

**The Interplay between Domestic
Politics and Europe: How Romanian
Civil Society and Government
Contested Europe before EU Accession**

by

Cristina Elena Parau

A thesis submitted in partial fulfilment of the
requirements for the degree of

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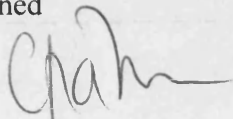


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Cristina Elena Parau

London, 6 November 2006

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Christine Eliza Farn

London 6 November 2000

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Abstract

The key research questions of this dissertation are: 'How do domestic actors construct Europe?' and 'How do they utilise it in seeking to empower themselves against other actors?' The questions of construction and utilisation of Europe are some of the most topical questions in Europeanization. The first question addresses constructivist/sociological concerns. The second addresses the issue of winners and losers (differential empowerment). Both are key issues in the literature of Europeanization and yet have been little addressed in the context of post-communist EU accession countries. This dissertation aims to bridge this gap by focusing on the post-communist country of Romania, a soon to be EU member-State. The actors under investigation are civil society, which emerged in Romania for the first time ever after 1989 and the central government Executive. The study covers the period during which the EU *acquis* negotiations were negotiated under the Social Democratic government led by Prime Minister Adrian Nastase (2000-2004). The data was gathered through in-depth case study and process-tracing, the methods found best able to disentangle a complex causal nexus.

The Europeanization literature is contradictory with regard to which domestic actors are constrained and which empowered: some scholars theorise that it empowers civil society (Diffusion); others that it empowers the Executive (Executive Empowerment); still others that it promotes co-operation between them (Network Governance). The empirical evidence so far has been inconclusive. This dissertation shows that only a small elite made of civil society entrepreneurs and government Executives constructed and utilised Europe in the pre-membership phase, to empower themselves relative to other actors, particularly opponents. The empirical data support two of the classical Europeanization theses in the literature: the Diffusion and the Executive Empowerment Theses. The Diffusion Thesis better explains civil society empowerment near the beginning and at the peak of *acquis* negotiations, although some evidence also favours Executive Empowerment. This latter thesis better explains the powerlessness of civil society at the close of negotiations, although some evidence for Diffusion was also found. No evidence was found supporting Network Governance. Instead evidence was found in favour of its critics, namely support for the claim that the EU (or Europe) empowers an elite in both civil society and the State.

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Thank you to all of my interviewees, who carved out precious time to answer my detailed and sometimes intrusive questions. I wish to thank especially certain European Commission officials in the Delegation in Bucharest, in DG Enlargement and DG Environment, but who took the trouble to talk to me in more than one occasion; Members of the European Parliament; the former senior civil servants and Ministers in the Environment Ministry and the National Agency for Mineral Resources; a senior official in the negotiations team; the Vice Presidents and former Director of the Rosia Montana Gold Mining Corporation; Members of the Romanian Parliament. All of these people requested anonymity and therefore I cannot fully acknowledge them here, as I would like.

I am particularly indebted to Radu Mititean from Cyclo-Tourism for his time and energy to provide me with detailed accounts of civil society involvement in the Rosia Montana and the Bechtel case, and for his feedback on my drafts; and to Alex Gota and Hans Bruno Fröhlich in Sighisoara for providing me with much empirical material which they meticulously collected during the Dracula Park campaign, half-expecting that someone might write a dissertation one day about it! I am also grateful to Sherban Cantacuzino and Nicolae Ratiu from the Pro Patrimonio Trust, and to Jessica Douglas-Home from the Mihai Eminescu Trust. Thanks to all of you! Any factual mistakes or misinterpretations of the data are mine and have been caused inadvertently.

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This dissertation has traced not only the breakout of constraints by Romanian norm entrepreneurs trying to better the *status quo*. It also traced my own breakout of the constraints imposed on me by my upbringing under Ceausescu and the damaging Socialist conditioning imposed on every Romanian by that regime. Such conditioning proved the most difficult part of my past to shed, and it is likely that the process has not ended.

Abbreviations

CEE	Central and Eastern Europe
EIA	Environmental Impact Assessment regulations
EP	European Parliament
GRP	Greater Romania Party
MP	Member of the Romanian Parliament
MEP	Member of the European Parliament
NGO	Non-governmental and non-for-profit organisation
PSD	Social Democratic Party
RMGC	Rosia Montana Gold Mining Company
SAR	Romanian Academic Society
TEN	Trans-European Transportation Network
UDMR	The Democratic Union of Magyars in Romania
UNESCO	The United Nations Educational, Scientific and Cultural Organization

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Chapter 1: The Europeanization of domestic politics: bottom-up and actor-centred

This dissertation endeavours to understand how Europe has affected the domestic politics of the accession country of Romania. The research questions are, ‘How do domestic actors construct Europe?’ and ‘How do they utilise it in seeking to empower themselves over other actors, particularly opponents?’ These questions will be explored through in-depth case studies drawn from the accession country of Romania, and by way of process-tracing, the method found best able to disentangle a complex nexus of causes and effects interacting over time.

Addressing these questions will make an original contribution to the field of Europeanization, which is concerned with studying the impact of European integration on domestic governance processes and structures.¹ Despite an explosion of research into this field in recent years, the outcomes of Europeanization and the processes that constitute it remain empirically underexplored. This is true all the more of the Europeanization of domestic politics in the accession countries of Central and Eastern Europe (CEE)², henceforward referred to as East Europeanization.

Several themes drawn from the Europeanization literature for their relevance to these questions are reviewed below, in particular: the top-down vs. the bottom-up approach; the ‘differential empowerment’ of domestic actors through Europe; and the Europeanization of State-civil society relations. The last section details the design of this dissertation, and outlines the contents of the thesis.

¹ Simon, Hix and Klaus H. Goetz, ‘Introduction: European Integration and National Political Systems’ in Klaus H. Goetz and Simon Hix (eds.), *Europeanised Politics? European Integration and National Political Systems* (London: Frank Cass, 2001).

² See for example Kenneth Dyson and Klaus H. Goetz, ‘Europeanization Compared: The Shrinking Core and the Decline of “Soft” Power’ in Kenneth Dyson and Klaus H. Goetz (ed.) *Germany, Europe and the Politics of Constraint*, Proceedings of The British Academy, 199 (Oxford University Press, 2003), p. 373.

1.1 The top-down approach

This section provides an overview of the ‘top-down’ Europeanization paradigm, the dominant approach to date. Its limitations will be highlighted, especially: the difficulty of establishing causality as opposed to mere correlation; the excessive focus on ‘the EU’ at the expense of the domestic arena; and the fogginess of a theorisation that overemphasises institutions and marginalises actors and agency, as opposed to making both part of the explanation.

The ‘top-down’ approach purports to explain the impact of the EU on the domestic arena as being the causal effect of EU ‘mechanisms’. This approach commits the researcher to a view of the EU as key or intervening ‘independent variable’; as an external ‘agent’ or ‘force’ which causes determinate effects in member-States, the ‘dependent variable’; as a ‘superior legislator’ pressurising ‘inferiors’ to adapt; or even as a ‘menu’ of institutional and policy templates to be ‘downloaded’.³ For Europeanization to occur in the way assumed in this paradigm, two ‘necessary’ conditions must be in place first: ‘misfit’ and ‘adaptational pressure’.⁴ ‘Misfit’ denotes some incompatibility between EU and domestic policy or institutions, which is supposed to create a pressure to adapt *from the top down*, to which ‘the domestic level’ responds, thus becoming Europeanized.⁵ From ‘measuring’ the ‘value’ of the misfit and/or the adaptational pressure (high, medium, low), one is supposed to predict the ‘degree’ to which a policy area or a country will be Europeanized.⁶

³ E.g., Kenneth Dyson and Klaus H. Goetz, ‘Living with Europe: Power, Constraint, and Contestation’ in Dyson and Goetz, *Germany, Europe*.

⁴ Tanja A. Börzel and Thomas Risse, ‘Conceptualizing the Domestic Impact of Europe’ in Kevin Featherstone and Claudio M. Radaelli (ed.) *The Politics of Europeanization* (Oxford: Oxford University Press, 2003) pp. 60-61.

⁵ Börzel and Risse, *Conceptualizing the Domestic Impact*; Claudio M. Radaelli, ‘The Europeanization of Public Policy’ in Featherstone and Radaelli, *The Politics*.

⁶ Radaelli, *The Europeanization of Public Policy*.

Europeanization mechanisms have been classified as ‘hard’ (‘vertical’), operating through pressure or coercion, or ‘soft’ (‘horizontal’), operating through ‘socialisation’ and ‘social learning’.⁷ This typology reflects rational-choice institutionalism, informed by the ‘logic of consequentialism’, and sociological institutionalism, informed by the ‘logic of appropriatedness’.⁸ These purport to predict Europeanization effects and the conditions under which they occur with the certainty of a logic similar to natural science models.⁹ The consequentialist logic predicts changes in the ‘domestic opportunity structure’ that empower or disempower domestic actors.¹⁰ The logic of appropriatedness predicts changes in informal institutions, *viz.* norms, values, expectations, ‘ways of doing things’, ‘collective understandings’, and identities at the domestic level.¹¹ These two types of mechanisms will be further detailed below, in the third section, where they become relevant to the discussion about differential empowerment (the key research question addressed by this dissertation).

In recent years, the dominance of the top-down paradigm has been questioned. One of the major criticisms has been its heavy reliance on dependent-independent variable design. This assumes a linear relationship that neglects the complexity of Europeanization phenomena, which entangle the EU with national and sub-national actors, structures and processes.¹² This assumption of linearity often fails to isolate the EU from other causes which might produce the same effect on their own; *e.g.*

⁷ Ibid.

⁸ James G. March and Johan P. Olsen, ‘The Institutional Dynamics of International Political Orders’, *International Organization* (1998), vol. 52, no. 4, pp. 943–69.

⁹ Börzel and Risse, *Conceptualizing the Domestic Impact*; Jeffrey Checkel, ‘Constructing European institutions’ in Mark Aspinwall and Gerald Schneider *The rules of integration* (Manchester, Manchester University Press, 2001); Jeffrey Checkel, ‘“Going Native” In Europe?: Theorizing Social Interaction in European Institutions’, *Comparative Political Studies* (2003) vol. 36, no. (1/2), pp. 209-231.

¹⁰ Börzel and Risse, *Conceptualizing the Domestic Impact*, p. 58; Kevin Featherstone, ‘Introduction: In the Name of ‘Europe’’ in Featherstone and Radaelli, *The Politics*, pp. 9, 15; Radaelli, *The Europeanization of Public Polic*’.

¹¹ Börzel and Risse, *Conceptualizing the Domestic Impact*, pp. 65- 6.

¹² Featherstone, *Introduction*; Johan P. Olsen, The Many Faces of Europeanization, *Journal of Common Market Studies* (2002), vol. 40, no. 5, pp. 921-952(32).

globalisation, new public management.¹³ ‘Top-down’ scholars sometimes assume causality on the basis of temporal consistency between an EU policy and domestic effects, when in fact, the ‘causality’ may be mere correlation.¹⁴ The habit of conceiving Europeanization in terms of causal effects has meant that researchers, knowing what they are looking for before going into the field, often only see what supports their views.

Key concepts of the top-down model, such as ‘misfit’ and ‘adaptational pressure’, have been found to predict poorly how either polities or policies will adapt to the EU.¹⁵ Europeanization has been detected in the absence of any (discernable) misfit or adaptational pressure.¹⁶ Notions such as misfit may add value to theory in the study of the Europeanization of laws and policies, where ‘hard’ evidence like policy documents are available for comparison; but the notion becomes much airier when one speaks of norms, values, and systems of beliefs.¹⁷ As regards the differential empowerment of domestic actors, studies have shown that one cannot assume a correlation between an abstraction like ‘misfit’ (even where it can be defined) and the response of domestic actors.¹⁸ Misfit might be ‘a good starting point’, but Europeanization cannot be fully understood if ‘the effects on actors [are not] considered’.¹⁹ In addition, the critics of ‘misfit’ and ‘adaptational pressure’ charge that they have no objective existence, but are matters of human interpretation and

¹³ Featherstone, *Introduction*, p. 4; Klaus H. Goetz, ‘European integration and national executives: a cause in search of an effect’ in Goetz and Hix, *Europeanised Politics?*

¹⁴ Kevin Featherstone, *The Political dynamics of external empowerment: the emergence of EMU and the challenge to the European social model 2001*, p. 13.
<http://www.lse.ac.uk/collections/europeanInstitute/articles/featherstone1.pdf>

¹⁵ Antoaneta Dimitrova and Mark Rhinard, ‘The power of norms in the transposition of EU directives’, *European Integration online Papers* (2005), vol. 9, no.16, p. 7, < <http://eiop.or.at/eiop/texte/2005-016a.htm>>.

¹⁶ Hix and Goetz, *Introduction*, p. 9; Sophie Jacquot and Cornelia Woll, ‘Utilisation of European Integration – Europeanisation from a Sociological Perspective’, *European Integration online Papers* (2003), vol. 7
<http://econpapers.repec.org/article/erpeioxx/p0104.htm>; Radaelli, *The Europeanization of Public Policy*

¹⁷ Radaelli, *The Europeanization of Public Policy*.

¹⁸ Mark Thatcher, ‘Winners and Losers in Europeanisation: Reforming the National Regulation of Telecommunications’ *West European Politics* (2004), vol. 27, no. 2 pp. 284 – 309, (p. 304).

¹⁹ *Ibid.*

construction.²⁰ Thus, they are difficult to ‘operationalise’ for purposes of empirical method.²¹ Furthermore, they are not easily applied to the study of domestic institutions ‘in crisis’ or institutions that are being built from scratch – as in often the case with institutions in the CEE accession countries)²² – where there is nothing on the ground that can be compared with an EU institution.

Theoretically, these top-down mechanisms have been couched in the terms of the new institutionalist paradigm. They overpredict behaviour based on the alleged constraining and constitutive determinism of institutions. Even actors’ most basic characteristics (*e.g.* identity) are subjected to reductionist determinisms to the neglect of investigating their actual preferences, beliefs and ideas, culture and ideology.²³ They neglect the fact that actors do not only follow institutional rules, they also create, destroy and modify them. Rational choice institutionalist approaches have so far dominated the literature, even though their logic is not incompatible with that of constructivism/sociological institutionalism.²⁴ The latter, with its amalgamation of approaches and assumptions, and its focus on intangible actor characteristics, has been much less theorised or studied empirically, as it presents researchers with serious operationalisation problems.²⁵ In the last few years the two perspectives been employed in tandem in the context of European studies with the aim of establishing which of the two institutionalisms has more explanatory power. The results have

²⁰ Dyson and Goetz, *Europeanization Compared*, p. 373.

²¹ Dimitrova and Rhinard, 2005.

²² Radaelli, *The Europeanization of Public Policy*.

²³ For a similar critique see Jacquot and Woll, 2003; Ulrika Mörth, ‘Europeanization as Interpretation, Translation, and Editing of Public Policies’ in Featherstone and Radaelli, *The Politics*.

²⁴ James, G. March and Johan P. Olsen, ‘Elaborating the “New Institutionalism”’, *ARENA Working Paper* (March 2005), no. 11, <<http://www.arena.uio.no>> (accessed 3 June 2006), p. 3.

²⁵ Dimitrova and Rhinard, 2005; Featherstone, ‘The political dynamics of external empowerment: the emergence of EMU and the challenge to the European social model’, in Andrew Martin and George Ross (ed.) *Euros and Europeans: monetary integration and the European model of society* (New York: Cambridge University Press, 2004), p. 228.

remained inconclusive so far.²⁶ This dissertation draws on insights from both frameworks, but these are regarded as complementary rather than competitive.²⁷ They are expected to explain different pieces of the puzzles encountered in the case studies.

The 'top-down' approach, with all its faults, has been exported to the study of Eastern Europe. The scope for top-down Europeanization here has been assumed to be much larger than in the old EU member-States, because of the highly asymmetrical power relations between the EU and the candidates.²⁸ EU accession conditionality has been assumed to be the key top-down Europeanization mechanism, which, combined with the significant misfit of the Communist legacy, would generate strong adaptational pressure that would transform every aspect of CEE governance.²⁹ Accession fever was so strong that Europeanization sometimes happened through mere 'passive leverage';³⁰ the EU needed to do little – its sheer attractiveness caused the CEE countries to Europeanize by anticipation.³¹ Once negotiations began, the Commission found itself enabled to influence governance in these countries, even where formal EU rules were lacking, with only guidelines, recommendations and 'informal pressures' (*a.k.a.* 'informal conditionality').³² Having no room to bargain over either the accession conditions or their evolution,

²⁶ Jeffrey Checkel and Andrew Moravcsik, 'A constructivist research programme in EU Studies?' *European Union Politics* (2001), vol. 2, no. 2, pp. 219-248; see also special issue of *Comparative Politics* February-March 2003.

²⁷ For a similar approach see Wade Jacoby, *The Enlargement of the European Union and NATO: Ordering from the Menu in Central Europe*. (Cambridge, Cambridge University Press, 2004), p. 196.

²⁸ Featherstone, *Introduction*, p. 19.

²⁹ Heather Grabbe, 'How does Europeanization affect CEE governance? Conditionality, diffusion and diversity', *Journal of European Public Policy* (2001), vol. 8, no. 6, pp.1013-1031; Heather Grabbe, 'Europeanization Goes East: Power and Uncertainty in the EU Accession Process' in Featherstone and Radaelli, *The Politics*, pp. 314 - 5; Barbara Lippert, Gaby Umbach, Wolfgang Wessels, 'Europeanization of CEE executives: EU membership negotiations as a shaping power', *Journal of European Public Policy* (2001), vol. 8, no. 6 pp. 980 – 1012.

³⁰ Anna Milada Vachudova, *Europe undivided: democracy, leverage, and integration after communism* (Oxford, New York: Oxford University Press, 2005).

³¹ Grabbe 2001; Lippert, Umbach et al., 2001.

