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## When, how and why did Romania accept the EU conditionalities in the anti-corruption field?

- *Overview 1999 – 2010* -

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ROMÂNIA



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EUROPEAN UNION



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## Introduction

This paper represents an attempt to evaluate the relation between Romania and the European Union in the narrow field of the anti-corruption policies, starting with the moment of accession negotiations up until today. Our research question was a simple one:

What were the factors that made some EU rules to be accepted by Romania and what were the factors that prevented this process?

At academic level, the paper<sup>1</sup> applies the theory of Europeanization to the particular case of Romania and mainly to the anti-corruption policies. Taking into account the 2004 accession wave, Schimmelfennig and Sedelmeier (2005) have developed a model regarding the degree of acceptance of EU conditions by candidate countries. We have adapted this general model to the case of anti-corruption policies in Romania over the period 1999 – 2010 and formulated four specific hypotheses. Therefore, the likelihood of adopting EU conditionalities depends upon 4 factors/elements:

- 1) the determinacy of conditions
- 2) the rewards and threats associated with the conditions
- 3) the costs inflicted by adopting the conditions on Romanian domestic veto-players
- 4) the change of the internal political equilibrium.

In order to test my hypotheses, we have insulated 29 conditions raised by the European Commission (EC) in its regular reports on Romania's progress and I followed their fulfilment (or lack of fulfilment). This quantitative approach was completed by qualitative analyses of Commission's reports, media sources and independent reports.

## Theoretical Framework of EU conditionalities

Less than 20 years ago, Central Eastern Europe (CEE) was part of the Communist world. Since then, an impressive transformation took place towards free market and liberal democracy. Most of the CEE countries are now members of European Union. A massive academic literature analyses the 'Europeanization' of CEE. This concept is controversial since it seems to imply more than a simple process of adapting CEE to criteria necessary to become EU members. In order to focus the perspective, some authors suggested the concept of 'EU-ization' to describe the transformation driven by the demands of EU in the accession process (Grabbe, 2006). Once the CEE countries entered EU's orbit, a special relationship was created since these countries wanted to enter the Union much more than EU wanted their membership. This situation created an imbalance between the two partners, called 'asymmetric power' (Grabbe, 2006) or 'asymmetric

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<sup>1</sup> This research represents an update of the thesis "The functioning of EU conditionalities for anticorruption policies in Romania", Cristian Ghinea, 2008, London School of Economics, unpublished.

interdependence` (Dimitrova, 2004). EU was in position to act as gate-keeper, granting rewards depending on the progresses made by each candidate.

Schimmelfennig and Sedelmeier distinguish between two mechanisms under which CEE adopted EU rules: EU-driven versus domestically-driven process. In the latter, the candidate country takes the initiative, while in the former it is a specific action of EU which makes the candidate country to act. They also make a separate distinction between two theoretical models:

#### **External incentives model**

According to this model, EU and the candidate country are both rational actors engaged in a bargaining process in which EU sets the conditions and the candidate has to fulfil these conditions in order to receive the reward (assistance and institutional ties). This is a conditionalities-centered model.

#### **Social learning model**

According to this perspective, the candidate country will adopt EU rules because it considers them legitimate rather than expecting some rewards.

After resting these models for various countries and policy areas, Schimmelfennig and Sedelmeier conclude that the first model (external incentives) has the biggest explicative power for EU rule adoption in CEE countries. In other words, these countries have adopted reforms especially because the EU asked for them and because they expected rewards from the Union (EU membership being in fact the greatest reward).

Although the social learning model could explain some aspects of the reform, the model cannot explain the dimension and the speed of the reform adopted by Eastern Europe.

Some authors challenge this conditionality-centred perspective. In their important book, Hughes et al. (2004) speak about `the myth of conditionality` - a kind of fetish of academic studies on Europeanization. Studying the regionalization policies, they observe that Eastern countries have gone through a lesser and more superficial regionalisation process than the external incentives model might explain. In other words, the simple existence of EU conditions and the historic fact of CEE candidate being admitted in EU are not sufficient to validate the `EU transformative power` (Grabbe; 2006).

This paper will discuss the two theoretical perspectives by applying them to the particular case of the anti-corruption policies in Romania. Did the EU have a transformative role in the anti-corruption field? Is this transformation the effect of the EU pressure or rather the adoption by the Romanian elite of several models considered superior? If the external pressure did matter, what are the areas in which it was more efficient, and why? We will try to answer these questions in the conclusions.

## **The relevance of this study case for EU conditionalities**

Schimmelfennig et al. (2005) make a useful discussion about choosing the study-cases for testing their models. They point out that 'the impact of political conditionality will be most discernible where is substantial conflict, in comparison with cases in which rule adoption only requires technical adaptation. (...) Moreover, in these cases it is easier to distinguish the impact of the EU from endogenous change, which is change that would occur in the absence of EU conditionality' (Schimmelfennig et al., 2005: 34). They call this sort of situation a problematic case.

Was corruption in Romania a problematic case in 1999 at the start of negotiations? Was there a distance between Romania's status-quo and EU expectations? Obviously, yes. In its 1999 edition, the Corruption Perception Index realized by Transparency International placed Romania on the last position among countries starting negotiations with EU (CPI, 1999). Going beyond the simple perception, other studies still placed the country on the last position. World Bank` BEEPS Interactive Dataset measured in 2002 the percentage of annual revenues spent by enterprises in unofficial payments to public officials. Romania presented the highest percentage among CEE candidate countries (EUMAP report, 2002). The experts-based survey realized by Freedom House placed Romania on the second worst position among the candidate countries (after Bulgaria) for 2000 and 2001. The situation of the two countries reversed in 2002 and Romania took the last position (Nations in Transit report; 2008). In conclusion, at the beginning of the negotiation process, Romania started in a sensitive position being expected to accomplish significant progress. In this situation, the effect of EU conditionalities should be clearly visible at the end of the process.

Moreover, the study-case is interesting because it shows another contradictory reality, this time inside EU itself. Despite the fact that EU placed corruption highly on the negotiation agenda, the Union itself lacked significant acquis in this area. In conclusion, we have a corrupt country, an ambitious EU on this issue and a weak EU model in this policy area. One could hardly find a more problematic case to test the EU-ization process.

## **Short history: Romania`s accession and anti-corruption conditionalities**

The first official evaluation of Romania's wish to join the EU was made in July 1997, with mixed results. Considerable progress was necessary to be made by Romania before being prepared to join the Union. The 114 pages report spoke little about corruption (EC, 1997). Despite pessimistic evaluations, the EC recommended in 1999 the start of negotiations with Romania and Bulgaria. There is a consensus in the literature that opening negotiations with the two Balkans countries was largely a political decision with geo-strategically grounds. Kosovo conflict and the military strikes conducted by NATO against Serbia altered the regional situation. Romanian and Bulgarian governments supported NATO despite the pro-Serbian feelings of the public opinions. The EU

considered that Romania and Bulgaria deserved to be compensated for supporting the West and for the economic losses caused by the war (Avery, 2004; Grabbe, 2006; Haughton, 2007, Schimmelfennig and Sedelmeier, 2005). The EC's October 1999 report mentions that corruption was a widespread problem in Romania, which was not addressed with sufficient determination. A special sub-chapter was dedicated to corruption, within the political criteria section. Still, EC underlined some general problems with very limited recommendations.

The return to power of Ion Iliescu in 2000 did not change the pro-Western affinity of the country. The new prime-minister Adrian Nastase was eager to prove pro-Western credentials. The public support for European integration was overwhelming. This created both pressure on and incentives for Nastase government to finish the negotiations. EU integration became the major issue on the public agenda. With the opposition split between right-wing extremists and small democratic parties, the government was unchallenged internally and able to follow its agenda. While it was able to close numerous negotiation chapters, two difficult areas lied behind: agriculture and justice and home affairs (JHA). The anticorruption was still a matter of political criteria but closely related to justice reform under JHA. Romania was formally respecting the political criteria, but the EC reports became more and more critical on the corruption situation. The EC's 2001 regular report on Romania noted there was 'no noticeable reduction in levels of corruption and measures taken to tackle corruption have been limited'. (EC 2001: 21). The government responded by taking some legal measures. These failed to convince the EC which became even more critical in 2002 report (EC 2002). In 2003, the EC makes a new step underlining the lack of high-level corruption cases prosecuted. Meanwhile, the government created a special institution to address high level corruption – the National Anticorruption Prosecutor's Office, but its results remained limited. A pattern occurred in this period, with the Romanian government passing laws and creating institutions and with EC asking for real results.

