruption in Romania, despite efforts to fight it after the accession to the EU. According to the Global Corruption Report produced annually by Transparency International, the corruption perception index (CPI) for 2009 was 3.8 for Romania, which positioned it on the 70th place out of the 180 countries included in the study. Romania’s corruption level is an over-used explanation for why things go wrong in its institutional setting. To avoid conceptual stretching that leaves us with poor theoretical framing of the empirical evidence, this article supports the idea that corruption is a side effect of collusive practices within the state apparatus, such as clientelistic relationships. Therefore, corruption levels are indicative of clientelism, but are not direct measurements of it. Based on the theoretical claims made by this paper, corruption can be evaluated as an instance of *patronage or favoritism* on one hand, or as instances of *preferential pork* distribution on the other hand. Still, any type of assessment of corruption is problematic on two accounts. Firstly, the measures of corruption are subjective assessments of foreign experts, usually investors or businessmen, and thus aren’t necessarily reflective of the citizens point of view (Wantchekon 2002). Secondly, even if the corruption measurement does indeed reflect the nationals perception, it is still a subjective assessment, which may, or may not be reflective of the actual reality, as corruption patterns of occurrence and prevention are translated from one country to another, disregarding contextual specificities (Mungiu-Pippidi 2007, Mungiu-Pippidi et al 2011). Olken (2009) has compared the corruption perceptions of villagers in Indonesia about a road-building project in their village, with the reality of corruption measured through a model of missing expenditures in that same project, based on data of expenditures and costs. He concluded that villagers’ perception of corruption is positively correlated

with the reality of it, but that the magnitude of this correlation is small.

In the Romanian case, public opinion figures also suggest discrepancies between the perception and the reality of corruption. Although the CPI 2011 showed a slight decrease in the public perception of corruption levels, the Global Corruption Barometer (GCB) 2010, also assembled by Transparency International, illustrated how 87% of the respondents considered the level of corruption to have increased in the past three years. Data from 2009 to 2011 (CGB, CSOP, Ministry of Justice) showed how the general opinion in Romania was inclined to consider the Political Parties and the Parliament as the institutions most affected by corruption, with a score of 4.5 out of 5. Such polls suggest that the public correlates the political parties with the legislature. Indeed, when analyzing the public discourse of the incumbent party and public officials over the last three years, one can see a clear fusion between the political party and the state apparatus—this being a general tendency of state building in Romania probably sourced in its communist past (Grosescu 2004). Therefore, behind the perceptions of corruption, more salient and deeply systemically embedded issues may lie. Consequently, empirical research on corruption shouldn't be based solely on perception indexes, but on more objective measurements, such as the disparities between the expenditures on certain public projects, and their actual costs.

Thus, armed with a better research design, we can use studies on the venal use of state resources as evidence of favoritism, or *patronage*. A study on the corruption level in Italy looked at the difference between the physical quantities of public infrastructure, and the cumulative price the government pays for public capital stocks, thus asserting that 'where the difference is larger between the monies spent on infrastructure and the existing physical infrastructure, more money is siphoned off to mismanagement, fraud, bribes, kickbacks, and embezzlement; that is, corruption is greater' (Golden and Picci 2004). In a similar manner, a recent study analysed the Romanian level of corruption through the use of such indicators as: the profit of Romanian contractor client-companies of the Government compared to European ones competing for

public contracts, the level of discretionary allocations from the Government's Reserve Fund, the performance of state owned enterprises (SOE) or the amount of politicization of the public sector (Ionita et al 2011). Such indicators proved to be highly revealing of the Romanian clientelistic practices—iterative exchanges or patronage, which are more than simple corruption. These are practices that affect the structure of the state apparatus beyond the siphoning of public resources. As this paper asserts, such instances of long-term clientelism affect the very democratic accountability relationship between the state and the citizens.

Pork-barrel politics, as mentioned before, is not necessary a clientelistic manifestation with electoral purposes. Thus, in regard to the preferential distribution of public resources, corruption is mainly a proxy for personalistic connections that may, or may not have mobilization value. Trying to answer the question of whether incumbents can buy political support through targeted public spending, Pop-Eleches and Pop-Eleches (2009) have uncovered an interesting relationship within the pyramidal structure—between governmental measures (national level politics), the local government (local politics), and the voters. Their study showed how, through targeted public spending—pork-barrel politics, the incumbent governing coalition increases its support from the part of program beneficiaries. But, the electorate is found to increase its support for the local representatives, or the local governmental structures, and not necessarily for the central government, which was in fact responsible for the respective policy of targeted public spending.

The evidence of this quasi-experiment accomplishes two things. Firstly, it supports the supposition that local channels of exchange have a faster and more direct influence on electoral support. Secondly, it exemplifies how targeted public spending, or pork-barrel politics can be used as a mean of “buying” political support, which is often the case. Nevertheless, the present paper does not treat it as a standard example of the PES because it is highly difficult to prove the connection between discriminate channeling of resources to certain districts—regional development, local infrastructure, housing projects

etc, and the conditionality of an exchange. With a few notable exceptions such as Mungiu-Pippidi et al (2011) or Ionita et al (2011)—studies that look at the discretionary use of the Government’s Reserve Fund, this is the empirical space in which most of the research on clientelism finds itself trapped in the ambiguous and obscure budgetary machinations of the administrative apparatus.

5.3.2. Political Incohesiveness

The second “symptom” of clientelism outlined by Kitschelt (2000) was the level of **political incohesiveness**, or programmatic incohesiveness. This again is usually a subjective assessment. For a better conceptualization, we should look at two different axes of political incohesiveness. The first is that between the political parties—the political offer, and the ideological and programmatic positions they adopt. The second is that between the electorate—the political demand, and the ideological and programmatic preferences they hold.

Considering the 1st axis of political incohesiveness (political parties—ideological/programmatic position), we can find evidence of incohesiveness in the actions of the Romanian political parties. Downs (2009) considers that the last legislative election, in 2008, “was further evidence of a Romanian party system that is failing to produce alternatives with clear ideological distinctions. If such avowed adversaries as the PD-L and PSD could agree to share power, opportunism and self interest were seemingly trumping fidelity to enduring policy positions and campaign promises”. Not only, have PD-L (the liberal democrats) and PSD (the social democrats) been “avowed adversaries”, but they are ideologically antagonist, as PSD scores 3.6 points on the left-right scale of ideological positioning (with 1=left, and 10=right), and PD-L scores 6.5 on the same scale (Comsa 2009). On the following elections—the presidential race in November 2009, the alliance between the same leftist PSD, and the rightist PNL (the national liberals), whose score is by 0.2 points greater than that of PD-L on the left-right scale, constructed an even larger ideological stretch. Still, this isn’t sufficient evidence of ideological inconstancy, as large

coalitions may also be formed for the sake of better governance, and stability. But, when an in-depth analysis is conducted of the parties' platforms and political manifestos, we can clearly see their programmatic convergence, as most of the 2008/2009 electoral promises are similar for all parties⁶.

For the second axis of political incohesiveness (electorate—ideological/programmatic preferences), we find rather conflicting evidence. On one hand, we witness a rate of 57, 2% of the Romanian population which claims that their electoral choice is based on the programs which the candidates are promoting (BCS 2009a). This would not only lead us to believe that clientelistic practices are only affecting the choices of a minority of the population, which would mean that electoral outcomes aren't changed significantly by it, but also, that the Romanian electorate has a strong ideological positioning. This finding is reflected to a certain extent by the fact that 52% of the Romanian electorate has an ideological preference, but the balance is precarious as up to 41% of the electorate can't /won't position themselves ideologically, and 5% vote contrary to their ideological beliefs (Comsa 2009). Comsa (2009) also observes how the abstract ideological choice of the voters is reflected in their political choices, but when it comes to specific programs, voters' preferences are surprisingly homogenous, disregarding the diverging abstract ideological preferences. Gherghina and Jigla (2011) find that it is difficult to speak of ideological institutionalisation in Romania, given that the electoral support is too fluid and the political parties don't have strong roots in the society. The variable levels of political volatility for all parties in Romania (see Gherghina and Jigla 2011) suggest that the electorate isn't consistent in its political choices and that further consolidation of party allegiance is needed. Because of this poor institutionalisation of political choices and ideological preferences, clientelism is one of the most effective and immediate solutions available to political parties for the mobilization of voters.

Along this latter axis, apart from ideological inconstancy, or indifference, we also find evidence of low levels of interest in politics and activism. The World

⁶ Analysis based on primary data compiled in Gherghina and Chiru (2011).

Values Survey (WVS) from 2005 shows that 68.1 % of the Romanian electorate isn't interested in politics, and over 60 % would never, under any circumstance sign a petition, join a boycott, or attend lawful/peaceful demonstration. These data show that the Romanian electorate is detached from the political process, and little hope is pinned on the outcomes generated by it. Still, my research on the presidential elections from 2009 seems to suggest, the Romanian electorate is highly interested in the confrontation between the candidates, and high interest is generated by the electoral campaigns themselves. Thus, while the political system itself doesn't appeal too much to the average voter, the persona of the candidate is of great interest, and fuels extensive public debates, which would suggest that there is a highly personal attachment in the process of casting votes. This type of low interest in the political system, coupled with a high attractive power of the candidates' charisma is also a prolific setting for clientelism.

6. Conclusion

This paper has attempted to outline the evolution of the clientelistic relationships, and how they impact upon democratic practices in the contemporary settings. It has also attempted to disentangle the different forms of clientelistic linkages—short-term, one-off exchanges, from long-term, iterative transactions. It has suggested that the non-iterative transactions are easier to trace, because of their purely mercantilistic nature. The long-term ones, which are closer to average partisanship, are more expensive in terms of time spend on the consolidation of the broker-client relationship, and in terms of the value of the exchanged goods— public employment, public contracts etc. The iterative exchanges can be better monitored, and hence, have greater predictability in terms of the electoral mobilization potential they hold. Still, as the empirical evidence gathered in Romania shows (Annex 1), a wide range of methods of monitoring one-off exchanges on the Election Day has been perfected as well. This implies a great risk for democratic accountability, as the transaction is fully consumed on the Election Day, the elected representative

becomes freed from any responsibility he might have had towards his/her voters—be they clients or independent supporters, during his term in office.

Finally, this study has proposed a new conceptualization of the dichotomy between programmatic platforms and clientelistic ones. The question is not whether an electoral system is programmatic or clientelistic, as informal exchanges usually take place in parallel with the programmatic ones, but whether or not clientelism prevails. Therefore, the programmatic political action belongs to the Formal Electoral System (FES), and the clientelistic electoral mobilization belongs to the Paralel Electoral System (PES). A candidate/party may make use of both types of electoral action, but its victory will ultimately depend on the mobilization form that is prevalent in that specific electoral setting. Both long-term clientelistic relations, and short-term electoral transactions belong to the PES. In the case of Romania, the empirical evidence testifies to a high incidence of short-term, non-iterative exchanges, which have a high effectiveness due to their relative low-costs, the general disenchantment of the electorate with the political sphere, and the improvement of the monitoring mechanisms. This study has analysed the incidence of long-term clientelism within state structure based on empirical evidence of proxies, such as corruption levels or the consistency of political preferences and support. Still, further research on the case and topic is needed to understand the scope and impact long-term clientelistic relations might have on the Romanian electoral system and to measure it with direct evidence, rather than through indicators of the likelihood of its occurrence.

Annex 1: “Known” Methods of “Stealing” Votes

1. **“Photo” Method.** Entering the polling booth with small cameras, or mobiles with incorporated camera, in order to take a picture of the ballot-paper. This procedure is used by those who want to monitor the vote of the persons to whom money or other benefits they’ve promised.
2. **“Unstamped Ballot-paper” Method.** Giving to voters unstamped ballot-papers (which will make their vote null). This method will be used in those sections where it is known that most votes will be in favour of for the opponent.
3. **“Voted Ballot-paper” Method.** Giving to voters, already voted ballot-papers. Similar method with the preceding one.
4. **“Typography” Method.** Distributing a greater number of ballot-papers than the real one. Implies the illegal printing of ballot-papers, which will reach the voting station through a member of the elections commission from that polling station.
5. **“Shuttle” Method.** A voter goes in the polling booth with an already voted ballot-paper, and exits with the empty one, which was handed to him at the polling station. (It’s meant ensure that voters, to whom money or favours have been given/promised, are voting the way the patron wants to. The patron is the one who provides the original voted ballot-paper)
6. **“Blue Shirt” Method.** A person, known by a clothing article, is hired to follow the voter in the polling booth to make sure that person votes the way he/she is supposed to. (This practice, like many others on this list, is specifically forbidden by the law)
7. **“Mobile Poll” Method.** The mobile poll, which is used with the approval of the voting section’s president, is used excessively, as a result of numerous written solicitations.
8. **“Crush” Method.** A crowd is intentionally formed at the entry of the polling station, so as to expressly delay the voting process. This method is

- again, mostly used, in those polling stations where the opponent is known to be favoured.
9. **“Multiple” Method.** The members of the voting commission give to known voters multiple ballot-papers, by signing as present other persons, who don’t show up. (This method requires the practitioners to have knowledge of the absent persons’ ID numerical codes, and is especially favoured by low turnout rates)
 10. **“Morning” Method.** Half an hour before the voting process begins, multiple ballot-papers, which are voted “the right way”, are introduced into the poll. Throughout the day, the members of the voting commission who committed the fraud will sign as present some of the people who didn’t show up.
 11. **“Fifty-fifty” Method.** Unused ballot-papers are split between the members of the voting commission of the station, and then introduced into the poll. It usually works in small polling stations, where there are no assigned observers.
 12. **“Bribe” Method.** Money is given upon the presentation of the proof of how the way people voted (the “right” way). It is usually the complement of other methods presented above.
 13. **“PV” Method.** The president of the voting commission has a duplicate of the voting record, and signs it on the way to the BEC (Central Electoral Bureau).
 14. **“T-shirt” Method.** The members of the commission wear electoral slogans, or inscriptions on their clothing.
 15. **“Bus” Method.** Moving electoral “tourists” from one city to another, in buses, or other vehicles.
 16. **“Scatterbrain” Method.** (similar to the “unstamped ballot-paper”) The member of the commission “forgets” to stamp the ballot-paper, thus giving the voter the chance to recast his vote.

17. **“Destruction” Method.** If the “voted” stamps remain at the reach of the commission members, they may stamp some of the “wrong” ballot-papers, once the polls have been open for counting, thus those ballot-papers will be rendered null.
18. **“Stalin” Method.** It is possible that, when the others aren’t paying attention to the final counting process, a member of the voting commission can move some of the ballot-papers to the “right” pile, thus increasing the final number counted votes in favour of that candidate, in that polling station.