³² Grabbe, *Europeanization Goes East*, p. 309; James Hughes, Gwendolyn Sasse, and Claire Gordon *Europeanization and regionalization in the EU's enlargement to Central and Eastern Europe: the myth of conditionality* (New York: Palgrave Macmillan, 2004).

except for temporality (transition periods), the candidates merely downloaded ready-made EU models.³³ Their transformation was further facilitated by the fact that they were required to harmonise quickly with an EU much more integrated than it had ever been before, in any of the previous enlargements;³⁴ and by the fact that their political elites, keen to abandon illegitimate Communist-era institutions, emulated EU institutions in order to ‘prove themselves ... worthy member states’.³⁵

As more empirical evidence accrued, the dominance of the top-down approach to East Europeanization began to be questioned. The net impact of EU conditionality appeared limited if one expected to see it everywhere, looking ‘across the board’ – over all policy domains in all the countries of CEE. On the contrary, conditionality seemed to have rather a ‘differential’ effect, depending on the country and the policy area; in some cases the influence was strong, in others it was non-existent.³⁶ Above all, conditionality had a short time horizon. The EU’s leverage, whether active or passive, formal or informal, seemed to lose traction as soon as the candidate became assured of accession.³⁷ This having happened, domestic preferences were observed to ‘strongly re-assert[ed] themselves’.³⁸

By 2003-2004 it had become clear that the widespread expectations of the EU’s transforming the CEE countries were not being confirmed by the reality on the ground. Research on CEE Executives, for example, revealed some evidence of

³³ Grabbe, *Europeanization Goes East*, pp. 312 - 3.

³⁴ Andrew Moravcsik and Milada Anna Vachudova, ‘National Interests, State Power, and EU Enlargement’, *East European Politics and Societies* (2003), vol. 17, no.1, pp. 42-57.

³⁵ Grabbe, *Europeanization Goes East*, pp. 312 - 3.

³⁶ Antoaneta L. Dimitrova, ‘Enlargement-driven Change and Post-Communist Transformations: A New Perspective’ in Antoaneta L. Dimitrova *Driven to Change: The European Union's Enlargement Viewed from the East* (Manchester, Manchester University Press, 2004); Frank Schimmelfennig and Ulrich Sedelmeier (2004).

‘Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe’, *Journal of European Public Policy*, vol. 11, no. 4, pp. 661–679.

³⁷ Vaduchova, 2005.

³⁸ Klaus H Goetz, ‘The New Member States and the EU: The Challenge of Adapting to Europe’ in Simon Bulmer and Christian Lequesne *Member States of the European Union* (Oxford: Oxford University Press, 2005), p. 494.

Europeanization effects in the form of the emergence of Core Executives and the development of administrative capacity.³⁹ These effects, however, were found to be strictly confined to a few ‘enclaves’ of top-level ministerial bureaucracy.⁴⁰ Scholars found it problematic to attribute to the EU even observed effects which the EU specifically aimed for with programmes designed to Europeanize administrative capacity in CEE. In the case of the Twinning Programme, for example, any putative Europeanization effects were deflected by the large number of domestic variables supervening and interacting with them; *viz.*, the public administrative tradition of the EU twinning experts; the personalities and professional skills of those involved on both sides of the programme; the domestic actors’ perceptions of the aims of twinning and of the EU experts; the degree of existing bureaucratisation and administrative politicisation; the degree of domestic institutional stability; and language and culture.⁴¹ Such evidence indicated not only the difficulty of tracing the effects of putative EU mechanisms, but also the many domestic factors that lay beyond the reach of accession conditionality.⁴²

Conditionality did not produce clearly identifiable effects, and this came to be attributed partly to the fact that it left room for re-interpretation by the accession countries – particularly so where the EU *acquis* was ‘thin’. The Commission’s ‘fuzzy commands’ were too often turned against the goals of the EU in favour of domestic agendas. EU conditionality proved not a linear cause but a ‘tool bag of differentiated and shifting instruments including prescriptive norms, institutional formats and preferences’, which domestic actors interpreted and deployed to serve their own

³⁹ Klaus H. Goetz, ‘Making sense of post-Communist central administration: modernization, Europeanization or Latinization?’, *Journal of European Public Policy* (2001) vol. 8, no. 6, 2001, pp. 1032 - 1051 (p.1038).

⁴⁰ *Ibid.*

⁴¹ Dimitris Papadimitriou and David Phinnemore, ‘Europeanisation, Conditionality and Domestic Change: the Twinning exercise and administrative reform in Romania’, *Journal of Common Market Studies* (2004), vol. 42, no. 3. pp. 619-39.

⁴² Grabbe, *Europeanization goes East*; Papadimitriou and Phinnemore, 2003.

purposes.⁴³ This called for research that would treat conditionality as a ‘process’ characterised by ‘the interaction between multi-level actors, perceptions, interests different rewards and sanctions, temporal factors, [and] institutional and policy compliance’.⁴⁴ More attention needed to be paid to domestic actors and institutions and how they made use of conditionality ‘from the bottom up’.⁴⁵ It was at this juncture in the development of the East Europeanization literature that the present research was taken up.

1.2 The bottom-up approach

Although the term ‘bottom-up’ has been loosely employed for some time,⁴⁶ only recently has it been singled out as a distinct approach to Europeanization research.⁴⁷

Bottom-up Europeanization is not a theory but a research design –

that ... start[s] from the analysis of the system of interaction (actors, resources, problems, style, and collective problem-solving rules) at the *domestic* level and ... raise[s] the question whether the EU affects this system of interaction and if so in what way (as a resource, as a reformulation of the problem, as a new set of collective problem-solving rules, as a constraint on what is feasible, as an alteration to the opportunity structure, as a new frame of reference, etc.).⁴⁸

As a research design bottom-up differs from top-down in the way it conceptualises Europeanization as well as in its research focus. The EU is no longer considered *the* independent variable but only as an ‘element in domestic political manoeuvres and in legitimising domestic reforms’;⁴⁹ or as an ‘arena’ where complex processes of ‘conflict’, ‘bargaining’ and ‘learning’ between the EU and domestic actors take

⁴³ Hughes, Sasse, and Gordon, p.3.

⁴⁴ Ibid.

⁴⁵ Goetz, *The New Member States*, pp. 480; Hughes, Sasse, and Gordon, p. 174.

⁴⁶ e.g. Marco Giuliani, ‘Europeanization in Italy: A Bottom-up Process?’ in Kevin Featherstone and George Kazamias (ed.) *Europeanization and the Southern Periphery* (Routledge, 2001).

⁴⁷ Dyson and Goetz, *Living with Europe*, p. 13.

⁴⁸ Claudio M Radaelli and Fabio Franchino ‘Analysing Political Change in Italy’, *Journal of European Public Policy* (2004), vol. 11, no. 6, pp. 941–53 (p. 948).

⁴⁹ Dyson and Goetz, *Living with Europe*, p. 13.

place.⁵⁰ Europeanization is conceived not as a linear independent-dependent variable mechanism, but as ‘an ecology of mutual adaptation’ where institutions, actors and processes ‘co-evolve’ and ‘interact’ with each other.⁵¹ This ecology takes into account feedback and evolution over time.⁵² Bottom-up approaches focus more on domestic actors and their expectations, values and beliefs; on how they ‘use’⁵³ Europe; on domestic political conflicts; and on domestic institutions; these have all been neglected by the top-down perspective.⁵⁴

The key question is not whether but how Europeanization happens. The question of ‘how’ might seem narrow in scope compared to the aspirations of political science for natural law-like generalisations.⁵⁵ However, given the many causality problems entailed by the top-down approach, the necessity for case study research to establish causation by tracing how domestic actors utilise the EU has been recently recognised.⁵⁶ Empirical evidence so far has been scarce for such propositions as that domestic actors deploy a ‘clear strategy to gain empowerment’ from the EU, e.g. by using it ‘to provide a justificatory discourse for domestic reform’.⁵⁷ Without such a linkage between the EU and domestic actors’ own ‘interests, strategies and resources’,⁵⁸ correlation is easily mistaken for causation, and theoretical conjectures about EU impact risk remaining unsubstantiated.⁵⁹ But even tracing how actors use the EU might not be enough to establish causation; Europeanization is so elusive that

⁵⁰ Klaus, H. Goetz, *Four worlds of Europeanisation*, Paper prepared for the ECPR Joint Sessions of Workshops. Turin, Italy, 22–7 March 2002, p.4

⁵¹ Featherstone, *Introduction*, p. 4.

⁵² One of the few East Europeanization studies that has paid attention to temporality is Hughes, Sasse and Gordon, 2004; see also Radaelli, *The Europeanization of Public Policy*, p. 34.

⁵³ What the literature calls ‘usage’ I shall label ‘utilisation’ in this dissertation; ‘usage’ connotes habit or custom, whereas the term ought to reflect rational choice theory, which is founded on *utility*.

⁵⁴ Dyson and Goetz, p. 13; Jacquot and Woll, 2003; Radaelli and Franchino, 2004.

⁵⁵ Alan S. Zuckerman, ‘Reformulating Explanatory Standards and Advancing Theory in Comparative Politics’ in Mark Irving Lichbach and Alan S. Zuckerman *Comparative Politics: Rationality, Culture and Structure*, (Cambridge: Cambridge University Press, 1997).

⁵⁶ Featherstone, *The political dynamics*, 2004, p. 226; Jacquot and Woll, 2003.

⁵⁷ Featherstone, *The political dynamics*, 2001, p. 13.

⁵⁸ Thatcher, p.286.

⁵⁹ Featherstone, *The political dynamics*, 2001, p.13.

alternative explanations, especially those centred on domestic variables, must always be considered.⁶⁰

The bottom-up approach at least meets these concerns halfway, as being more ‘empirically grounded’, more open to empirical data springing from unforeseeable sources which unexpectedly provide evidence for or against particular explanatory variables.⁶¹ In this sense the bottom-up approach is capable of combining the exploratory with the explanatory. The top-down method, by contrast, searches for just that evidence (and no other) which would verify a hypothesis formulated *a priori* with one dependent and one independent variable. By slipping this straightjacket, the bottom-up approach increases the likelihood, too, that one will be open to a wider range of effects – whether ‘cognitive’ or ‘material’; ‘direct’ or ‘indirect’;⁶² ‘intended’ or ‘unintended’.⁶³

Theoretically, bottom-up research has been carried out from both rational choice and constructivist perspectives, and sometimes both at once. The rational-choice research has focused more on how domestic actors incorporate the EU into their domestic strategies; how they utilise the EU as a material or cognitive resource to empower themselves; and how these utilisations affect domestic power relations.⁶⁴ Typologies of EU resources and of their utilisation have been identified; resources may be ‘material’ (e.g. EU organs, directives, funding) and ‘immaterial’ (e.g. ‘discursive references’ and ‘ideas’).⁶⁵ Strategic utilisation is possible because the EU leaves

⁶⁰ Featherstone, *The political dynamics*, 2001, p.13; see also Hughes, Sasse and Gordon, 2004.

⁶¹ Klaus H Goetz, *Does One Concept Fit All? The Regional Patterning of Europeanisation*, Paper presented at the UCL Europeanization workshop, London, June 2003.

⁶² Kenneth Dyson, ‘Economic Policies: From pace-Setter to Beleaguered Player’ in Dyson and Goetz, *Germany, Europe*, p. 208.

⁶³ Jenny Fairbrass, *The Europeanisation of Interest Representation: UK Business and Environmental Interests Compared*, Paper prepared for the conference, ‘Britain in Europe and Europe in Britain: The Europeanisation of British Politics?’ Sheffield Town Hall, 16 July 2004, p. 5.

⁶⁴ Featherstone, *Introduction*, p. 16; Featherstone, *The political dynamics*, 2001, pp. 12-13; Thatcher, 2004.

⁶⁵ Jacquot and Woll, 2003.

room for the ‘political discretion of national actors in translat[ing] European requirements’.⁶⁶ From the bottom-up perspective of domestic actors on the ground, a top-down ‘pressure’ may constitute an opportunity they can turn to their advantage (utilise).⁶⁷ For example, certain domestic actors (typically technocrats) have utilised the Economic and Monetary Union as a ‘*vincolo esterno*’ (external bind): they let themselves be ‘bound by EU constraints in order to obtain otherwise elusive reform at home and gain strategic advantage over their rivals’.⁶⁸

Utilisations of EU resources may thus be ‘strategic’, but they may also be ‘cognitive’ and ‘legitimising’ at the same time.⁶⁹ EU resources are utilised strategically when actors import them into the domestic arena to achieve a goal not otherwise possible; they are utilised cognitively when actors introduce ideas and discourses not available at the domestic level; they are utilised legitimisingly when actors refer to the EU in their discourses with the aim of legitimising their acts at the domestic level. Legitimising utilisation includes strategic and cognitive utilisations as well, just as cognitive utilisation includes strategic motivation; while strategic utilisation is the most common of all and can stand alone. Crucial to any of these utilisations is the actors’ recognition of the EU as a resource and the will to seize upon it.⁷⁰

The constructivist research, by contrast, assumes strategic behaviour to be important, but material interests are socially constructed.⁷¹ Consequently, constructivists have focused on how the EU shapes domestic actors’ identity; how EU policies are framed

⁶⁶ Ibid.

⁶⁷ Hix and Goetz, *Introduction*; Thatcher, 2004.

⁶⁸ Featherstone, *Introduction*, p. 9.

⁶⁹ Jacquot and Woll, 2003.

⁷⁰ Ibid.

⁷¹ John Gerard Ruggie, ‘What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge’, *International Organization* (1998), vol. 52, no. 4, pp. 855-885; James A Caporaso, Jeffrey T. Checkel, Joseph Jupille, ‘Integrating Institutions: Rationalism, Constructivism, and the Study of the European Union’ *Comparative Political Studies* (2003), vol. 36, no. 1-2, p. 14; Kenneth Dyson, ‘Whitehall Culture and the Treasury as Institutional Veto Player: A Constructivist Approach to Economic and Monetary Union’ *Public Administration* (2000) vol.78, no. 4, pp. 897-914(18).

through discourses;⁷² and how domestic actors ‘translate’, ‘interpret’ and ‘edit’ the often ‘ambiguous’ and ‘unclear’ EU rules.⁷³

The study of the bottom-up discursive construction of the EU has now become an accepted part of the research agenda in Europeanization.⁷⁴ Discourse is ‘a set of ideas’ and ‘a resource used by entrepreneurial actors to produce and legitimate those ideas’.⁷⁵ Discourses featuring the EU are now studied for their content, function and actual causal impact, from a variety of institutional perspectives, including rational-choice and sociological.⁷⁶ The content of discourses may be about knowledge, problems, actors and resources (*per* rational choice); or they may be more normative, richly referring to EU principles and values (*per* sociological institutionalism).⁷⁷ The function of discourses about the EU may be to mobilise and forge consensus (the ‘coordinative function’), or else communicate with the wider public for purposes of ‘public deliberation and legitimation’ (the ‘communicative function’).⁷⁸

Few are those who have tried to combine the two frameworks.⁷⁹ Some have focused on how the ideas, beliefs and discourses that actors have constructed about the EU have shaped their strategic utilisations of it.⁸⁰ In Cyprus, for example, the government constructed the EU as a ‘tool for modernization’ and then used

⁷² Dyson, *Whitehall Culture*; p. 647; Donatella della Porta and Manuela Caiani, ‘The Europeanization of Public Discourse in Italy A Top-Down Process?’, *European Union Politics* (2006), vol. 7, no. 1, pp. 77–112; see Special Issue: Policy Change and Discourse in Europe, *West European Politics* (2004) vol. 27, no. 2.

⁷³ Mörth, 2003.

⁷⁴ Dyson and Goetz, *Living with Europe*, p 14.

⁷⁵ Vivien A Schmidt and Claudio M Radaelli, ‘Policy Change and Discourse in Europe: Conceptual and Methodological Issues’, *West European Politics* (2004) vol. 27, no. 2, pp. 183 – 210. (p. 192).

⁷⁶ Kevin Featherstone, ‘Cyprus and the Onset of Europeanization: Strategic Usage, Structural Transformation and Institutional Adaptation’ in Featherstone and Kazamias, p. 280; *West European Politics* special issue, March 2004, vol. 27, no. 2.

⁷⁷ Claudio M. Radaelli, and Vivien A. Schmidt, ‘Conclusions’, *West European Politics* (2004), vol.27, no.2, pp.364–379, (p. 364).

⁷⁸ *Ibid.*

⁷⁹ e.g. Dyson, *Whitehall Culture*, 2000; Featherstone, *The political dynamics*, 2004;

⁸⁰ Dyson, *Whitehall Culture*, 2000; Jacquot and Woll, 2003.

strategically to shift onto it the blame for contested and opposed domestic reforms.⁸¹ Others have noted that in practice the two dimensions – strategic and constructivist – have proved to be ‘simultaneously at work in ways that are difficult to disentangle empirically’.⁸² Material changes (integration of financial markets) can lead to cognitive changes (new policy paradigms), which in turn affect domestic power relations.⁸³ In Britain, for example, the EMU was constructed only by a ‘small trans-national policy community’ of finance ministers and central bankers, the same ones who ended up being empowered by the EMU.⁸⁴

The bottom-up approach, however, has been much less applied to the study of East Europeanization.⁸⁵ A notable exception is Hughes *et al.* (2004), who by conceptualising conditionality as a process, departed from the dominant dependent-independent variable approach.⁸⁶ The scarcity of bottom-up research is surprising, in that domestic actors in CEE with opposite ideological views and policy preferences have both been noted to utilise the EU as ‘ammunition’ against each other, to delegitimise the other side of domestic debates about policy or institutions.⁸⁷ Elites at all levels have been noted taking the leverage out of EU conditionality, manipulating, co-opting and redirecting it, thus gaining unexpected influence over the accession process and its consequences.⁸⁸ In the teeth of the widespread assumption of a power asymmetry between Brussels and accession countries, there seems nonetheless to be room for bottom-up utilisations of the EU by domestic actors.⁸⁹ And yet, except for

⁸¹ Featherstone, *Cyprus and the Onset of Europeanization*, p. 142.

⁸² Dyson, *Whitehall Culture*, p. 647.

⁸³ *Ibid.*

⁸⁴ *Ibid.* p. 645.

⁸⁵ Goetz, *The New Member States*, p. 478.