Since corruption became an embarrassing issue, the government passed in 2003 by emergency procedure a massive packet of laws addressing reforms of judiciary and anti-corruption. Extensive legislation of public disclosure of officials' assets, conflicts of interests, party funding was passed, but the new measures were considered weak by independent experts and the EC (EC 2003 report). Moreover, EC warned that 'these anti-corruption provisions are not being fully or consistently applied' (EC 2003: 21).

In this context, a second pattern appeared which remained valid until today: EC asks at first for several legislative changes and institutional mechanisms, sees that their implementations is poor and comes back with new conditionalities regarding the implementation of laws and the effectiveness of institutions. The EC's 2004 report remained largely critical asking again for real progress. The accession negotiations with Bulgaria and Romania were finished in December 2004. The treaty of accession was signed in April 2005 establishing the accession date for 1 January 2007. In order to ensure the continuation of necessary reforms, a new mechanism was created,

by which the EC continued to monitor the two countries. In the worst case scenario, the accession could have been postponed by one year.

The 2004 elections brought to power a new President and a new Government had talked a lot about corruption in their electoral campaign. A former anti-corruption independent expert, Monica Macovei, was appointed Justice Minister. She became a controversial figure internally and an iconic symbol of anticorruption efforts for the international media. The EC appreciated her determination and the new measures taken by the government: `there has been an increase in the political will to tackle corruption and several steps were taken that could have a positive impact if implemented fully` (EC 2005: 13).

Before 2007, the EC did not recommend the accession delay, but created a new post-accession mechanism for Romania and Bulgaria, the so-called `Mechanism for Cooperation and Verification`. This was meant to ensure that the two countries will continue reforms after accession. If they failed to do so, the Commission maintained the option to activate a safeguard clause. There were two such clauses for Romania, one for agriculture and the second one on judicial reform and anti-corruption. Once the safeguard clause was activated, there were no obligations for other Member States to recognize the Romanian judicial decisions. I will discuss later the consequences of all these evolutions, including the real credibility of such a threat. The EC established four benchmarks to judge Romania`s progress in judicial reform, three of them directly addressing the necessity to continue anti-corruption efforts (EC decision, December 2006).

With this new conditionality, Romania got the long awaited EU membership on 1 January 2007. But its first year in EU proved to be one of the most agitated in its recent history. Only one month after accession, the new majority in Parliament composed of liberals and social-democrats passed a no-confidence vote against Macovei. The prime-minister consequently eliminated her from the government as well as all the ministers who were supported by the President. The political crises got deeper in March 2007, when the parliament appointed a special committee to investigate alleged abuses of the Constitution by the President. Hereafter, the vote in Parliament was infirmed by referendum. Throughout the entire 2007 – 2008 period, the Parliament tried to limit the power of the anti-corruption institutions created by EU conditionalities. While praising efforts made by DNA (National Anticorruption Directorate) prosecutors, the EC criticized other institutions and two reports released in 2008 warned that not a single case of high level corruption was finalized (EC February 2008 and EC July 2008). The sanction related to the CVM was not activated, but the monitoring was prolonged until at least 2010.

### **What were the factors that led to the acceptance of EU conditionalities? Our hypotheses**

- 1) The determinacy of the condition

According to the theory adapted by us, the determinacy of the EU condition depends on:

- How clear (measurable) the condition is
- How formal is its character (is it part of the *acquis communautaire* or is it a special requirement developed for particular cases?)

EU conditionalities have a bigger chance to be implemented if the EU itself has a clear model which can be exported in the state with whom it negotiates. Grabbe (2006) considers that the EU influence was limited in those areas where EU lacked institutional models. EU had a limited role in member state governance. This is the case for anti-corruption policies.

When the negotiations started with CEE countries, the EU lacked a comprehensive *acquis* for anti-corruption. An evaluation conducted in 2002 concluded that 'EU anti-corruption framework remains diffuse and largely non-binding' (EUMAP report, 2002: 34). The same report lists the *acquis* components at that moment (2002), making the difference between:

- direct anticorruption *acquis* (several EU conventions targeting frauds against the Community budget and corruption among EU employees).
- 'soft' anticorruption *acquis* (anti-corruption instruments adopted by the Council of Europe and OECD).
- provisions related to corruption (such as public procurement laws or civil service reform). (EUMAP report, 2002: 35-37)

The EC was facing a complex situation: on one hand, a consensus existed that the former communist countries were vulnerable to corruption and on the other hand, the EU itself lacked leverages over the existing member states in this area. Thus, the EC was in the position to ask the candidates to adopt rules that it was unable to impose over the member states. As an example, the EC made a condition for CEE to ratify the Council of Europe and OECD conventions mentioned above as 'soft' *acquis*. As a result, the CEE countries were more advanced in 2002 in ratifying these conventions than EU members (see the detailed tables with ratification situation in EUMAP report, 2002: 38-39).

Later in the process of negotiation with CEE countries, the Commission released in June 2005 a communication which proposed some basic common policy principles. Concerning the candidate countries, the document mentioned the objective to encourage 'anti-corruption policies in the acceding, candidate and other third countries on the basis of 10 general principles' (EC Communication, June 2005:20). These 10 principles refer to: credibility of anti-corruption institutions, political will to combat it, codes of conducts and integrity standards for the administration and the judiciary, transparent rules for party funding. One may notice that all these elements were already presented as conditions in EC's reports on candidate countries before 2005. Although apparently this document adds new elements to the *acquis* in this area, in fact it provides some non-binding recommendations for the Members States and formalizes some principles for candidates and supports the conditionalities already developed by the EC in the negotiations.

According to our hypothesis, **the likelihood of a conditionality to be adopted increases when the condition is part of a European model (acquis) or when the expected outcomes are measurable.**

## 2) The reward and threat associated to the conditionality

According to Schimmelfennig and Sedelmeier (2005) the next elements taken into account by the candidate countries in evaluating the adoption costs are:

- the size and speed of rewards: `the likelihood of rule adoption increases with the size and speed of rewards`
- the credibility of the conditionality.

In our case, given the history of Romania`s accession presented in the previous pages, we considered that the probability of some conditions to be accepted increases before important moments such as:

- The decision to close negotiations
- The decision not to postpone the accession with one year
- The decision to activate the safeguard clause

One may notice that the first moment was based entirely on a logic of reward (closing negotiations and obtaining an accession date) while the next two were based on the logic of punishment (delaying accession and activating the safeguard clause).

The second hypothesis is:

**The likelihood of EU anticorruption conditions to be adopted by Romania increased before those moments when EU was due to decide about accession and about applying the post-negotiations surveillance mechanisms.**

## 3) The costs (opportunity cost, welfare and power losses) suffered by domestic players following the adoption of conditionalities

Adapting the general theory of Tsebelis (2002) to the field of EU conditionalities, Schimmelfennig and Sedelmeier assume that `the likelihood of rule adoption decreases with the number of veto players incurring net adoption costs (opportunity cost, welfare and power losses) from compliance` (Schimmelfennig and Sedelmeier, 2005: 17).

Tsebelis defines veto players as `individual or collective actors whose agreement is necessary for change of the status-quo (Tsebelis, 2002:19). In our case, the status-quo is the situation of rampant corruption criticized in EC`s reports. In this situation, the local politicians and decision makers enjoy a *de facto* immunity versus prosecutions and tend to establish formal and informal barriers against prosecutions. Given the fact that EU attempted to change this situation by encouraging an accountability system and effective judiciary capacities, we will consider the veto-players those actors who tried to sabotage these efforts.

Explaining their hypothesis, Schimmelfennig and Sedelmeier mention the possibility that some decision makers might adopt EU rules in a form that implies reduced costs, doing what they call the `Potemkin harmonization` (Schimmelfennig and Sedelmeier, 2005:17)

Therefore, the veto players' hypothesis states that:

**The likelihood of EU anticorruption conditions to be adopted by Romania decreased when they endangered the immunity previously enjoyed by the Romanian decision makers. In some cases, they preferred to adopt the conditions in a form that decreased the effectiveness of the new legislation and institutions.**

#### 4) The change of the domestic political equilibrium

In negotiating anti-corruption conditions, EU found better allies in some particular Romanian political actors and institutions and tended to favour these over the defenders of the status-quo. Grabbe (2006) also identifies this tendency and calls it `empowering the modernizers` effect.