Source: compiled and translated by the author

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Restructuring the Foreign Policy of the EU: Competing Narratives and Discourses

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Abstract

The study of EU foreign policy has devoted over the last years great emphasis to the conceptualization of the role of the Union as an international actor. This paper critically analyzes two overarching narratives – realist and interpretive – about the role of the Union as an international actor employing insights from critical theory. By such narratives, it is meant those perspectives that have been developed in scholarship and have sought to answer questions about how the EU behaves in the international system and how it should behave. The method of critical reading implies uncovering the premises on which the international role of the EU was constructed within the two narratives, then underscoring their consequences and juxtaposing them to their founding principles. This endeavour highlights the purpose behind the different types of foreign policy constructed and promoted by the two narratives. Simultaneously, the study enquires into the shared commitment between the two narratives for the creation of a common foreign and security policy for the EU.

KEY WORDS: *European Union, foreign policy, critical theory, narrative, realist, interpretive*

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In the last two decades the European Union has come to be viewed as a unique international actor (Aggestam 2011; Bickerton 2011b; Allen & M. Smith 1990; Biscop & Andersson 2007; Bull 1982; Diez 2005; Hill 2003; Howorth 2010; Hyde-Price 2008; Hyde-Price 2007; Manners 2008b; Manners 2002; Orbie 2009; Sjursen 2006). Simultaneously many have doubted the claim that the EU behaves as a traditional national state in the international system (Biscop & Andersson 2007; Tuomas Forsberg 2011; Ginsberg 2001; Zielonka 2008). Different narratives and discourses about the Union's role in the international system have been developed in order to legitimate a specific foreign policy. By narratives and discourses of the Union's role in the international system the article refers to those narratives that have been constructed in scholarship and have tried to answer questions about what the EU is as an international actor and what it should be. As the EU is a top-down project where leaders have constantly sought to implement ideas developed by academia, the realm of foreign policy – being traditionally a top-down policy area – has been highly influenced by scholarly debates. Two main broadly defined directions have shaped the debate around the foreign policy of the EU: namely one centred on a power based – realist - perspective based on the neorealist and neoliberals commitment to the idea states have to maximize their national interest rationally and egoistically through their foreign policy; and a second one that focussed on the Union's uniqueness in the in the international system and that was researched with an interpretive epistemology. Both these perspectives have tried to argue around the idea that the EU may or may not have a traditional foreign policy. At the same time, in both cases, great detail was devoted to developing a normative side to their arguments. Discourses about capabilities, norms values or identities have been put forward in order to show how the EU should develop its foreign policy and what kind of force it should project in its international relations.

The goal of the argument developed here is to critically analyse and try to understand *why* and *how* the overarching directions in the debate around the

foreign policy of the European Union have constructed and legitimated different kinds of foreign policy approaches for the Union. This article engages with insights from critical theory to explore the two narratives and expose the way their goals differ from their consequences and try to understand why they legitimate specific types of foreign policies for the EU. While both perspectives share a common goal in creating and promoting a unified foreign and security policy for the Union, they differ significantly in regard to the weight they afford to military capabilities or norms and values. A realist perspective acknowledges that in the contemporary international system driven by anarchy, the only way the EU could play an important role would be for it to develop strong military capabilities. This *Realpolitik* view of international relations is contrasted by the interpretive approach of those who promote the idea that the EU is a new type of international actor and must build on its specific characteristics even though it might not achieve significant short-term success (Manners 2008a; Manners 2006; Manners 2002; Manners 2008b; Manners 2008a; Menon 2011; Rogers 2009). They recognize that the EU must try to develop a common approach to foreign policy that is not bent on the use of military capabilities, because the consensus on such a decision would be almost impossible to achieve due to the conflicting interests of the member states. From this point of view the EU is a normative actor who promotes and should promote the norms and values that lay at its foundation in its external relations (Eriksen 2006; Manners 2002; Moumoutzis 2011). This normative desiderate has been embraced by the recent leaderships of the EU only rhetorically. Former EU High representative on the Common Foreign Security Policy of the EU, Javier Solana has underlined the normative scope of the Union: 'in terms of normative power, I broadly agree: we are one of the most important, if not the most important, normative powers in the world' (cited in Manners 2008:79).

Considerable amount of criticism has been directed towards the EU from third party states due to the dissonance that exists between its rhetoric and its practical actions. The Union seems to be committed to promoting its norms towards the emancipation and well-being of the world, but at the same time it

acts as if it were driven by power politics. For example the Union's divided responses to the worldwide economic crisis or to the issue of energy security have put serious doubt on its normative character (Casier 2011; Agh 2010; Aalto 2011). By exploring the narratives about the role of the EU as an international actor the paper tries simultaneously to understand how these scholarly debates have been translated into practice and to sketch how the foreign policy of the EU functions as a result of these competing narratives.

Applying insights from critical theory

The methodology employed in this article relies on insights from critical theory to analyze the ways in which the EU was constructed in scholarship as an international actor. Critical reading or immanent critique is applied in order to identify and understand the nature of the differences between the principles and the goals of a narrative and its consequences. This method has been central to the work of the Frankfurt School (Habermas 1989; Habermas 1998; Habermas 2000; Horkheimer & Adorno 2002), hermeneutics scholars (Richardson 2003; Gadamer 2004), or critical international relations theorists (Booth & S. Smith 1995; Devatak 1995; R. W. Jones 2001a; R. W. Jones 2001b; Neufeld 1995; Mouffe 2005; Roach 2007; S. Smith 1995; Linklater 2001; Linklater 2007; Linklater 2008; R. Cox 2001; R. W. Cox 1981). The article draws on an earlier version of critical theory attributed mainly to Horkheimer (1982), distinct from the much recent strand developed by Habermas that focuses on a communicative theory and the need to foster open dialogue within society. The framework of critical reading implies exploring the construction of a narrative by analyzing its inherent principles and standards and then tracing the way they unfold into its practical implications. In this manner the immanent contradictions within a narrative's construction are brought to light (Neufeld 1995). Adorno and Horkheimer (2002) argue that if critical reading is to be efficient it has to start from within. As such, the study will assume the position of each narrative explored because only by doing so will it be possible to understand the goals that

inform them. The framework of analysis for the realist and interpretive perspectives about the international role of the European Union will entail different stages that will be applied equally to both of them. It begins with presenting the way the narratives are situated into the broader area of the study of international relations. The next step explores their main tenets and principles, simultaneously juxtaposing them to the critics that the proponents of different perspectives have put forward over the years. The contradictions within the narratives are highlighted by uncovering certain discrepancies between the underlying goals and purposes of each perspective. At the same time, the study teases out the contradictions between the goals and principles outlined earlier and their consequences – the way they have been applied and have influenced the practice of foreign policy within the EU. Discourses from key EU foreign policy actors and brief examples of the Union's recent international actions and attitudes are conveyed in order to achieve the previous point. However, the article does not seek to explain the existence of a causal link between scholarship and policy approaches, but critically evaluates how these perspectives have been constructed or legitimated and underscores their internal contradictions. Secondly, the article explores a series of instances where policy practices have been influenced by the two broad approaches defined earlier (realism and interpretivism) and their internal contradictions.

The Paradox of applying critical theory to the study of EU foreign policy

International relations theory scholars who have engaged in applying insights from critical theory have at the same time sought to denaturalize the state as the main point of focus in the international system (Dannreuther 2007; Mearsheimer 2002; McCormack 2009). By analyzing the structure of the modern political order – the system of sovereignty that is believed to have been created by the Peace of Westphalia - they sought to challenge the boundaries of the national state. Being created as a top-down construction, the European Union is in itself a critical project that seeks to transcend the modern conceptualization of the nation state which is bound up by an overarching norm of sovereignty. A critical reading

of the EU in all its aspects – be it foreign policy or economic policy – is especially difficult in this case as the Union seems to be the materialization of specific critical narratives that addressed the problems of the *Old Europe* -which was characterized by considerable bloodshed. Nonetheless, the EU has been constructed through the transfer of legitimacy and authority from the nation states to a new centre (Haas 1958). New discourses have elevated and perpetuated the new position of power of this centre, which in the end gave birth to new patterns of domination significantly different from the ones that the EU was set to challenge (Linklater 2007, p.50). It is for this reason that a critical reading of the foreign policy of the EU like the one developed in this article is much needed at this point. The narratives devised in this area in order to legitimize different international roles for the Union have become competing orthodoxies, each trying to impose its principles in a positive manner – although the epistemology of the interpretive perspectives on the foreign policy of the EU argues that only positivist approach engage in such practices (Manners 2010; McCormick 2006; Neufeld 1995). They tend to act like ideological constructs that reify a particular set of social, economic and discursive arrangements (S. Smith 1995).

Another difficulty in applying critical theory to the study of the EU and in particular to its foreign policy pertains also from the Union's character of being constructed as a top-down project. The habermassian focus on undistorted communication comes into direct clash with the nature of the dialogue present within the foreign policy of the Union. Traditionally open dialogue has not been a characteristic of decision making in foreign policy (Almond 1950; Deutsch et al. 1969; Hallin 1989; Kennan 1985; Morgenthau 1967). Building a critical reading of the EU's role in international system having in mind the pervasiveness of open dialogue would be a project that transcends the goals of this study, as it would have to negate the base of foreign policy decision making – the closed nature of decision making in foreign policy and the exclusivity of the state in this area. Moreover, the development of the EU over the last two decades has been influenced by the lack of democratic legitimacy based on the absence of open dialogue in all of the Union's policy areas. Open dialogue in EU foreign policy can only be constructed

when its democratic deficit in other foreign policy areas will be mitigated (Bickerton 2011a; Laidi 2008; Lucarelli 2006).

Realism and interpretivism in the study of EU foreign policy

Table 1 portrays the range of assumptions that both realist and interpretive perspective regarding the EU's foreign policy have applied. Realist perspectives on the role of the European Union as an international actor have put the emphasis on the need of the Union to adapt itself to the structural conditions of the international system (Ginsberg 1999; Ginsberg 2001; Hill 1991; Hill 1993; Howorth 2001; Howorth 2004; Howorth 2007; Hyde-Price 2006; Hyde-Price 2007; Hyde-Price 2008; McCormick 2006; Whitman 2006). Such studies have been mostly influenced by the neorealist tradition in international relations has posited that the international system is dominated by anarchy which compels states to seek to increase their security in order to survive and consequently thrive. Two methods have been developed in scholarship for achieving this goal: firstly developing strong military capabilities and secondly constructing military alliances with great powers (Mearsheimer 2002; Walt 1990; Waltz 1979) (Mearsheimer 2001; Van Evera 1999; Walt 1987; Waltz 1979).

	<i>Realism</i>	<i>Interpretivism</i>
Nature of the international system	<ul style="list-style-type: none"> • Anarchy • Sovereignty as a basic principle, although in the case of the EU a loss of economic sovereignty is admitted • Dominated by the interests of actors 	<ul style="list-style-type: none"> • Fluid, dynamic • Post-national/ post sovereignty • Dominated by the spread of norms and values (either exogenous or endogenous to the system)
Main actors	<ul style="list-style-type: none"> • States 	<ul style="list-style-type: none"> • States, international organizations, NGO, transnational advocacy

		groups, multinational corporations
State behavior	<ul style="list-style-type: none"> • Self interested 	<ul style="list-style-type: none"> • Altruistic
Foreign policy goals	<ul style="list-style-type: none"> • Promoting and safeguarding national interests • Maximising security 	<ul style="list-style-type: none"> • Spreading the democratic values that lay at the foundation of the EU
Mechanism/tools	<ul style="list-style-type: none"> • Adapting and forcing 'others' to the conditions of the international system • Military alliances • Intergovernmentalism 	<ul style="list-style-type: none"> • Persuasion, leadership by example • Effective multilateralism • Functionalism

Table 1 Realism and interprevitivism in EU foreign policy scholarship

Scholars acting within a liberal paradigm have acknowledged the realist tenet of anarchy structuring the international system, but have underlined that strong economic ties and thus interdependence can help a state survive and prosper (Keohane 1992; Moravcsik 1997). These three principles have been applied to portray the way the EU can become a veritable international actor that could influence the behaviour of other states (Howorth & Menon 2009; Hyde-Price 2008). All these views converge with the idea that the EU must develop military capabilities that can be deployed anywhere in the world. Any major power in the international system must be willing to project its power in order to safeguard its interests. This can be achieved only if the state possesses strong military capabilities to back up its claims. Moreover, liberal perspectives have completely acknowledged that the only through which the EU can develop an effective foreign policy that can allow it to play an major role on the international scene would be for it to use its economic power to persuade third party actors (Eeckhout 2005; Howorth & Menon 2009; Lucarelli 2006; Toje 2011; H. Smith 2002). Either as a sui generis type of economic empire (Zielonka 2007; Zielonka 2008) or acting in terms of a presence in the international system (Allen & M. Smith 1990) the EU has the potential of becoming a major international actor or even develop a coherent grand strategy in the same way as the US. Broadly

speaking – with some variations, the EU is portrayed in realist scholarship as a rational actor which needs to replicate the state in order to have an effective foreign policy and advance the national interests of its members states.

In the recent years it has been widely held that the EU is a special type of interactional actor, different from the national state in that it does not always act to promote its own interests but tries to promote an universal set of norms and values- be they human rights, democracy, rule of law, or environmental protection - in its external relations (Aggestam 2006; Diez 2007; Forsberg 2011; Leonard 2005; Manners 2002, 2006a, 2006b, 2008, 2010; Orbie 2008; Zielonka 2008; Whitman 2006). Such a normative approach often comes into collision with the notions of interest defined by realists. It has been previously outlined that realists argue that the EU in order to become a strong international actor has to pursue its own interests by developing military capabilities and use them in connection with its economic power to influence third party states (Hyde-Price 2008: 7). On the other hand, interpretivists - whose view has been prevalent within the last decade – shape their analysis of the international role of the EU around the fact that the Union has the duty of globally promoting the norms and the values that construct it and have proven successful for its development. The use of military power is seen by proponents of this perspective as not necessary for promoting the Union's normative power, although at times military capabilities can reinforce its normative stand when engaging in peacekeeping operations and dealing with threats from terrorist groups (Cooper 2004; Manners 2006). In this case, the power of the EU could not stem from its economic potential or military means but from its ability to persuade others in adopting its norms.

An emphasis on the need to develop military capabilities may be the overarching theme in realist scholarship but lately the focus has shifted towards one of the foundation of positivist social sciences. Even if realists acknowledge that the EU may be a different type of actor than the national state they still stress that its main goal is to secure its interests in order to survive (Cameron 1999; Cooper 2007; Hyde-Price 2006; Nichol 2009). Here it is important to point out that the

realist narrative of the foreign policy of the EU developed in the last two decades differs significantly from that constructed during the Cold War. The difference stems from the fact that during the Cold War no theory in international relations challenged the fact that states' primary goal is to promote and achieve their security interests; consequently, the debate centred around the method through which interests can be achieved. Balducci (Balducci 2007, p.40) underscores this shift:

Until recently the study of European foreign policy has been dominated by the rationalist paradigm, characterized by the three typical assumptions of (i) a self-interested and rational actor, (ii) exogenously-given interests and (iii) society as a strategic realm where individuals, read states, come together to pursue their predefined interests

There have also been various interpretive perspectives that diverged from the common idea outlined above. While, all interpretivist views about the foreign policy of the EU stress that the EU is a different kind of international actor because it promotes its norms externally – and it ought to, they do not tend to agree about the manner in which the EU is carrying out its foreign policy. Having close resemblance with realist scholarship on the EU's foreign policy some interpretivists consider that the EU is promoting its norms in a egoistic fashion only in countries which are too weak to resist it or where other strong states don't have close interests (Johansson-Nogués 2007;). Various actions and behaviours of the EU have been put forward in order to support this idea: for example the EU has been very critical and outspoken about the quality of the protection of human rights in the countries that were candidates to become member states but remained silent in the front more massive human rights violations within Tibet due to its close economic ties with China (Birchfield 2007; Aggestam 2011; Aggestam 2008).