⁸⁶ Hughes, Sasse and Gordon, p. 2.

⁸⁷ Grabbe, *How does Europeanization affect CEE*, p. 1028.

⁸⁸ Grabbe, *How does Europeanization affect CEE*, pp.1013-1031; Hughes, Sasse and Gordon; Cristina E. Parau, *Europeanisation as Empowerment of Civil Society: All Smoke And Mirrors?*, paper presented at the European Consortium for Political Research Conference, Budapest, 8-10 September 2005.

⁸⁹ Goetz, *The New Member States*, p. 500.

occasional references, little research has investigated how domestic actors in CEE utilise (let alone construct) the EU, and whether these constructions and utilisations affect domestic power relations.

Those few scholars who have focused on domestic politics in CEE and its interaction with EU politics⁹⁰ still conceptualise the EU as an independent variable exercising ‘passive’ or ‘active’ leverage over domestic actors.⁹¹ Even though such studies took the domestic level into account, they did not take on the viewpoint of domestic actors or the possibility that they might bring about Europeanization at their own initiative and in ways not altogether intended by Brussels. I argue that this is an important gap in our knowledge, especially about CEE, where actors matter the most, in that formal institutions ‘are [still] far from fixed’ and have only limited ‘socialising effects’⁹² (at least by comparison with West European institutions). It is this gap which the present study contributes to bridging.

1.3 Europeanization as differential domestic empowerment

This section reviews the literature on one Europeanization theme that will figure prominently in the instant dissertation: the differential empowerment of domestic actors, its causes and outcomes. Gaps and inconsistencies exist in the theory and even more in the body of empirical data. In this first section the theory on how differential empowerment is produced by the EU will be reviewed; in the second, the theory and empirical evidence about the actual outcome of differential empowerment. Where specific theories have been formulated or data found about the actor-collectives featured in this dissertation, *viz.* environmental civil society and the

⁹⁰ Jacoby, 2004; Vachudova, 2005.

⁹¹ *Ibid.*

⁹² Goetz, *The New Member States*, p. 498.

Executive, these will be reviewed.

The most common domestic-empowerment argument has been made from a rational-choice perspective: the EU presents domestic actors a new ‘opportunity structure’, or set of political potentials which they may utilise to achieve domestic goals.⁹³ Whether any such utilisations lead to a redistribution of power has been theorised to be influenced by two main domestic conditions. One is the number of ‘veto points’ – ‘individual or collective actors whose agreement is necessary for the change of the status quo’⁹⁴ – that withstand Europeanization; the other is the existence of ‘formal institutions’ supporting the domestic Europeanizers.⁹⁵ How far domestic actors are able to exploit the new opportunities ‘depends on their previous resources and identities shaped by domestic institutions (access to public sphere and decision-making bodies, financial means, information, legitimacy)’.⁹⁶ If veto points are few and/or formal institutions supportive enough, Europeanization is supposed to manifest as an actual redistribution of power among domestic actors. Some win, others lose (‘differential empowerment’).⁹⁷

Less widespread has been the argument that differential empowerment might also ensue from a ‘trickling down’ of EU (and international) norms and ideas.⁹⁸ Norms and values might be ‘diffused’ to the domestic level by trans-national advocacy

⁹³ Börzel and Risse, *Conceptualizing the Domestic Impact*, p. 57; Featherstone, *The political dynamics*, 2004, p. 227; Christoph Knill and Dirk Lehmkuhl, ‘How Europe Matters. Different Mechanisms of Europeanization’, *European Integration online Papers* (1999), vol. 3, no. 7, <<http://eiop.or.at/eiop/texte/1999-007a.htm>>; Radaelli, *The Europeanization of Public Policy*.

⁹⁴ George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton, NJ: Princeton University Press, 2002), p. 19.

⁹⁵ Börzel and Risse, *Conceptualizing the Domestic Impact*.

⁹⁶ Kitschelt, 1986 ‘Political Opportunity Structures and Political protest: Anti-Nuclear Movements in Four Democracies’, *British Journal of Political Science* 16:57-85; Thomas Risse, Maria Green Cowles and James Caporaso, ‘Europeanization and Domestic Change: Introduction’ in Maria Green Cowles, James Caporaso and Thomas Risse, *Transforming Europe. Europeanization and Domestic Change* (Ithaca and London: Cornell University Press, 2001), pp. 11-12.

⁹⁷ Tanja A. Börzel and Thomas Risse, ‘When Europe Hits Home: Europeanization and Domestic Change’, *European Integration online Papers* (2000), vol. 4, no. 15, <http://eiop.or.at/eiop/texte/2000-015a.htm>; Börzel and Risse, *Conceptualizing the Domestic Impact*, p. 64; Featherstone, *Introduction*, p.16.

⁹⁸ Jeffrey Checkel, ‘International norms and domestic politics: bridging the rationalist-constructivist divide’, *European Journal of International Relations* (1997), vol. 3, pp. 473-95; Kevin Featherstone, 2004, pp. 228-9.

coalitions. These can challenge and even constrain domestic governments whose behaviour is not in line with such norms, by alerting the domestic public and parties to the international regime to the lack of compliance, and by supporting domestic protest groups.⁹⁹ Or norms and values might reach the domestic level through the ‘mechanisms’ of ‘socialisation’ and ‘social learning’ by the government elite.¹⁰⁰

Although such claims would suggest that sociological institutionalism can supplement rational choice to help us understand differential empowerment more fully, few have recognised its potential to explain puzzling aspects of differential empowerment that rational choice does not illuminate. However, a concrete phenomenon like differential empowerment may be hard to study from a constructivist/sociological perspective, focusing as it does on intangible variables like values, norms, and beliefs.¹⁰¹ The difficulty lies first in detecting, then in explaining how the actors’ constructions of Europe might alter their orientations and thus their behaviour. To overcome these difficulties, the mechanism of ‘socialisation’ or ‘social learning’ has been refined recently by the actor-centred concept of ‘norm entrepreneur’, which is easier to operationalise.¹⁰² Norm entrepreneurs (*a.k.a.* ‘moral entrepreneurs’ or ‘change agents’) may be individual actors or actor-collectives (*e.g.* social movements, epistemic communities) whose norms are ‘compatible’ with EU norms.¹⁰³ Through deliberative persuasion they ‘convert’ others, such as policy-making elites, to internalising these norms.¹⁰⁴

⁹⁹ Thomas Risse and Kathryn Sikkink, ‘The socialization of international human rights norms into domestic practices: Introduction’ in Thomas Risse, Stephen C. Ropp, Kathryn Sikkink (ed.), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999) p. 5.

¹⁰⁰ Checkel, 1997.

¹⁰¹ Dimitrova and Rhinard, 2005; Featherstone, *The political dynamics*, 2004, p. 227.

¹⁰² Featherstone, *The political dynamics*, 2001, p. 4.

¹⁰³ Börzel and Risse, *When Europe Hits Home*, p. 5; Börzel and Risse, *Conceptualizing the Domestic Impact*; Featherstone, *The political dynamics*, 2004, p. 229.

¹⁰⁴ Jeffrey T. Checkel, ‘Social construction and Integration’, *Journal of European Public Policy* (1999), vol 6, no. 4, pp. 545-60 (p. 552).

Regardless what the exact Europeanization mechanism may be, the Western literature contains many competing theses about the identity of those whom the EU is alleged to systematically empower over others. At a high enough level of abstraction, the empowered are supposed to be the ‘norm entrepreneurs’ who promote EU values. They may be empowered over those promoting contrary values.¹⁰⁵ Alternatively, the empowered might be domestic actors whose interests are ‘positively affected’ by Europeanization.¹⁰⁶ More concretely, the following domestic actors have been theorised as likely to be empowered by the EU: the executive is theorised to be empowered over the legislature; central government over sub-national government; the judiciary; ‘economic and monetary authorities’ over ‘ministries and para-state organizations dealing with social, cultural and other matters’; interest associations over political parties; business and professional associations over trade unions and social organizations; ‘specialized “sectoral” forms of associability’ over ‘broader “inter-sectoral” or class-based ones’.¹⁰⁷ Other theses include the Executive Empowerment thesis; the Diffusion thesis; and the Network Governance thesis.

As this dissertation focuses only on domestic civil society and the Executive, only the hypotheses relevant to this focus – the Executive Empowerment thesis; the Diffusion thesis; and the Network Governance thesis – will be evaluated. As the issue of differential empowerment has been poorly theorised and little empirically tested in the East Europeanization literature, the theory and evidence in the West Europeanization literature, and its adaptability to the Eastern context, will be reviewed here.

¹⁰⁵ Börzel and Risse, *When Europe Hits Home*, p. 5; Börzel and Risse, *Conceptualizing the Domestic Impact*; Featherstone, 2004, p. 229.

¹⁰⁶ Maria Green Cowles and Thomas Risse, ‘Transforming Europe: Conclusions’ in Cowles, Caporaso and Risse, *Transforming Europe*, p. 230.

¹⁰⁷ Philippe C. Schmitter, *The political impact of European Monetary Union upon ‘domestic’ and ‘regional’ democracy* (Istituto Universitario Europeo San Domenico di Fiesole, 2002), pp. 19-20; Risse, Cowles and Caporaso, ‘Introduction’, p. 11.

The Central Executive Empowerment thesis was propounded by Moravcsik (1994), who claims that the EU augments the political resources domestic central executives already have, leading to further centralisation of power at the expense of other domestic actors. Participation in international institutions like the EU redistributes power at the domestic level in a way that systematically benefits national executives. Moravcsik (1994) identifies four causal mechanisms of Executive empowerment: (a) ‘initiative’: internationalisation of the domestic policy agenda strengthens the Executive, as Executives generally control ‘foreign policy’, or international negotiations, and can easily exclude domestic alternatives from the beginning; (b) ‘institutions’: international agreements confront the domestic opposition with a *fait accompli* that can not be compromised or modified after the fact, and the resulting all-or-nothing choice renders opposition so costly that few veto points are left to challenge the Executive; (c) ‘information’: participation in an international organisation sets up an ‘information asymmetry’ with other domestic actors that they find expensive to overcome, allowing the Executive to ‘lengthen the leash’ binding them as agents to even their own principal-constituents; (d) ‘ideas’: participation in an international organisation furnishes the Executive with potential ideological justifications for domestic policies (e.g. the classic ‘the devil made us do it’), giving the Executive greater influence over the cost/benefit calculations of other domestic actors.¹⁰⁸ Of all international regimes, the EU is *par excellence* a power resource for national Executives, as decisions in so many policy domains are now made in Brussels, and the decisional process there is too costly for most domestic actors to participate in. These factors enhance the Executive’s relative capacity for action by

¹⁰⁸ Andrew Moravcsik, *Why the European Union Strengthens the State: Domestic Politics and International Cooperation*, Center for European Studies, Harvard University, Paper presented at the Annual Meeting of the American Political Science Association, New York, 1-4 September 1994.

isolating them from the pressures of domestic and trans-national interests.¹⁰⁹ Their autonomy is thus enhanced.¹¹⁰ The Executive Empowerment thesis – which Moravcsik further refined in 1996 by theorising the origins of government's preferences¹¹¹ – has been criticised on several grounds: it unrealistically treats the State as a unit; it relies only on foundational decisions, neglecting the cumulative influence of the EU routine; its key actors (Executive; societal interests) are unclearly defined;¹¹² and it is not a theory but a methodological approach.¹¹³

The main rival of the Central Executive Empowerment thesis is the Diffusion Thesis who claims that participation in the EU diffuses power from the central Executive to domestic civil society and sub-national governments.¹¹⁴ The EU provides new resources and opportunities to these actors, especially recourse to: EU supranational organs, empowering them to by-pass domestic constraints;¹¹⁵ pan-European networks empowering them to participate indirectly in EU decisional processes and influence EU policy independently of the domestic Executive;¹¹⁶ EU funding, enhancing their resources and action capacity; and EU legislation (*e.g.* the EIA Directive), enabling their direct participation in domestic decisional processes. Such resources are particularly important when the State is particularly hostile to civil society actors¹¹⁷ (as one may expect in Romania). Domestic Executives thus find themselves

¹⁰⁹ Klaus Dieter Wolf, 'Defending State Autonomy' in Beate Kohler-Koch and Rainer Eising (Eds) *The transformation of governance in the European Union*, (New York: Routledge, 1999), p. 234.

¹¹⁰ Kevin Featherstone, *Introduction*, p. 9.

¹¹¹ Andrew Moravcsik, 'Reply: The Choice for Europe', *Journal of European Public Policy* (1999), vol. 6, no.1, pp. 168–79.

¹¹² Daniel Wincott, 'Institutional interaction and European integration: towards an everyday critique of liberal intergovernmentalism', *Journal of Common Market Studies* (1995), vol. 33, no. 4, pp. 597-609 (p. 598); Jenny Fairbrass and Andrew Jordan, 'Protecting biodiversity in the European Union: national barriers and European opportunities?', *Journal of European Public Policy* (2001), vol. 8, no. 4, pp. 499 – 518.

¹¹³ Wincott, p. 598.

¹¹⁴ Risse, Cowles and Caporaso, *Introduction*, p.11.

¹¹⁵ *Ibid.*

¹¹⁶ Tanja A. Börzel, *Environmental leaders and laggards in Europe: why there is (not) a southern problem*, (Aldershot, Hampshire, England, Burlington: Ashgate, 2003).

¹¹⁷ Maria Green Cowles, 'The Transatlantic business dialogue and domestic business-government relationships' in Cowles, Caporaso and Risse, *Transforming Europe*, pp.159-79.

constrained by ‘alliances among sub-national and supranational actors’.¹¹⁸ The Diffusion thesis has been criticised for being descriptive, providing no ‘testable hypotheses’; for assuming too much sub-national governmental autonomy; for being too ‘top-down’; for over-relying on data about sub-national government, leaving other sub-national actors out of account; and for not looking beyond mere mobilisation to test whether sub-national governments do in fact have power to shape policy outcomes.¹¹⁹

The Executive Empowerment and Diffusion theses both assume an adversarial relation between State and civil society. By contrast, the Network Governance thesis posits that Europeanization does not empower one actor over another but transforms domestic governance, leading to co-operative relationships between state and non-state actors.¹²⁰ Participation in the EU, it is claimed, creates both constraints and opportunities for all domestic actors indiscriminately, empowering no set of actors over another, but increasing domestic actors’ mutual interdependence.¹²¹ The co-operative network mode of governance, having emerged and become dominant in Brussels, has diffused to EU member-States, where it is replacing other modes of governance (e.g. corporatist or statist).¹²²

None of these theses has been ‘conclusively proven’ to date,¹²³ all are inadequate to explain whatever differential empowerment has been observed at the domestic level – certainly if one looks across all member-States.¹²⁴ The empirical evidence is highly

¹¹⁸ Moravcsik 1994, p. 3.

¹¹⁹ Fairbrass and Jordan, p. 507; Mark A. Pollack ‘Creeping competence: the expanding agenda of the European Community’, *Journal of Public Policy* (1994), vol 14, no. 2, pp. 95–145.

¹²⁰ Beate Kohler-Koch, ‘The evolution and transformation of European governance’ in Kohler-Koch and Eising, *The transformation*.

¹²¹ Ibid.

¹²² Beate Kohler-Koch and Rainer Eising, ‘Introduction. Network Governance in European Union’ in Kohler-Koch and Eising, *The transformation*, p. 7.

¹²³ Schmitter, *The political impact*, p. 20.

¹²⁴ Börzel and Risse, *Conceptualizing the Domestic Impact*, pp. 54, 64; Schmitter, *The political impact*, p. 20.

mixed: no one class of actors or actor-collectives is found to be systematically empowered over any other. For example, empirical evidence from Britain, France, Germany and Italy (although in want of further testing) suggests that the EU might systematically empower certain State and certain societal actors: 'insofar as EC integration is controlled by governments and large business interests ... Europeanisation [might] systematically favour ... those interests'.¹²⁵ Others have claimed that European integration has weakened the State while strengthening civil society in the 'Southern periphery',¹²⁶ although which elements of the State or of civil society have been empowered has been left unclear.

Other types of evidence from the environmental field yield a similarly hazy picture. Environmental advocacy groups have sought to empower themselves over a recalcitrant State by alerting EU organs to their governments' non-compliance; by exploiting the independence of their domestic judiciaries; and by using the investigative procedures of their parliaments.¹²⁷ A number of studies have looked at the empowering effects of specific EU directives expressly designed to encourage public participation in the implementation of EU environmental law; for example, by allowing advocacy groups to file complaints over non-compliance before both domestic and EU enforcement bodies.¹²⁸ On the other hand, such directives are typically ambiguous enough to leave governments ample leeway for interpretation in implementation.¹²⁹ Governments may implement these provisions tardily and

¹²⁵ Thatcher, p. 306.

¹²⁶ P. C. Ioakimidis, 'The Europeanization of Greece: An Overall Assessment', in Kevin Featherstone and George Kazamias *Europeanization and the Southern Periphery* (Chippenham: Antony Rowe, 2001), p. 278.

¹²⁷ Cliona Kimber, 'Implementing European environmental policy and the Directive on Access to Environmental Information' in Christoph Knill, *Implementing EU Environmental Policy* (Manchester, Manchester University Press, 2000), p. 174.

¹²⁸ Tanja A. Börzel, 'Improving compliance through domestic mobilisation? New instruments and the effectiveness of implementation in Spain' in Knill and Lenschow *Implementing EU policy*.