My hypothesis states that:

**The EU anti-corruption pressure affected the internal equilibrium of Romania and empowered the anti-status-quo actors. The likelihood of the EU conditions to be adopted depended by the position of these actors, the conditions having more chances to be adopted when the reformist held power positions.**

#### **Methodology**

In order to test our hypothesis we insulated 29 conditions present in EC's reports between 1998 and July 2010. Table 1 represents a detailed analysis of these conditions. We avoided the general formulations such as `there is need for further progresses` which could hardly represent a concrete condition. We followed each condition from the moment it was included in an EC report for the first time and we mentioned whether it was repeated in following reports. We thus proceeded to analyze the outcome, creating a scale of three possible results:

- fulfilled
- partially fulfilled
- not fulfilled

For each condition we provided in the last column the reasons of inclusion in the mentioned categories. In the same column we mentioned the sources used in considering the outcome of the condition (EC's evaluations or other independent sources). The outcome is linked to the nature of the condition. In those cases where EC asked for a specific piece of legislation, we considered it fulfilled if the Romanian authorities adopted the law in a form considered appropriate vis-à-vis the condition. Where the condition asked for some practical effects (such as prosecuting high-level corruption cases) we measured the fulfilment against the concrete realities covered by the condition. In some cases, one condition is directly linked to a previous one. For instance, the EC raised the necessity of a special office to address high level corruption.

The Romanian government created this office and the next year the EC created a new condition about properly staffing and financing the new institution (the case of ANI – the National Integrity Agency). In this sort of situation we considered the two conditions separately even though they targeted the same issue.

**Table 1. Compliance with EU conditionalities**

Nr.	Conditionality	Report in which is mentioned	Compliance	Comments
1	Law on Prevention and Fight against Corruption	Nov. 1998	Mai 2000 - fulfilled	Source: EC's 2000 report
2	Clear definition of corruption in the Criminal Code	Nov. 1998	Mai 2000 - partially fulfilled  2010 – fulfilled (new Criminal Code)	The definition was included in the 2000 law. We considered it only partially fulfilled because the Criminal Code remained unchanged, creating the possibility for the prosecuted persons to use the differences between the general Criminal Code and the particular law on corruption.  Source: EC's 2000 and July 2010 reports
3	Solve the institutional overlapping and create a special independent office to target corruption	Nov. 1998	Mai 2000 - Partially fulfilled  2006 - fulfilled	In May 2000 an Anti-Corruption and Organized Crime Unit was created within the General Prosecutor's office. This was replaced in September 2002 by the National Anti-Corruption Prosecutor's Office (NAPO). We considered the recommendation to be partially fulfilled by creating the first structure. EC still criticizes some institutional overlapping and the lack of independence of the two bodies. The new legislation on the DNA (2006) did not raise criticism and therefore we considered the condition fulfilled in 2006. (see also the next

				recommendation) Sources: EC`s 2000, 2002 and 2006 reports
4	Strengthen the autonomy of NAPO (better definition of the status of the prosecutors, giving prosecutors guarantees for permanence in office)	Oct. 2002	April 2004 – partially fulfilled  2007 – fulfilled	<p>The obligation of NAPO to report to Parliament was removed in April 2004. Although it granted the chief prosecutor more autonomy, this change did not provide a better status for prosecutors within the office, as the condition asked for.</p> <p>We considered this condition only partially fulfilled in 2004. Hereafter, the changes in legislation and the creation of DNA clarified the status of prosecutors. In 2006, a decision of the Constitutional Court obliged for a change in legislation and the DNA was subordinated to the General Prosecutor’s office. The new structure kept the functional autonomy of the DNA and the condition was modified by the third benchmark which asked for the stability of the DNA institutional structure (the EC thus appreciated the new organisation and asked for its stability).</p> <p>Sources: EC`s 2004, 2005 and 2007 reports.</p>
5	Properly staffing and properly funding NAPO	Nov. 2003	September 2006 – fulfilled	<p>The 2004 EC`s report considers the staffing request to be fulfilled, but in the same time criticizes the government`s decision to lower the financial threshold for cases that the central NAPO structure can investigate because it could overload the office. Because of this contradictory evolution, we considered the objective to be only partially fulfilled in 2004.</p> <p>The new government raised the above-mentioned threshold in 2005.</p>

				<p>Taking into consideration other aspects as well, the EC concluded in May 2006 that: `DNA (<i>replacer of NAPO</i>) has the staff, financial resources and training to conduct effective investigations into high-level corruption`.</p> <p><i>Sources: EC`s 2004, 2005 and May 2006 reports</i></p>
6	Adoption of the Civil Service Act	Nov. 1998	December 1999 – fulfilled	
7	Ratify two Council of Europe Conventions on combating corruption	Nov. 2000	2002 –July – fulfilled	Sources: EC`s 2002 report
8	A fully transparent system of party funding	Nov. 2001	April 2006 – partially fulfilled	<p>EC`s 2003 report welcomed improvements in legislation but warned against serious loopholes, such as funding parties through NGOs. In its 2005 report, EC still considers the system not transparent enough. Further improvements were added in April 2006 in order to oblige all finance sources to be published in the Official Gazette. Still, in the 2008 local elections, independent reports raise doubts about the accountability of the system, all major parties spending more than the declared amounts. Since the initial condition went further than the legal aspect, we considered it only partially fulfilled by the 2003 and 2006 improvements.</p> <p><i>Sources: EC`s 2003 and May 2006 reports.</i></p>
9	Legislation on access to public information	Nov. 2000	October 2001 – fulfilled	<i>Source: EC`s 2002 report</i>

10	A new National Strategy to Combat Corruption	Nov. 2001	October 2001 – fulfilled	<i>Source: EC's 2002 report</i>
11	Introducing the concept of criminal liability of legal persons in legislation	Nov. 2001	December 2005 – fulfilled	<i>Source: EC's May 2006 report</i>
12	Addressing potential conflicts of interest of politicians and civil servants	Oct. 2002	July 2010 – partially fulfilled	<p>In April 2003 the government passed by emergency procedure anti-corruption legislation including provisions on conflicts of interests. Still, in its 2003 report, EC considered the new legislation 'weak and, for politicians in particular, the definition of conflict of interest is limited'. New improvements were added in April 2004. In 2004 report, EC considered that 'Romanian anti-corruption legislation is well developed and is broadly in line with relevant EU <i>acquis</i>'.</p> <p>The problem was not mentioned in the reports released between 2004 and 2010, but in the EC's July 2010 report the issue of the definition of conflict of interests especially in the public procurement field, reappears. 'The protection against conflict of interest in the law is not sufficiently effective. Several laws address different aspects of conflicts of interest and are not sufficiently harmonised. This leads to confusion regarding the attribution of responsibilities among competent authorities. (EC, July 2010: 19). Taking into account the legislative progresses of 2003 and 2004, I considered the condition partially fulfilled.</p> <p>Sources: EC's 2003, 2004 and 2010 reports.</p>

13	Producing a strategic assessment of the nature and scale of corruption	Nov. 2003	March 2005 – fulfilled	EC's 2005 report considered the document assessing corruption to be 'clear, well structured and operationally focused with deadlines, benchmarks, guaranteed budgetary resources and clear institutional responsibilities' <i>Source: EC's 2005 report</i>
14	Removing immunity of former ministers from criminal prosecution	Oct. 2004	Not fulfilled	Following a government's decision, EC's 2005 report considered this recommendation fulfilled. But the Romanian Constitutional Court (RCC) rejected the new provision and the immunity was reinstated. RCC considered that former ministers should benefit from the same status as current ministers. Thus, the prosecutors need the approval of the President or the Parliament (for former ministers currently being MPs). Given the fact that former ministers still enjoy exceptional immunity, I considered this recommendation not to be fulfilled. <i>Sources: EC's July 2006, 2007 and February 2008 reports.</i>
15	Establishing an independent agency to verify the statements regarding personal wealth	May 2006	2010 – fulfilled	The EC imposed two conditions regarding this agency. In May 2006, EC asked for the creation of an independent agency. In October the same year, it included more details on its responsibilities. Because between May and October 2006, the Commission added clear requirements regarding ANI's competences, changing thus the

16	Agency `with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken`	October 2006	2010 - fulfilled	<p>substance of the condition, we considered them as two separate conditions. (see the methodological observation in page 31)</p> <p>Although the creation and effectiveness of ANI was a real adventure, when this was paper was written, the institution still existed and had a satisfactory legal independence (due to the legislation amended after EC's July 2010 report).</p> <p><i>Sources: EC's May 2006, October 2006, June 2007 and July 2010 reports + press analysis for ANI legislation in 2010.</i></p>
17	Demonstrate the effectiveness of the National Integrity Agency (ANI)	June 2007	Partially fulfilled	<p>Although established in May 2007, ANI was not operational in 2008. The July 2008 report mentions: `This body now has to demonstrate that it can monitor financial asset flows, detect and sanction unjustified increases in assets and regulate conflicts of interest.`</p> <p>Progresses related to ANI :</p> <p>Progresses made by ANI were praised in the reports issued in February 2009, July 2009 and March 2010: `The National Integrity Agency has established an operational record of cases. This needs to be maintained` (EC report issued in February 2009); `ANI is now operational and has developed a track record of cases` (EC July 2009 report); `The progress of the National Integrity Agency (ANI) has been consolidated and extended.` (EC March 2010 report).</p> <p>Despite this, following the April-June 2010 events, the July 2010 report criticised the new amendments brought to the law on the organisation of ANI and warns that "The new law interrupts the</p>