Nonetheless, this view has only been peripheral to the main argument of interpretivists, that the EU is not only promoting its norms but it does it in a normative manner. Examples like the one presented above exist because the EU

is not to be judged by *what it does but by what it is* (Manners 2002), namely the norms and the values that are at its core and are found throughout its founding and subsequent treaties. Thus, the EU possesses a normative construction that predisposes it to act in a normative way (Manners 2008). Persuading others to live by its example becomes the main strategy of the EU, which can be understood here as ideological power with an ability to shape the universal conception of what is normal in the international system (Bickerton 2011a; Bickerton 2011b; Tuomas Forsberg 2011). For example, in its position as a 'normative' leader in global climate change policy the EU has been keen in promoting multilateralism as one of its showcase norms. To date the EU has signed more than 70 international agreements in climate change (Vogler 2011, p.26), more than any other state, proving that is highly committed to cooperation under the values of international law (Schreurs & Tiberghien 2007, p.42). Within the UN, the European Union has been at the forefront of multilateralism driving forward the regulations for global carbon emissions reductions and trade, and for the worldwide spread and multiplication of renewable energy sources (Paterson 2009, p.141; Schmidt 2008, p.94).

With both the ideational and practical expansion of the normative view of the EU, not only the claims about the methods to safeguard different interests and the definition of those interests have been challenged, but also it has been affirmed that the Union might be international actor that most of the times doesn't act out of self-interest (Birchfield 2007; Diez 2001; Diez & Pace 2007; Orbie 2009). As such, recent realist scholarship has tried to debunk these claims. From Youngs' (2010) point of view it would be dangerous for both the Union and for other states to portray the former as a *force for good* because the anarchy international system will constrain them to use these representations of the EU in order to promote their own interests. This idea is developed later as an important critique to the interpretive perspective on the foreign policy of the EU; but it is worth mentioning that for realists a normative actor can never exist, and if one state claimed it possessed such a character it would act in order to project its own interests as universal. Jan Zielonka (2007; Zielonka 2008) has been the

proponent of the idea that the Europe Union behaves in this way in its relation with small and weak states, being a contemporary empire that seek to engulf its neighbours⁸. This has found affinity both with the realist claim of the impossibility of a truly normative actor and with the liberal conviction that states can use their economic power to influence weaker actors.

Other interpretive approaches, advocate a greater focus on the decentralized nature of the CFSP (where the decision and expertise is shared between various intuitions, committees and policy groups), and a higher degree of attention to the way member states contribute to the institutional process of foreign policy either as entrepreneurs, implementers, drives or barriers. Accordingly, foreign policy decisions in the EU are not always the result of a common denominator stance as positivists would have it, but tend to functionally balance towards a consensus from which decisions could functionally derive. The concept of multi-level governance is introduced here to describe the internal processes because they are more important in describing the foreign policy of the Union than the dynamics of the international system. It explains the link between institutional-building and foreign policy cooperation, whereby cooperation between member states is driven by the further development of institutional mechanisms (Biscop & Andersson 2007; Carrubba & Singh 2004; Carlsnaes 2004; Diez 2005; Hill & Wallace 1996; Moumoutzis 2011). Social institutionalist scholarship shifts the focus from the lack of effectiveness in EU foreign policy to its process. A decentralized decision making process based on multi-governance becomes more than an instrument for providing effective policy outcomes, it transform from a means to an end into an end in its self which is desirable because it advances European integration (Bickerton 2011a, p.8; Cameron 1999; S. G. Jones 2007; Krahnmann 2003). Rather than treating foreign policy as a domain of 'high politics' it is lowered to a position similar to other areas of European integration.

⁸ Even some proponents of the Europe as a normative power concept have conceded to the idea that the UE is acting at least in its Eastern Neighborhood as an normal realist political actor that seeks to promote its own interests at the expense of others (Tonra & Christiansen 2005; Wagnsson 2010)

Immanent contradiction of realist narratives

Various contradictions between realist principles and those that have influenced the construction of the European Union can be identified. The realist commitment to the tenet that states are the only actors that matter in the international system comes into direct collision with the fact that the European Union is not a state and more importantly it behaves like one only in a limited number areas. However, realist perspectives stress that in the realm of foreign policy the EU will still act in an intergovernmental manner (Howorth 2001; Howorth 2004; Howorth 2007; Hill 2003; Thomas Forsberg 2009; Faber & Orbie 2009; Eeckhout 2005; Rynning 2011). Through different bargaining processes states can make different concessions in order to promote their national interests within the EU. At the same time, many realists acknowledge that the big EU member states can influence the international arena only if they poll their power into the EU in order to transform it into a strong international actor (Biscop & Andersson 2007; Kagan 2003). The contradiction here is very clear as realists considering states as the most important actors in the international system, seem to have conceded to the idea that states have to give up their sovereignty to an overarching actor. This turn can be made only if realists claim that the EU must act like powerful state maximizing its own interests. Thus, challenging the basic principles and goals on which the EU was build. Liberals have recently argued that the EU promotes its interests by trying to force other states to adapt its *effective multilateralism* (Rogers 2009). By using this term scholars have meant to highlight the fact that the Union is at the moment policing regional cooperation, recognizing such instances only if they comply with the principles set up by it and only if they accept to sign advantageous partnerships for the EU. Nonetheless, this last point has been inherently linked with the need to develop military capabilities that could back up Europe's *effective multilateralism* (Rynning 2011).

On the other hand, considering states as the primary actors in the international system has obscured the well being of individuals. Since the end of the Cold War this aspect has been addressed through various policies and theories. They have

sought to mitigate what scholarship has tagged as a democratic deficit⁹ – namely that the policies of the EU are not grounded into the will of its citizens (Toshkov 2011; Archibugi 2004; Lord 2006; Braun 2008). Simultaneously, the democratic deficit was sustained by the fact that realists due to their epistemological commitment to positivism have taken the interests of institutions for granted. They have reified them, forgetting that the EU was created and exists for the well being of its peoples and not for assuring the smooth functioning of its institutions. In the area of foreign policy Wagner (2007, p.2) has argued that the goal of creating an European military force increases the pressures on the member states to contribute financially, policy which in most cases isn't supported by their citizens. Data from the Eurobarometre confirms his views and shows that most European citizens do not favour an EU that spends massively to support military operations throughout the world. Additionally, EU citizens hugely support a foreign policy of the EU that is bent on promoting its norms and values but one which is done without financial involvement¹⁰.

By conceding part of their sovereignty to the European Union, member states have practically vanquished in their mutual relations any sign of the overarching anarchy preached by realism. This behaviour of the member states seems to have confirmed Alexander Wendt's (1992) famous idea that 'anarchy is what states make of it'. Interestingly, realists have accepted the fact that within the EU member states have managed to transcend the constraints of anarchy and cooperate for their common good. A major contradiction within the realist contributions to the debate around the foreign policy of the EU suffices when one observes their emphasis on the fact that the EU must consider the international system as being anarchic by nature and not try to change it but adapt to. Translated into practice, this has created deep confusion within the foreign policy of the EU. Rhetorically the EU projects itself as a *force for good* which seeks to promote its values for the emancipation of other peoples (Tuomas Forsberg

⁹ A detailed discussion of the democratic deficit issues within the EU does not fall within the scope of this paper, which will only touch upon the this phenomena in relations to the foreign policy of the Union.

¹⁰Special Eurobarometer 343 on Humanitarian Aid, http://ec.europa.eu/public_opinion/archives/ebs/ebs_343_en.pdf, accessed on 4.08.2011.

2011; Johansson-Nogués 2007). However, many actions of the EU seem to have been influenced by an anarchistic mindset informed and legitimated by the realist perspectives on the Union's foreign policy. For example, in the aftermath of the 2008 war between Russia and Georgia, the also EU was outspoken in condemning the Russian aggression against an emerging democracy but was keen to strike a deal with Moscow when it found it beneficial. It gave up supporting the Georgian government for establishing a good relationship with Moscow that assured preferential energy prices for the big EU states (Averre 2009)

Member state behaviour in the realm of EU foreign policy challenges another realist tenet linked to the previous: that in an anarchic international system states are prone to compete with each other. However, all realist contributions to the debate have acknowledged that one of the hallmarks of the EU has been the shared goal of all member states of creating a common foreign policy. Nonetheless, realists argue that the EU must view its relations with third party states in a competitive manner. Forsberg (2011) has posited that such a contradiction if translated into practice can determine the EU to revert back to a state of political competition between states for the setting of the foreign policy goals, and more importantly, the abandoning of the goal of creating a truly common foreign and security policy. For example, the EU's approach towards Russia has often been criticised for its lack of unity. Most member states have sought to develop enhanced bilateral relations with Russia, who on its part has endorsed this kind of behaviour in different official papers drafted by the Ministry of Foreign Affairs (Sammut 2010, p.79; Haukkala 2008; Haukkala 2009; Delcour 2010; Cichocki 2010). Germany and France offer the best example of developing this type of links with Moscow. Both have seen Russia as a main economic and security partner outside of the EU (Rahr 2005, p.231; Rahr 2007; Lukyanov 2008; Light 2008). According to Weaver (2010, p.67), the Union as a whole has suffered in consistency and coherence as most member states have developed their bilateral relations without considering the interests of their partners.

A criticism that has been often presented towards realism is that it mainly is an American social science whose only role was to legitimate and inform the foreign policy of the US (Hoffmann 1977). As noted above many of the realist contributions to the debate have sought to legitimate the Union's self interested international actions. Moreover, various European leaders that have supported the creation of a military force for the EU have also been keen in spurring realist scholarship on EU foreign policy and then using it to legitimate their initiatives (Biscop & Andersson 2007; De Zutter 2010; Rogers 2009). For example former President Jacques Chirac and Prime Minister Tony Blair were vocal in advocating the development of a military force. Tony Blair speaking in front of the Royal United Services Institute in 1999 underlined that 'European defence is not about new institutional fixes. It is about new capabilities, both military and diplomatic' (Nuttall 2000).

Realists predict that any actor should behave as an interest maximizer in order to survive in the international system (Hyde-Price 2006; Hyde-Price 2007; Hyde-Price 2008; Rynning 2011). Within the EU, its member states have learnt how to make compromises and to accommodate their interests constructing deep patterns of solidarity between them. This solidarity became rooted in a number of norms and values that are at the base of the EU: like democracy, human rights or rule of law. Externally the EU has directed most of its efforts towards promoting these values in other states around the world. At the same time, a strict condition for the integration of new states into the EU was the acceptance of its values and partial relinquishment of old national interests. This process of transferring the authority in defining national interests from the state to the EU has been the hallmark of recent European integration (Jacoby 2004; Vachudova 2005). Realists due to their positivist commitment cannot turn a blind eye to the fact that states have given up their divergent national interests in order to pursue common goals within the EU¹¹. Instead they have posited that the new foreign policy

¹¹ Positivist research focuses on empirical research, in this case refuting the observation that state do cooperate and give their national interests will be almost impossible if one remain fully committed to a realist perspective.

resulting from the cooperation between member states is bound to be one that only seeks to advance the goals of the EU, acting only when the benefits outweigh the costs (Cooper 2007; Whitman 2006). The seemingly altruistic promotion of democracy and human rights by the EU is seen here as a way to advance its interests and constrain third party states to behave in its benefit.

The contradiction here is very obvious: while EU member states are constrained to behave altruistically in their foreign policy towards each other, realists propose that the EU is an egoistic actor in the international system and when it promotes its values it does it with a hidden agenda (Hyde Price 2007). Thus, realism offers an efficient back door to EU politicians for legitimating their practical egoistic foreign policy actions when rhetorically they claim to behave as a *force for good*. The European Neighborhood Policy¹² best exemplifies this as the EU has developed it in order to promote democracy and human by its own standards. Many leaders of the countries in question rejected the cooperation with the EU claiming that this would only benefited the latter (Christou 2010; Christou 2011; Aalto 2011; Haukkala 2008; Haukkala 2009; Haukkala 2010; Leonard & Popescu 2008; Rynning & Jensen 2010). In the face of these responses EU leaders legitimate their foreign policy actions by arguing that they're task is to promote the Union's values in the manner they view as the most appropriate.

Like any positivist project, realist perspectives about the international role of EU act in a hegemonic manner trying to silence and reject any dissident view (Cox 1981; Hyde-Price 2008; Linklater 2001, 2007a, 2007b; Smith 1995; Whitman 2006). Realists reject and marginalize any perspective that does not claim that the EU has to use its present economic power - the threat of exclusion from its markets and the promise of future membership (Hyde-Price 2007: 31) – or develop strong military capabilities in order to become a strong international actor. The pursuit of an ethical or altruistic agenda in the EU's foreign policy is seen here as a failed strategy which can have tragic consequences once put into practice. By portraying interpretive perspectives about the role in international system of the EU as a threat to the vital interests and existence of the Union,

¹² A foreign policy instrument of the EU which was set to promote human rights, democracy and economic development in its neighbor states.

realists try to delegitimize and throw to the margins of the academic field all other views. Through this a hegemonic project is set to be constructed which will be successful only when other rival political project are deactivated (Rogers 2009: 852).

Robert Cox (1981) famously articulated the idea that any theory always has a purpose and serves a specific interest. It has been widely debated that realist theories mainly serve and legitimate the interests of powerful states (Cox 2001; Linklater 2001; Neufeld 1995). The case of the realist interventions in the debate about the role of the European Union as the international actor doesn't stray too far from this. The foreign policy legitimated and promoted by these theories is in line with the goals and interests of the big member states. France and Great Britain have been outspoken in their support for creating a military force for the EU. On the other hand, most member states have been unwilling in financing such an initiative (De Zutter 2010). As such, the realist perspectives served to naturalize the claim that the EU needs to deploy hard power – especially military power, which has to back up the Union's economic power- in order for it to influence international events and thus become a strong global actor. At the same time, realist scholarship about the foreign policy of the EU has created a political and academic culture that seeks to prepare Europe for surviving in the competition and uncertainty that characterizes the anarchic international system. Nonetheless, this realist culture was much more prevalent in the field of EU foreign policy during the Cold War, when power politics and bipolar competition characterized most interaction between states (Howorth 2001).