¹²⁹ Sonja Bugdahn, 'Of Europeanization and domestication: the implementation of the environmental information directive in Ireland, Great Britain and Germany', *Journal of European Public Policy* (2005), vol. 12, no.1, pp. 177 – 199.

inconsistently, hindering civil society empowerment thereby.¹³⁰ The Access to Information Directive, for example – expected to empower civil society and constrain the Executive – has been found, in the case of France, to have had the opposite effect of enhancing the State’s legitimacy and authority.¹³¹ In other EU member-States, too, civil society groups have been constrained in exploiting EU directives. These constraints had been imposed on them by factors specific to the domestic society in question: the lack of public interest in environmental issues; the degree of civil society mobilisation before the advent of the EU; civil society actors’ own de-prioritisation of environmental issues; the characteristics of the domestic administrative ‘culture’, and its civic and political context. In poorer member states like Spain civil society mobilisation has been found to have been inhibited by a dearth of human, expert and fiscal resources.¹³² The Access to Information Directive did little to mobilise civil society in rich member-States such as France and Germany, where civil society is much more mature and would have been expected to utilise such opportunities.¹³³

Still, investigating the environmental policy field, others have concluded in favour of the Diffusion thesis.¹³⁴ Domestic environmental groups, operating within a closed domestic opportunity structure, used EU resources and opportunities – the supranational institutions such as the Commission and the European Court of Justice (ECJ) – ‘to outflank the government’, bringing about policy outcomes otherwise

¹³⁰ Christoph Knill and Andrea Lenschow, ‘Do new brooms really sweep cleaner? Implementation of new instruments in EU environmental policy’ in Knill and Lenschow *Implementing EU policy*, p. 274.

¹³¹ Knill and Lenschow, *Do new brooms*, pp. 260-1.

¹³² Börzel, *Improving compliance*; Börzel, *Environmental leaders*, 2003.

¹³³ Knill and Lenschow, *Do new brooms*, pp. 260-1.

¹³⁴ Fairbrass and Jordan, *Protecting biodiversity*, 2001; Donatella della Porta, ‘The Europeanisation of Protest: A Typology and Some Empirical Evidence’, *EU Working Paper* SPS No. 2003/18, European University Institute, pp. 11-12; Christopher Rootes, ‘The Europeanization of Environmentalism’, in Richard Balme and Didier Chabanet (ed.), *L’action collective en Europe* (Paris: Presses de Science Po, 2002), pp. 377-404.

impossible.¹³⁵ Interestingly, Fairbrass and Jordan (2001) suggest that the EU might be used not only by environmental groups but also by the government: ‘the British authorities did not ... stand idly by, but worked assiduously (e.g. contesting ECJ court cases and mounting an energetic campaign to dilute the Habitats Directive) to nationalize EU biodiversity policy’.¹³⁶ Moreover, when the opportunity arose – with the strengthening of one biodiversity directive – the government used it to ‘claim political credit ... when the mood of public opinion became greener’.¹³⁷ Such findings support the Diffusion as much as the Executive Empowerment theses, as the authors seem to suggest, but, this dissertation will show, only if the empirical research takes into account the full cycle of events over time.

These are important findings, for this dissertation has empirically recorded evidence of both Executive and civil society empowerment, albeit in a very different context, increasing the scope for generalisability. Fairbrass and Jordan’s study (2001) is limited, as the authors themselves admit, to a case of so-called ‘low politics’ without evidence about what happens in ‘high politics’.¹³⁸ This means that the outcome might be different in ‘high politics’ cases, that is, cases that matter much more to the Executive. On the assumption that ‘high politics’ is whatever the Executive believes it is, the third case study herein, tracing differential empowerment in a major public procurement case, gives evidence of Executive empowerment in a high politics case. Research testing the Network Governance thesis has proved equally inconclusive.¹³⁹ Some have found evidence of network governance in most EU policy areas and of its

¹³⁵ della Porta, pp. 11-12.

¹³⁶ *Ibid.*, p. 513.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*, pp 514-515.

¹³⁹ Featherstone, *Introduction*, p. 8.

‘transformative repercussions’ on member-States.¹⁴⁰ Others have concluded that the thesis has been falsified: networking in Brussels was not found to have made the State more co-operative with other domestic actors, only with other member-States; the intergovernmental agreements made actually shut out other domestic and transnational actors, just as Moravcsik predicted.¹⁴¹ Critics of the Network Governance thesis have even suggested that ‘network governance may only be an euphemism for upper class rule’.¹⁴² The network governance thesis has also little to say about the possibility, evidenced in this dissertation, of rival networks one of which becomes more powerful than another.

In Eastern Europe, the issue of differential empowerment has been much less explored. Here, the focus of research to date has been primarily on formal institutional changes *e.g.* formal changes of the Executive, reform of the public administration.¹⁴³ Beginning only in 2004, a few authors were asking questions pertaining to ‘How EU conditionality changes the domestic opportunity structure?’ and ‘How does it change the balance of power at the domestic level, that is, who wins and who loses as a result and under what conditions?’¹⁴⁴ The discussion here is still incipient.

One of the claims made so far is that EU conditionality ‘changes the domestic opportunity structure in favour of domestic actors with independent incentives to

¹⁴⁰ Rainer Eising and Beate Kohler-Koch ‘Governance in the European Union. A comparative assessment’ in Kohler-Koch and Eising, p. 267; Kohler-Koch and Eising, *Introduction*, p. 7.

¹⁴¹ Wolf, *Defending State*, pp. 231 - 2.

¹⁴² Kohler-Koch and Eising, *Introduction*, p. 7.

¹⁴³ *e.g.* Dimitrova, 2004; Antoaneta L. Dimitrova, ‘Enlargement, Institution-Building and the EU's Administrative Capacity Requirement’, *West European Politics*, vol.25, no. 4, pp. 171-190; Barbara Nunberg *Ready for Europe: public administration reform and European accession in Central and Eastern Europe* (Washington, DC: World Bank, 2000) World Bank technical paper no. 466; see special issue *Journal of European Public Policy* (2001) vol. 8, no. 6.

¹⁴⁴ Antoaneta L. Dimitrova and Bernard Steunenberg, ‘Conclusions: the ‘end of history’ of enlargement or the beginning of a new research agenda?’ in Antoaneta L. Dimitrova, *Driven to Change: The European Union's Enlargement Viewed from the East*, (Manchester, Manchester University Press, 2004), pp. 181,189; Hughes, Sasse and Gordon, 2004; Jacoby, 2004; Schimmelfennig and Sedelmeier, p. 664.

adopt EU rules'.¹⁴⁵ Schimmelfennig and Sedelmeier (2004) created a model that purports to predict under what conditions the transfer of EU rules to accession countries will be successful. If the empowered are domestic actors with an incentive to adopt EU rules, then the Schimmelfennig-Sedelmeier model is relevant to the question of domestic differential empowerment. Although framed within the top-down dependent-independent variable design, some of the 'mechanisms' that go into their model are evidenced in the processes traced in this dissertation [see Conclusions Chapter]. However, with its more bottom-up, constructivist approach, this research goes beyond the top-down limitations of their model.

Schimmelfennig and Sedelmeier propound three models to explain when an EU rule will be complied with or not: the 'external incentives model'; the 'social learning model'; and the 'lesson-drawing model'.¹⁴⁶ The external incentives model predicts that EU conditionality creates incentives for compliance with EU rules. A state will adopt the EU rules if the EU rewards exceed the domestic adoption costs.¹⁴⁷ The social learning model predicts that EU rules will be adopted if domestic actors have already internalised EU identities, norms and values. They comply because they consider it 'appropriate behaviour', rather than out of fear of coercion. The lesson-drawing model predicts that policy-makers, out of an 'internal need' to improve the *status quo*, will seek to learn from the EU how best to solve domestic policy problems.¹⁴⁸ Schimmelfennig and Sedelmeier's model will be revisited in the general conclusions, where its applicability will be assessed in light of the empirical data revealed herein.

¹⁴⁵ Schimmelfennig and Sedelmeier, p. 664.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid., pp. 664-667

¹⁴⁸ Ibid., pp. 667-668

Schimmelfennig and Sedelmeier (2004) have also claimed that those empowered by EU conditionality are likely to be the domestic governments, as they are the ones that have authority over the implementation of EU rules.¹⁴⁹ Their claim is not new. Since East Europeanization research began, one of its foundational assumptions has been that accession negotiations concentrate power and resources in the hands of the Executive. The latter is thus empowered at the expense of other branches and levels of government, and of civil society.¹⁵⁰ Parliament, for example, has been said to be weakened by lack of information about accession negotiations, which the Executive could withhold from it.¹⁵¹ These claims have been based on the general knowledge that the Executive is *the* domestic actor charged with negotiating with the Commission. The argument that this strengthens the Executive, however, is weak. The EU *acquis*, as a substantial body of settled law, is non-negotiable except as to the implementation timetable. An accession country Executive, then, has no other choice but to agree to transpose it. This could hardly be called ‘empowerment’. The Executive may actually be constrained, as they cannot bargain with the EU over the content of the *acquis*. Moreover, the fact that the Executive does most of the work of accession does not necessarily empower them, as mostly they merely carry through tasks ‘assigned’ by the Commission. Even if other actors were to be involved in the negotiations – for example, even if Parliament had more information about the progress of negotiations – they would still have had no choice but acquiesce as much as the Executive, unless they were prepared to challenge accession itself.

The empirical evidence of domestic differential empowerment through accession to the EU is patchy, making it difficult to establish any definitive trend. Some scholars

¹⁴⁹ Ibid., p. 664.

¹⁵⁰ Grabbe, *How does Europeanization affect CEE*, pp. 1013-1031.

¹⁵¹ Ibid.

have claimed that overall, the accession process has marginalised non-State actors.¹⁵²

In Poland, Hungary and Romania, for example, it empowered the Executive relative to societal interests, the accession negotiations giving the Executive the excuse of ‘sheer policy overload’ and ‘time pressure’ to exclude everybody else from decision-making.¹⁵³ Such disempowerment of non-State actors has been noted even in policy domains where the EU has placed great emphasis on social dialogue (e.g. social policy).¹⁵⁴ By contrast, others have found that accession has in fact empowered civil society. In Slovakia, for example, signals from the EU had the effect of mobilising the political opposition, until then fragmented, who rose up to challenge the authoritarian government.¹⁵⁵

As for the effects of the EU on environmental advocacy groups, the picture is just as mixed. Environmental NGOs in the Czech Republic, Poland and Hungary, for example, resorted to conditionality to pressurise their governments to keep environmental issues on the agendas.¹⁵⁶ In other cases conditionality appears to have had no such inclusive effects, or has even hindered environmental civil society.¹⁵⁷ Others found that environmental groups in the Czech Republic, Poland and Bulgaria had made very little use of the EU or its conditionality to promote their interests.¹⁵⁸

At most, these NGOs had resorted to the Directive on Access to Information out of

¹⁵² Grabbe, *How does Europeanization affect CEE*, pp. 1013-1031; Umut Korkut, ‘The European Union and the Accession Process in Hungary, Poland and Romania: Is There a Place for Social Dialogue?’, *Perspectives on European Politics and Society* (2002), vol. 3, no.2, pp. 297-324; Schimmelfennig and Sedelmeier, p. 675; Magda Stoczkiewicz, Ivona Malbasic, Stephan von Pohl, *Billions for Sustainability? Lessons learned from the use of pre-accessions funds* (Prague: CEE Bankwatch Network, 2002).

¹⁵³ Korkut, p. 297.

¹⁵⁴ Schimmelfennig and Sedelmeier, p. 675.

¹⁵⁵ Marek Rybář and Darina Malová, ‘Exerting influence on a contentious polity: the European Union’s democratic conditionality and political change in Slovakia’ in Antoaneta L. Dimitrova *Driven to Change. The European Union’s Enlargement Viewed from the East* (Manchester: Manchester University Press, 2004); Vachudova, 2005.

¹⁵⁶ Barbara Hicks, ‘Setting Agendas and Shaping Activism: EU Influence on Central and Eastern European Environmental Movements’, *Environmental Politics* (2004), vol.13, no. 1, pp. 216 – 233, (pp. 221 - 2).

¹⁵⁷ Stoczkiewicz et al., 2002.

¹⁵⁸ Liliana B Andonova, *Transnational politics of the environment: the European Union and environmental policy in Central and Eastern Europe* (Cambridge, Mass.: MIT Press, 2004), p. 25; also noted by Stoczkiewicz et al., p. 26.

all the provisions of the *acquis*. Yet even here they referred more to the UN Convention on Access to Information.¹⁵⁹ They were constrained in utilising conditionality by ignorance, and by lack of information and material resources.¹⁶⁰

Likewise, the expectation that EU directives such as Environmental Impact Assessment and Access to Information would spearhead public participation in environmental decisions in CEE has not been corroborated by the available evidence. As of 2000 environmental NGOs were disempowered in utilising the *acquis* by manifold domestic constraints: (a) public administrative hostility to power-sharing, stultifying NGOs' input in EIA consultations; (b) a paternalistic State tradition, inuring the people to subservience before the State; (c) contempt for the rule of law; (d) the counter-hostility of NGOs to the public administration; and (e) the jaundiced attitude of private investors toward EIA procedures.¹⁶¹ As a result, civil society groups appeared to have lost trust in the EIA.¹⁶² Two years later, EIA consultations were still found to have been carried out improperly and untimely and did not seem to have lead to 'meaningful' public participation.¹⁶³ Funding, another top-down mechanisms intended by the EU to empower civil society in the post-communist countries, had likewise had little effect.¹⁶⁴

In sum, we know too little about the nature of differential empowerment, its causes and consequences. No studies of CEE have looked in detail at how accession to the EU has affected domestic power relations. Our theories about differential

¹⁵⁹ Andonova, p. 25.

¹⁶⁰ Andonova, p. 25; Stoczkiewicz et al. p. 26.

¹⁶¹ Joanne Caddy, 'Implementation of EU environmental policy in Central European applicant states: the case of EIA' in C. Knill *Implementing EU Environmental Policy: New Directions and Old Problems* (Manchester, Manchester University Press, 2000).

¹⁶² Ibid.

¹⁶³ Stoczkiewicz et al., p. 19.

¹⁶⁴ Petr Jehlička and Andrew Tickle 'Environmental Implications of Eastern Enlargement: The End of Progressive EU Environmental Policy?' *Environmental Politics* (2004), vol. 13, no. 1 pp. 77 - 95; see also Vachudova, p. 216.

empowerment are in want of empirical testing and refining. We know little about the mechanisms (if that is what they are) and the scope conditions leading to it. Few have endeavoured to understand differential empowerment from a bottom-up or from an actor-centred perspective. Fewer still have combined the rational-choice with the sociological perspective. We know little about what exactly it is that empowers domestic actors; for example, some authors refer to 'European integration', others to specific EU policies, still others to 'Europe' as a holistic context. We know even less about what they do to empower themselves; indeed, the very concept of self-empowerment is scarcely to be found in the literature. Even a basic concept like 'empowerment' has not been carefully defined. Neither has the identity of those empowered or disempowered been carefully noted; for example, 'civil society' is often used interchangeably with 'advocacy groups', ignoring more traditional civil society, like trade unions. The exact identity of the State actors being empowered or constrained is likewise seldom made clear.

Given this state of the literature, any empirical research that combines rational choice with sociological perspectives, and is carried on from the bottom up is on point. This dissertation does just this. It also provides much needed empirical evidence against which the literature's three main differential empowerment theses can be matched. Thus, the research reported herein tried to escape the box of investigating only issues considered 'doable' within the methodological framework of dependent-independent variable design. The bottom-up design adopted here should complement top-down research by revealing much about how domestic politics, as carried-on by domestic actors on the ground, interact with top-down opportunities and constraints. The aim is to contribute toward the construction of a well-rounded picture of the complex interactions between Europe and domestic actors, institutions and politics in

Romania (and by extension CEE as a whole).

1.4 The approach of this study

The research questions addressed in this dissertation are: ‘How do domestic actors construct Europe?’ and ‘How do they utilise it in seeking to empower themselves relative to other domestic actors?’ The key actors studied in this dissertation are the civil society and the Executive of the accession country of Romania.

Civil society is a ‘multi-faceted’ and ‘contested’ concept with manifold definitions.¹⁶⁵ The definition adopted here is ‘an arena of uncoerced collective action around shared interests, purposes and values’.¹⁶⁶ Civil society comprises manifold types of organisations: ‘registered charities, development non-governmental organisations, community groups, women's organisations, faith-based organisations, professional associations, trades unions, self-help groups, social movements, business associations, coalitions and advocacy groups’.¹⁶⁷ This dissertation will ignore trade unions, the form of civil society traditional in Communist Romania, in order to focus on those civil society actors and organisations that have emerged in Romania for the first time ever after 1989. These organisations, such as environmental charitable trusts, promote values and norms that have been alien to Romania for most of its history: democracy, the rule of law, accountability, human and minority rights, sustainable development, and cultural heritage. References to such organisations will be used interchangeably with ‘civil society’ or the ‘new social movements’. When other civil society actors than these are referred to, these will be clearly identified – as for example ‘trade unions’.

¹⁶⁵ Centre for Civil Society, London School of Economics, *Introduction*, <<http://www.lse.ac.uk/collections/CCS/introduction.htm>>, 2006 (accessed January 2006).

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

The reason for focusing on the new at the expense of traditional civil society is that the latter may be presumed on the inside of the Romanian political system already. This presumption is particularly safe whenever a government is formed by the Social Democratic Party of reformed communists, as was the case during the period studied in this dissertation. Trade unions, especially those in the mining and steel industries, which formed the core of the Communist economy, have been advantaged since 1989 compared to the new social movements. The ex-Communists who have ruled Romania for most of the transition have privileged the unions, with whom they have close connexions, in terms of allowing their participation in policy making. Although their influence has likely decreased since 1989 – a phenomenon observed across the CEE¹⁶⁸ – they are still more ‘on the inside’ of governmental decision-making than anybody from the new social movements. The latter, since their emergence in 1989, have remained ‘on the outside’ of domestic politics [see Chapter 2]. Will accession to the EU, which these more modernist and progressive elements of Romanian civil society have done so much to promote and support, empower them to become ‘insiders’? Will the uncooperative relationship between them and the State be recast? This research focuses on the central government Executive amongst State actors, who during the government of the Social Democrat Party between 2000 and 2004 was the undisputed centre of policy-making and political decision in all the cases studied herein [see Chapter 2].