				<p>encouraging development of ANI and breaches commitments taken by Romania upon accession” (for more details see the study-case regarding ANI on page 35-36)</p> <p>Criticism in regard to ANI:</p> <p>EC’s February 2009 report mentions that further investments in logistics, equipment, case management software and human resources are needed for ANI to achieve full operational capacity.</p> <p>EC July 2010 report warns that the National Integrity Council ‘has not been able to act as an interface between ANI and politics and was not able to shield the agency from political accusations and promote its development.’</p> <p>Given this ambivalence, we considered this condition only partially fulfilled.</p> <p>Sources: EC’s report from 2007 until now.</p>
18	Continue to conduct professional, non-partisan investigations on high-level corruption allegations.	Oct. 2006	Fulfilled	<p>EC’s February 2008 report considered that ‘the DNA continues to show a consistently positive track record for prosecution of high level corruption cases, court sentences remain lenient and inconsistent’. The report further criticizes the Parliament for raising legal barriers and the High Court of Cassation and Justice for reversing some of the initial decisions.</p> <p>The good progresses registered by the DNA are mentioned in all the reports from the period 2009-2010. However, high-corruption investigations face difficulties following the lack of jurisprudence, weakness of sanctions and procedural delays. Due to the fact that the</p>

				<p>condition refers to investigations and the work of prosecutors in general, we considered this side of anti-corruption policies to be fulfilled.</p> <p>Moreover, some of the problems mentioned in EC's reports as being obstacles when trying to obtain sentences have started to be solved. For instance, on 24 August 2010 the Senate adopted a draft law which abrogated a paragraph from the organisation and functioning of the Constitutional Court. Following the adoption of this draft law, processes will not be suspended anymore if an exception of non-constitutionality is raised (98% of the exceptions of non-constitutionality are rejected). The law passed with the votes of the Democrat-Liberals and the Liberals and was validated by the Constitutional Court.</p> <p>Sources: EC's report from 2008 until now</p>
19	Assure the legal and institutional stability of the anti-corruption framework including key institutions such as the DNA and promote dissuasive decisions in cases of high-level corruption	June 2007	Partially fulfilled	<p>The stability of the anti-corruption framework is criticised in EC's July 2009 report which mentions that the Parliament's initiative to modify the nomination procedure of chief-prosecutors impedes the efficiency of the judicial system. The same report criticises Parliament's attempt to modify the nomination and revocation procedures for key-positions within the General Prosecutor's Office. However, EC's July 2010 report mentions that the anti-corruption framework remained unchanged.</p> <p>Given the Parliament's attempt to modify the procedures for nominating key-persons in the judiciary as well as the possibility that</p>

				<p>these may occur in the future, we have considered that this conditionality is partially fulfilled.</p> <p>Sources: EC's reports from 2007-2010</p>
20	Further measures to prevent and fight against corruption, in particular within the local government	Oct 2006	Not fulfilled	<p>The report published in July 2008 considers that 'Romania continues to make progresses in the fight against local corruption, but needs to produce more results'</p> <p>The report issued in July 2009 shows that 'a complete assessment of progress is not possible. Detailed and verifiable outputs are not available and actual tangible results are difficult to measure.</p> <p>The 2010 report ties the issue of local corruption to the legislative gaps concerning public procurement and conflict of interests. As there is a permanent critical trend in EC's reports regarding this benchmark and no concrete measures from the part of Romanian authorities, we considered this condition unfulfilled.</p> <p>Sources: EC's reports from July 2008 and July 2010.</p>
21	Establish a coherent country wide anti-corruption strategy targeting most vulnerable sectors and local administration and monitor its implementation.	June 2007 Again in February 2008	June 2008 – fulfilled	<p>A new national corruption strategy targeting corruption in local public administration was adopted in June 2008.</p> <p>The report released in July 2010 shows that the impact of the 'National Strategy for preventing and combating corruption in vulnerable sectors and in the local administration sector (2008-2010)' is difficult to evaluate. However, as the conditionality referred to the elaboration of a strategy, we considered it fulfilled.</p> <p>Source: EC's reports from July 2008 and July 2010.</p>

22	Assess the results of the recently-concluded awareness-raising campaigns and, if necessary, propose follow-up activities that focus on the sectors with a high risk of corruption	June 2007	Partially fulfilled	The report issued in July 2008 mentions that ‘The number and variety of awareness campaigns undertaken by Romanian authorities show a willingness to act constructively to combat local corruption. These campaigns have contributed to raising awareness about the disadvantages of corruption, but more measures need to be taken in order to explain to average citizens how they could combat corruption. Research has not been conducted to determine the most vulnerable sectors, and authorities in some traditionally susceptible sectors, such as health and education, demonstrated little awareness of the extent of the problem. Further critical analysis of the impact of campaigns and corruption within different sectors is needed to enable more targeted actions in future. An effective and comprehensive system to collect and follow-up corruption signals of diverse origins providing for easy access and the protection of confidentiality is missing’.
23	Report on the use of measures to reduce the opportunities for corruption and to make local government more transparent, as well as on the sanctions taken against public officials, in particular those in local government	June 2007	Not fulfilled	The report issued in July 2009 mentions that ‘However, a complete assessment of progress is not possible. Detailed and verifiable outputs are not available and actual tangible results are difficult to measure.’ The Strategy is ‘an opportunity that has not been exploited’. The same report shows that ‘the police are reporting an increase in intelligence leads and notifications to prosecutors, whilst there has been an increase in indictments made for corruption by local prosecutors’ offices’ The report issued in March 2010 shows that ‘The local strategies for

				<p>combating corruption prepared by the county prosecution offices appear to be delivering results, with an increase in the number of indictments and investigations commenced ex-officio’</p> <p>The report issued in July 2010 shows that ‘Indications are that the number of investigations has increased, including investigations commenced ex-officio indicating a more pro-active approach of the prosecution, and that these investigations are predominantly focused on the priority sectors identified by the strategies. In parallel to an increased number of investigations, more indictments are resulting’</p>
24	Unifying jurisprudence	June 2007	Partially fulfilled	<p>The issue of appeals in the interest of the law and the role of the High Court of Cassation and Justice (HCCJ):</p> <p>The report issued in July 2009 shows that HCCJ ‘does not act as a proper Court of Cassation in charge of the interpretation of the law but as a third (and sometimes first) degree of jurisdiction. This does not allow the HCCJ to play fully the usual role of a Supreme Court, which is to ensure a uniform application of law.’ In addition, the report mentions that it is necessary a ‘reform of the HCCJ to allow it to judge only on legal matters’;</p> <p>The report issued in July 2010 recommends the revision of HCCJ attributions: ‘additional measures to revise the internal organisation and working methods of the HCCJ and to the creation of specialised panels while respecting the principle of random allocation of cases’.</p> <p>Access to jurisprudence / IT equipments for the judiciary:</p> <p>In February 2009 a national portal (Jurindex) appears and here several</p>

				sentences are published. Between summer 2009 and January 2010 no decision is made available on Jurindex. The report issued in July 2010 mentions the delays in publishing sentences on Jurindex.
25	Design and implement a rational and realistic staffing model for the justice system on the basis of the ongoing needs assessment	June 2007	Not fulfilled	<p>The revised Strategy for the management of human resources in the judiciary was launched by the Superior Council Of Magistracy on 10 September 2010 immediately after the Strategy for Human Resources 2008-2011 was criticised by the Commission in its July 2009 report because it did not offer solutions for re-allocating staff and reorganising courts.</p> <p>Since the problem is present ever since 2007 and the measures taken by the Superior Council of Magistracy have been constantly criticised, we have considered the condition unfulfilled. The strategy published by CSM was not evaluated (not even implemented) when this report was being written, so one can hardly speak about an already existing framework, as the condition requires.</p> <p>(For more details see the report elaborated by CRPE and SAR within this project: "People of Justice. Short and medium term HR policy within the magistracy")</p>
26	Develop and implement a plan to restructure the Public Ministry that addresses the existing managerial shortcomings and human	June 2007	Partially fulfilled	EC's report issued in July 2010 mentions the progresses registered in introducing a financial management system and an asset recovery as an indicator for evaluating the performance of prosecutors. However, the same report warns that 'a more fundamental reform of the Public