Immanent contradiction of interpretive narratives

Any critical reading of the interpretive narratives about the international role of the EU should start by analyzing their foundation that the Union is a special type of international actor that seeks to altruistically promote its norms throughout the world. The analysis starts by uncovering the premises, on which the EU is taught off as a normative actor, then highlights their consequences and juxtaposes them to its founding principles. The previous section explored the premises of idea that

the EU behaves in its international relations as a normative actor. Simultaneously it was underlined that interpretivists share the belief that the EU is biased towards acting normatively but differ in regards to methods and the interests that drive this behaviour. An important premise of interpretive arguments, which was not considered earlier due its only indirect influences, is the pervasiveness of the idea that the EU is the first state or international actor that has behaved normatively or made exporting its norms and values a main foreign policy priority. Positioning the European Union as a unique project both practically and intellectually because it seeks to transcend the boundaries of traditional power based politics is a strategy that has the effect of transforming Union into a universal *force for good*. Its universal character grants the EU considerable powers in creating standards and norms in the international system that no other actor is legitimate enough to challenge. Consequently, the EU discriminates and collaborates only with the states that accept to adapt to the definitions of international normality set out by it (Diez 2005; Menon 2011; Mitzen 2006; M. E. Smith 2004; Tocci 2008)

The argument that the Union is a unique international actor branches into other critiques of the EU's endeavour to position itself as an emancipatory power whose goal is to promote a series of universal principles that at the same time are found at its base. Firstly, other states or empires have been driven in their foreign policy by the same goals as the EU. The Roman Empire sought to promote its norms and values everywhere it expanded and to all peoples it came into contact (Archibugi 2004). Great Britain during the 18th and 19th century believed that it had a duty in sharing its civilizing power with all the nations and peoples within its Empire. Its initiative against slavery at the end of the 18th century can be considered a trademark of the pursuit of a normative foreign policy. During the last century, the United States embodied such normative behaviour, projecting itself as the defender of the free world - where human rights and democracy are upheld-, the spreader of democracy or the crusader against *evil* regimes and international terrorism. In all the three cases presented above there was a hidden agenda that governed the adoption of a normative foreign

policy. The Romans were animated by the idea of creating a functioning empire that could work for the benefit of the centre. For this they needed to impose their norms over others, thus creating the patterns for predictable behaviour that could foster the growth of an empire (Mearsheimer 2002). In the case of Great Britain and the United States it has been argued that specific domestic interests groups found in their benefit to push for a normative foreign policy (Selden 2010). The existence of such hidden agendas, whose influence is at least debatable if one shies away from a Marxist perspective, determined the failure of the emancipation inherent in the norms that were exported (democracy, human rights or citizenship). As interpretivists rarely take note of these normative failures (Eriksen 2006), it is worth pointing to the idea that this overlooking might legitimate the present practical behaviour of the EU: the discrepancy between its highly emancipatory discourse and its practical actions that seem to build on a realist understanding of world politics¹³. Moreover, it can be added that the United States as the EU is continuously claiming that it has a missionary zeal (Diez 2005). In this sense the idea that the EU always was and will be a normative power becomes weak due to the failure of the same American narrative (Selden 2010).

In its relations with third party states, the EU has tried to define what universal norms are and how they should be globally adopted. Interpretivists have emphasized that the EU is predisposed to promote only the norms that can be used to achieve normative purposes because it is constrained by its politico-legal constitution to behave in such a way. The fact that the EU is build upon a series of treaties which are founded themselves on a number of norms values and principles certifies the duty of the Union to promote them globally (Balducci 2007; Hooghe 2003; Manners 2002). Intense scrutiny was developed in scholarship towards the way the EU tends to define what regional cooperation means. A normative Europe Union does not recognize regional cooperation initiatives if they do not fall into the categories imposed by it. Interpretivists have supported

¹³ In the previous chapter it was highlighted that during the Russian –Georgian war of 2008 and the recent economic crisis the EU's behavior was characterized by the pursuit of its self interest.

such behaviour from the EU, positing that regional cooperation initiatives have to be supported by the EU only if they are compatible:

Both with regard to what is required for the Union itself in order to be a self-sustainable and well-functioning democratic entity and with regard to the support and further development of similar regional associations in the rest of the world (Eriksen 2006: 253).

Even if one is to accept Manners' (2002, 2006) argument that the EU is biased towards normativity due to the norms that infuse its founding treaties which constrain it to behave according to its norms and promote them, this does not mean that the Union will relinquish its own interests for the emancipation of third party states. Diez (2005: 634) argues that the construction of the self-image of normative power Europe does not come from nowhere and it is not new. It is informed by a deep tradition of initiatives and endeavours that desired to construct world peace (Linklater 2001) or even a world state (Wendt 1999). The normative discourse is used in the case of the EU as a way of distinguishing it from the other (Hopf 2008: 39). The EU positions itself as a unique international actor that has its main goal and duty in promoting its norms for the emancipation of other states and peoples. Immediately such rhetoric encompasses the idea that other states are inferior in their foreign policy, because unlike the EU they do not share this goal of promoting universal norms and trying to act as emancipatory powers. Within the interpretive scholarship this move is legitimized by the idea that the EU went through a massive normative transformation. If before the Second World War, Europe was a continent plagued with wars and conflicts, after 1945 the EU managed to create a new discourse and identity based on solidarity between its states and nations, and on the respect of democracy and human rights. The past of the EU becomes the absolute other in the construction of the normative Europe narrative¹⁴ – *the past as other* (Diez

¹⁴ I disagree here with Diez (2005), who critiquing the discourse of the normative power Europe discourse posits that it is not aware of its own biases and traditions, making it less reflexive. My view is that a normative Europe could not be constructed without separating it from the pre-1945 Europe. Only by acknowledging its past can Europe become normative and all narratives that promote this can become reflexive.

2005: 634). Consequently, all non-EU states are judged according to the past image of Europe and in most cases – the US, or Australia or Canada seem not to fit within this discourse - they are deemed to behave similarly or even less normative. As such, the EU has a duty to promote - even impose - its norms in the states who still act as Europe did before 1945 (Cooper 2004). This means that actors who are geographically separated by the EU are considered in the same way as Europe views itself in the past. In this sense, the enlargement of the EU is a very striking case, as states from the European continent were considered not to share norms such as democracy or human rights, but their accession to the EU immediately certified the strong presence of such norms within countries like Romania, Bulgaria or Hungary (Jacoby 2004; Vachudova 2005)

On the other hand, interpretive scholarship has considered the enlargement policy the most effective normative tool of the EU (Ganzle 2008; Manners 2002, 2010; Sjørnsen 2006b). Rhetorically and formally – in EU documents and political declarations- the expansion of the EU was presented as a success in exporting the EU's norms and values to other states. The last enlargement was plagued by many shortcomings, but for the sake of the argument developed here it is worth mentioning only two. While interpretivists argue that the enlargement policy was the most effective instrument of a normative behaviour, they seem to overlook that its success was determined by the use of political conditionality. In EU scholarship, conditionality is considered a system of incentives and punishments the Union has managed to exert a high degree of influence over the acceding countries (Schimmelfennig & Scholtz 2008). It not only capacitates the energies of the candidate countries, but it also requires a high degree of internal agreement over the norms and values that the European Union seeks to externalize. As such, the mechanism of conditionality is more in terms with a realist prediction because it rests on the EU's immense economic power. The most important and effective normative instrument of the EU is at the same time one that functions according to realist tenets that predict intense competition between states under anarchy – in this case the EU is backing up conditionality

by appealing to its economic power (Tonra 2010). The contradiction underlined continuously in this paper between the normative rhetoric of the EU and its actions that tend to be driven by power and self-interests is also instantiated by the way conditionality is portrayed and practiced. Interpretivists portray it as a normative success keeping a blind eye to its mechanisms which are far from being influenced by an emancipatory purpose. Through this the confusion between the goals of the EU and its actions is maintained, legitimized and perpetuated by interpretive narratives about the role of the Union in the international system. A last point is worth mentioning here in relation to the way interpretive scholarship has viewed the use of conditionality. It was highlighted above that the success of conditionality relies on the development of an internal agreement over the need to adopt the norms of the EU. Vachudova (2005) has shown that in many cases, interpretivists have hailed the successes of conditionality overlooking the fact that its achievements were resting only on the formal adoption of some policies and changes in national constitutions. It was hoped that once all formal aspects of normative policy will be set up in the acceding and partner states – where conditionality was applied- the contagion with norms, values and ideas will follow (Eriksen 2006; Manners 2002). The effects of such thinking proved to be very damaging for the emancipatory goal of interpretive narratives, for the leaders of third party states have sought to legitimate various domestic injustices by claiming that the EU's conditionality was forcing them to act in such a way¹⁵. By keeping a blind eye to the leaders' sometimes even unlawful policies, the EU did not act as *force for good*, but its behaviour contributed to the worsening of the standards of life of most citizens living in countries affected by conditionality. Interpretivist scholarship accepted and overlooked these side effects hoping that in the long run the norms of the

¹⁵ Just to point to one pervasive effect of this kind, almost all the leaders of the post-communist countries from Central and Eastern Europe supported the privatization of state companies on meager sums, which ended up in benefiting specific interest groups in each country. They justified their policy by arguing in front of their citizens that the EU imposed such measures as a condition for their reintegration into Europe (Grabbe 2006).

EU will settle and create the seeds for the emancipation of the individuals living in those countries¹⁶.

Conclusion

In the background of the latest external actions of the EU that seem to be informed by its self-interests – the last enlargement, the Russian-Georgian War, the EU's response to the global economic crisis, or the creation of the External Action Service - , the purpose of this article was to critically analyze the realist and interpretive narratives about the role of the Union as an international actor. By such narratives, I meant those perspectives that have been developed in scholarship and have sought to answer questions about how the EU behaves in the international system and how it should behave. The study engaged in developing a critical reading of the two perspectives outlined above. The method of critical reading has implied uncovering the premises on which the international role of the EU was constructed within the two narratives, then highlighting their consequences and juxtaposing them to their founding principles. It was underscored that both realist and interpretive perspectives through their portrayal of the international role of the EU have instantiated the dissonance between its rhetoric and its practical foreign policy actions. Various EU leaders have sought to legitimize their foreign policy actions by appealing to these narratives. Realist narratives have centred on the idea that the EU has to promote its self interests in order to survive and thrive in the international system. This theoretical commitment has challenged many of the basic principles on which the European Union was build: solidarity, respect for human right or democracy. The critical reading of realist narratives has highlighted that they act in a totalitarian manner, trying to silence all other perspectives deeming that they could put the mere existence of the EU at risk. Interpretivist perspectives have used the same argument – trying to marginalize realist interventions, claiming that the emancipatory purpose of the EU as a critical project is hampered by the realist

¹⁶ In terms of minority protection and respect for human rights the EU seems to have been very successful in exporting its norms in the countries were it used conditionality (Jacoby 2004). On the other hand, in recent years there have been serious setbacks relating to implementation of democracy, rule of law or the principle of equality (Hill 2002).

idea that the Union should only promote its self-interest in order to survive and to grow at the expense of others. Nonetheless, it was observed that in some cases interpretivists have acknowledged that the EU must act in a power politics manner in order to promote its norms, because once settled they will create the seeds for emancipations. Additionally, interpretive studies have constructed various causal narratives – that are more in line with a positivist epistemology- to back up their claims about the EU's normative power. In this context, the contradictions between the two narratives, and those that are found within them have created and instantiated the dissonance between the EU's normative rhetoric and its practical realist actions. In turn, this paints a grim picture for those who support EU practical actions as an expression of its normative role in the international system (De Zutter 2010).

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Post-Accession Effects of Conditionality: New Member States and the Implementation of the EU Competition Policy

Roxana Mihaila¹⁷

Abstract

This article looks at the post-accession difficulties of new member states to fulfill the demands of EU membership and considers the degree of Europeanization in the area of competition policy. The article takes a comparative approach and looks at seven of the new Central and Eastern European member states. It analyzes the capacity of their national implementing actors to apply and enforce the EU legislation in area of competition policy. This article builds on theories of Europeanization and conditionality, and rational institutionalism to explain the problems of domestic adaptation to EU requirements in the context of the Eastern enlargement. By applying Fuzzy Sets Qualitative Comparative Analysis, the article examines the domestic causal factors conditioning the implementation process and how they interact in affecting it. The findings show that implementation is country specific and consequently no general path that generates efficient implementation can be derived, but only partial explanations based on various combinations of domestic factors. These observations are also relevant in the current 'EU in crisis' context. Specifically, they offer an indication of the areas vulnerable to the temporary deregulation of competition due to the Commission's flexible approach to implementation in support of governments' efforts to handle the crisis.

KEYWORDS: *Europeanization, competition policy, fuzzy sets*

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The modernization of the EU competition policy has shifted the focus of research from the legal and political implications to the role of national administrations in the implementation process. The 2003 Modernisation Package has granted national competition authorities and national courts competences to directly apply and enforce anti-trust laws, generating concerns as to the effectiveness of the implementation process. Additionally, the EU's Eastern enlargement has brought new challenges to the uniform enforcement of European legislation in general and competition legislation in particular. Competition does not follow the classical pattern of convergence of national legislation since it does not fully shift toward a common European content and style of policy, but still retains national patterns of implementation (Cini, 2003, van Waarden, 2002). Owing to stringent conditionality, Central and Eastern European national administrations were required to rapidly adopt and put into practice an unfamiliar enforcement system in a short period of time, jeopardizing efficient implementation.

This article examines the capacity of national administrations to ensure effective policy implementation. It looks comparatively at the performance of national implementing actors (i.e. national competition authorities, national courts) in seven of the new member states comprising the 2004 Eastern enlargement (Poland, Hungary, Czech Republic, Slovakia, Estonia, Latvia, and Lithuania). By employing Fuzzy Sets Qualitative Comparative Analysis (fsQCA) it investigates the causal combinations of factors determining the effectiveness of the process of legal implementation. This research does not assess the actual degree of effectiveness achieved by Central and Eastern European countries (CEECs), but compares their performance to deduce the factors that condition effective implementation. It does not claim to be exhaustive in terms of the issues covered, but to offer an indication as to where to look for further explanations or potential for deregulation related to competition policy enforcement.

The analysis in this article can be generalised for the current economic context, especially from the viewpoint of the importance of the clarity of laws and regulations for the efficient implementation of competition policy. Similarly to the

first year of the implementation of the Modernisation Package, the current competition environment is dominated by legal uncertainty, differential application of EU legislation, and a propensity to circumvent existing rules to safeguard domestic interests. In spite of the Commission's "flexibility in procedure and rigidity in principles" (Reynolds, 2011:1672) approach, member states now have a series of legal loopholes to speculate these circumstances to their advantage.

1. National Administrations and Policy Implementation

National administrations are crucial actors which determine the effectiveness of the implementation process (see Knill and Leskow, 1998; Riley, 2003; Wilks, 2005; Borzel, 2004; Sedelmeier, 2006; Nicolaidis, 2006). Drawing on a model proposed by Knill (1998), who looks at their role in determining the successful implementation of environmental policy in the UK, this article investigates the capacity of CEECs' national administrations to cope with the EU requirements in the field of competition policy. It sets to identify the necessary conditions, in terms of national administrative capacity, for the effective implementation of competition legislation.