The questions posed above will be answered within a comparative framework comprising three case studies. In two of the cases (Dracula Park and Rosia Montana) civil society were empowered quite contrary to all expectation, exerting

¹⁶⁸ Laszlo Bruszt and David Stark, ‘Who Counts? Supranational Norms and Societal Needs’ *East European Politics and Societies* (2003) vol. 17, no. 1, pp. 74-82. (p. 78)

unprecedented influence over the decisions of the Executive. It is a rare phenomenon indeed in Romania for the Executive to give up or delay implementing two economic development projects at all, let alone to do so for reasons of environmental protection and cultural heritage. In fact, these are the first such cases recorded since 1989, when the new social movements emerged for the first time. As no new social movements existed in Romania before then (or before Communism), the likelihood is that the Executive have never been thus constrained in Romania's recorded history. *Prima facie* Europe appears to have been the source of this empowerment. If this first impression holds true, then the question to be researched becomes, How did Europe yield this differential empowerment?

In the third case study (the Transylvania Motorway) civil society was not empowered at all, even although they constructed and utilised the EU in the same ways as in the other cases. The question is 'Why'? Interestingly, the Executive in this case was also observed to have constructed and utilised Europe to empower themselves over their rivals before the domestic elections.

This dissertation will endeavour to explain the variation in differential empowerment between civil society and the Executive; thus, it goes beyond the exploration of what opportunities afforded by Europe domestic actors have resorted to. It will aim to establish whether 'Europe', or Romania's accession to the EU, has actually empowered any domestic actors over others, and if so, how. As the literature suggests, the critical question is whether differential empowerment has actually happened, for mere mobilisation or deployment of Europe, or EU opportunities, may have little or no effect on domestic power relations. The interesting issue is whether Europe affects domestic power relations, not the fate of a single actor; indeed, the

main empowerment theories are differential, as the literature review above has shown.

For purposes of this dissertation, differential empowerment shall be defined relative to the Executive: – civil society will have been ‘empowered by Europe’ if without it, civil society would not have prevailed upon the Executive to change a given decision, and if the latter would not have changed that decision on their own absent Europe.¹⁶⁹ In other words, if the values and interests of the civil society challenging the substance and/or procedure of Executive decisions are reflected in the final outcome of the case, and those values and interests are such as the Executive, of themselves, would likely have disregarded, then civil society will have been ‘differentially’ empowered, that is, empowered over the Executive.

The novel proceeding in this dissertation’s method will be to go on from there and trace the Executive’s next move, without stopping at evidence of civil society empowerment. For, once constrained by this empowerment, the Executive may well have taken steps to escape or minimise the consequences, and/or the future application of a like constraint. In doing so, the Executive, too, may seek to empower itself through Europe. In this case, the ‘net amount’ by which civil society is *permanently* empowered might actually be smaller than would be found if one does not look beyond the first instance of differential empowerment.

Once differential empowerment has been established and accounted-for as due to Europe, the next step will be to compare the findings to the main Europeanization theses in the literature. This the Conclusions will do, by matching the empirical findings reported herein against these theses as well as against the Schimmelfennig-

¹⁶⁹ Steven Lukes, *Power : a radical view*, (London : Macmillan, 1974)

Sedelmeier model. As the theses in question are in want of empirical testing, as the authors themselves admit, the evidence from the case studies will be evaluated with a view to whether or not it supports any of them. As for the Schimmelfennig-Sedelmeier model of EU rule transfer, the evidence of the cases will be examined to determine whether or not the observed differential empowerment may have happened through one or more of the model's three mechanisms: 'external incentives', 'social learning' and 'lesson-drawing'. As any abstract model or thesis is to some extent a straitjacket, the processes traced herein will be explored for other insights as well.

The research design employed herein will be 'bottom-up', according to which Europe is conceptualised as '[one] element in domestic political manoeuvres'.¹⁷⁰ Thus the research herein begins in the domestic arena. Tsebelis posits the existence of 'nested games', a concept according to which domestic are involved in making rational choices in the domestic arena and beyond simultaneously.¹⁷¹ This suggests that nested games may be expected to be relevant to a bottom-up research design. It follows that participation in the EU should mean that domestic actors take part in at least two games at the same time, the domestic and the European. Therefore their choices might not be explainable without paying attention to their interests and motivations on both levels. A sub-optimal outcome at the EU level might bring substantial benefits at the domestic level and *vice versa*; therefore, to fully explain a domestic outcome, one might have to pay attention to both of these 'games'.¹⁷² This dissertation will take into account the nested-game situation, and show how in all cases the outcome was best explained by taking into account domestic actors'

¹⁷⁰ Dyson and Goetz, *Living with Europe*, p. 13.

¹⁷¹ George Tsebelis, *Nested Games Rational Choice in Comparative Politics* (Berkeley, University of California Press, 1991), p. 6.

¹⁷² Hix and Goetz, *Introduction*, p.12.

perception of the differential costs-benefits at the domestic *versus* at the European and other levels.

By contrast with most studies, 'Europe' shall include not only the centre of EU power in Brussels, but also the greater range of 'peripheral' phenomena that lie beyond the scope of the powers of the supranational institutions. This conception is broad enough to take into account the whole spectrum of activities initiated by domestic actors. These activities might include the utilisation of 'material' top-down opportunities provided by accession to the EU (*e.g.* EU law) as well as the construction of Europe through discourses. Bottom-up constructions and utilisations may even include instances where domestic actors deploy or attempt to deploy Brussels itself in ways not necessarily intended or even foreseen by Brussels in order to pressurise the Romanian government. Domestic actors might empower themselves by building alliances across EU member-States. Domestic new social movements are likely to be empowered by trans-national non-governmental organisations, which can provide them with 'know-how, ties and norms'.¹⁷³ Domestic actors may even go beyond Europe to empower themselves. An international institution like the UN may constitute a further set of opportunities to be exploited. If such phenomena are discovered to have a bearing on the cases studied, their interaction with 'Europe' and with the domestic arena will be traced.¹⁷⁴ This broadening of scope to encompass non-EU supranational phenomena is aimed to transcend the tunnel vision of the empirical research to date.

¹⁷³ Bruszt and Stark, p. 80.

¹⁷⁴ as for example suggested by Jeffrey J. Andreson, 'Europeanization in Context: Concept and Theory' in Dyson and Goetz, *Germany, Europe*, p. 39.

Whether Europeanization ought to include ‘discourses’ has been a contentious issue in the literature.¹⁷⁵ They shall be treated in this dissertation, inasmuch as the cases studies show that processes of social construction embrace discourses featuring Europe or the EU. Discourses are an important source of evidence for how domestic actors construct, perceive and interpret Europe, and yet they have been a neglected dimension in East Europeanization research. At least in Romania, all domestic political actors have learnt to deploy discourses featuring the EU; the phenomenon became so pervasive during the *acquis* negotiations that some referred to it as a ‘psychosis’.¹⁷⁶ Such an empirical observation suggests that discourses may be particularly relevant in the context of a post-communist accession country, where all actors suffer severe material, cognitive and legitimacy deficits. Discourses may thus constitute a weapon much needed by all political actors in the domestic arena. Without engaging in the full methodology of discourse analysis, the process tracing in the following case studies will remark the content and function of domestic actors’ discourses about ‘Europe’. It will also inquire whether systematic differences exist between the main actors’ discourses.

By contrast to other studies that have focused on the domestic arena, but at the macro-level,¹⁷⁷ the focus here shall be on the micro-level of the behaviour of actors. The explanation will give priority to actors (collectives and interactions), as opposed to systemic institutional or structurally based explanations. Actors will, however, be traced within their institutional settings.¹⁷⁸ Actors’ intentions remain subjective, in that ‘people act not on the basis of objective reality but on the basis of perceived

¹⁷⁵ Dyson and Goetz, *Living with Europe*, p. 14.

¹⁷⁶ Interview by the author with former senior civil servant, Romanian Environment Ministry, 11 November 2005.

¹⁷⁷ E.g. Vachudova, 2005.

¹⁷⁸ Fritz Wilhelm Scharpf, *Games real actors play: actor-centered institutionalism in policy research* (Boulder, Colo.: Westview Press, 1997), p. 12.

reality and of assumed cause-and-effect relationships operating in the world they perceive'.¹⁷⁹ It is for this reason that the key actors in this dissertation are analysed in terms of their values, expectations and perceptions, not just their competence and power resources. In line with the insights of sociological institutionalism, the institutional settings themselves are empirically researched but are not assumed to exhaustively determine actor behaviour.¹⁸⁰ This is because actors create, destroy and modify institutions and rules, as well as conform to them. Formal and informal institutions are discussed insofar as process tracing reveals their actual influence on actor behaviour. The hope is to illuminate the applicability of the new institutionalism to Eastern Europe, as actors in this part of the world have been theorised to behave according to different logics to Western actors.¹⁸¹

Believing along with others¹⁸² that the two main strands of new institutionalism are necessary compliments of each other, this dissertation intends to make full use of the insights of both frameworks. The theme of 'construction' draws on insights from sociological/constructivist concerns about how domestic actors perceive, interpret and construct Europe within their own frames of reference; whilst the theme of 'utilisation' corresponds to rational choice, focusing on how domestic actors use Europe, whether constructed (e.g. norms, values, discourses) or objective (e.g. EU organs, law), as a power resource and how they incorporate it in their domestic strategies and tactics.

The scarcity of empirical evidence indicates a method that will be as inclusive as possible, so as to capture whatever bottom-up utilisations of Europe domestic actors

¹⁷⁹ Ibid., p. 18.

¹⁸⁰ Ibid., p. 12.

¹⁸¹ Thanks to Dr. Vesselin Dimitrov, LSE, for drawing my attention over this issue.

¹⁸² Scharpf, 1997.

may deploy. As one cannot well predict what uses of Europe domestic actors will make, a method that follows the empirical evidence wherever it may lead was deemed best. The method used herein is therefore process tracing,¹⁸³ which has been little employed in either West or East Europeanization research. Process-tracing is the appropriate method for this dissertation which, given the under-specified state of the field as a whole and the degree of confusion still persisting, aims to identify processes of Europeanization¹⁸⁴ rather than prove or predict hypotheses. Although entailing disadvantages¹⁸⁵ – it is time-consuming and laborious, and risks becoming tunnel-visioned¹⁸⁶ – process-tracing nonetheless does bid fair to disentangle Europe from the many other causal factors at play.¹⁸⁷ It does so by allowing the careful mapping of changes over time as well as of interaction between variables. This is a major advantage given that establishing causality rather than mere correlation has been a thorny problem in Europeanization research.

Process-tracing may be inductive or deductive.¹⁸⁸ If inductive, it begins with empirical observation. One begins with what looks like a case of Europeanization and ‘work[s] back along the temporal causal chain, identifying the facts that have brought about the observed changes’.¹⁸⁹ If deductive, it begins with an a priori expectation that ‘[the] domestic configuration of interests, ideas, and/or institutions’ will be impacted and a specification of whether this will be due to Europe or to other

¹⁸³ Alexander George and Timothy J. McKeown, ‘Case Studies and Theories of Organizational Decision Making’ in Robert F. Coulam and Richard A. Smith (ed.) *Advances in Information Processing in Organizations*, vol. 2 (Greenwich, Conn.: JAI Press, 1985).

¹⁸⁴ Olsen, *The Many Faces of Europeanization*, p. 925.

¹⁸⁵ Anderson, p. 50.

¹⁸⁶ Jeffrey T. Checkel, ‘It’s the Process Stupid! Process Tracing in the Study of European and International Politics’, *ARENA*, Working Paper no. 26, October 2005, <http://www.arena.uio.no/publications/working-papers2005/papers/wp05_26.pdf>, (accessed, June 2006), pp. 3-4.

¹⁸⁷ Anderson, p. 50.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

factors.¹⁹⁰ As process tracing must be theorised,¹⁹¹ each case study does lay out a priori expectations about the key actors' likely acts, as well as about the expected outcome. These expectations are not intended to be predictive, but to establish some heuristic relationship between theory and fact.

The cases studied were selected inductively. The research reported herein began as an inquiry into the outcome of civil society empowerment immediately observable in two controversial affairs, the Dracula Theme Park at Sighisoara and the gold mining at Rosia Montana – an outcome that was unexpected and seemed *prima facie* to have been due to European interventions. As well as environmental organisations, both controversies attracted other actors, such as those advocating civic rights, respect for the rule of law and governmental accountability. The involvement of these actors has been traced too, as they showed up in every case. This alone makes this dissertation a valuable contribution to the field of Europeanization. Only 8.3% of the total number of Europeanization articles published between 1981 and 2000 focused on NGOs; by comparison for example, 33.3% focused on policy-making and 16.7% on foreign policy.¹⁹²

The original design of the research was to trace the fate of civil society alone; however, this proved impossible. The centrality of the political branch of the Executive in shaping the domestic opportunity structure for all other actors, civil society especially, was discovered to be an empirical reality, and the inclusion of the Executive in all cases could not be avoided. Indeed, the empirical facts of the third case obliged a focus on the Executive and their construction and utilisation of Europe, to the relative smaller focus on civil society – notwithstanding that the case

¹⁹⁰ Ibid.

¹⁹¹ Checkel, 2005, p. 5.

¹⁹² Featherstone, *Introduction*, p. 6.

had originally been selected because domestic civil society had been observed attempting to utilise the EU in challenging an expensive motorway. Process-tracing then revealed the Executive to have learnt no less than civil society how to construct and utilise Europe as a resource. In this case their construction and utilisation of Europe was aimed at empowering themselves not against their civil society opponents, which mobilised much later in this case, but against their domestic political opponents before the elections.

The cases studied were also selected for their controversial nature, in the hope that controversy might yield a particularly rich vein of information – a richness essential to any research that aims rather to fully understand Europeanization than to predict it. Being controversial, the cases received a lot of attention inside and outside Romania. This is a crucial advantage, in that it makes it likelier that the processes to be traced will be ‘unbroken’, that is, free of evidentiary gaps. The acts of the interested parties will be better documented, so that the real causes of the conjectured Europeanization may be discovered. The criterion of controversy, however, entailed a selection bias toward atypical cases. This in turn may well bias the empirical results, for example, toward ignoring, perhaps, more subtle forms of Europeanization like incremental normative drift.¹⁹³ It was endeavoured to compensate for these possible shortcomings by tracing not just one political contest but several of them in order of time. This diachronic approach should allow the detection of changes in actors’ resources as well as perceptions and learning as the evolution of these might become visible from one controversy to another.

The research method is comparative and therefore the cases were selected to be

¹⁹³ Frank Schimmelfennig, Stefan Engert and Heiko Knobel, ‘The Impact of EU Political Conditionality’ in Frank Schimmelfennig and Ulrich Sedelmeier (ed.), *The Europeanization of Central and Eastern Europe* (Ithaca and London: Cornell University Press, 2005), p. 34.

comparable. They have involved the same actors and actor-collectives, have unfolded under the same government, that is, in the period 2001-2004, when Romania was ruled by a coalition dominated by the Social Democrat Party under Prime Minister Adrian Nastase, and during the period in which Romania negotiated the *acquis*. This homogeneity between cases allows one to carefully trace the processes that lead to the differential empowerment outcomes studied herein and thus established with greater certainty a cause-effect relation. The third case (the Transylvania Motorway) is particularly important not only in that it provides crucial insight into the limits of civil society empowerment by the EU but also because it captures the Executive skilfully deploying the EU to empower itself.

The research design pays attention not only the interests and utilisations of actors but also their constructions, values and norms. Therefore, it has been important to select cases from a policy area where norms seem to have mattered, so as to shed light on both logics of behaviour. It has been asserted that certain policy areas are inherently more normative than others, hence more suitable for the sociological approach; whereas, the more technical sides of the *acquis*, having little 'normative content', would be unsuitable for a study like this one.¹⁹⁴ Norms are central to the environmental policy area, thus it has been considered a field of research that could shed light on values as well as interests. Accordingly, the three cases were selected from the interface of environmental policy and other policy domains; *viz.* cultural policy in the Dracula Park case; industrial policy in the Roşia Montana case; and transportation policy in the Transylvanian Motorway case.

¹⁹⁴ Dimitrova and Rhinard, 2005.

Romania is a 'critical case' for evaluating the potential of the bottom-up approach for furthering our understanding of Europeanization. The Romanian Executive in general and the Nastase government in particular was outstandingly hostile to civil society influence and participation, except for trade unions and business. Such conditions set up model cases of civil society reaction and mobilisation against the Executive. Moreover, Romanian civil society is poorly developed, operating under severe material and institutional constraints. The expectations as to civil society behaviour yield an antinomy that can only be resolved empirically. On the one hand, it is reasonable to expect that post-communist path-dependency would be strong enough to inhibit Europeanization: Romanian environmental organisations, notorious for their low capacity to mobilise, would fail to recognise the new opportunities, particularly as utilising them has been theorised to require entrepreneurs who take the initiative. On the other hand, like all other Romanians, civil society operates in a hostile environment of severe resource scarcity, they may reasonably be expected to seize any new opportunities created by Europe to escape these constraints and others imposed on them by a deeply hierarchical and centralised State. In addition, Romania, being a 'problem' candidate, has been a straggler in the accession process. Thus, one might expect Brussels' to take a stronger hand than in other cases, thus limiting domestic actors' room for manoeuvre from the bottom-up. If under such unfavourable conditions for bottom-up Europeanization, domestic actors are still observed to find ways to empower themselves, then *a fortiori* one should expect this to happen under less constraining conditions.

The evidence yielded is qualitative, and was adduced from a multiplicity of sources: more than 60 interviews face-to-face; telephone and email interviews with leaders of Romanian civil society organisations, academics, journalists, European Commission

officials, Members of the Romanian and of the European Parliament, Romanian senior civil servants and ministers, and the EU negotiations team; legal and policy documents; online discussion forums involving some of the most prominent civil society organisations, including the ones featured in this dissertation; news reports; and radio archives (*viz.* BBC Romanian and Radio Free Europe).

The dissertation is structured as follows. Chapter 2 provides a background to the case studies, and is divided into two parts. The first part gives a broad overview of the post-1989 Romanian political system; of the several Communist legacies; of the conditions under which the new social movements emerged and their relations with the Romanian State; and of the general characteristics of the Romanian Executive. Civil society is revealed to operate under a closed domestic opportunity structure that affords little or no participation in policy-making processes. The new civil society is fragmented, poor in material and human resources, with little capacity to mobilise, and lacking in credibility. In stark contrast, the Executive operates under few institutional or social constraints. The second part is an ‘up-close’ background of the condition of civil society, focusing on the complex genesis of one of the cases – the Rosia Montana gold project. It reveals that neither civil society nor the Executive made much of Europe for self-empowerment prior to the commencement of *acquis* negotiations in 2000.