	resources issues			Ministry is necessary'. At the same time, the plan to restructure the Public Ministry does not enjoy the support of CSM which is the only institution which is responsible for the promotion, sanctioning, evaluation, recruitment and transfer of magistracy staff.
27	Monitoring amendments to the Procedural Codes	June 2007	Not fulfilled	EC's July 2008 report mentions that Romanian authorities did not provide information concerning the amendments brought to the Procedural Codes as they only concentrated on the elaboration of the new codes. The following reports issued by the EC do not mention anymore this conditionality.
28	Report and monitor on the progress made, as regards adopting the new Codes including adequate consultations and the impact it will have on the justice system	June 2007	Partially fulfilled	<p>On 22 June 2009, the Government assumed responsibility in front of Parliament on the Criminal and Civil Code by an emergency procedure. (EC report from July 2009). The Criminal and Civil Procedural Code were adopted by Parliament on 22 June 2010. (EC report July 2010).</p> <p>The evaluation of the effects that the new codes might produce on the judiciary has not been achieved. The Strategy for the Development of the Justice as a Public Service, launched for public debates, refers to the issue of the implementation of codes (EC report July 2010).</p> <p>Taking into account that the adoption of codes was not accompanied by training sessions or simulations and that no impact studies were elaborated on the 4 codes, we considered the criterion partially fulfilled.</p>

29	Enhance the capacity of the Superior Council of Magistracy to perform its core responsibilities as well as its accountability.	June 2007	Not fulfilled	<p>The report issued in July 2008 shows that ‘Despite its key role in promoting a transparent and efficient judicial process, the SCM has not yet fully taken responsibility for judicial reform and for its own accountability and integrity’</p> <p>EC’s report issued in July 2009 warns that ‘The evaluation system introduced by the SCM to assess the performance of magistrates appears of questionable value’ and that Despite a regional allocation of positions the procedure continues to apparently favour recruits from Bucharest”.</p> <p>The report issued in July 2010 shows that ‘It is obvious the necessity of recruiting additional staff in view of attaining the maximum potential and of consolidating the inspection capacity. Moreover, a bigger transparency is necessary in order to ensure a bigger trust in the inspection process, from the magistrates as well as from citizens.’</p> <p>The same report shows that there are still particular concerns as to the selection of judges for the HCCJ, infringements of the deontological code and corruption in magistracy.</p>
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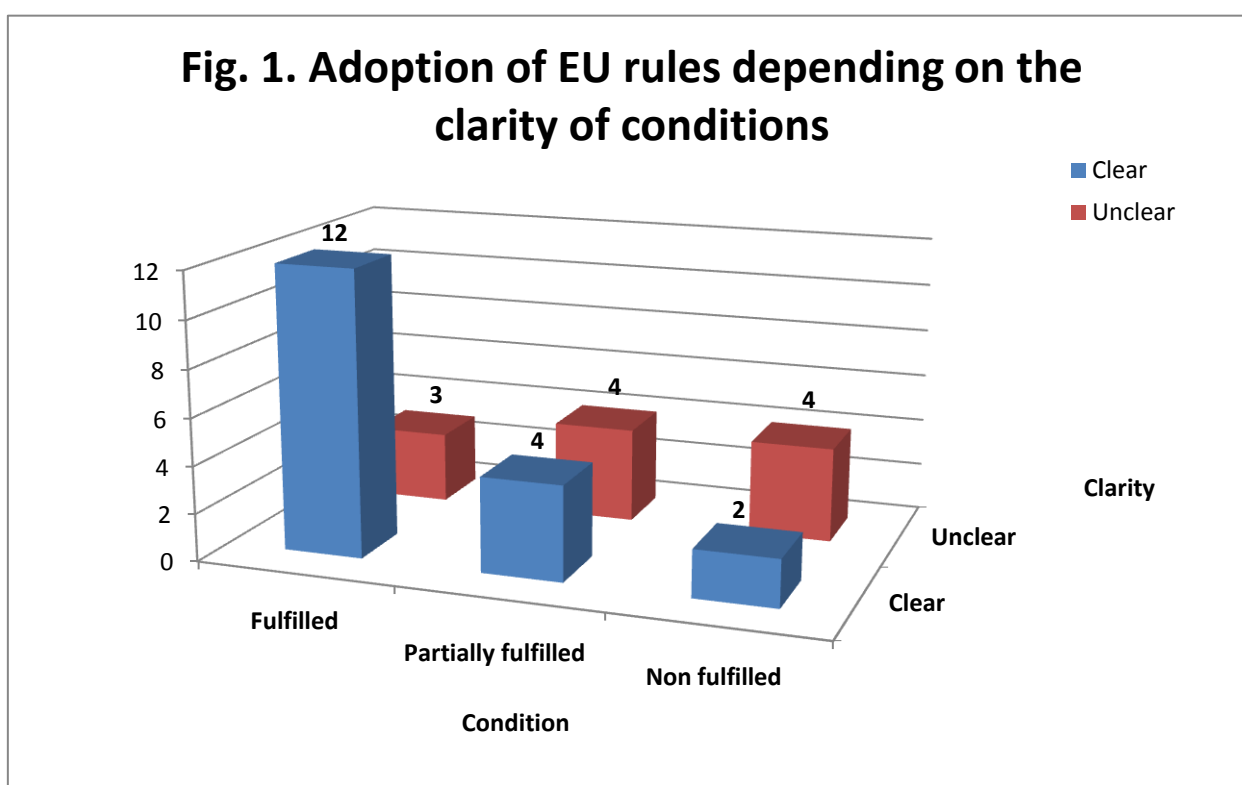
## Testing the hypotheses

### The determinacy

#### Hypothesis no. 1

#### 1) The likelihood of a condition to be adopted increases when it is part of a European model (acquis communautaire) and when the expected results/effects are measurable

According to this indicator, we have obtained 18 measurable conditions and 11 very general conditions. Figure 1 shows the differences between the two categories and a higher degree of fulfilment for the measurable conditions.

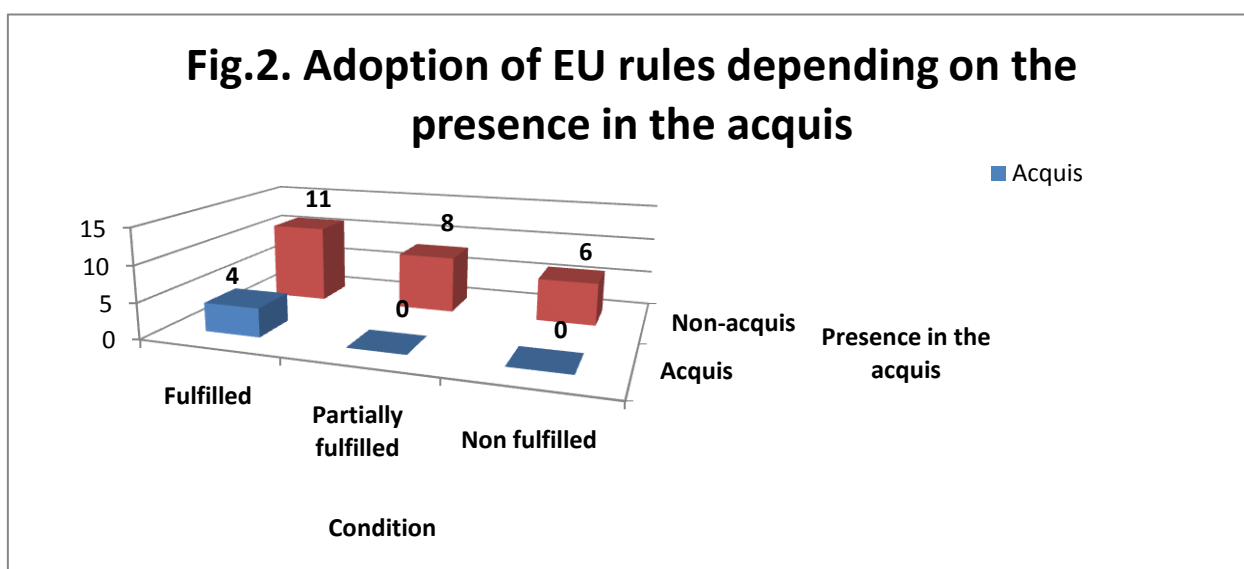


The second indicator concerned the presence of the conditions in the EU acquis. As we discussed previously, EU has a very limited acquis in anti-corruption. We considered that the conditions covered by EUMAP report (2002) were part of the acquis. These conditions were called:

- direct acquis
- `soft` acquis and
- the related areas (such as civil service law).