Implementation refers to the process of transposition, application and enforcement of EU legislation (Steunenberg, 2003:5), while effectiveness is defined as "the degree to which both the formal transposition and the practical application of supranational measures at the national level correspond to the objectives specified in the European legislation" (Knill, 1998:595). Literature identifies two main factors that affect the implementation process: effective administrative organization and clearly worded provisions at national level and the degree of fit or misfit between European rules and existing institutional and regulatory traditions (Treib, 2006). Overall, implementation remains an under-researched area. Most studies limit themselves to the degree of implementation achieved by a state while leaving aside the variables influencing this process, and conclude that "Community law, once it has been incorporated, is applied neither better nor worse than national law" (Ciavarini, 1988:199; qtd. in Treib,

2006:8). This article moves further along this line by looking at the factors that condition effective implementation. It adds to the research on the impact of enlargement conditionality by providing an analysis of the CEECs' experience with implementing competition legislation.

“The *acquis*, the whole *acquis* and nothing but the *acquis*” policy towards the CEECs (Grabbe, 2006:33) – non-negotiable and allowing for no opt-out possibilities - and the close monitorization during and after the accession negotiations process left them with little to say when negotiating the content of their agreements. Conditionality, a “bargaining strategy of reinforcement by reward” (Schimmelfenning, 2004:662), triggered legislative adaptation and the transfer of institutional models, whether by strengthening existing institutions or creating new ones (on the impact of conditionality see also Spendzharova, 2003). The latter created institutional isomorphism, which in the field of competition policy took the form of competition authorities modelled on DG Competition - an example of “mushrooming of regulatory agencies” (Schimmelfenning, 2004:676). In assessing the conditions that influence effective implementation, this article does not look at states' willingness to implement the required legislation, but at their administrative capacity to do so (see Putnam 1988; Chayes, 1993; Borzel, 2004; Nicolaidis, 2006; Treib, 2006).

The degree of domestic change as a result of conditionality is referred to as the Europeanization of national norms, policies and institutional structures. A general consensus exists in literature that Europeanization, based on a “misfit” between the national and European levels, ultimately creates pressure and fosters domestic change (Borzel, 2000; Caporaso, 2001, qtd. in Olsen, 2002; Cini, 2006; Grabbe, 2006; Montpetit, 2000; Papadimitriou, 2004; Radaelli, 2006; Schmidt, 2002). In comparison to the “older” member states' competition policy, analyses of the impact of Europeanization on newly acceded countries have been scarce. Some scholars have assessed the progress achieved by a number of, at that time, accession and candidate countries (Hungary, Poland, Slovenia, and Romania) to conclude that the current EU approach towards them might not be

feasible, but the study was limited to the degree of transposition achieved by each state (see Holscher, 2004). Others provide a more in-depth approach by looking at the major constraints to implementation, but consider only specific areas of the policy (e.g. vertical restraints, Lorentzen 2002).

The most regulated EU policy area, competition aims to prevent discriminatory practices on the common market (Wallace, 2005). Unlike in other policy fields, the Commission did not explicitly seek to change national legislation, but only to ensure EU rules would apply to cases affecting trade between member states (Cini, 2003; van Waarden, 2002). The Eastern enlargement created pressure for effective and uniform application of competition legislation through the “harmonization of national legislation with EU provisions and institutional coordination among member states and between these and the Commission” (de Rosa, 2003:22). For CEECs, the blueprint for these laws and policies was provided in the Association (Europe) Agreements (EA), where the provisions regarding competition rules reproduced entirely the articles in the EC Treaty. In the aftermath of the Copenhagen Council, the Europe Agreements emerged as the legally binding framework for accession (Muller-Graff, 1997:34) and legal approximation became a prerequisite for membership and a goal for Europeanization (Bossche, 1997; Vink, 2002)⁵. The emphasis on competition *acquis* originated in concerns that, faced with competition on the European market, the CEECs’ governments would ultimately resort to discriminatory practices such as state subsidies for poorly performing firms and industries (Holscher, 2004:323).

The increased burden of investigation placed on the Commission has also led to reforms. The so called “Modernization Package” (one Commission Implementing Regulation and 6 Notices) and Regulation 1/2003 provided for decentralization, for vertical and horizontal coordination, and a two-tiered system of monitoring of competition policy, where the Commission and National Competition Authorities (NCAs) share competence in investigating anti-competitive practices (for an overview of the monitoring process see de Rosa, 2003). To ensure coordination,

Regulation 1/2003 set up of a European Competition Network (ECN) to facilitate cooperation between NCAs and between NCAs and the Commission and to “ensure both an efficient division of work and an effective and consistent application of EC rules” (Commission, 2003). NCAs are under obligation to “inform the Commission at an early stage of cases that they are investigating under Article 81,” and facilitate exchange of information on such cases (Montag, 2003:121).

The role of NCAs is critical for the effective application of competition rules. Regarding antitrust provisions, Regulation 1/2003 gives direct effect to Articles 81 and 82 TEC, empowering national courts and NCAs to apply them. It provides for greater involvement of national authorities in securing the provisions of EU law than any other policy. These changes operate with the assumption that NCAs have acquired a “culture of competition” and are “mature enough to take up the torch of implementation,” a theory which conflicts with the view of CEECs as totally lacking such a culture given their history of central planning (Wilks, 2005:434). Delegating powers of implementation to the new member states’ NCAs and courts is problematic: NCAs are perceived as inadequately resourced, with limited expertise, lacking independence and cooperating with inexperienced courts which are “illiterate in anti-trust thinking” (Wilks, 2005:439; Riley 2003; Maher, 2006).

These changes have prompted debate among scholars concerning the difficulties of effectively putting competition rules into practice (see Holscher, 2003; van Waarden, 2002; Lorentzen, 2002; Wilks, 2005). In CEE, NCAs have had to adopt a new model of law enforcement and were expected to respond accordingly within a short adjustment period. Since the national authorities might lack the necessary expertise, given the “stamp of approval culture,” the system of notification may not work as well as it does at EU level (Holscher, 2003:334). The few empirical studies conducted on the implementation of competition policy (see Holscher, 2003; Lorentzen, 2002; Dutz, 1999) point toward factions of the business community and even of the regulatory bodies which are unfamiliar with

competition provisions. As NCAs differ in their capabilities to meet the imposed requirements, there is a high risk of implementation becoming ineffective (Wilks, 2005). Although the CEECs national legislation replicates almost fully the provisions in the EC Treaty, this is insufficient to ensure effectiveness in competition enforcement (Commission, 2005). This article seeks to determine the combination of factors that could secure an effective functioning of NCAs in CEECs.

In the context of the current financial crisis, these concerns have resurfaced, as the Commission has, in an effort to support national governments in crisis management, temporarily relaxed the rules applicable under EU law. Although the institution's officials have emphasised on every occasion that distortions should be kept to a minimum, this does not rule out the danger that national governments would try to abuse these derogations.

3. Model of Analysis and Variables

In assessing the impact of conditionality, various scholars have placed the study of Europeanization within the theoretical background of institutionalist theories (Checkel, 1999; Jupille, 1999; Schimmelfenning, 2002; Sedelmeier, 2006; Pollack, 2006). The two distinct approaches, namely rational and sociological (constructivist) institutionalism, diverge over the EU's domestic impact. This paper follows the rational approach to analyze the Union's use of conditionality towards candidate and accession countries. These states adapt their domestic policies to EU requirements following a domestic bargaining process in which every actor involved seeks to maximize its benefits under the imposed criteria. Although these actors gain the legal and political resources to pursue domestic change, the latter materializes only if they have the capacity to avoid existing constraints and exploit the emergent opportunities (Borzel, 2000; Sedelmeier, 2006).

Data collection was archive based comprising both primary (i.e. annual competition reports from National Competition Authorities and Commission

reports on competition) and secondary sources. Data was collected over a one year span (2005) since this was the first full year of application of the Modernization Package. For reliability purposes, given the scarcity of quantitative information on the implementation of EU legislation and the potential data inconsistencies as some national authorities do not always have an incentive to accurately report their activity, the information from national reports was triangulated with the Commission's annual reports.

This article applied fuzzy sets qualitative comparative analysis (fsQCA) as developed by Charles Ragin (1989, 2000, 2007; also Kvist, 2006, Schneider, 2005). QCA works with the assumption that causation is complex rather than simple and creates models to explain an outcome as the result of different combinations of causal conditions. It addresses the problem of limited diversity and diverges from conventional techniques by operating with the concept of *equifinality* – i.e. different conditions can lead to the same outcome (Schneider, 2005:761). The data used in fsQCA is qualitative, expressing membership of cases in conceptual sets described by the independent variables. Developed from the analysis of configurations of dichotomous crisp sets, fuzzy sets allow for variables to be scored on a continuous scale between 0 and 1. The raw data describing the variables serves to establish the degree of inclusion in conceptual sets, and is re-scored as fuzzy membership scores. Accordingly, there are two major steps in conducting fuzzy sets analysis: establishing empirical indicators for the sets, and calibrating the raw data into fuzzy variables (Kvist, 2006).

Scholars of competition policy implementation identify three major lines along which effectiveness can be assessed: law enforcement, competition advocacy, and institutional related activities (see Dutz, 1999; Fingleton, 1995; Holscher, 2004). For law enforcement, the focus is on resources (i.e. the size of the budget allocated for a particular NCA, the availability and effectiveness of human resources, and the quality of that office's employees), the capacity of the NCAs to carry out their functions (i.e. the number of cartel decisions relative to the total number of decisions they take per year related to competition cases),

effectiveness of national courts (i.e. the number of the appeal procedures), and a developed culture of cooperation with the ECN (i.e. the number of competition cases of which the ECN was informed). Competition advocacy is determined by the effectiveness of written comments and objections concerning economic policies affecting competition. Finally, institutional related activities include the degree of political independence of the NCAs and the transparency of these agencies.

Translated into fuzzy set vocabulary, the outcome of interest is the degree of membership of each case in the effective implementation set (“EffImplem”). According to the previously mentioned variables, nine causal conditions (each representing a conceptual set) influencing the outcome were identified and coded in relation to the theoretical concepts as follows:

Conceptual set	Description	Measurement
“WellRes” (well resourced)	Material resources NCAs have at their disposal	Interval data measured as budget/GDP ratio. This choice is justified because even though an office may receive a higher amount of money with respect to another country’s office, in relation to the country’s GDP it may still be insufficient (see Fingleton, 1995:90)
“SuffStaff” (sufficient staff)	NCAs with sufficient human resources to carry out their function	Number of cases handled per employee
“HiQualEmp” (high quality employees)	NCAs with highly qualified employees	Ratio of professionals (specifically trained in law and economics) to the total number of staff.
“GoodEnf” (good enforcement)	NCAs with a good record of enforcement	Ratio of decisions concerning cartels to the total number of decisions per year. Rationale: assumption that cartels, being harder to investigate, conceal a greater productivity record (see Fingleton, 1995:109).
“EffApp” (effective appeal)	National courts with a good record of handling appeal procedures	Ratio of decisions reached/total appeals per year
“AcqCoopCult” (acquired culture of cooperation)	NCAs accustomed to cooperate with the ECN	Ratio of the number of cases of which the ECN was informed to the number of cases investigated by the NCA

<i>ExpAdv</i> (advocacy experience)	NCAAs with acquired expertise in competition advocacy	Total number of written comments / objections issued by the Competition Authority per year
<i>PolIndep</i> (political independence)	Politically independent competition authorities	Method of appointment and dismissal of officials
<i>TranspAg</i> (transparent agencies)	Transparency of procedures / decisions	Availability to the public of the authority's decisions

Scores were estimated following data available through the national Annual Reports and the Commission's Annual Reports. The scope was not to rank cases, but construct an indicative description as to the membership of one country in the particular sets described above. Therefore, the assessment is not an indication of the performance of the country in that sector, but a reflection of the degree of fit of a particular case in a specified category. Each case is assigned a score of membership in the particular set described by each of the causal conditions, according to the calibration method. Calibration refers to establishing when something is fully out of / fully in a set and ascribing membership values in the range from fully in (score 1) to fully out (score 0). FsQCA relies on three qualitative anchors (breakpoints): full membership (1), full non-membership (0), and the cross-over point (0.5), i.e. the point of maximum ambiguity regarding whether a case is more "in" or "out" of a set (Ragin, 2007:3). Degree of membership was assessed, separately, for each of the nine causal conditions. Given the differences between the nature of the analysed data, the author opted for a manual calibration procedure supported through the use of statistical tools (see Table 2). Theoretical considerations guided the calibration process to ensure scores depicted a realistic image (i.e. found empirical correspondence at case level) and a sufficient degree of variation on the variables.

4. Findings

Expectations were that countries scoring high along all causal conditions would have a satisfactory record of implementation, while lower membership or

absence of a causal condition would imply inconsistencies in domestic implementation. However, it seems that the high/low degree of membership in individual sets does not exert a direct influence on the degree of membership in the outcome set. Rather, through combinations of scores of membership in various categories, the best explanatory model appears to be in the form of configurations of causal conditions leading to the outcome.

Direct calibration was applied to each of the first seven out of the nine variables, since the data for the last two variables was of different nature than for the others. Hence, scores of membership for political independence and transparency of agencies were assigned following a purely qualitative comparison between the countries. When assessing the degree of political independence of the competition authorities, it compared the methods of appointment and replacement of the staff with executive responsibilities as a measure, albeit imperfect, of formal independence (see Fingleton, 1995). Institutional transparency was evaluated on the basis of the availability of reports and decisions of the offices to the general public.

As regards political independence, the Hungarian NCA is the most independent among the countries under investigation. Its director is apolitical, is appointed for a fixed term by the President on a recommendation from the Prime Minister, but he is directly accountable to the parliament and may be removed only by the latter's vote. This differentiation ensures that no conflict of interests arises in the office's handling of competition cases (score of 1). Poland and Czech Republic score close to the Hungarian office, with a membership of 0.83 each. In Poland, the President of the Office of Competition and Consumer Protection is appointed for a five-year term by an independent committee of law and economics experts. However, he is accountable to the Prime Minister, and therefore considered to have a less independent position than its Hungarian counterpart. In the Czech Republic, the Chairman of the Office for the Protection of Competition is nominated by the Government and appointed by the President for a six years term, for a limited number of two terms. The position is restricted to persons who

are not members of any political party/movement, ensuring minimum political intervention in the decision-making process of the office. The Baltic states were taken as a whole as the status of their competition offices is very similar. The heads of the offices are appointed for a five years term by the Minister for Economics in the case of Estonia and Latvia, and by the President on a proposal from the Prime Minister in Lithuania. They are all accountable to the government, diminishing the level of independence regarding the validity of their decisions: at times, when faced with a particular decision the offices might choose not to antagonize the government. The head of the Slovak NCA is appointed by and directly accountable to the government, which decreases its independence. Furthermore, she may be removed at any time, which diminishes the freedom of decision of the office as a whole, for fear to antagonize the government if a decision proves sensitive for the latter.