Chapters 3, 4 and 5 expound the case studies, presenting them in chronological order: Chapter 3 expounds Dracula Park (2000-2001); Chapter 4, the Rosia Montana gold mining project (2002 – 2004); and Chapter 5, the Transylvanian Motorway affair (2003-2004). In the Dracula Park case, a small group of protestors constructed and utilised both Europe and UNESCO in hopes of constraining the Executive to abandon a tourism development in close proximity to the medieval Saxon town of

Sighisoara, in the heart of Transylvania. In the event the Executive chose to constrain itself, because it anticipated a loss of international reputation as well as difficulties that might have delayed accession to the EU. Although constrained, the Executive are observed to utilise Europe, too, in tandem with domestic power resources, in order to minimise their consequent liability. The Executive's self-constraint is best explained by a combination of rational-choice and sociological interpretations.

In Chapter 4, a group of farmers managed to controvert a government-favoured gold mining project that was likely to have harmed the environmental and cultural heritage of the ancient Roman mining town of Alburnus Maior, now called Rosia Montana. They were empowered by trans-national civil society entrepreneurs, who constructed the EU as a community of environmental values, and who lobbied MEPs and the Commission. These supranational actors then intervened in ways that obliged the Executive again to constrain themselves insofar as not to 'grandfather-in' under pre-EU rules as planned the permit to mine gold. They changed course because they anticipated being sanctioned by the supranationals and also by Hungary (by then a member-State), as well as losing reputation and credibility before other member-States. Pressurised to abandon the project, they managed to temporise, postponing its implementation instead. They constrained themselves (to the extent that they did) with less reluctance this time than in the Dracula Park case, because they perceived the material and political benefits of the mining project to be relatively minor at that time in comparison with the Park. At the same time, the Executive attempted to empower themselves by shifting onto the European Commission responsibility for taking a decision on the permit, in hopes that this might bolster their credibility and burnish their image before the EU.

Chapter 5 (the Transylvania Motorway) contrasts with the previous two cases. This case is one of ‘high politics’: the potential domestic political benefits of building the Motorway are much more significant to the political parties in the governing coalition, and the stakes in their re-election higher than in the other cases. But in order to reap these benefits, they must openly breach the EU law of public procurement, despite having just promised the Commission to honour it. The Executive eventually escape the full consequences of the ensuing supranational sanctions. They succeed because by then they had built trans-national alliances with interested Heads of State in the Council as well as with certain supranational politicians. One result of these alliances was the timely assurance of Romania’s accession to membership of the EU, which shielded the Executive from the damaging domestic consequences of the sanctions. This case also contrasts with the previous two in that civil society was not empowered. Despite the expectations raised by their prior successes, neither environmental nor any other civil society group exerted influence over any aspect of the Motorway. They failed to obtain anything that they wanted, even though the supranational organs constrained the Executive more rigorously than in Dracula Park or Rosia Montana.

Chapter 6 (Conclusions) compares and contrasts the findings of the several case studies, drawing the main conclusions of the dissertation. With the help of Europe domestic as well as trans-national civil society empowered themselves, and prevailed over the Executive. Power thus diffused to them, but only at those points of time in the accession process – the beginning and peak of the *acquis* negotiations – when the Executive was most sensitive to EU sanctions. Once the Executive became assured of membership, they regained their monopoly of policy planning, and proceeded as planned in the teeth of supranational opposition. They, too, utilised Europe to escape

constraints on their discretion imposed by Romania's accession to the EU, implementing a decision they deemed necessary to empower themselves before the elections over their opponents.

Chapter 2: The *status quo* before the advent of Europe

This chapter gives an insight into the Romanian *status quo* before domestic actors began to construct and utilise Europe to empower themselves domestically. The Europeanization processes documented in Chapters 3-5 are better evaluated against such a background. The chapter is divided in two parts. Part One (The Context) and its three sections provide an overview of the two key actors studied in the cases in this dissertation – the new social movements and the Executive, – and of their relations since 1989. It also sketches-in the main features of the current Romanian political system and its Communist legacies. Part Two (Domestic inertia before Europe) focuses in on some of the themes introduced in Part One by investigating in some depth the history of the Rosia Montana gold mining project before this became controversial in 2002.

2.1 The context

2.1.1 The new social movements

By contrast to other CEE countries, in post-1989 Romania the new social movements emerged from scratch. Ceausescu's 'totalitarian-sultanistic' regime was particularly harsh never venturing any of the de-Stalinization that everywhere else in CEE permitted some reform of the Communist Party and of society.¹⁹⁵ Romania experienced nothing like Solidarity in Poland; the Party tolerated only civil society organisations created from the top-down by the Party itself.¹⁹⁶ The Securitate, the

¹⁹⁵ Juan J. Linz and Alfred C. Stepan, 'The Effects of Totalitarianism-cum-Sultanism on Democratic Transition: Romania' in Linz and Stepan, *Problems of Democratic Transition and Consolidation. Southern Europe, South America, and Post-Communist Europe*, (Johns Hopkins University Press, 1996), p. 352.

¹⁹⁶ Linz and Stepan, p. 355; Vladimir Tismaneanu, *Stalinism for All Seasons: A Political History of Romanian Communism* (California: University of California Press, 2003), p. 4; Laurence Whitehead, 'East-Central Europe in Comparative Perspective' in Geoffrey Pridham, Eric Herring and George Sanford, *Building Democracy? The International Dimension of Democratisation in Eastern Europe* (London, Leicester University Press, 1994), p. 57.

largest secret police in Communist Europe, infiltrated all of private life, strangling in the cradle anything like a civil society. (It was recently discovered to have recruited even children as young as 12).¹⁹⁷ Repression of dissent was stronger than in any of Romania's neighbours.¹⁹⁸

The hope that a vibrant civil society might develop once the Ceausescu clan was overthrown in 1989 never materialised. The new social movements that began to emerge were stifled by manifold factors. One was the Communist legacy – a preference for informal networks and mistrust of all organisations. The post-Communist reality contained others: – poverty, low public morale, low levels of trust in domestic institutions, which in most cases failed to deliver the expected well-being, and a lack of support by the State.¹⁹⁹ As in most CEE countries the emergent Romanian civil society was anything but vibrant: private networks continued to dominate, often mutually disconnected and hostile to the public sphere.²⁰⁰

By the end of the 1990s, most of the new civil society organisations were small and made of volunteers who lacked the time, resources, knowledge, skills and commitment to engage in real policy-making. Most volunteers were attracted to the sector not for what it stood for but because of what it offered in material terms (*e.g.* access to computers and Internet, opportunities for training and travelling abroad). Except for trade unions, mobilisation rates remained low, particularly in rural

¹⁹⁷ BBC, 19 July 2006.

¹⁹⁸ Linz and Stepan, p. 352.

¹⁹⁹ Marc Morjé Howard, *The Weakness of Civil Society in Post-Communist Europe*, (Cambridge, Cambridge University Press, 2003); Stephen Welch, 'Democracy without Civil Society?', *International Studies Review* (2004), vol. 6, no. 2, pp. 306-308.

²⁰⁰ Howard, p. 17.

areas,²⁰¹ notwithstanding that as in other post-Communist countries in the region²⁰², the number of civil society organisations increased particularly after mid-1990s.²⁰³

Indeed in 2004 Romania was estimated to have no less than 70,000 civil society organisations, and this number was growing at the outstandingly high annual rate of 10%.²⁰⁴ However, as few as 2,000 organisations (at most 4,000) were reported to be ‘active’.²⁰⁵ The rest were typically ‘one-person operations’ trying to eke a living out of the external funding opportunities meant to develop civil society in Romania.²⁰⁶ Moreover, the rapid growth of the sector was being accompanied by a similarly rapid ‘mortality rate’ due to the dearth of actual funding on one side and of seriousness of purpose on the other.

As of the beginning of 2000, Romanian civil society organisations generally lacked human and financial resources as well as expertise in most areas, including internal organisational management and fundraising.²⁰⁷ Most were active only at the local level; only a few were active at the regional, national or international levels. Most involved themselves in small-scale projects delivering social services like health care or child protection, or raising public awareness of issues little known in Romania (e.g. environmental protection, minority and human rights, the rule of law, and

²⁰¹ Carmen Epure, Oana Tiganescu and Ancuta Vamesu, *Romanian Civil Society: An Agenda for Progress A Preliminary Report On The Civicus Index On Civil Society Project In Romania*, Civil Society Development Foundation, Bucharest, August 2001, <<http://www.fdsc.ro/PDF/Civicus%20index%20-Romania%20preliminary%20report.pdf>> (accessed May 2003).

²⁰² Laszlo Bruszt, David Stark, Balazs Vedres, ‘Rooted Transnational Publics: Interfacing Civic Activism and Foreign Ties’, *Theory and Society* (forthcoming).

²⁰³ Noted across the CEE region from East Germany to Russia – see Howard, 2003.

²⁰⁴ Freedom House, *Nations in Transit 2004: Romania*, 2004, <<http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan016585.pdf>> (accessed January 2004); Ministry of European Integration, *Document de Programare Multi-Anuala A Sectorului Societate Civila (2003-2007)* (draft), Bucharest 2003.

²⁰⁵ Freedom House, *Nations*.

²⁰⁶ Interview by the author with Oana Penu, Project Coordinator, Regional Environmental Centre for Central and Eastern Europe, Bucharest, 3 September 2004

²⁰⁷ Jan Aart Scholte, ‘Globalisation, Governance and Democracy in Post Communist Romania’, *Democratisation* (1998), vol. 5 no. 4, pp. 52-77.

accountability).²⁰⁸ Few had any policy expertise or knowledge of Romanian public administration, and even fewer were trying to influence public policy.²⁰⁹ Those that did tended to be organisations in Transylvania and in Bucharest (where 86% of Romania's civil society organisations are located)²¹⁰ who had better material and human resources and are well-connected with Western civil society organisations.²¹¹

Throughout the 1990s, the new social movements rarely engaged in lobbying the State.²¹² However, as the empirical case studies herein will show, several times during the EU *acquis* negotiations, they succeeded in lobbying the EU organs in Brussels as well as international and other European institutions. Protests or any other kind of direct action were rare. So were lawsuits,²¹³ although some intensification of litigation over access to information had been noticeable over the last few years.

As of beginning of 2000, the Romanian civil society's agenda continued to be dominated by the more pressing issues of lack of funding and human resources; a high degree of conflict between organisations over scarce resources, influence and prestige;²¹⁴ poor coordination, communication and networking; mutual mistrust;²¹⁵ State-imposed constraints limiting their autonomy;²¹⁶ a closed domestic opportunity structure which provided them with few channels to influence or scrutinise policy-

²⁰⁸ Epure, Tiganescu et al. 2001; Freedom House, *Nations*.

²⁰⁹ Christine Kruger and Alexander Carius, *Environmental policy in Romania. Towards EU accession*, (Berlin, Ecologic, 2001); Interview by the author with Florin Vasiliu, Legal Expert, Support Centre for Non-Government Organisations (CENTRAS), 12 July 2003.

²¹⁰ Epure, Tiganescu et al., 2001.

²¹¹ Dan Manoleli (Ecology Professor, Bucharest University), commentary made during 'The Role of NGOs in Romania's Accession to the EU' Conference, organised by the Delegation of the European Commission, Bucharest, 10-11 July 2003 (observed by the author).

²¹² Vasiliu, interview, 2003.

²¹³ Out of the 113 cases of environmental prosecution recorded by 2002 none had been initiated by environmental organisations (The Environmental Protection Inspectorate Drobeta Turnu-Severin web site,, 202, <<http://www.protectia-mediului.ro/>> (accessed January 2003).

²¹⁴ Manoleli, commentary, 2003 conference.

²¹⁵ Ibid.

²¹⁶ CENTRAS, *Forumul Organizatiilor Neguvernamentale din Romania: 'Dezvoltarea Societatii Civile*, the 8th edition, January 2002.

making; and public mistrust of civil society.²¹⁷ (The latter has been partly blamed on instances of corruption involving civil society: at the end of the 1990s, for example, the media exposed the misuse of civil society organisations for importing tax-free, second-hand cars). Once the process of accession to the EU gained momentum after 2000, Romanian civil society began to pay more attention to the EU. However, EU policy issues remained of marginal interest to most organisations, which became mostly concerned about the opportunities that accession has or will create for them such as access to EU funds.²¹⁸

Indeed, starting with 1993, the EU has provided funding to civil society organisations in the accession countries. In fact after the withdrawal of most other foreign donors in the mid-1990s, the EU became one of the main sources of funding.²¹⁹ Yet, at least before accession, this funding had little impact.²²⁰ Most funds were granted for narrowly focused projects such as establishing resource centres for civil society groups, citizens' advice bureaux, and mass-media and information campaigns.²²¹ Few domestic organisations were able to access these grants. The difficulty (amongst others) of meeting stringent eligibility criteria deterred most organisations from applying. The applicant had to prove that it had 'robust and substantial financial and human resources', and that it could contribute 10-20% to the cost of its project proposal.²²² At least in the environmental field, few

²¹⁷ Trust for Civil Society in Eastern Europe, *2001 Sustainability Index: Romania*, <<http://www.ceetrust.org/romania/romania.html>> (Accessed April 2003).

²¹⁸ CENTRAS, 2005, [http://www.centras.ro/mainro.shtml?cmd\[83\]=i8622956d92d46d40519a38c39cf52b140](http://www.centras.ro/mainro.shtml?cmd[83]=i8622956d92d46d40519a38c39cf52b140), (accessed 29 April 2005).

²¹⁹ Joann Carmin and Stacy D. Vandever, 'Enlarging EU Environments: Central and Eastern Europe from Transition to Accession', *Environmental Politics*, vol. 13, no. 1, pp. 3-24 (p. 11); Petr Jehlička and Andrew Tickle, 'Environmental Implications of Eastern Enlargement: The End of Progressive EU Environmental Policy?', *Environmental Politics* (2004), vol. 13, no. 1, pp. 77 – 95 (p. 84).

²²⁰ Interview by the author with Ioana Derscanu, Task Officer Civil Society, Delegation of the European Commission in Bucharest, 2 September 2004; Interview by the author with Radu Mititean, Executive Director, Cyclo-Tourism Club Napoca, 15 September 2004.

²²¹ Mititean, interview, 2004.

²²² Ibid.

if any Romanian environmental NGOs qualified:

No environmental NGO in Romania meets these conditions, so most of them do not even try to apply [for EU funding]. No national environmental or even regional NGO is strong enough ... most [NGOs] are small and local. Also, financially, these [NGOs] are not very stable or well developed; most of the time they struggle to survive. You have to prove that as an NGO you have strong and substantial financial and human resources, which very few organisations have.²²³

Although Romanian NGOs were also eligible for funding directly with the European Commission in Brussels, as of 2003, only a few were known to have applied (none these were environmental NGOs).²²⁴

Access to EU funds was obstructed not only by the civil society's own weakness. The fact that some of these EU (and other external) funds were channelled to civil society through the State – being granted for institution building projects that included partnerships with civil society organisations – also contributed. Such institutional arrangements reportedly diminished the autonomy of civil society, breeding patron-client relationships between the State and certain privileged groups.

This appears to have been the case particularly under the Nastase government (2000-2004), which found ways of constraining civil society in accessing EU and other external funds which the State was supposed to channel to them. Executive Emergency Ordinance 37/2003, for example, prioritised the funding of organisations that the State had beforehand classified as 'public utilities'.²²⁵ In theory any organisation could have become a public utility;²²⁶ in practice the ambiguity and vagueness of the decree meant that State bureaucrats wielded ample discretion to

²²³ Mititean, interview, 2004; Interview by the author with Ionut Sibian, Project Co-ordinator, Civil Society Development Foundation, 12 September 2004.

²²⁴ Derscanu, interview, 2004.

²²⁵ A public utility may, for example, manage a local heating network (Epure, Tiganescu et al., p. 18).

²²⁶ Epure, Tiganescu et al., p. 18.

decide who qualified.²²⁷ By the end of 2003, Freedom House reported that the 14 ‘public utilities’ that received funding from the State and three of these were connected to the Prime Minister.²²⁸

This dependency on State approval encouraged opportunistic behaviour, both by the State and by civil society.²²⁹ Many civil society organisations were drawn into supporting the *status quo* in exchange for funding.²³⁰ Often these organisations were poorly skilled, ‘shell’ NGOs, set up by entrepreneurs to eke out a living. Business entrepreneurs set up dummy NGOs for tax sheltering purposes as the NGOs were exempted from tax.²³¹

‘Shell’ NGOs were also set up by political entrepreneurs scrambling for funds which they would not otherwise have been eligible for.²³² Political parties, Members of Parliament, even central and local administrations were reported to have set up their own NGO partners to grab EU funds.²³³ This phenomenon was apparently amplified in 2003 when the Nastase government introduced the Act on Funding of Political Parties and Electoral Campaigns, (No. 43/2003). The Act dismantled all limits on the funding of political parties and electoral campaigns by civil society organisations.²³⁴ This raised the concern – expressed in 2003 by the Romanian Ministry of European Integration – that it might be used by political parties for partisan purposes and even

²²⁷ Ion Olteanu, Ex-Government Counsellor, Office for Government-NGO Relations paraphrased in Epure, Tigianescu et al., p. 18.

²²⁸ Freedom House, Nations, p. 7.

²²⁹ Dan Manoleli, *Central Administration and Accession to the European Union. The Map of Players and Issues of the Accession to the European Union* (Bucharest: Open Society Foundation, 2003), pp. 9-21.

²³⁰ Interview by the author with Dumitru Mihiu, former civil servant, Romanian Environment Ministry, 14 July 2003.

²³¹ Penu, interview, 2004.