These are conditions applied for all CEE candidate countries. The `non-acquis` category covers the conditions developed by the EC on ad-hoc basis related to the special situation in Romania.

According to this indicator, we have identified only four conditions that were included in the acquis communautaire, all of them before the 2007 accession. All four were fulfilled by Romania. The two indicators were correlated logically – all requirements in the acquis were measurable (they referred to the adoption of laws or to the ratification of international conventions).



The first hypothesis has been confirmed: the likelihood of rule adoption increases when the conditions are clear and part of the acquis. When further analyzing Table 1, one can observe that in the first stage of the negotiations the conditions tended to be clearer and the acquis ones were also presented in this early stage. At the beginning of negotiations Romania registered serious shortcomings in a vast range of areas. While other chapters were easily closed, the corruption issue remained one with multiple problems and little progress. The EC was thus forced to imagine new conditions to solve this salient problem and it stepped out more from the acquis.

This led to a change in the nature of conditions. The EC moved from asking laws and new institutions to requiring their implementation and functionality. This inherently created conditions that were fuzzier and more difficult to be measured. To give an example, the EC made the transition from asking a Law on Prevention and Fight against Corruption in 1998 to requesting the Romanian authorities to assure the legal and institutional stability of the anti-corruption framework in 2007.

## 2) Adoption depending on key-moments

### Hypothesis no.2

#### The likelihood of EU anticorruption conditions to be adopted by Romania increased before the moments when EU was due to decide about accession and about applying the post-negotiations surveillance mechanisms

In order to test this hypothesis, we analyzed the conditions presented in Table 1 and measured for each important moment how many conditions were pending and how they were fulfilled or not in the measuring period. We considered three moments to be important for deciding potential rewards or sanctions for Romania:

Entire year 2004 - negotiations with Romania were completed in December 2004 and during 2004, the EU decision about completion was unclear. As the corruption was one of the last issues on the agenda, its importance was significant for EU's decision. According to our hypothesis, Romania should have made efforts to satisfy EU conditions during that year. Thus, we isolated in Table 1 the conditions pending at the beginning of 2004 and their status in December 2004, when the decision to finish negotiations was taken.

2005 – 2006 – despite closing the negotiations in 2004 and signing the accession treaty in April 2005, EU maintained the pressure on Romania under the threat of postponing actual accession with one year. Since the frequency of monitoring missions increased and remained constant, we took into consideration the entire period between establishing new status for Romania (April 2005) and the final EC report before accession (October 2006). The method was similar with the above-mentioned: we compared the pending conditions at the beginning of the period and their status at the final moment.

2007 – 2010 – although an EU member from 2007, Romania was still subjected to the so-called cooperation and verification mechanism, EU being able to activate the safeguard clause. EC established four benchmarks to measure Romania's progress.

#### Findings:

##### 2004

According to the theory, the bigger the reward, the more significant are the chances of EU rules to be adopted. The decision made in December 2004 (closure of negotiations) was the biggest possible reward for the Romanian government, since it meant closing a path that led directly to membership. This success was intensely exploited politically by Nastase government in the election that followed immediately. **Thus, we expected 2004 to be a period when the acceptance of EU conditions to be accelerated. But this seems not to be the case with anti-corruption conditions.**

Eight conditions were pending at the beginning of 2004. At the end of negotiations five of them were fulfilled and only three partially fulfilled (see Fig. 3). It is worth mentioning that the government had some attempts, especially by several emergency ordinances passed in April 2004, but the EC was still unsatisfied with the outcome. Despite the good intentions expressed by the government and intense scrutiny from the EC, the real progress was limited in 2004.

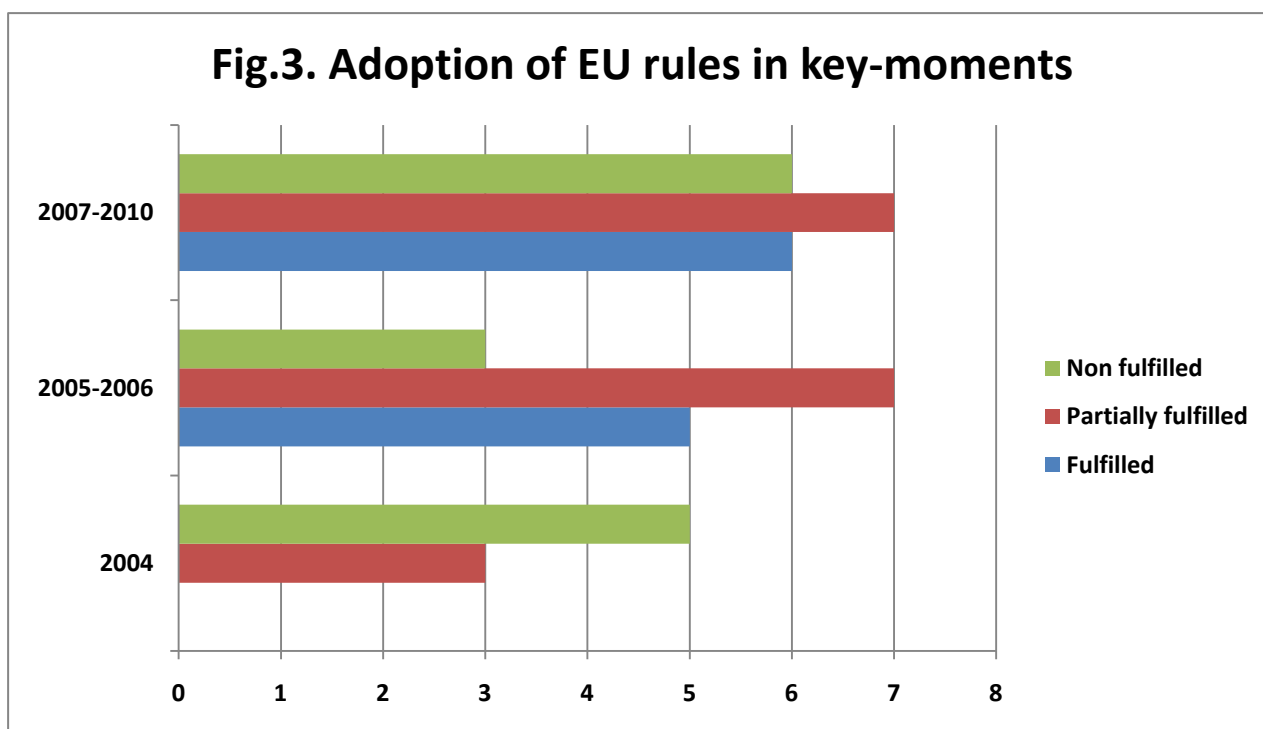
##### 2005 - 2006

After closing the negotiations, the logic of reward was replaced with the logic of punishment. Romania had to continue progress otherwise EU was entitled to postpone the accession with one year. According to the theoretical model, the promise of reward is more powerful than the threat. One should expect a decrease in rule adoption during this period compared with 2004. But this expectance is not confirmed by data. Out of the fifteen conditions pending at beginning of the period, five were fulfilled, seven partially fulfilled and three remained not fulfilled by the time Romania entered EU on 1 January 2007 (see Fig. 3). A quantitative analysis of Table 1 shows

that the conditions were inherited from the period before 2004 and were solved by the time of accession.

### 2007 - 2008

The logic of punishment continued after accession. Given the discontent with Romania's progress as well as the fact that after accession its usual intervention mechanisms were exhausted, the EC invented especially for Romania and Bulgaria the Cooperation and Verification Mechanism. It was meant to ensure the survival of some rules and institutions which were important for the EU anti-corruption agenda. But the perception was that the sanctions were not meant to be actually implemented or the threat was never credible. If the Romanian judicial decisions were not recognized, this would inflict costs against ordinary Romanians and less on decision makers. Moreover, once activated it would be costly for EU and for European companies working in Romania. Taking into consideration these characteristics, one should expect a decrease in the adoption of rules. This expectation seems to be confirmed by data. Out of the nineteen conditions derived from the EC's post-accession benchmarks, six were fulfilled and seven were partially fulfilled (see Fig. 3). The adoption rhythm is superior to the 2004 period although inferior to the period 2005-2006.