In terms of transparency, one looked for the consistency with which NCAs make publicly available their activities, by identifying the type of documents available for the public and the time frame in which they are published. To various degrees, all NCAs publish regular activity reports, in both the national language and English, and make them available free of charge for any interested party. Again, the Hungarian NCA appears to set the standards: a comprehensive web page in terms of decisions published, timely publication of reports, and coverage of appeals. It also publishes studies and analyses, and provides clarifications as to the legislation in force and the requirements of maintaining a competitive market through the use of a specifically designed forum. Slovakia and Lithuania have a good record of timely publishing their annual competition reports, but they lack the consistency of decisions published witnessed in the case of Hungary. The Czech Republic and Estonia rank mid-way because although comprehensive on reports and informative documents, they do not make available any decisions on cases that the office has investigated. Latvia and Poland, fall mostly out of the transparent agencies set, as they lag behind in the timely publication of reports and fail to publish any type of decisions in English.⁹

The first part of the analysis was performed without including simplifying assumptions in determining the configurations of causal conditions that affect the outcome.

EFFIMPLEM→wellres*SUFFSTAFF*HIQUALEMPL*GOODENF*EFFAPPL*

acqcoopcult*expadv*polindep*TRANSPAG¹⁰

According to fuzzy set conventions, the solution translates into the following: efficient implementation is a product of low membership in the well-resourced set, *and* high membership in the sufficient staff, high quality employment, good enforcement and effective appeal sets respectively, *and* low membership in the acquired cooperation culture, advocacy experience, and political independence sets, *and* finally high membership in the transparent agencies set. This solution is the most complex configuration of causal conditions that impact upon the effective implementation outcome. Membership of each case in this causal configuration was computed according to the minimum principle (see Table 5a).

The intermediate solution offers a less rigid explanation, by allowing for any combination of two or more conditions explaining enforcement. It complements the previous result by acknowledging the existence of less complex configurations with explanatory power (for details see Table 9)¹¹:

EFFIMPLEM→wellres*SUFFSTAFF*HIQUALEMPL*GOODENF*EFFAPPL*

**acqcoopcult*expadv*TRANSPA+wellres*suffstaff*hiqualempl*goodenf*effa
ppl***

acqcoopcult*expadv*POLINDEP*TRANSPAG+wellres*SUFFSTAFF*

HIQUALEMPL*goodenf*effappl*acqcoopcult*EXPADV*POLINDEP*transpag

Following the same rationale discussed above, membership in each of the three configurations has been computed following the minimum principle, while

membership in the solution as a whole was determined following the maximum principle (see Table 5b).

The second part of the analysis takes into consideration the logical remainders for the further simplification of the logical configurations. The parsimonious solution is: **EFFIMPLEM** → **polindep**. The threshold for consistency is however not met (lower than the cut-off value of 0.5). Consequently, the parsimonious solution has no explanatory power in terms of necessity/sufficiency for the outcome.

5. Interpretation of the Results

The analysis has shown that the effectiveness of NCAs can be explained through two main combinations of causal conditions. Taken individually, none of the causal conditions has enough explanatory power, but they gain relevance only in configuration with other causal factors.

As previously mentioned, fsQCA distinguishes between two types of causal conditions/combination of conditions: necessary (the instances of the outcome form a subset of the instances of the condition) and sufficient (the instances of the condition form a subset of the instances of the outcome). A condition/combination of conditions is necessary if it is present in all the instances of the outcome, but it can only produce the outcome in combination with additional conditions; similarly, a condition/combination of conditions is sufficient if it is capable of producing the outcome by itself (adapted from Pennings, 2003:554).

The fsQCA analysis has generated two different configurations of causal conditions. The most complex configuration, which fully covers the outcome and which considers the impact of all causal conditions, is sufficient for determining efficient implementation. However, its consistency value, although above the set threshold, is too low to assume necessity. While none of the individual conditions making up this combination is sufficient by itself, each of them is necessary, to

different degrees, to generate the outcome. If one restricts the analysis to the ideal solution configuration, only one case perfectly fits the model – Slovakia. However, its membership in the efficient implementation set is very low (0.17) and therefore this solution does little to explain the outcome. This proves that ideal types can scarcely find correspondence with empirical cases, and justifies the choice of looking into alternative configurations. Consequently, if one allows for a degree of divergence from the ideal model, Hungary, Slovakia, Lithuania, Estonia, Latvia and Poland all fit within the configurations. This strategy permits a better comparison and consequently a better assessment of the contribution of each of the causal conditions toward implementation.

Three other possible causal paths to the outcome, resulting from the assumption that the presence of all causal conditions is not necessary for its occurrence, combine into a more parsimonious configuration and provide a less restrictive analysis of the factors leading to efficient implementation. With a consistency score of 1, which approximates a perfect subset relation between this configuration and the outcome, the second configuration shows that either one of the three paths towards efficient implementation is sufficient in determining efficient implementation, but none of them is necessary. Although the solution configuration as a whole covers approximately 44% of the outcome, the individual explanatory power of each of the three paths is much lower (approx. 10%). This confirms the assumption of the qualitative comparative method that causal inferences are best explained through configurations of explanatory variables.

This looser interpretation has shown that some of the causal conditions have a greater weight in influencing the outcome. As such, the level of resources and the culture of cooperation with the ECN prove necessary for the assessment of effectiveness if they interrelate with other relevant conditions. Effective implementation occurs despite low levels of material resources and lack of a culture of cooperation with the ECN, but only if the remaining variables combine in either of the three forms contained in the intermediate solution. Similarly,

although most configurations assume a high score in the effective appeal set, deficiencies in this regards can be overcome when associated with high levels of political independence and transparency of an NCA. The analysis has showed that, although dubious at first look, low membership in some of the causal conditions intuitively considered necessary for the presence of the outcome can lead towards a positive effectiveness record, while conversely high scores on some variables do not ensure effective implementation.

The examples of Hungary and Slovakia show that the absence of political independence does not lower the score of membership in the efficient implementation set, as expected, but it contributes toward full membership. However, political independence does not by itself influence efficient implementation, but it has to be accompanied by good agency performance (Nicolaidis, 1999:18). This observation finds support in the relevant literature which differentiates between nominal and effective political independence. While the former refers to the actual degree of independence of an agency with respect to political entities, the latter considers independence to mean “adequate staff, financial resources and access to information” (Nicolaidis, 1999:18). Consequently, high membership in these three sets (sufficient staff, highly qualified employees and good record of enforcement) makes up for the absence of the political independence condition – effective political independence appears to make up for nominal independence too.

The solution configurations have also shown that the condition of transparency of NCAs has an almost equal weight towards determining efficient implementation as that of political independence. The latter acts as a “guarantee of impartiality, fairness, and consistency which is typically seen as essential if the public is to have confidence in an agency,” and is complemented by public trust in NCAs, achieved through institutional transparency (Wilks, 2002:151). Both political independence and the degree of transparency have gained increased relevance for the application of competition policy in the aftermath of the changes effective in 2004. The investigation of competition cases currently relies on a system of

notification requiring businesses and individuals to lodge complaints with the responsible competition office if they observe unfair competition practices or abuses on the market. Consequently, the degree of trust in a NCA and its perceived political independence affects the willingness of the public and businesses to entrust their cases to these offices. The notification procedure malfunctions due to businesses' reluctance to direct their complaints towards the responsible authority, namely their unwillingness to act against each other. This situation stems from the businesses' suspicion of competition rules, their lack of a culture of lodging complaints, and their perception of "ganging up" on each other if resorting to this kind of practices (Lorentzen, 2002:11). Critics of decentralized enforcement have warned that even when complaints do reach the responsible offices, the varying degree of political independence of the NCAs creates the risk of "*forum shopping*"- potential complainants who will lodge their complaint with the authority where the chance of a prohibition is highest (Pirrung, 2004). Moreover, most citizens in the new member states admit being uninformed about their rights (Eurobarometer 259, p.90). The implications of the Modernization Package, and especially the notification procedure, are largely unfamiliar to both individuals and businesses, while the latter are most of the times ignorant or suspicious of competition law (Lorentzen, 2002:11).

Further on, some configurations in which cases have a very low membership in the well-resourced set and a high membership in the sufficient staff set lead to the same membership score in the outcome as the combinations in which cases have very low membership in both these sets (e.g. Lithuania vs Poland, Czech Republic). Hence, resource level is not a necessary condition if other causal conditions are met (such as sufficient staff). With regard to the NCAs' resources, the implementation literature accounts for two opposing views in terms of their contribution towards the stability and effectiveness of the agencies. While some scholars consider funding paramount in affecting the performance of competition agencies (Nicholson, 2006 – although only in certain contexts; Wilks, 2005; Riley, 2003; Borzel, 2004), others argue for an aggregate impact of several explanatory

variables (Nicolaidis, 1999; Fingleton, 1999; to some extent Nicholson, 2006), an argument which resonates with the finding of this article.

The necessity of the well-resourced condition for efficient implementation is linked to the relevance of the number and quality of employees. Some scholars emphasise the need for well trained and efficient personnel, arguing “it makes little sense to expend huge amounts of resources if the whole system is badly designed, resulting in inefficient application of the rules” (Nicolaidis, 1999:17). Europeanization theories (Radaelli in particular) view domestic change as the internalization of “formal and informal rules, procedures, policy paradigms, styles and ‘ways of doing things’” embedded at EU level (Radaelli, 2006:3). This is achieved primarily through educating civil servants and experts, and fostering the Commission’s ambition for a “common competition culture” at European level. Consequently, more important than mere material resources is ensuring sufficient staffing and training for the NCAs’ employees and thus superseding any potential “institutional embeddedness” existent at national level which might undermine implementation (Knill, 1998: 603).

The EU regulatory model, introduced through conditionality, was met with relatively low institutional resistance and was rapidly adopted, since it was “presented at the same time as CEE policy-makers were seeking a model to implement” (Grabbe, 2002:4). Some scholars have accordingly argued that long term effectiveness was sacrificed at the cost of short term one, as the newly acceded states have only pursued EU models for the benefits of accession, and not for their potential to support the enforcement of the policy as such (see Sedelmeier, 2006). EU-style practices have been adopted without a substantial knowledge base which to ensure long-term operability. The findings show that, if the most complex interpretation is considered, all CEECs score low in the effective implementation set. These observations are consistent with some scholars’ expectations that “NCAs are under-resourced, have limited experience and expertise, face large-scale cultural and industrial challenges, and are

working with inexperienced courts that are often illiterate in antitrust thinking” (Riley, qtd. in Wilks, 2005: 439).

Finally, the effective appeal condition needs to be understood both in relation to the degree of public confidence in competition agencies and with regard to its contribution toward effective implementation. The findings show that this condition is neither necessary nor sufficient by itself for the outcome, but can nevertheless determine the direction of impact. Recent research on the activity of the courts suggests moving beyond their mere caseload and rather taking into consideration issues of access to and standing before the court (see for example Cseres, 2010). Cseres warns of scepticism with regard to the appropriate training of judges, the reluctance of national courts to apply EU law and lenient practices of the courts which adversely impact implementation. Some scholars observed that the effectiveness of the courts is potentially the most important after the activity of the agencies themselves (see for example Nicholson, 1999).

Although the general conclusion implies that the quality and number of staff contribute the most toward the explanation of effectiveness, implementation goes beyond mere material and human resources. Causal conditions combine in a multitude of ways and to different membership degrees, producing complex causal solutions.

Conclusion

The general conclusion drawn from the analysis of causal configurations is that none of the constituent conditions has explanatory power by itself (they are neither necessary nor sufficient), but only in combinations of variables. One cannot create a general pattern for efficient implementation, but simply offer explanations as to which conditions have a greater explanatory power.

The analysis has shown that the same level of membership in the outcome can be reached when cases have different scores of membership in the same causal conditions or even when some of the causal conditions are missing. The

implication is that implementation is country specific, namely that causal conditions that work towards an outcome in one case do not necessarily have the same impact in other cases. Some scholars also point toward the specificity of the implementation process, namely that it is highly dependent on national patterns: “implementation is not only about having enough personnel and budgetary resources to execute certain assigned tasks. It is also about how to execute those tasks, which may require *the development of, perhaps unique, procedures of putting the rules into practice* for the ultimate purpose of integrating a member country into the rest of the EU” (Nicolaidis, 1999: 7; emphasis not in the original text).

This article has shown that various deficiencies in the activity of the NCAs can be overcome if different other combinations of conditions are present - the conclusions of the Commission Reports on Competition since 2006 to present do not find major inconsistencies in the implementation of the policy. The outcome of implementation however ultimately remains dependent on the willingness of implementing actors and the choices they make. Both the degree of political independence and the transparency of the agency are relevant toward assessing the effectiveness of implementation, although each of them is neither necessary nor sufficient by itself for the occurrence of the outcome. The low level of resources an agency has at its disposal does not necessarily negatively correlate with effectiveness. Conversely, having the capacity for effective implementation does not automatically translate into good practice. The different configurations of variables show that NCAs have to function within the constraints of their operating environments.

A potential solution for long-term effectiveness relates to the sufficient staffing of the competition offices and a high level of expertise, since they ensure, as the findings of this article show, a satisfactory record of implementation despite limited material resources, transparency, independence or judicial inexperience. While it has been argued that an agency cannot secure a high level of training for its personnel and a good enforcement record without having material resources

(see Nicolaides, 1999), empirical cases show that effectiveness can be achieved even when the funding of NCAs is extremely low (see especially the cases for Poland, Hungary, Slovakia, Lithuania). The literature on implementation specifies that variables such as the legal system, the experience of the agencies, the nature and clarity of laws and regulations, as well as institutional transparency and public trust also work toward the quality of implementation (Fingleton, 1995; Nicolaides, 1999; Nicholson, 2006).

This article has showed that the effect of each variable differs depending on the configuration it is part of – one cannot identify a one size fits all approach to implementation, but only look for solutions tailored to the specific domestic conditions in each case. Implementation remains highly dependent on national administrative patterns and policy context. Although the Commission argues for “antitrust as a discipline,” national regulators face electoral and economic pressures to safeguard certain economic sectors. In this context, given the Commission’s flexible approach to regulation in support of governments’ efforts to handle the economic crisis, the pressure on the NCAs’ enforcement responsibility increases. By identifying the causal factors affecting the effectiveness of the NCAs’ activity and their individual weight in different circumstances, this article has also exposed the elements of implementation vulnerable to anti-competitive pressures.

