

### 3. ROMANIA: OUTSMARTING THE EU'S SMART POWER

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If ever a test case was perfectly designed for Europe's smart power, it is the situation of Romania, Bulgaria and Slovakia. These countries break the circularity of the argument over the EU's transformative power. They were not invited to join the EU after they were successful in their transitions, but rather as their transitions hung in the balance and the power struggle between the old and the emerging elites was far from over. They were invited in the express hope that EU accession would be a strong enough incentive to drive these transitions back on track with greater speed and purpose. And considerable success followed in all three cases, most notably in Slovakia. They managed to accede by the deadline and, despite immediate setbacks after accession, their democratic institutions resisted. Nevertheless doubts persist that their Europeanisation is no more than superficial, lacking any real substance. Romania is a particularly challenging case. It had the worst Freedom House Nations in Transit democracy scores of all EU accession countries, and these did not improve convincingly after joining. According to Freedom House, Romania is still the only accession country on the wrong side of the consolidation dividing line. Even the accession process presented a far from linear evolution: Freedom House downgraded Romania three times during this interval.

Romania has of course come a long way since the time of Nicolae Ceausescu's dictatorship. Its evolution is all the more remarkable since it was the only East European country with a bloody revolution (one thousand dead in circumstances that remain unclear) and a transition dominated by former communists. Ion Iliescu, a reformed apparatchik with barely disguised authoritarian tendencies, has won three out of the first four presidential mandates, using the army and vigilante coal miners to

defend his regime. As there was no organised opposition under Ceausescu's harsh regime, the challenger elite has encountered significant difficulties in providing a viable political alternative. The entry of Romania into the EU is due to high popular support for accession, which brought all parties to a common denominator and made accession a common political project. But Romania's current problems are also rooted in the opportunistic behaviour of its elites. The country had barely entered Europe when its political class started to undo reform commitments made to Brussels.

### **Corruption battles**

Romania succeeded in becoming a member of the European Union on 1<sup>st</sup> January 2007. In the immediate aftermath of Romania's accession, on 2<sup>nd</sup> January 2007, the battle started against Justice Minister Monica Macovei, who had been the champion of anticorruption measures agreed with the European Commission. The Senate voted a motion against Minister Macovei, denouncing the 'failure' of justice reform. The motion had been prepared in December 2006, but was postponed until Romania's accession, as Macovei was Romania's most trusted minister within European Union institutions. On February 13<sup>th</sup>, 81 senators, more than just the opposition members, voted against Minister Macovei. However, as there was no constitutional procedure for the Parliament to dismiss a minister in Romania except by dismissing the entire cabinet, the result of such a no-confidence motion was not binding for the Prime Minister, National Liberal Calin Popescu Tariceanu. The phrasing of the motion was particularly embarrassing for Romania, as it was practically an inventory of legislation passed following Romania's commitments to Brussels in order to make the country accepted in the EU.

As public opinion sided with Macovei, who also enjoyed huge support from international media and the European institutions, she was not dismissed outright. Negotiations and pressures dragged on for a few more weeks, with the European Commissioner for Justice and Home Affairs making public statements in her favour. But in the end, the PM dismissed her anyway. Her successor spent less than a year in office, chiefly trying to fire the head anticorruption prosecutor (office of DNA) – but he was himself fired by President Traian Basescu when charged in a corruption case. The fight between an informal parliamentary majority, formed by all the parties except the president's Democratic Party and the

directly elected President Traian Basescu supporting the anticorruption bodies, lasted for four years, until the 2008 election returned a new majority. Its culmination came in 2007, when two thirds of the Parliament impeached Basescu, on grounds judged to be insufficient by the Constitutional Court. A month later he was constitutionally reinstated by a popular vote, with two thirds in his favour this time. But the conflict remains emblematic of Romania's trouble-ridden politics. It boils down to a conflict over the rule of law; a clash between the directly elected national leader and Parliament; the open defiance of Brussels and the forfeit of the promises Romania made to be accepted into the EU. But as Romania has enjoyed robust economic growth since 2001, reaching a peak in 2008, when other countries were hit by the crisis, the political troubles have for a long time not translated into economic ones. The 2008 national elections actually saw the demise of radical populist parties: the Greater Romania Party had its base eroded by the more recent New Generation Party, and none of them made it to the electoral threshold. Joining forces in 2009, they managed to send two representatives to the European Parliament. They applied to join the Popular Party group, however, suggesting that they are more opportunistic than radical.