By comparing the three periods, a complex situation appears, and the hypothesis needs to be interpreted differently for each period. The hypothesis was thus infirmed for 2004. Theoretically, given the supreme reward (EU accession) the adoption rate should have been bigger. But in fact, the contrary occurred. For the period 2005-2006, the theory would have predicted the fall of the adoption rate because Romania had already obtained EU accession. As a matter of fact, the most concrete progresses were registered during that period. On the other hand, the result is a mixed one for the post-2007 period. The theory predicts less adoption, given the fact that the sanction

*was not very credible. The period of the CVM sees more adoption by comparison to 2004, although less than during the period 2005-2006.*

### **3) Veto players and adoption cost**

#### **Hypothesis 3**

**The likelihood of EU anticorruption conditions to be adopted by Romania decreases when they endanger the formal and informal immunity previously enjoyed by the Romanian decision-makers. In some cases, they prefer to adopt the conditions in a form that decreases the effectiveness of the new legislation and institutions.**

Schimmelfennig and Sedelmeier (2005) called the `Potemkin harmonization` the adoption of EU rules that produces only formal effects, while the decision-makers do not implement the new rules which they will try to undermine in practice.

Apparently it is hard to make the distinction between a real harmonization and the Potemkin-like one because you have to assume that decision makers have other intentions than their public positions. Having in mind this methodological limit, I still proceeded to create another indicator making the difference between:

- Those conditions which could have been limited only to formal effects if the decision makers were unwilling to actually implement them. We called these `formal` conditions.
- Those conditions created by the EC in such a way as to consider them fulfilled only when they produce real changes (e.g. prosecuting cases, limiting abuses, controlling officials` assets) We called these `practical` conditions.

One may notice that all the initial conditions covered by the acquis were formal. The assumption was that after the adoption of some laws, they will be implemented. After several years of advocating laws and institutions which tended to remain pieces of papers or just institutional straw, the Commission started to push for practical results and drafted the conditions accordingly.

In order to better explain this difference, I will use as example the conditions no. 15 and 16 in the Table 1. Initially, the EC asked for the creation of an `independent agency to verify the statements regarding personal wealth`. The draft law presented by the government was significantly changed in the parliamentary committee. The changes clearly affected the capacity of the proposed agency to produce results. We considered this initial condition to be a `formal` one since it allowed Romanian decision-makers to create a toothless institution. Following the events in Parliament, in its next report, the EC came up with a more detailed condition: the new institution had to have the `responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken`. The new condition established minimum standards for empowering the agency and measurable criteria of activity, going from the `formal` category to the `practical` one.

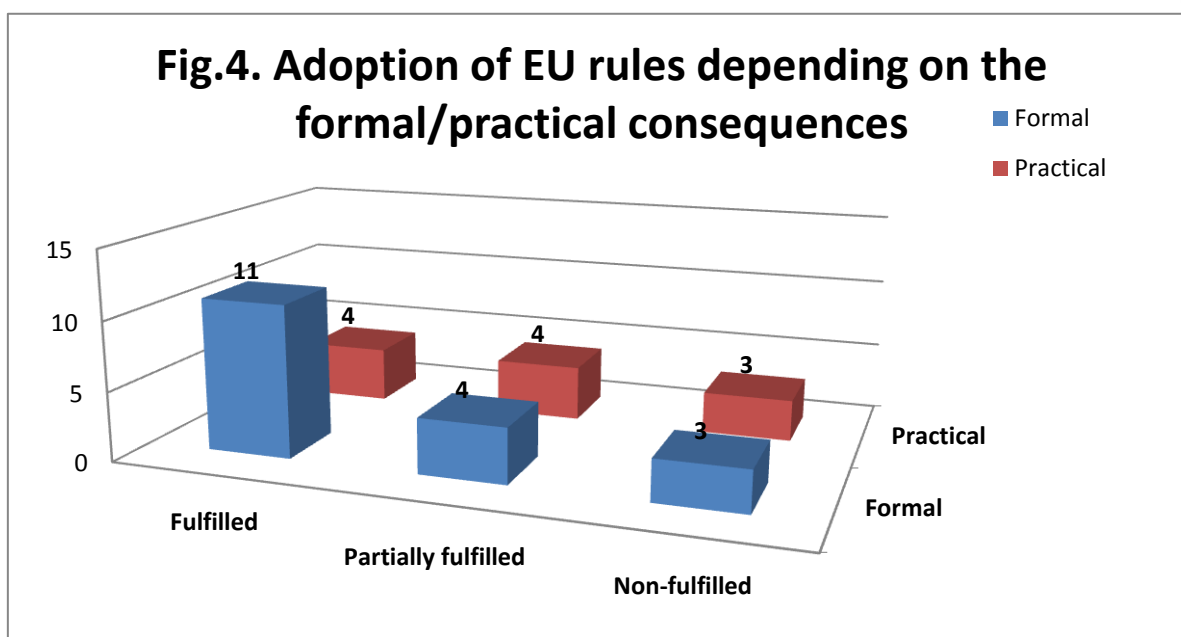


Fig. 4 shows the difference between degree of fulfilment of formal conditions and the practical conditions. A quantitative analysis would also show that the formal and not fulfilled criteria have less practical weight (for instance, the elaboration of strategies). The most spectacular example of veto-players` intervention was the immunity enjoyed by former ministers and members of parliament. EU asked the removal of this immunity. The Romanian Constitution requests a special approval for prosecuting these categories (from a presidential commission in the case of ministers and the Parliament in the case of MPs). The law on ministerial responsibility extended this immunity to the former ministries. Former Justice Minister Macovei proposed a law to remove the immunity of former ministers. The new law was challenged at the Constitutional Court that decided that the former ministers should be equal with those in office. Thus, all cases were stopped. After the replacement of Macovei, the new Justice Minister changed the law again, dissolving the Presidential commission in charge with the approval. A new legal battle started and lasted for almost one year. As this was solved, a new problem occurred. The majority of prosecuted former ministers were MPs. Thus, the prosecutors needed the approval of the Parliament to continue while the parliamentary majority in the period 2007-2008 rejected the respective approvals.

The EC followed the cases involving high officials and praised the DNA for these actions. Moreover it established a special benchmark in 2006 which asked for the completion of high-level corruption cases. An excellent review of ways of blocking high-corruption cases was made by the independent expert W. De Pauw in a report for the European Commission („Expert Report on the Fight against Corruption / Cooperation and Verification Mechanism”; W. De Pauw; 12-15 November 2007). This report was not published by the Commission but leaked into the media and was published by *The Economist* on 3 July 2008.

#### 4) Influencing the internal equilibrium

#### **Hypothesis no. 4**

**The EU anti-corruption pressure affected the internal equilibrium of Romania and empowered the anti-status-quo actors. The likelihood of EU conditions to be adopted depended by the position of these actors, the conditions having more chances to be adopted when the reformist held power positions.**

The previous hypothesis took into consideration the institutions and the formal relations between Romania and EU actors, especially the Commission. But the interviewed experts raised the issue of the role played by the credibility of some persons involved in the process. It seems that exasperated by the formal adaptation with no concrete results, the Commission tended to invest credibility in some persons perceived as being committed to change the status-quo. Grabbe (2006) considers credibility of domestic actors as one of the main elements affecting EU reactions. Credibility seems to be assured by political will and concrete actions to implement the EU conditions.

The clearest example of investing credibility in Romania was the former Justice Minister Monica Macovei. When she was excluded from the government, *The Economist* concluded that: 'EU relied too much on individual politicians to back Romania's anti-corruption drive, notably Monica Macovei, a much-admired justice minister. She was soon fired after Romania joined the EU in January 2007'. Her replacer publicly accused her of manipulating the Commission in order to criticize Romania in the following reports (quoted in *Adevarul*, 13 June 2008). This has become a frequent accusation against Monica Macovei, but for anyone who was not involved in the political fight in Romania it is unclear how a marginalised person even in her own party could influence the European Commission and this given the fact more influent Romanian politicians have an open fight with the Commission, but without results.

Both supporters and critics recognized that Macovei enjoyed a special relation with EU's officials. She brought credibility in the process and her internal position was boosted by the open support received from Brussels. But who supported who? A more logical explanation refers to the EU influence model that we discuss here: EU rules change the internal equilibrium in the targeted countries by giving the possibility to anti-status-quo players to act and by placing status-quo supporters on a defensive position.

In other words, EU influence creates the conditions for encouraging the reformist players while it is up to each internal political player to benefit (or not) from this change of situation. From the interviews made for this report with persons working within the Commission on Romania's reports, it results that Macovei gave credibility to the process, while her internal position rose following the open support from Brussels. One may conclude that we had a mutual influence.

Is this differential empowerment visible in our methodology?