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Annexes:

Table 1: Data report compiled on the basis of the national Annual Reports for competition policy

Country	Budget	GDP	Professionals	Total staff	Total cases	Cartel cases	Appeal decisions	Total # appeals	Cases informed
Poland	6521325	2.10E+10	204	278	473	27	14	47	12
Hungary	5800000	8.4E+10	95	116	201	25	154	231	42
Czech Republic	143801000	9.2E+10	88	114	64	5	16	52	8

Slovakia	1313526	3.7E+10	61	70	136	21	35	46	4
Estonia	832000	9.00E+09	24	47	68	8	1	1	5
Latvia	723425	9.80E+09	33	53	68	7	10	16	4
Lithuania	1042632	1.8E+10	39	60	81	7	9	17	2

Country	Budget/GDP (%)	Professionals/Total staff (%)	Cases/Employee	Cartel/total cases (%)	Appeal decisions/Total appeals (%)	Cases informed/Total cases (%)	Written comments
Poland	0.031%	73.38%	1.70	5.71%	29.79%	2.54%	3000
Hungary	0.007%	81.90%	1.73	12.44%	66.67%	20.90%	125
Czech Rep	0.156%	77.19%	0.56	7.81%	30.77%	12.50%	83
Slovakia	0.004%	87.14%	1.94	15.44%	76.09%	2.94%	32
Estonia	0.009%	51.06%	1.45	11.76%	100.00%	7.35%	0
Latvia	0.007%	62.26%	1.28	10.29%	62.50%	5.88%	231
Lithuania	0.006%	65.00%	1.35	8.64%	52.94%	2.47%	42

Table 2: Statistical analysis

Country	Budget/GDP (%)	Z-scores	Professionals/Total staff (%)	Z-scores	Cases/Employee	Z-scores	Cartel/total cases	Z-scores
Poland	0.031%	-0.01	73.38%	0.19	1.70	0.65	0.06	-1.53
Hungary	0.007%	-0.48	81.90%	0.93	1.73	0.73	0.12	0.71
Czech Republic	0.156%	2.42	77.19%	0.52	0.56	-2.09	0.08	-0.83

Slovakia	0.004%	-0.54		87.14%	1.39		1.94	1.23		0.15	1.71
Estonia	0.009%	-0.43		51.06%	-1.74		1.45	0.04		0.12	0.49
Latvia	0.007%	-0.47		62.26%	-0.77		1.28	-0.36		0.10	0.00
Lithuania	0.006%	-0.50		65.00%	-0.53		1.35	-0.20		0.09	-0.55
Mean	0.0003			0.71			1.43			0.10	
Std. Dev.	0.0005			0.12			0.42			0.03	
Country	Appeal decisions /Total appeals	Z-scores		Cases informed/Total cases	Z-scores		Written comments	Z-scores			
Poland	29.79%	-1.30		2.54%	-0.84		3000	2.44			
Hungary	66.67%	0.30		20.90%	2.08		125	-0.37			
Czech Republic	30.77%	-1.26		12.50%	0.75		83	-0.41			
Slovakia	76.09%	0.70		2.94%	-0.77		32	-0.46			
Estonia	100.00%	1.74		7.35%	-0.07		0	-0.49			
Latvia	62.50%	0.12		5.88%	-0.30		231	-0.26			
Lithuania	52.94%	-0.30		2.47%	-0.85		42	-0.45			
Mean	0.60			0.08			501.86				
Std. Dev.	0.23			0.06			1022.30				

Table 3: Fuzzy membership scores of each case in the categories described by the causal conditions

	WellRes	SuffStaff	HiQualEmpl	GoodEnf	EffAppl	AcqCoopCult	ExpAdv	PolIndep	TranspAg	EffImplem
Poland	0.33	0.67	0.83	0	0	0.17	1	0.83	0.17	0
Hungary	0.33	0.83	0.83	0.83	0.67	0	0.33	1	1	0
Czech Rep.	1	0.83	0	0.17	0	0.83	0.33	0.83	0.5	0
Slovakia	0.17	1	1	1	0.83	0.17	0.33	0.17	0.83	0.17
Estonia	0.33	0	0.67	0.33	1	0.33	0.33	0.67	0.5	0
Latvia	0.33	0.17	0.33	0.5	0.67	0.33	0.33	0.67	0.17	0.17
Lithuania	0.17	0.17	0.33	0.17	0.33	0.17	0.33	0.67	0.83	0.17

Table 4: Software reduced truth table following constraints imposed by the author

wellres	suffstaff	hiqualempl	goodenf	effappl	acqcoopcult	expadv	polindep	transpag	number	effimplem	consist
0	1	1	1	1	0	0	0	1	1	1	0.50495
0	1	1	1	1	0	0	1	1	1	0	0.432203
0	1	1	0	0	0	1	1	0	1	0	0.336634
0	0	0	0	0	0	0	1	1	1	0	0.336634

Table 5a: Cases' membership in the complex solution configuration

	Country	Membership in solution configuration	Membership in outcome set
1.	Poland	0	0
2.	Hungary	0	0
3.	Czech Republic	0	0
4.	Slovakia	0.67	0.17
5.	Estonia	0	0
6.	Latvia	0.17	0.17
7.	Lithuania	0.17	0.17

Table 5b: Cases' membership in the intermediate solution configuration

	Country	Membership in path 1 configuration	Membership in path 2 configuration	Membership in path 3 configuration	Membership in solution configuration	Membership in outcome set
1.	Poland	0	0	0.67	0.67	1
2.	Hungary	0.67	0.17	0	0.67	1
3.	Czech Republic	0	0	0	0	1
4.	Slovakia	0.67	0	0	0.67	1
5.	Estonia	0	0	0	0	1
6.	Latvia	0.17	0.17	0.17	0.17	0.67
7.	Lithuania	0.17	0.67	0.17	0.67	0.83

POLICY BRIEF

How Can Romania Meet European Requirements in the Field of Energy?

Corina Murafa¹⁸

ABSTRACT:

The Romanian energy market suffers from structural flaws, which pre-date the beginning of liberalization. Although the restructuring process by breaking-up vertical monopolies (damaging for competition and for competitiveness at the same time) started off relatively early - 1998 for electricity, 2000 for gas, uncompetitive commercial practices and damaging administrative decisions kept persisting. A brief diagnosis of how the Romanian electricity market runs shows that structural flaws still exist. Over 75% of wholesale electricity trade takes place over-the-counter (outside the specialized trading platform OPCOM), via so-called bilateral contracts, be they negotiated or regulated. In and by themselves, bilateral contracts are important for ensuring trade predictability for large industrial consumers. Although there is a specialized market for bilateral contracts inside OPCOM, only 8% of the entire electricity traded inside OPCOM is represented by this market segment.

KEY WORDS: *liberalization, EU infringement, energy, OPCOM, Romania, transparency*

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An Assessment of the current situation

Absence of transparency in trading, over-the-counter contracts follow a political rather than a commercial logic. We are talking here about the so-called “contracts with the smart guys”, whereby rent-seeking suppliers or industrial consumers benefit from cheap energy from state-owned companies. In order to minimize this predatory behaviour, the Ministry of Economy mandated that state companies must sell transparently, on OPCOM, to whichever supplier offers more (Order no. 445/2009). An exemption to this order was issued later for the largest state-owned producer of electricity, namely Hidroelectrica. Even so, obliging producers to use OPCOM for selling power does not ensure their competitive behaviour.

An exemplary proof is the highly publicized event in December 2010, when Hidroelectrica accepted the purchase offer from Romania’s largest steel company and sold electricity at 138 RON/ MWh, when the average market price was 160 RON/ MWh.

Apart from bilateral contracts below, market price, outside or inside OPCOM, the power sector still displays regulated end-user tariffs, which are set very low in the regulated sector of the market (accounting for 47% of all retail electricity traded). For this reason, providers are using cross-subsidies to recover their costs, charging industrial consumers more. One of the latest European Commission infringement procedures, dating June 2009, was related exactly to these regulated tariffs, which the Romanian government could not justify as a public service obligation.

Because of regulated end-user tariffs and wholesale contracts below market average, distribution system operators claim they cannot undertake necessary investment in the network. A brief calculation shows that Romania needs up to 15-20 billion EUR of investments in the distribution network alone in the next 20 years.

On top of all these aspects, one should not forget the artificial life support given to inefficient and polluting power plants, mostly for social protection reasons. The

best known case is Termoelectrica, which has accumulated losses of 2.5 billion RON by the end of 2009. In addition, the European Commission also pointed out, in an action against Romania filed in June 2010 other damaging practices in the power sector: lack of transparency of transmission system operator Transelectrica and lack of interconnection capacity, mainly due to the missing intraday congestion management procedures.

Investors and international financial institutions accuse Romania of lack of predictability in the elaboration and implementation of reforms aimed at restructuring the power generation sector. The story of national champions (allegedly one at first, two afterwards) dragged endlessly since 2008, with government decisions successfully challenged in court and with endless waves of criticism coming from the private sector and the academia that the government is trying to save the bankrupt coal industry at the expense of hydro power, the latter being, for better or worse, profitable.

The point of this policy brief is not to discuss whether creating two national power generation mammoths would have been a good idea (although we believe it wouldn't have been). We are only pointing out that the government has not been capable, for four years now, to implement a sound restructuring of the mostly state-owned power generation sector.

In the case of natural gas, distortions are even more serious than in the power sector. First and foremost, the regulator is indirectly setting the price for domestic production (which accounts for approximately 70% of our consumption), at a level three times lower than the market price. In addition, it imposes quantitative restrictions, through the so-called "basket mechanism", an arrangement, claims the government, meant to offer access to all consumers to cheap domestic gas.

Because of a lack of definition for the "vulnerable consumer", the main beneficiaries of this generous government subsidy are not poor senior citizens

(entitled, according to European law, to adequate protection), but large industrial consumers (80% of national consumption is industrial consumption). To top it all, between June 2009 and October 2010, temporary measures allowed industrial consumers to consume exclusively domestically produced gas, which exerted a high upward pressure on domestic reserves.

There are clear indicators that the natural gas market is not functioning competitively, namely lack of liquidity and high concentration indices in all segments of the market. In wholesale production there is a clear oligopoly (Romgaz and Petrom), and this upstream concentration is reflected in the retail segment, with concentration indices two to three times higher than normal values.

Last but not least, despite the obligation to take part in the common market in the field of natural gas as the only pipe linking Romania to Western markets (the Szeged - Arad pipeline) does not allow reversible flow, meaning it is physically impossible to export gas to Hungary. In addition, one of the most recent infringement procedures of the European Commission is accusing transmission system operator Transgaz of not respecting the requirements in the Second Energy Package and not offering firm and interruptible third party access.

As a general structural deficiency of the Romanian energy market, which impacts both the natural gas and the power sector, one needs to mention the regulator's lack of independence. In an informal letter addressed to the Romanian government, dating as well from October 2010, the Commission was flagging the gradual capturing of the regulator by political interests. A step in this direction has been the dissolution of its budgetary independence through Law 329/ 2009 and Government Decision 1428/ 2009.

In the Romanian context, we need to bear in mind the following structural flaws: lack of regulator independence, very low regulated end-user prices, cross-

subsidies, high concentration indices in all segments of the market, lack of investment in the distribution network, in storage and in diversification of supply, lack of transparency of transmission system operators, lack of interconnection capacity and unjustified protection for industrial consumers.

In the electricity sector, we are also dealing with bilateral contracts below market average which follow a political, rather than a commercial logic, and also with lack of transaction transparency. In the gas sector, both quantity and price caps meets, in the form of the “gas basket” and the way the regulator is indirectly setting the price for domestic gas. The European Commission is very much aware of these flaws, and our government has received numerous infringement procedures

Where Do We Need to Go?

Other Member States are not champions of energy market liberalization and of moving towards a truly European energy common market either. However, we are not talking here in most cases of structural problems as serious as Romania's - lack of regulator independence, cheap energy sold by state-owned enterprises to political clients, simultaneous quantity and price cap (as the case of Romanian gas is).

Although Member States (especially France and Germany) have been waging an endless fight to keep their national markets closed, the European Commission firmly believes that gas and power are commodities like any other, and they must move freely in the common market, so that the consumer could have tangible benefits in the end.

For this reason, the Commission has been issuing legislative packages one after the other in order to impose competition in those segments of the market subject to competition (i.e. production and supply). Transmission and distribution are based on cables and pipelines, so they constitute a natural monopoly. Once upon a time, all these four market segments were forming state-owned, vertically integrated national companies. In a fully functioning common market, the

independent operators of transmission and distribution networks must offer free access to any EU economic agent (producer or supplier), no matter its country of origin. In other words, the Commission has been struggling to break up vertically integrated companies (a process called unbundling) and to remove all barriers faced by intra-community gas and power trade.

An elaborate Market Enquiry undertaken by the European Commission, the results of which were published early 2007, reveals unsettling conclusions:

- energy markets remain national in scope and interconnection capacity is very low;
- markets maintain the same level of concentration as in the pre-liberalization period;
- incumbent companies prevent new actors from entering the market;
- prices are highly volatile;
- transmission system operators do not offer transparent data on capacity allocation;
- regulated tariffs persist, and so do long term contracts in the retail markets.

Under these circumstances, over sixty (60!) infringement procedures against Member States were still open in 2009, while the Commission was already in a hurry of issuing the Third Liberalization Package. Thus, by 4 March 2011, Member States, including Romania, had to transpose in their national legislation two new directives and three new regulations, aimed at bringing about the common market:

- Directive 2009/73/EC concerning common rules for the internal market in natural gas;
- Directive 2009/72/EC concerning common rules for the internal market in electricity;
- Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks;

- Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity;
- Regulation (EC) No 713/2009 establishing an Agency for the Cooperation of Energy Regulators (ACER).

The main legislative novelties in this package are, according to the Commission: higher standards on consumer protection and public sector obligation; new unbundling measures; increased powers and independence of national regulators; new tools for harmonizing markets at European level (common technical codes, common network development plans, and of course the newly established ACER). Seeing that Member States are not in a hurry this time either to transpose the Package, the Commission has just taken the first step of the infringement procedure against Member States - 18 of them for failing to transpose the Gas Directive, 17 for the Electricity Directive. Romania is an offender in both cases.

In our opinion, the real content of the package does not rise even by far to the expectations of turning the European energy market in a single, competitive market. The package simply repeats clauses in older directives and regulations, the real novelties brought being insufficient to address the structural problems of European markets. Thus, new unbundling provisions are so diluted, that Member States have enough leeway to maintain the joint control over transmission and generation/ supply at the same time. Under these circumstances, one cannot hope that markets will become less concentrated than they are now too soon.

On the other hands, the package contains clear requirements on separating natural gas storage from production and implicitly of granting indiscriminate third party access to storage. Given this, the Romanian government will need to act with respect to Romgaz, which presently controls both extraction and storage of natural gas.

Unfortunately, the package does not contain enough incentives for encouraging investments in increasing the crossborder interconnection capacity. The two

European Networks of Transmission System Operators (ENTSO for Gas and ENTSO for Electricity) will draft, together with ACER, ten-year investment plans in networks, but fixing the problem of not being able to export gas from Romania to Hungary for instance goes beyond the scope of the Third Package.

The new package mandates that transmission system operators offer information of interest to economic agents in the market in a much clearer and standardized form than nowadays. Unfortunately, the package does not contain extra requirements on price formation transparency. Thus, Romanian companies cannot technically be forced to trade on OPCOM or on a similarly designed platform for gas. Even worse from the perspective of structural deficiencies in the Romanian energy market, by stressing consumer protection (Member States are free to define "the vulnerable consumer" and "the public service obligation"), they leave a lot of freedom for Member States to maintain regulated tariffs.

Through the newly established ACER, next to the two ENTSOs, the package seems to solve the issue of the incompatible designs of national energy markets, so crossborder transactions will most likely be encouraged. In addition, a new and very significant provision in the package, given Romania's context, is represented by the new and detailed requirements on enhancing regulator's independence.