Corruption had surfaced as the chief concern in Romania by 2002-2003, under the government of Social-Democrat Adrian Nastase, which was also a key time for EU accession. The rise in public concern over this issue coincided with the alleviation of older and more critical fears, such as hyperinflation. Under Nastase, currently indicted on several counts, and defending himself by means of parliamentary immunity only, corruption had openly become the *modus operandi* of the government. Until then it had been more hidden.

'Corruption' in postcommunist societies is generally systemic and goes beyond mere bribery. It cannot be understood in the same terms as corruption in developed Europe, where a bribe is inseparable from graft: in postcommunist Europe bribery is often a way of opening access to excluded contenders in a distribution system that is anything but random. Postcommunist corruption can best be defined as the discretionary distribution of public goods as a ground rule by a non-autonomous state for the benefit of particular groups or individuals. These public goods included nearly everything, as at the beginning of transition everything belonged to state property - but gradually diminished as privatisation progressed and market institutions have consolidated. Inequality before the law remains a crucial component of post-communist corruption and

distribution of public funds, including the remarkable new resources of EU money (which replace the resources from privatisation) persists in being anything but random, even after accession. Passing 'special' legislation to favour certain economic interests is another important feature. By 2003, Romania's top businesses also headed the catalogue of unpaid loans to state banks, debts to the tax authorities or the social security budget, almost without exception. Money for local governments strictly followed party lines, causing two thirds of them to migrate to the government party in just one electoral cycle (the Social-Democrats) in order to obtain funding. In other words, even if the country formally complied with EU requests (basically adopting legislation or creating new institutions without any serious attempt at implementation) Romania's economic and political orders were clearly particularistic and pre-modern. The 2004 elections put an end to the Social Democrat majority, but they did not deliver a sufficient majority to President Basescu, whose party did not put on a convincing performance to change this situation. His main 'instrument' was Minister Macovei and her revamped Anticorruption Agency, but the Parliament, with some help from the Constitutional Court, managed to stall all investigations directed at top politicians by reinventing immunity for MPs and ministers (which had been dropped upon 2003 constitutional reform).

By autumn 2007 however, due to efforts by prosecutors (that were strongly encouraged by Brussels), nine ministers and eight MPs were under investigation by the National Anti-Corruption Directorate (DNA). In June 2007, Justice Minister Tudor Chiuariu, the successor to Ms Macovei, had tried to fire the prosecutor in charge of political cases. Politicians have repeatedly tried to control the DNA's activity by modifying its legal status or scaling back legal anticorruption instruments. A new law was passed in late March 2007, decriminalising certain aspects of bank fraud that were previously under the jurisdiction of the DNA. The law is likely to be applied retroactively, so decriminalisation would apply to bank officers that received kick-backs for granting illegitimate loans, leading to the dismissal by the DNA of numerous cases that were pending. The culmination of this anti-anticorruption activity came in October 2007, when, according to the President of Romania, a draft emergency ordinance was prepared to close down the DNA and merge it with the department against organised crime within the General Prosecutor's Office. The DNA was originally set up as an independent agency at the special request of the European Commission. Meanwhile, despite being subordinated by a Parliament Act to the General Prosecutor, it has so far preserved its

separate organisation, with its Chief Prosecutor remaining independent and its own judicial police force being directly subordinated. Due to its special legal status, it is better organised and far ahead, in terms of performance and resources, of the rest of the General Prosecutor's office. Merging with the rest would not only have created the opportunity to fire its chief, but would have ended the privileged status the EU had accorded it for so long and brought it into line with the rest of the Romanian judiciary.<sup>1</sup> The president made a live TV appearance appealing to the government not to enact the ordinance; the European Commission also showed its discomfort, though much of it through informal channels, so in the end the ordinance was not promulgated.