When we discussed the second hypothesis, we had already tested the adoption of EU conditions in the period 2005 – 2006. This was the period when Macovei held the ministerial position. As the Fig. 3 shows, this was the period when the most pending conditions were adopted (comparing it with 2004 and 2007 – 2008 periods). We discussed these findings above taking into consideration the key moments. The assumption was that in 2004 the reward for adopting EU rules was the biggest (closing negotiations). But this assumption was not confirmed by data, since the 2005 – 2006 period shows the most successful rate of complete fulfilment of conditions. **Thus we must conclude that differential empowerment of reformist actors such as Macovei was more important for the adoption rate than the timing of EU key decisions on Romania.** This assumption is supported by qualitative analyses of the Table 1. One can notice that some of the conditions only partially fulfilled in 2005 – 2006 refer to measures changed or blocked by other veto-players (such as the above-mentioned issue of immunity for former ministers, where the law proposed by the Justice Ministry was rejected by the Constitutional Court and later changed in the Parliament).

The empowerment factor is sustained also from the reversed perspective. If the empowerment of the reformists increases the likelihood of rule adoption, we may assume that once the EU leverage decreases, the internal equilibrium changes again in the favour of status-quo actors and some of the reforms are undone. This assumption was confirmed in Romania's case.

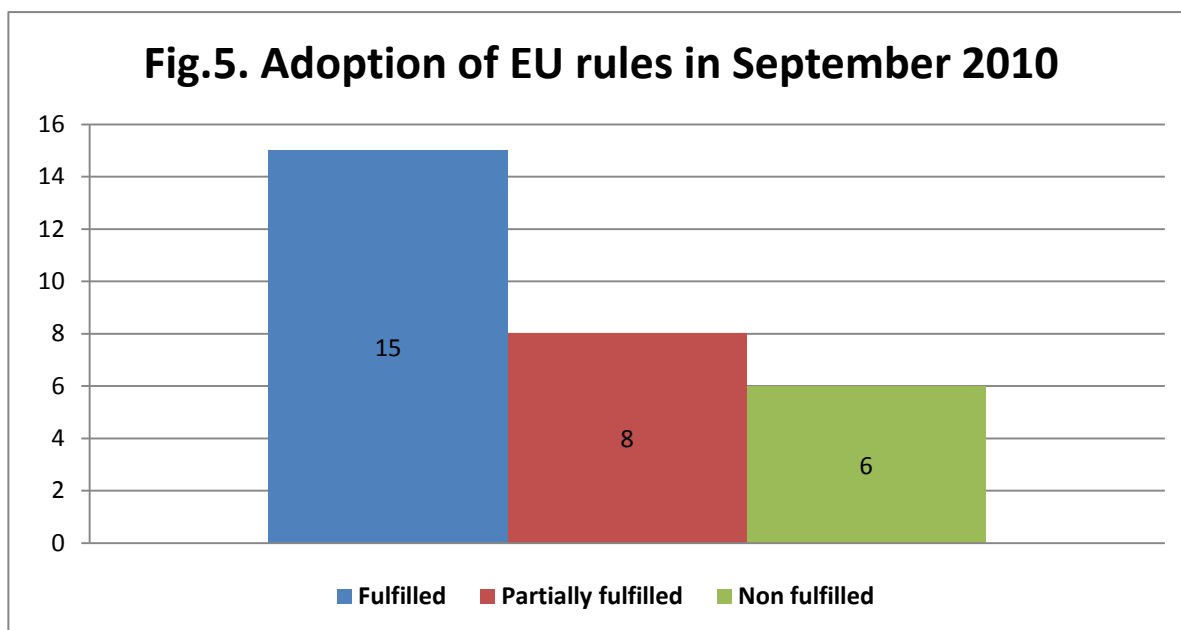
A change of discourse was visible immediately after accession. The main argument was that Romania had already entered the EU, so the Commission should not criticise an EU member. The logical presumption was that once part of the EU, the power of the Commission decreased as the reward had already been received. This was also the moment when the EC's reports became openly critical towards the Romanian Parliament after this institution became an active player in changing the legislative rules and which allowed high-corruption cases to be blocked or delayed. EC's report from 2008 criticises directly the Parliament for blocking high-corruption investigations. An independent report asked by the EC and leaked to the media bluntly stated that: *'Instead of progress in the fight against high-level corruption, Romania is presently regressing, on all fronts, in the fight against corruption. Many of the measures that were presented, before Accession, to be instrumental in the fight against corruption, have been deliberately blunted by Parliament or the Government immediately after Accession, while other factors have been instrumental in repulsing ongoing attempts to address high level corruption'*. (De Pauw report, 2007: 22)

After presenting a long list of such reversing measures, the report concludes that: *'If the Romanian anti-corruption effort keeps evaporating at the present pace, in an estimated six months time Romania will be back where it was in 2003'* (De Pauw report, 2007:23)

Out of our four initial hypotheses, three were confirmed and one was valid in rather exceptional circumstances (second hypothesis). Thus, we may conclude that EU rules adoption in anti-corruption policies in Romania depended on:

- the clarity of the conditions and their link to EU acquis
- the concrete possibility of EU conditions to affect the immunity of Romanian decision makers (this possibility created opposition among veto players)
- the power positions held by anti status-quo actors, favoured by EU in the negotiation process

An overall picture shows that out of the 29 conditions, fifteen were completely fulfilled, eight just partially and six not fulfilled (Fig. 5).



### Study-case: ANI loses powers, EU saves the situation

*On 14 April 2010, the law on the organization and functioning of the National Integrity Agency (ANI) was ruled unconstitutional following an exception raised in one case involving the confiscation of a large amount of money from a former parliamentarian. The Court considered that not only the confiscation of illegally acquired assets breached the Constitution, but also the obligation to make public the wealth statements infringed upon the right to privacy. Moreover, the powers of ANI to investigate cases have a jurisdictional nature, the judges believed. Following the ruling of the Constitutional Court, all investigations carried out by the Agency were suspended. However, sources close to the investigation sources claimed that at that time the Agency was investigating 7 of the 9 judges of the Constitutional Court.*

*After a meeting with all parliamentary parties, the Romanian president recommended a fast-track amendment of the ANI law in accordance with the Constitutional Court requirements. In one of his speeches, the President highlighted the fact that EC reports might link Romania's lack of*

*progress in the judiciary with the accession to the Schengen area foreseen to take place in March 2011.*

*The new law was debated in the Senate on 12 May where it underwent major changes, namely the elimination of the asset control commissions and the elimination of criminal sanctions if the wealth statement is not filled in correctly. The new law led to serious criticism from the Romanian civil society which asked the President not to promulgate the revised law. Following the President's decision to send back to Parliament the new law for re-examination, the Chamber of Deputies took into account most of the President's suggestions, namely the re-introduction of the asset control commissions. However, on 30 June, the Senate adopted a law from which the asset control commissions were removed and the period in which dignitaries could be investigated was reduced from 3 years to only 1 year after the end of their mandate. Critiques raised by several ambassadors were perceived as an act of "political pressure at the decision-making level" by UDMR senator Gyorgy Frunda who was also the author of the above-mentioned amendments.*

*The new law was sent again to the Constitutional Court by the head of state on procedural grounds. The Court admitted that private income falls under the competence of the Senate as first chamber and under the competence of the Chamber of Deputies, where the final decision should be taken.*

*After wide criticism from the European Commission (CVM report issued in July 2010), on 16 August 2010, the Government re-introduced those provisions which had been previously eliminated by the Senate. The law was supported by a wide majority in the Chamber of Deputies, but in the absence of Social Democrats who argued that the new law might be used as a tool in the "political fight". The Senate accepted the new form of the law but reintroduced the obligation for trade union leaders to fill in wealth and interest statements. Although not open supporters of the new law, Liberals agreed to vote for its adoption as a way of supporting Romanian commitments within the European Union. The revised law was promulgated by the President on 31 August 2010.*

*Not only did the Liberals supported the Government in passing the new law on the organization of the National Integrity Agency, but also voted for the Small Reform Bill and an important amendment to the law on the functioning of the Constitutional Court which prevents the lawsuits from being stopped if an exception of non-constitutionality is raised. However, there is always a risk that the new law might be challenged at the Constitutional Court, ANI President Catalin Macovei believes. Furthermore, PM Boc stated that Romania regained some of the credibility it had lost when the law was amended.*

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Project financed by the European Union within the Transition Facility Programme 2007/19343.01.11 “Consolidating the support of civil society in the fight against corruption”

Project: **The Evaluation of the Effectiveness of the Mechanism for Cooperation and Verification in Justice. Recommendations for the Post-2009 Period** carried out by the Romanian Academic Society (SAR) together with the Romanian Center for European Policies (CRPE)

Editor: This present report was written by the Romanian Center for European Policies.

Date of publication: September 2010

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