This offers the hope that Romania's national regulator, ANRE, can become once again a champion of professionalism and fairness in regulation.

To sum it up, the Third Energy Package does not impose too high demands for us: regulator independence, separating storage from natural gas extraction, defining the vulnerable consumer, enhanced transparency for transmission system operators and participation in the new European institutions aimed at unifying national energy markets (ACER, the two ENTSOs). In the longer run the actions undertaken by these institutions will most likely further integrate isolated national energy markets, but it is too early to assess such an effect. Unfortunately, the package does not oblige companies to respect commercial rather than political rules and does not terminate regulated tariffs. Obviously, given the fundamental flaws of the Romanian energy market, that go against the

rules of free market economy, a legislative package diluted by pressure from large Member States to maintain their national monopolies cannot have an overwhelming effect in domestic energy markets.

III. What Scenarios Are We Talking About?

A. “Business As Usual: TEP implementation ‘to the letter’”

Information published on the website of the Ministry of Economy regarding legislative initiatives to change the Law on Natural Gas, and the Electricity Law, so as to transpose the package do not convince us that the government wants to transpose Third Energy Package directives correctly. For instance, as a Policy Brief recently published by Expert Forum indicates, ANRE will be granted more independence, but it will not become more accountable through a checks and balances system. In addition, the government's proposals opt for the minimal unbundling option, and there is no ownership unbundling: the Ministry of Economy will own both transmission system operators and producers. In the natural gas sector, it is unclear how storage unbundling will look like.

The proposals are packed with further ambiguities and Expert Forum concluded we cannot talk about adequate transposition. Within this context, the European Commission will send a Letter of Formal Notice to Romania, dated 30 September 2011, asking why the delay in adopting national laws to transpose the Third Energy Package. We were informed by Romania's Permanent Representation at the European Union that the Romanian government is still discussing informally with the Commission the content of the proposals, without notifying them officially. Hence the infringement for non-communication.

For the time being, the Commission has not questioned the content of the government's proposals publicly, although we believe it will soon address inadequate transposition as well.

It is now clear that the government's position is closest to a baseline scenario, which will not mean real change. In other words, Romania will continue to follow the pathway of countries with an unfinished transition, by adopting massive amounts of legislation without transposing it adequately. Current practices, as well as the new proposals coming from the Ministry of Economy make us believe we are heading in this direction.

Undoubtedly, given the recent infringement procedure, the proposed legislative changes would be adopted, but in a “business-as-usual” format, we fear. What would such a scenario involve?

Both Transgaz and Transelectrica will join the new ENTSOs, so they will participate in drafting joint technical and commercial codes, including new interconnection, capacity allocation and congestion management rules. Despite this, the unclear requirements in the Third Energy Package on how crossborder energy exchanges will be facilitated in practice leaves ample leeway for Romania to keep the gas market isolated while, most likely, crossborder power trade will increase (in years with a lot of rain, Romania exports 10% of the electricity it produces).

Provisions on transmission system operator transparency will be implemented in Romania at little cost for the government, while the issue of commercial transactions transparency could continue unabated. Given the detailed provisions on regulator independence, issues like budget independency will be enforced, yet a baseline scenario will allow to implement the law only in its letter, not in its spirit. Thus, more radical reforms such as replacing political appointments with technical appointments or the approval of the yearly activity report in Parliament can be avoided. ACER is for the time being a toothless European agency, having mainly a consultative role, and we cannot hope it will contribute too much to improving processes within ANRE.

Most importantly, consumer protection clauses in the Third Energy Package will act like a double edge sword. On the one hand, government authorities will implement effortlessly requirements such as effecting supplier change within

three weeks maximum, providing consumption data to clients, creating an energy ombudsman.

Obviously, when implemented correctly (although methodological norms will again be decisive), such provisions can bring real benefits to consumers.

On the other hand, since the package allows Member States to come up with their own definition for "vulnerable consumers" and "public service obligations" (in consultation with the Commission, of course) a minimal transposition scenario will lead to endless back-and-forth between the government and European institutions, as the government will try to maintain the regulated tariffs system.

Under these circumstances, a "Business as Usual" scenario will mean the following consequences:

- economic consequences: further cost accumulation through regulated tariffs and crosssubsidies,

so that infrastructure investment can be postponed; the arrears of state-owned enterprises will increase the budget deficit and lead to further public finance deterioration;

- political consequences: all political parties seem to favour postponing much needed reform, yet reform which can have high social costs (for either clientelistic or electoral reasons); in a broader picture, such an attitude coming from the Romanian government will lead to a deterioration of our political relations with the European Commission and the International Monetary Fund; European authorities can choose to push the current infringement further and open up proceedings against Romania in front of the European Court of Justice, which might include substantial fines; part of the actions promised by Romanian authorities, as part of the current Standby Agreement have not been fulfilled (e.g: privatizing minority packages in Petrom; the calendar for giving back ANRE independence. As a matter of fact, the legislative proposals on transposing the Third Energy Package published by the Ministry of Economy in March this year didn't lead anywhere, with new, yet not significantly improved versions, published on the website of the Ministry of Economy.

- social consequences: heavy, inefficient industries (the mining sector, the fertilizer sector, aluminium) will continue to offer jobs to Romanians in small mono-industrial cities, and energy bills for the domestic consumer will remain unchanged; although socially desirable in the long run, in the longer run the economic costs of this scenario will outweigh its social benefits.

The net winners under this business as usual scenarios are non-profitable industries, including the so-called "smart guys". Domestic consumers are also winners, yet the negative effects of such a scenario will be felt in the medium and longer run.

The clear losers under this scenario are private producers and suppliers (e.g.: Petrom, E.ON, CEZ, Gas de France), who recover their costs, yet are not making at all as much profit as they could. The government itself is also a loser, because profitable state-owned enterprises (e.g.: Hidroelectrica) are not making as high a profit as they could, while the arrears of non-profitable producers keep increasing.

B. "Third Energy Package Implementation and Incremental Reform"

Although the Third Energy Package is not by far strong enough to really push for the creation of the single energy market, it can trigger some pressure on the government, also given the recent infringement procedure opened by the Commission. In conjunction with commitments within the framework of the IMF agreement, one can imagine a scenario whereby the government implements gradual reforms given the external pressure coming from these two institutions.

All elements of the Third Package the implementation of which would have been unavoidable in a baseline scenario will be implemented in an incremental reform scenario as well. The government will need to grant more independence to the national regulator, transmission system operators will develop common technical and commercial codes and will become more transparent when it comes to capacity allocation and to third party access. Both in the gas and the power

sector, an incremental reform scenario will mean opening up the market further (the opening has been stagnating around 53% of the market for power and 56% for gas), without forcing consumers to renounce their captive status. In addition, in the case of storage unbundling will take place and the price for domestic gas will gradually increase, so as to facilitate both competition and investment.

Price convergence will mean that the government could allow gas exports as well – assuming it will increase storage capacity and diversify supply - which means Romania will ultimately have the chance of becoming an important actor on the European gas market. A non-radical change would mean defining the vulnerable consumer in such a way to comprise almost all domestic consumers and small businesses, in accordance with European recommendations. The most correct solution, one that respects the spirit of European law, is to protect vulnerable consumers via social subsidies, but one can imagine an arrangement with gas suppliers (publicly and privately owned) in which they would offer social tariffs for vulnerable domestic consumers in exchange of eliminating the gas basket. Either way, the vulnerable consumer must be defined.

Obviously, such a scenario would require social protection and professional reconversion programmes in those geographical regions affected by the bankruptcy of industries, which have been so far protected by gas subsidies offered to industrial consumers. As far as power is concerned, the scenario means privatizing minority packages in state-owned generation companies. Transparency obligations in the third package would be interpreted as transparency of transactions (including by transferring all transactions on OPCOM), not only as transparency of the transmission system operator.

Under these circumstances, an incremental reform scenario would have the following consequences:

- economic consequences: losses to consumer surplus and job losses in industries indirectly subsidized by cheap energy will obviously represent economic losses; at the same time, privatizing minority packages in state-owned generators and the higher profit margin of those companies that are not working

right now to their full potential because of bad deals concluded outside OPCOM will act as economic gains; in the longer run, increased revenue of public and private actors will mean more network investment and creating more efficient generation units; this incremental reform scenario would function best under the assumption of low economic growth, as next months are looking to be.

- political consequences: higher energy prices/lay-offs, unless compensated for by social transfers, including professional reconversion programmes, will inevitably mean retaliation in the elections;
- social consequences: social costs will be higher in the shorter run than in the baseline scenario; however, in the medium run, given that vulnerable consumers will be correctly defined and protected and that most consumers will only join the competitive segment of the market voluntarily, these costs will be mitigated.

Net losers under this scenario will be the heavy industry (aluminium, fertilizer production). Bankrupt state-owned energy companies that would be shut down because restructuring would not be possible will lose, but the state in general would profit from increased budget revenue (generated by the net winners, i.e. both public and state owned gas and power producers). The government will have the chance to increase its reputation at EU-level, but domestically there is the risk that voters will retaliate against costs incurred by even the slightest reform. It is up to the efficiency of social protection measures that these risks be mitigated.

C. "Third Energy Package Implementation and Radical Reform"

Under conditions of high economic growth and aggressive IMF/ EU pressure, one can imagine a scenario whereby the government opts for maximal transposition and for supplementary, relatively drastic reform measures.

In the gas sector, such measures might be: renouncing the basket mechanism, defining the "vulnerable consumer" very strictly, so that the most households and all economic agents would not be able to qualify as vulnerable consumers; full

convergence of prices in less than a year and creating an OPCOM for gas. In the power sector, essential changes would be majority share privatizations and forced opening of the market. In a radical reform scenario, there won't be any intermediary measures for protecting small industrial consumers. Essentially, both the second and the third scenario, head towards the same direction.

The speed of reforms differs and the so do the social protection measures surrounding them. The consequences will also be more drastic:

- economic consequences: massive privatization would mean net gains in the Romanian economy; at the same time, such a scenario can be imagined only under conditions of high economic growth, globally, which would enable investors to offer a high price for these majority packages; consumer surplus would go down, which would lead to a decrease in consumption, with negative effects in the entire economic chain.
- political consequences: for sure the increase in tariffs for domestic consumers would be used by the opposition as an electoral weapon in the upcoming 2012 campaign; at the same time an anti-European discourse would appear.
- social consequence: social costs will incur due to lay-offs in privatized state-owned enterprises and in heavy industries affected by higher energy prices; it is hard to believe that the social protection system will move swiftly enough to absorb the shock.

The distribution of winners and losers would be by and large the same as in the second scenario. The mining industry and thermo power plants will go bankrupt because restructuring would be impossible. Under these conditions, Romania could turn from a net power exporter to an importer. Romanian gas producers would enjoy an increase in revenue, and suppliers would also win. Consequently, the Romanian government would win from higher royalties, profit taxes and privatization revenue. At the same time, it is hard to believe that the consumption decrease will be compensated by the aforementioned revenue, given that medium income domestic consumers will be hit hardest, given they won't qualify as vulnerable consumers.

The table on the next page summarizes the three transposition possibilities of the Third Energy Package:

Shaping factors	S1: TEP Implementation "To the Letter"	S2: TEP Implementation and Incremental Reform	S3: TEP Implementation and Drastic Reform
Economic growth	low	low	high
EU/ IMF pressure	low	high	high
Shaping actors	<ul style="list-style-type: none"> - heavy industries benefiting from cheap energy - domestic consumers -> through electoral pressure 	<ul style="list-style-type: none"> - EU Commission/ ECJ - IMF - private suppliers and producers - domestic consumers -> through electoral pressure 	<ul style="list-style-type: none"> - private power companies (interested in acquiring generation assets) - domestic gas producers - IMF - (to a lesser extent than S2) EU
Main TEP-based actions	<ul style="list-style-type: none"> - strengthening ANRE independence - increased TSO cooperation - transparency regarding networks/ allocation - protracted definition of vulnerable consumer -> en masse "protection" - cross-subsidies maintained - isolated market maintained (mostly for gas) 	<ul style="list-style-type: none"> - strengthening ANRE independence - increased TSO cooperation - transparency regarding networks/ allocation - transparency of transactions (OPCOM) - gas storage unbundling - gradual, voluntary entry of consumers on the competitive segments - privatize minority packages in generation - gas exports allowed - elimination of basket in exchange of special social tariffs from suppliers OR generous definition of vul- 	<ul style="list-style-type: none"> - strengthening ANRE independence - increased TSO cooperation - transparency regarding networks/ allocation - transparency of transactions (OPCOM, OPCOM-like structure for gas) - gas storage unbundling - very strict definition of vulnerable consumer (to include only few domestic consumers) - price convergence for gas in less than one year - mandatory entry of consumers on the competitive market - privatize majority packages in generation

		nerable consumer (to include most domestic consumers and small businesses) - expanding storage - action on security of supply - some mining kept and subsidized	- gas exports allowed - elimination of basket - risk of import dependency, unless storage is expanded and supply diversified - mining closed -> potential electricity imports
Political impact	deteriorating relationship EU - IMF; populist protection measures before election	Romania becomes a strategic energy actor at EU level; softened voter vengeance	voters and opposition sanction drastic reform
Economic impact	increased cost accumulation and arrears; industries supported artificially	revenue from privatization and increased efficiency compensates increased social spending	heavy economic impact for households, risk of mark-up manipulation by producers (if supply and storage not diversified)
Social impact	least social impact	medium impact, if protection is strong in mono-industrial towns	heavy impact
Winners	subsidized industry, household consumers	domestic producers and suppliers, state (privatization and tax revenue)	domestic generators and suppliers, especially private ones, state (privatization and tax revenue)
Losers	domestic generators, suppliers, distributors	subsidized industry, (to a lesser extent) state - because of social spending compensation	subsidized industry, households, state (decreased consumption)

IV. Our Recommendation

We recommend the second scenario (Third Energy Package implementation and incremental reform), including, most importantly, a rapid adoption of adequate legislative changes to the Electricity and Natural Gas Law, so as to avoid having the infringement procedure pushed further. Realistically speaking, given the frail global and national economic growth and the electoral temptations of 2012, nothing more than incremental reform is feasible in Romania. From the legislative proposals published on the website of the Ministry of Economy for the transposition of the third package, it is clear that Romanian authorities would rather prefer a Type A scenario, i.e. a shallow implementation of the package that would bring very few improvements to the energy sector.

Measures such as increasing ANRE independence, increasing the transparency of transmission sector operators but also of transactions by moving them to OPCOM, the clear separation of gas storage from production (accompanied by the increase in storage capacity), gradual voluntary entry of consumers on the

competitive segments of the markets, privatization of minority packages in state-owned enterprises (although the IMF agreement, which includes such privatizations, dates from March 2011, the only attempts in this direction pursued by the Romanian government to date have failed), a mechanism to protect most natural gas domestic consumers (but removing protection of industrial consumers) are realistic and would bring great economic benefits, while minimizing social losses.

Political will and strategic thinking are needed, yet the coming elections are not a good omen, given Romania's low governance capacity. Hopefully, EU pressure will act like a strong enough external anchor.

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