Politicians investigated by the DNA invariably claim that the investigation is a political witch-hunt. One frequent theme is that the former party of President Basescu, the Democratic Party (DP), is spared by the DNA. There is no credible evidence to back this allegation. A review of the cases from the three main political parties shows that no party was spared. The Social Democratic Party had Adrian Năstase (former president of SDP) sent to trial for accepting bribes, blackmail and influence traffic; Șerban Mihăilescu (MP, former Minister Secretary General of the Romanian Government) was tried for accepting bribes (cash and hunting rifles); Ioan Stan (MP) is under investigation for exercising undue influence as a party leader in order to obtain funds, goods and other undue advantages; Miron Mitrea (MP and former minister of transport) is indicted for accepting bribes. Other MPs and SDP mayors are also facing indictment. They make up the most numerous group, but they were also far more years in government than any other party. From the Democratic Party the DNA charged Gheorghe Falcă (mayor of Arad and godson of the president of Romania) for the crimes of accepting bribes and abuse of office against the public interest; Ionel Manțog (former secretary of state), for accepting bribes, making false statements and abuse of office; Stelian Duțu (MP) for abuse of office against the public interest; Cosmin Popescu (former secretary of state) for intellectual forgery and for aiding a criminal; as well

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<sup>1</sup> European Commission reports assess the DNA positively, "The work of the National Anticorruption Directorate (DNA) shows a positive track record over the past six months". See February 2008 report, p. 4 (see [http://ec.europa.eu/dgs/secretariat\\_general/cvm/docs/romania\\_report\\_20080201\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/cvm/docs/romania_report_20080201_en.pdf)).

as other mayors and lower-ranked politicians. At the beginning of the year the National Liberal Party had only a few mayors and regional leaders under investigation. However, since remaining in government by themselves the NPL and DAHR seems to have given in to temptations of all kinds. Minister Macovei claimed that her conflict with PM Tariceanu was due to her opposing 'special destination' bills being passed by the government. Bills of this kind generally provide exemptions of every kind: a number of companies are exempt from the general bankruptcy law (although Romania's EU engagement prohibits it from any state help to businesses), a certain privatisation is exempt from general privatisation law and its safeguards, a certain tender is organised by different rules than general procurement legislation, which was brought in line with EU law and is therefore very demanding. The Romanian media as well as YouTube showed video and audio recordings of Liberal ministers for Labour and Agriculture engaged in shady dealings. In a video recorded by prosecutors the minister for Agriculture is seen accepting an envelope of cash and a basket of salami. The National Liberal Party Labour minister was also tapped when pressurising a regional official to grant public contracts to his son's newly set-up company.

This deep linkage between business and politics, well-known in Italy, especially before the *mani pulite*, is difficult to fight and the combat waged by Basescu and Macovei had all the features of a civil war. In 2005 a new director of the tax office, Sebastian Bodu was appointed, with the result that companies finally paid their dues. He was sacked by PM Tariceanu two years later, simply for warning that new legislation (which favoured certain car importers) is against competition *acquis*. There were also steps back on procurement legislation and on the politicisation of the administration, which had never really gone away before returning in force. A long-awaited revision of the criminal code ended in lighter sentences for corruption. The Commission opened infringement procedures for a few other notorious cases, all of the same type: the formal transposition of EU demands is followed by complete subversion in practice, generally due to clientelism. How could the head of a government with nine ministers indicted for corruption, for instance, allow the newly created telecommunications agency to be independent and not politically controlled, in an area so rich in graft opportunities?