²³² Ion Olteanu, Ioana Avadani, Mihai Lisetchi, *Letter of response to the Strategy for the Development of the Civil Society in Romania, presented at The Role of NGOs in Romania's Accession to the EU Conference, held in Bucharest, July 2003*, posted on <Mediu@ngo.ro>, 20 August 2003.

²³³ Mititean, interview, 2004; Penu, interview, 2004.

²³⁴ Vasiliu, interview, 2003.

be abused to facilitate money laundering.²³⁵ The pursuit of basic material wants contributed to an explosion of non-governmental organisations and of ‘partnerships’ after 2000-2001.²³⁶ The phenomenon became so widespread by 2004 that some referred to the phenomenon as ‘the alternative civil society’.²³⁷

It was to be such weaknesses intrinsic to civil society and the constraints imposed on it by other domestic actors that will soon drive a few civil society entrepreneurs to deploy Europe and the EU strategically so as to empower themselves not only with basic action capacity but also relative to the State (see the empirical case studies in this dissertation).

2.1.2 State-civil society relations

Post-1989 relations between Romanian civil society and the State developed along Statist/corporatist lines. The State’s ‘social partners’ were trade unions and business; it excluded most other civil society actors.²³⁸ ‘Civil society entrepreneurs’ tried to establish formal relations with the central and local government Executives shortly after the toppling of Ceausescu. Their attempts met with little success. Both central and local State authorities were highly reluctant to communicate with civil society organisations or include them in policy decisions. Sometimes they were rejected openly and blatantly with comments like: ‘Why should we consult with you? Such things are confidential’; or ‘We disapprove the participation of NGOs [non-governmental organisations], as we have functionaries who are responsible for these things; we will not tolerate all kinds of anti- and non-governmental organisations

²³⁵ Ministry of European Integration, 2003

²³⁶ Sibian, interview, 2004.

²³⁷ Mititean, interview, 2004.

²³⁸ Olteanu, Avadani and Lisetchi, Letter. Interview by the author with Doina Constantinescu, senior civil servant, Environmental Department, Industry Ministry, 12 July 2003.

interloping in State affairs'.²³⁹ Reactions like these were the norm in the early 1990s, and they were sometimes even signed or stamped by the local Prefect, the central government representative.²⁴⁰

Throughout the 1990s the relations between the State and the new social movements were characterised by lack of communication, mutual suspicion, and hostility, even though the State, under pressure from the general process of accession to the EU, began in the mid-1990s to adopt various top-down initiatives intended to formalise relations with the new social movements. These initiatives included legal procedures mandating State consultation of civil society, and the instituting of formal organisational structures of consultation. These top-down initiatives became more frequent once the process of accession to the EU took off after the entering into force of the Europe Agreement in 1995, and even more once *acquis* negotiations were opened in 2000. However, as with many other institutional reforms in Romania, the changes did not go much beyond shallow formalism. Indeed, the weight of the empirical evidence suggests that, in fact, the Romanian State at all levels continued to be little interested in dialoguing with the new social movements.

Institutionalising relations with civil society was first attempted in 1994 by the Social Democrat government, when an Inter-Ministerial Working Group for Supporting Civil Society Development was set up.²⁴¹ This was prompted by the promise of EU financial assistance to Romania – in this case a PHARE-funded project – for reforming the Romanian public administration.²⁴² The experiment ended as ‘an exploratory exercise’, its sole outcome being a (half-finished) report evaluating the

²³⁹ Mititean, interview, 2004;

²⁴⁰ Ibid.

²⁴¹ CENTRAS, 2002:101

²⁴² Ibid.

state of co-operation between the State and civil society.²⁴³

When in 1996 the Social Democrats were succeeded by a centre-right coalition, their programme featured a whole section dedicated to collaboration with civil society.²⁴⁴

In 1998 Prime Minister Victor Ciorbea set up an Office for State-Civil Society Relations within his Cabinet and instructed all local governing bodies to charge a member of staff with responsibility for civil society relations.²⁴⁵ The result was an ‘informal network’ of departments for civil society relations across the country; few meetings with civil society actually took place.²⁴⁶ A year later, in February 1999, the Office was reshuffled and its staff folded Russian doll-like, into another office-within-an-office: the Unit for NGO Relations within the Department for Social Dialogue, arranged under the Council for Economic and Financial Co-ordination. Nonetheless, by the end of 1999 only a small number of consultations with a handful of ‘carefully selected’ organisations had actually taken place.²⁴⁷

In yet another government reshuffle, in 2000, under the new PM Mugur Isarescu, many more offices and departments were set up by Executive Ordinance to formalise relations with civil society at all levels: ‘Within Parliamentary chambers, within the Romanian Presidency, within the General Secretariat of the Government, within the Office of the Ombudsman, and within autonomous government agencies, ministries and other specialised organs of the central public administration and of the local public administration, there shall operate organisational structures for the relations with [private] associations and foundations’.²⁴⁸ Most State organisations ignored the

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Ibid., p. 102.

²⁴⁶ Ibid.

²⁴⁷ Mititean, interview, 2004;

²⁴⁸ Romanian Government, ‘Ordinance no. 26 from 30 January 2000 regarding associations and foundations’, *Official Journal*, no. 39, 31 January 2000.

Ordinance.²⁴⁹ The structures that were set-up were poorly staffed, short-lived ‘political footballs’ that ‘had great difficulty co-operating with civil society organisations’.²⁵⁰

The domestic opportunity structure became particularly closed for the new social movements under the rule of the neo-Communist Social Democrats (PSD) (who were in power for most of Romania’s first 15 years of transition). When the PSD returned to power at the end of 2000, the new PM, Adrian Nastase, created in January 2001 another department under his own direction to replace the former bureau in charge of civil society relations.²⁵¹ This was necessary, Nastase claimed, because ‘partnership with civil society is a necessary condition for improving governmental policies’.²⁵² However, except for an intensification of rhetoric, little actually happened until July 2003, when another government reshuffle saw the re-organisation of all ministerial Departments for Relations with Non-governmental Organisations, making them essentially inoperative.²⁵³

All this evidence suggests that the State was not in fact earnest about dialoguing with the new social movements, in spite of the structures that were continually being recycled to formalise relations with them. The fact that all these ‘reforms’ coincided with the period in which the process of Romania’s accession to the EU was gaining momentum suggests they may have been undertaken in response to the government’s perception of how they ought to behave or appear to behave within the new context.

²⁴⁹ CENTRAS, 2002, pp. 103, 105.

²⁵⁰ Ex-counsellor to the Office for Government-NGOs Relations paraphrased in CENTRAS, 2002, p. 105.

²⁵¹ CENTRAS, 2002, pp. 20-1.

²⁵² Romanian Government, Department for Institutional and Social Analysis web site (link no longer valid) (accessed August 2004).

²⁵³ Personal communication with Elena Stefanescu, civil servant, Ministry of European Integration, Department for the Relation with the Public and NGOs, 12 July 2003.

That only shallow formalism is likely to have been at work in the arena of State-civil society relations is corroborated by the generality of this phenomenon. Throughout the 1990s, Romanians put little stock in formal institutions, which, despite existing on paper, were widely ignored or abused in reality. Distrust in formal structures and the dominance of informal norms of behaviour was still a powerful Communist legacy for most of the 1990s even in the teeth of external pressures, such as the EU's insistence on administrative reform. Indeed, these very pressures were often co-opted by the partisan elite in power and utilised publicly to justify ministerial or administrative changes that were in fact motivated by domestic power games. It has become a commonplace amongst Romanians that these frequent and very opaque reshufflings and restructurings are typically motivated by personal interests and ties between power-brokers, notwithstanding their justification by reference to accession conditionality.²⁵⁴

Often the fate of government structures pivoted on private interests entirely, such as which cronies the current Cabinet wanted to employ; having determined this, ministerial portfolios were then cooked up to accommodate them.²⁵⁵ The 'churning out' of formal structures at the highest (Cabinet or Prime Ministerial) level is likely to have been motivated by very similar considerations as well as by the government's perception that this would look good before the EU.

The accession process did obligate Romania to transpose a flurry of legislation mandating that the authorities consult civil society. In theory this created new opportunities for civil society to influence government decisional processes, as many domestic laws now provided for public and stakeholder consultations. The accession

²⁵⁴ Interview by the author with Task Officer, European Commission Delegation in Bucharest, 13 July 2003.

²⁵⁵ Ibid.

process also obligated the Romanian government to ratify all the international conventions it had signed. These too created a new opportunity for domestic civil society – in particular the Aarhus Convention on Access to Information and Public Participation in Decision-Making and the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo)²⁵⁶ [see Chapter Four].

Some of these laws were introduced in the absence of any EU Directives (e.g. public administration reform laws like the Act on Decisional Transparency of the Public Administration, No. 52/2003). They were driven from the top-down by the European Commission and its Delegations who relied mainly on informal conditionality to influence the quality of the domestic State-civil society relations.

Indeed, European Commission officials had constantly ‘encouraged’ the Romanian government to respect EU principles of good governance like accountability and transparency, public- and stakeholder consultation, and social dialogue.²⁵⁷ Occasionally, EU organs publicly backed up civil society demands, lending moral support by publishing statements in favour of their campaigns (e.g. for the Campaign Against Corruption at the Local Level in Romania).²⁵⁸ The Commission also took steps to establish relations of its own with civil society in accession countries. One example has been the regular meetings under the ‘EU Dialogue’, in which the Commission familiarised NGOs with EU institutions and policies, encouraging their participation to policy consultations in Brussels, and, above all, urging them to watchdog the candidate government’s compliance with EU conditionality.²⁵⁹

²⁵⁶ Mititean, interview, 2004.

²⁵⁷ European Commission, *Strengthening social dialogue in Romania, Bulgaria and Turkey*, Istanbul, le 19 novembre 2004 Discours d'ouverture de Madame Odile Quintin, Directeur général de l'Emploi et des Affaires sociales, Commission européenne.

²⁵⁸ Interview by the author with Dolores Neagoe, Task Officer Civil Society, Delegation of the European Commission, Bucharest, 2 September 2004.

²⁵⁹ Carmin and Vandevier, p.18.

However, most of the new laws were poorly implemented²⁶⁰ as late as 2004, suggesting that, just as in some EU member-States,²⁶¹ opportunities decreed from the top down are in themselves insufficient to empower domestic civil society *per se*. Domestic laws mandating public access to information, for example, contain manifold exemptions which the authorities exploited to restrict public access anyway.²⁶² Furthermore, regardless who was in power, civil society actors commonly reported being denied or ignored in their requests for public information. In some cases, the government circumvented accountability by classifying public contracts ‘secret’ and thus forbidding access to information.²⁶³ In other cases, individual Ministers issued Ministerial Orders (secondary legislation) charging fees for releasing information in the Ministry’s possession. Such Orders in fact amended the provisions of the Free Access to Information Act that the State shall make public information available free of charge.²⁶⁴ By charging for searching and photocopying of information prices higher than the market price, Ministries such as the Environment Ministry prohibited the NGOs’ access to State information.²⁶⁵ Such amendments were deemed unconstitutional as a Ministerial Order cannot modify an Act of Parliament. (The Environment Ministry allegedly admitted, in the wake of a media exposé, that the fees they had introduced were a ‘mistake’ and promised to rectify the matter, but two years on, the fees were still standing).²⁶⁶

Under such constraining circumstances, civil society have had to rely on ‘informal channels’ of information – *i.e.* civil servants with whom certain NGOs have personal

²⁶⁰ Interview by the author with DG Environment, European Commission, 6 July 2005.

²⁶¹ Kimber, p. 174.

²⁶² Email communication with Sorin Ionita (Research Director), Romanian Academic Society, Bucharest, 18 March 2006.

²⁶³ Mititean, interview, 2004.

²⁶⁴ Bugdahn, p. 190.

²⁶⁵ Mititean, email posted on Discussion List on Environment, Mediu@ngo.ro, 4 June 2003.

²⁶⁶ Mititean, interview, 2004.

contacts. But these friendly civil servants must be highly discreet about passing on to third parties even information that was not confidential, resorting to spy-novel ruses like anonymous emails or meetings in a public park, because ‘the boss had better not see me’.²⁶⁷ In a few instances, activists have even resorted to the lawcourts to wrest information from the State. In spite of the new laws, then, opportunities to access information held by the State have remained scarce for the new social movements.

As for consultations, the process of *acquis* negotiations has been responsible for the first-ever consultation of Romanian environmental civil society. This happened in October 2001, and was driven by the government’s submission of its Position Paper on Environment to the European Commission, the first stage in the negotiations process. The consultation was organised by the Environment Ministry on advice from Commission negotiators.²⁶⁸ Although civil society were given too little time (1-2 days) for anyone to make any sensible comments,²⁶⁹ this first consultation was perceived at the time as a milestone in Romanian State-civil society relations.²⁷⁰ It proved a one-off event, however, as witness, a year later, the scores of organisations complaining to Environment Minister Lificiu that they had been ‘cut off’ from contact with the Ministry.²⁷¹ (Lificiu promised to meet with them, but when they arrived in Bucharest, ‘nobody in the ministry remembered anything about it’.²⁷²) An NGO delegation did later meet with Lificiu and with Chief Accession Negotiator Vasile Puscas – they reported that the officials’ tone was ‘threatening’.²⁷³ Lificiu told

²⁶⁷ Ibid.

²⁶⁸ Mititean, interview, 2004.

²⁶⁹ Personal Communication with research officer, Regional Environmental Centre for Central and Eastern Europe, Bucharest, 14 July 2003.

²⁷⁰ Mititean, interview, 2004.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Interview by the author with Lavinia Andrei, Director, Terra Mileniul III, 11 July 2003; Manoleli, conference commentary.

them that the Environment Ministry ‘has no obligation to consult NGOs’.²⁷⁴

Nonetheless, meetings between the Environment Ministry and environmental groups did take place thereafter, two to four times a year, which, compared to the *status quo ante*, amounted to some ‘contact’, at least, between these groups and Ministry civil servants. Most of these meetings, however, were mere updates on the Ministry’s activities, not proper consultations.²⁷⁵ Furthermore, civil society veterans complained that the government too often consulted organisations ‘nobody ever heard of’.²⁷⁶ (The earnestly active environmental organisations in Romania are so few, and they know each other so well, that dummy ones like these are spotted instantly.²⁷⁷) When anything like consultation did take place, it was ‘unpredictable’, ‘irregular’ and ‘at short notice’; *i.e.* only a few days before the event.²⁷⁸ Thus, as late as 2004, the relations between the State and the new social movements was still informal.²⁷⁹ Civil society elites claimed that they were ‘deliberately excluded from the institutionalised system’²⁸⁰, notwithstanding that the State had toned up its rhetoric about the importance of consultation and partnership.²⁸¹

At the European Commission Delegation’s behest (in response to complaints from civil society that they have been excluded from the *acquis* negotiations),²⁸² in 2004 the Nastase government instituted within the Ministry of European Integration a new formality of State-civil society collaboration, with the goal of assisting the

²⁷⁴ Mititean, interview, 2004.

²⁷⁵ Andrei, interview, 2003; Interview by the author Anca Tofan, Director, Regional Environmental Centre for Central and Eastern Europe in Bucharest, 14 July 2003.

²⁷⁶ Mititean, interview, 2004; Manoleli, conference commentary.

²⁷⁷ Andrei, interview, 2004; personal communication with Viorel Lascu, Director European Integration, Oradea County Council, 14 July 2003.

²⁷⁸ Derscanu, interview, 2004; Mititean, interview, 2004.

²⁷⁹ Personal communication with Adrian Popescu, Romanian journalist, Sibiu, 15 July 2003.

²⁸⁰ Maria Kaldor, President Foundation for the Development of the Civil Society, commentary made during July 2003 conference.

²⁸¹ Comments made by civil society representatives at the July 2003 conference.

²⁸² Sibian, interview, 2003.

Negotiations Team. Included was one environmental organisation, Terra Mileniul III.²⁸³ The bulk of the ‘partners’, however, remained trade unions and industry groups, the same non-State actors that had always been consulted by the Negotiations Team.²⁸⁴

The above evidence suggests that the process of accession to the EU had some effect on the Romanian State’s relations with the new social movements. These evolved from almost total neglect in the early 1990s to some communication by the end of the 1990s, and especially after *acquis* negotiations began in 2000. Romanian civil society entrepreneurs themselves were convinced that, without the accession process, neither the law nor the practice of consultation, as little and as faulty as they were, would have evolved at all in Romania.²⁸⁵ (Indeed, State authorities have allegedly said ‘to NGOs’ faces’, and ‘non-chalantly’ too, that ‘we consult because the EU demands it’.²⁸⁶) State actors were observed to have learnt how to mimic consultation, as by cherry-picking NGOs they foresaw would approve their decisions²⁸⁷ or consulting dummy NGOs, and to have tempered their rhetoric. The political elites’ underlying values had not changed; but, having grasped that mistreating civil society in public was no longer ‘politically correct’, they no longer felt free to reject public consultation openly.²⁸⁸ Thus, accession did do a little to constrain the Romanian State; nevertheless, this constraining effect has generally been weak, as witness the closed domestic opportunity structure under which Romanian civil society still operated at the beginning of 2000.

²⁸³ Mititean, interview, 2004.

²⁸⁴ Vasile Puscas, Romania’s Chief Negotiator, speech given the the July 2003 conference.

²⁸⁵ Mititean, interview, 2004.

²⁸⁶ Sorin Ionita, Executive Director, Romanian Academic Society quoted in ‘Guvernul a bifat doar un sfert din angajamentele catre UE’, *Evenimentul Zilei*, 29 April 2004; Mititean, interview, 2004.

²⁸⁷ Ibid.

²⁸⁸ Mititean, interview, 2004.

Under pressures brought to bear by EU accession conditionality, a kind of twilight relationship had thus evolved between the State and the new social movements. For this reason, Romanian civil society may be expected to take the initiative to construct and utilise Europe and the EU on their own; supply the defects of accession conditionality and its insufficient top-down opportunities; and empower themselves with the action capacity to move the Romanian State off dead centre.