Unfortunately, corruption in Romania is not only related to parties and businesses, but cuts across the most important institutions of society. Romanian media has gradually been captured, after having been largely

free and fair at the end of the 1990s. After 2006, concentration in media ownership continued to increase in Romania. Three owners enjoy more than two-thirds of the TV political news market. One is the controversial businessman Sorin Ovidiu Vantu, who owns the daily *Cotidianul*, the investigative magazine *Academia Catawencu*, and a radio station at the head of his influential television channel, the all-news Realitatea. Vantu also started his own news agency, Newsin, and a business TV channel. Mr Vantu has so far managed to escape conviction, despite been charged on several counts. He was the patron of Romania's largest national investment fund (the FNI), a sort of pyramidal game that collapsed in 1999, leaving him with a fortune. Dan Voiculescu, another oligarch in the media landscape, as well as a politician, owns three TV channels, a daily, and a financial weekly that openly wage his political battles for him. The national screening agency for Securitate files, the CNSAS, exposed Mr. Voiculescu as an informant to the communist police in 2006. He is also notorious as having worked for an agency that laundered Ceausescu's money in the 1980s. Naturally, the agenda set by this kind of media looks like a permanent war on anti-corruption, not on corruption.

## **EU measures**

The obvious question at the end of this review is why the European Commission, pushed to the end of its tether by the lack of commitment from Romania's political bodies, did not activate the safeguard clause that had been specifically created for the accession of Romania and Bulgaria to protect the EU from these countries' eventual breach of assumed legal commitments. It would have been the first time such a tough post-accession mechanism was introduced, but the penalties proved inadequate relative to the monitoring mechanism. Activating the clause means at worst that Romania's court sentences would no longer be recognised in the European Union. Bad publicity aside, this move would not directly harm the government or the parliament as much as it would affect European companies doing business in Romania. Although the idea of applying the clause was discussed at the Commission, it was promptly dropped and relegated to the 'lessons learned' chapter for further accessions. The Commission was more innovative in the case of Bulgaria, which saw its EU funds cut - but in Romania evidence of direct fraud is scarce. Seeing the systemic distribution of public funds, fraud is hardly necessary for Romania's top 'business politicians', who prefer to do things legally and to

hire lawyers to defend them from the Commission infringement mechanisms.

There is an additional, political reason why the EU seemed paralysed in the face of Romania's negative developments. Now part of EU, Romanian parties relate to their respective European families on an equal footing. The Liberals in the EP thus defended the Liberal Party, even in its worst decisions. Social Democrats behaved somewhat better, trying to convince their Romanian counterparts that they needed to clean up their act. As for President Basescu, he is largely unknown at the European level and enjoys little trust. While Macovei was known and trusted, having worked for the EU institutions before becoming a minister, Basescu remains a mystery; a populist president from New Europe, and a committed transatlanticist with little record on EU integration. Some of his enemies' criticisms, who compare him to Putin (or Sarkozy) might not have been without consequence for his PR at the EU level. His failure to reappoint Macovei after the 2008 elections has further engendered mistrust, as well as the appointment of some of his relatives and close relations to various positions controlled by him. Although likely to be reelected in 2009, his victory will be seen by many as too ambiguous to cheer for.

Should we therefore conclude that Romania was just 'not ready', and a one year delay of the EU accession date would have allowed reformers like Ms Macovei to consolidate their gains? Hardly so: one year is unlikely to have changed the deep-seated malaise reported there. The conclusion is rather that conditionality prompts unsustainable change, a change that does not survive the lifting of sanctions. The deep Europeanisation of Eastern Europe seems to have been achieved more by emulation and diffusion than by the reward and punishment mechanism related to accession. At the end of day, democracy promotion succeeds by helping the domestic drivers of change, not by doing their job for them. Only Romanians themselves can do this.