As the empirical case studies will show, they will indeed use Europe and the EU to empower themselves domestically. However, it will take domestic civil society some time to learn how to do this. As the history of the Rosia Montana case shows [see Section 2.2 below], civil society only woke up to the possibilities of Europe halfway through Romania's *acquis* negotiations, that is, around 2002. Before then, the domestic *status quo* was largely characterised by a state of inertia with regard to domestic actors' constructing and utilising Europe to empower themselves.

2.1.3 The Executive

Because the controversies studied herein emerged during the tenure of the Nastase government between 2000 and 2004, it is necessary to overview the characteristics of the Social Democrat Party (henceforward the PSD), and of the Executive institutions they staffed during that time.

The PSD was the successor party of the National Salvation Front, the 'popular front' organisation which metamorphosed out of the Communist Party in 1989, and which, under different names, ruled Romania until 1996. As the PSD they were re-elected in November 2000, when they won 37% of the popular vote, most of which were protest votes intended to punish the 'ineffectiveness, gridlock and corruption

scandals' of the centre-right Romanian Democratic Convention.²⁸⁹ This latter had been a 'coalition of coalitions' made up of pre-1945 centre-right political parties, civic leaders, and the Democratic Union of the Magyars in Romania (hence UDMR), and which had governed Romania between 1996 and 2000.²⁹⁰

Although PSD won only a plurality of the popular vote, they nonetheless managed to form a majority in Parliament by signing a post-electoral protocol of co-operation with the UDMR. This plus a fragmented opposition gave the PSD a comfortable margin of control in Parliament, shored by the fact that the Greater Romania Party, the party of 'extremist' nationalism, though ostracised from this and all governing coalitions, almost invariably votes with the PSD.²⁹¹ The PSD's position was further strengthened by the fact that, traditionally, many Parliamentarians from opposition parties defect to the winning coalition (although the most massive wave of defections to the PSD took place at the local and county levels).²⁹² Parliamentary rule in Romania was already weakened by the Constitutional loophole permitting the Executive to legislate by Emergency Ordinance – a powerful prerogative, and particularly so when the same party controls both Executive and Parliament, for the consequent Ordinances are unlikely to be amended. This was the case under Nastase, and he and his Cabinet fully exploited this constitutional right. Under all governments Emergency Ordinances have become notorious for their 'partisan and arbitrary character'.²⁹³ Under the PSD they were often denounced for serving the interests of only a few power brokers and their clientele.²⁹⁴ All of these factors

²⁸⁹ Monica Ciobanu and Michael Shafir, 'The 2004 Romanian elections: A test for democratic consolidation?', *Radio Free Europe Reports* (7 april 2005), vol. 7, no. 3.

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² Vladimir Tismaneanu and Mircea Mihaies, *Schelete in dulap* (Bucharest: Polirom, 2004), p. 296.

²⁹³ Horia R. Patapievici, Commentary, *Radio Free Europe*, 30 November 2004 (audio).

²⁹⁴ Mona Musca, National Liberal Party MP, commentary made at the July 2003 conference.

combined to neuter Parliament under the Nastase government.²⁹⁵ Indeed, so plenary was the PSD's control that Nastase became notorious for his contempt of it: reportedly he 'turned his back' on Members of Parliament when they demanded that he gives an annual report on his government's activities.²⁹⁶

The only potentially significant constraint the PSD elite had to beware throughout their tenure was their coalition partner, the UDMR.²⁹⁷ The post-electoral pact between PSD and UDMR was subject to annual review, renewal depending on the success of the bargains struck between them.²⁹⁸ The bargaining was not always smooth. Tensions showed up over some of the UDMR's most controversial demands, such as elaborated constitutional rights for Hungarians and the creation of Hungarian-language faculties within Babes-Bolyai University in Cluj, Transylvania. Moreover, by 2002-2003 UDMR appeared to be crumpling under the threat of defection by radical elements within the party.²⁹⁹ The bargaining was to become more intense the closer the elections loomed, as the PSD became obliged to heed not only the UDMR's but also the electorate's preferences.

Other constitutional constraints were also neutralised. Within the PSD itself, no alternative elite existed that could check and balance the one in office, so that a significant intra-party veto-point was missing.³⁰⁰ To top it all, the PSD controlled the Constitutional Court – and still did in 2005, after losing the 2004 elections³⁰¹ – a

²⁹⁵ Interview by the author with senior official, European Commission Delegation in Bucharest, 10 May 2006.

²⁹⁶ Tismaneanu and Mihaies, p. 270.

²⁹⁷ Alina Mungiu-Pipidi, 'Constitutional Watch A country-by-country update on constitutional politics in Eastern Europe and the ex-USSR 2003', *East European Constitutional Review*, winter 2002/spring 2003, <http://www.law.nyu.edu/eecr/vol11_12num4_1/constitutionwatch/romania.html>.

²⁹⁸ Ciobanu and Shafir, *The 2004 Romanian elections*.

²⁹⁹ Mungiu-Pipidi, 2003.

³⁰⁰ Jean Blondel and Maurizio Cotta, 'Conclusion' in Jean Blondel and Maurizio Cotta *Party and Government: an inquiry into the relationship between governments and supporting parties in liberal democracies* (Basingstoke: Macmillan, 1996).

³⁰¹ Alina Mungiu-Pippidi, 'Transformation Reloaded?', *SAR Policy Brief*, August 2005, p. 2, <<http://www.sar.org.ro/Policy%20memo13-en.pdf>>.

circumstance that effectively removed constitutional constraints from Nastase and his Cabinet.

Few also were the extra-constitutional constraints. Domestic civil society was too weak to pose significant challenges.³⁰² However they did succeed in constraining the Executive on several occasions, as evidenced in the cases studied herein. Even the media had been enfeebled by the PSD's implicit control over a considerable segment of it, either through ownership or through indebtedness to banks controlled within the Party's inner circle.³⁰³ The near-vacuum of checks and balances gave pretty much plenary discretion to PSD power-brokers. This led to a pullulation of corruption. Indeed, under the PSD the institutions of the State reportedly became 'subordinated to the momentary self-interests of the government'; the ruling circle deployed public assets as if 'a personal account available to its clients', and 'ran [the State treasury] gangster-style for the benefit of the political clientele'.³⁰⁴ Absent any significant domestic checks and balances, the EU and its accession conditionality was left the only significant constraint on the Executive (but this too would lose its power once EU membership became certain).

During his Premiership Adrian Nastase, also President of the PSD, gained a reputation for being a strong and even 'autocratic' leader.³⁰⁵ He was said to suffer from a 'cult of the personality', and was widely perceived as pompous, arrogant and 'self-important'.³⁰⁶ For such reasons, and by contrast with the former PSD leader, now President Ion Iliescu, Nastase was not very popular with the public, and the two leaders would compete throughout their tenure for influence over the PSD and

³⁰² Vachodova, p. 214.

³⁰³ Mungiu-Pippidi, *Transformation*, pp. 4; Interview by the author with Gelu Trandafir, BBC Romanian journalist, 24 February 2006; Vachodova, p. 214.

³⁰⁴ Patapievici, Radio Free Europe, RFE (audio).

³⁰⁵ Tismaneanu and Mihaies, p. 225.

³⁰⁶ *Ibid.* pp. 164, 165, 166, 193.

beyond.³⁰⁷ Nastase led a Cabinet made up mostly of former apparatchiks (himself being one) who were loyal both to him and to Iliescu.³⁰⁸ The Cabinet's loyalty and Nastase's autocratic style meant a highly 'disciplined' Cabinet. It was apparently so disciplined that no minister dared to speak publicly on any issue without Nastase's prior approval.³⁰⁹ Indeed, the Nastase Cabinet proved perhaps the more stable after 1989. For comparison, the PM was reshuffled three times under the previous centre-right coalition.³¹⁰ It also proved a more efficient Cabinet, as witness the fact that it was under PSD that most of the *acquis* was transposed.

Nastase was ambitious and had an 'appetite for global visibility'.³¹¹ After taking the Party Presidency away from Iliescu in 2000, he was determined to transform the PSD's image from one of 'unreconstructed' communists³¹² 'with authoritarian and populist tendencies into a European-style social-democratic party'.³¹³ The Party's poor image had been acquired during its previous tenure (1990-1996), during which its leaders, among whom were Iliescu and Nastase, had proved reluctant to take radical reform measures or push too strongly for Romania's integration into Euro-Atlantic structures. The government then apparently feared that accession to the EU might undermine their domestic power base by 'strengthening opposition forces, limiting rent-seeking opportunities for economic cronies, and precluding ethnic scapegoating as an easy ploy for rallying support'.³¹⁴ On the other hand, it was under their rule that the Europe Agreement was signed (1993) and the application for EU membership was made (1995). Their attitude toward integration was 'strategic', in

³⁰⁷ Task Officer, 13 July 2003.

³⁰⁸ Tismaneanu and Mihaies, p. 225.

³⁰⁹ Ibid., p. 162.

³¹⁰ Ibid., p. 163.

³¹¹ Ibid., p. 163.

³¹² Vachudova, p. 272.

³¹³ Ciobanu and Shafir, *The 2004 Romanian elections*.

³¹⁴ Vachudova, p. 73.

that they put on display just enough commitment to the EU to garner its assistance and to avoid alienating the pro-EU Romanian public against themselves.³¹⁵

This time around the PSD and its leaders were determined to make the Romanian government ‘a more serious partner for discussion with the European Union and international organizations’, and to integrate her into both the EU and NATO.³¹⁶ This became Nastase’s number one priority; he was prepared to do whatever it took to shield these goals.³¹⁷ It has transpired this was what had motivated him to join the PSD in the first place.³¹⁸ Romanian political analysts opine that the PSD appealed to Nastase not so much because he identified with its ideology, as because he somehow foresaw that ‘in the epoch of the Europeanization process one of the most fundamental blocs of enlargement was the Socialist bloc ... [Nastase] understood that the most efficient way of entering the European structures is through the Socialist International’.³¹⁹ Indeed, the PSD became a member of the Socialist International in 2004, and Nastase its Eastern European President between 2004 and 2006.³²⁰ By way of the Socialist International forum he and the PSD were able to build important strategic alliances with Social Democrats all over Europe, alliances that were to contribute much to the Nastase government’s progress toward EU membership [for an illustration of this, see Chapter 5]. Indeed it was under the PSD government that Romania was admitted to NATO in March 2004, and that *acquis* negotiations were closed in November 2004 – although, as Chapter 5 will show, the credit for these accomplishments cannot be given to the Nastase government alone.

³¹⁵ Ibid.

³¹⁶ Ciobanu and Shafir. 2005. *The 2004 Romanian elections*.

³¹⁷ Former senior civil servant, Environment Ministry Romania, interview, 3 June 2006.

³¹⁸ Tismaneanu and Mihaies, p. 165

³¹⁹ Ibid.

³²⁰ Ibid.

2.1.4 Communist legacies and the post-1989 political system

Before discussing the *status quo* in more detail, it will be useful to sketch-in the salient general features of Romanian political system as it stood after 1989. The key feature is the sundry Socialist legacies, which continued to influence events in Romania. These legacies cannot well be ignored by any study of contemporary Romanian politics, and have been well-documented by Vladimir Tismaneanu, the Romanian historian of Communism. Only a memorandum is needed here: ‘the resurrection of the secret police’; ‘the lack of transparency in public life’; ‘the climate of rampant suspiciousness and corruption’; ‘the emergence of “red-brown” Stalinist-fascist ultranationalist coalitions’; ‘the paternalistic style characteristic of both government and opposition’; ‘the absence of reform-oriented groups in the ruling bureaucracy’; ‘the weakness of liberal pluralistic efforts to strengthen civil society’; ‘a political culture based on fear’; ‘problematic legitimacy’; ‘spurious internationalism’; ‘populist manipulation of symbols’; ‘unabashed personalization of power’; ‘persecution mania’; ‘a deep inferiority complex’; ‘a sense of illegitimacy’; ‘political narcissism, sectarianism, anti-intellectualism’; and ‘the obsession with political and social “transformism”’.³²¹

These legacies have pervasively influenced the kind of political system and institutions that have developed in Romania since 1989. These have often been characterised in the academic literature as ‘pathologies’ that Romania shares with other CEE countries, including: a high degree of fragmentation of institutions and of the political party system;³²² lack of trust in and legitimacy of State institutions in

³²¹ Tismaneanu, pp. 4, 5, 9, 13.

³²² Klaus, H. Goetz and Helen Z. Margetts, ‘The Solitary Centre: The Core Executive in Central and Eastern Europe’, *Governance* (1999), vol. 12, no. 4. pp. 425-453 (p. 428).

general, and post-Communist elites in particular;³²³ shallow and malfunctioning formal institutions, particularly those mediating accountability;³²⁴ opportunistic rather than principles-driven politicians and parties;³²⁵ the dominance of personalisation in politics and procedures; the dominance of ‘networks of influence’, for which Romania has been recently characterised as a ‘phenomenon of mafiotization’ with a ‘quasi-mafia’ political leadership;³²⁶ the prevalence of private and partisan interests over the public interest;³²⁷ a poorly performing, heavily politicised and corrupt public administration;³²⁸ the predominance of informal rather than formal norms of behaviour;³²⁹ the wide latitude of discretion – few checks and balances, constitutional or extra-constitutional – afforded public office holders by the Romanian polity; a wide-spread disregard for democratic norms and values, such as the rule of law, and human and civil rights; the ascendancy of material ‘proletarian’ values at the expense of everything else (e.g. a concern for the environment or cultural heritage); and the lack of a political culture of consensus and power-sharing, or the prevalence of zero-sum adversarialism (the Leninist tit-for-tat).³³⁰ The latter especially has led to frequent, acute conflicts between governing coalition partners and to discontinuity between the reforms and programmes of one government and another (according to the Romanian proverb, ‘I didn’t bake the cake lest others eat it’).³³¹ The case studies herein will illustrate many of these features, showing the

³²³ Tismaneanu and Mihaies, p. 174.

³²⁴ Alina Mungiu-Pippidi, ‘Culture of Corruption or Accountability Deficit?’ Special Report, *East European Constitutional Review*, vol. 11/12, no. 4/1, winter 2002/spring 2003.

³²⁵ Alina Mungiu-Pippidi, *Politica dupa communism: structura, cultura si psihologie politica* (Bucharest: Humanitas, 2002).

³²⁶ Tismaneanu and Mihaies, pp. 29, 245.

³²⁷ Mungiu-Pippidi, *Culture of Corruption*.

³²⁸ Mungiu-Pippidi, *Transformation*, p. 3.

³²⁹ Sorin Ionita, ‘The Cargo Cult of Democracy in Romania’, *Romanian Journal of Political Science* (2003), vol. 1.

³³⁰ Michael Schafir, ‘The Ciorbea Government and Democratization: A Preliminary Assessment’ in Duncan Light and David Phinnemore (ed.) *Post-Communist Romania. Coming to Terms with Transition* (Palgrave, 2001); Tismaneanu and Mihaies, p. 45.

³³¹ Tismaneanu and Mihaies, p. 45.

remarkable resilience of the Socialist legacy,³³² to overcome which Romanian norm entrepreneurs were driven to turn to Europe.

2.2 Domestic inertia before Europe: the Rosia Montana gold mining project (1995-2002)

Before tracing how and when domestic civil society ‘woke up’ to the new opportunities created by Europe and by Romania’s accession to the EU, it is necessary to give some insight into the Romanian status quo that preceded Europe’s advent. Of the cases studied herein, Rosia Montana is by far the best window into such an insight, for the case began before domestic actors started to deploy Europe strategically to empower themselves relative to each other.

Insight into the state and behaviour of Romanian civil society is complemented in this chapter by insight into the behaviour of the Romanian Executive regarding such issues as the rule of law, public accountability, and the handling of civil society opposition. These insights are arrived at by tracing the history of the Rosia Montana project from inception in 1995 until the juncture of 2002. At that point the evolution of the project takes an unexpected turn, marked by an unprecedented construction and utilisation of Europe by domestic civil society and the Executive for purposes of self- and differential empowerment [see Chapter 4]. Such insights into the status quo will be valuable as providing a benchmark against which Europeanization effects documented in the subsequent chapters may be evaluated; therefore, this section should be read as background not only to the Rosia Montana controversy in Chapter 4, but to the whole thesis.

³³² Goetz, *Making sense*, p. 1033.

The first part of this section introduces the political, economic and social matrix in which the controversy over the Rosia Montana gold mining project arose in 2001. It is against this hostile background that domestic civil society will be empowered. Part two will document how the Rosia Montana gold mining project came into being. Part three will examine how a local opposition sprang up; their treatment at the hands of the Romanian government, which were interlocked with the managers of State-owned companies; and their near-failure in the absence of any domestic or external support.

2.2.1 The Communist industrial legacy

The Rosia Montana project fell out of the necessity the Romanian government was under to re-construct the failed economy inherited from Ceausescu. Of the many misfits between Western and Eastern institutions exposed by the collapse of the Communist regime, the inadequacy of the command economy paradigm for a market economy may have been the worst; if not the obsession with industrialisation at all costs, with no thought for sustainability. This legacy was a labyrinth of enormously labour-intensive, loss-making industries kept alive by massive State subsidies.³³³

The mining sector posed some of the greatest challenges to the economic reforms. Many mines dug under Ceausescu had been unprofitable *ab ovo*, but this had never become an issue under Communism, as the State had been a monopsonist. Even the putatively lucrative metals sub-sector (mining gold, silver, copper and uranium) was still losing money. Romania emerged from Communism producing gold at a cost of US\$800-1,000 per ounce while the world market price was US\$300 per ounce; the

³³³ Tom Gallagher, *The Theft of a Nation. Romania since Communism*. (London: Hurst and Company, 2005), p. 80; Former senior civil servant, Environment Ministry Romania, interview, 11 November 2005.

State was thus losing US\$500-700 for every ounce of gold mined.³³⁴

For most of the 1990s few effective pressures impinged on the Romanian government to induce them to reform the mining sector. As most mining districts in Romania are mono-industrial and economically isolated, sudden closures without alternatives for the local populace heavily dependent on mining would have worsened poverty and unemployment, an outcome that all Romanian governments were keen to avoid.³³⁵ But there were other reasons to avoid reform. Between 1989 and 1996, during which Romania was ruled by 'reformed Communists', President Ion Iliescu and the ruling National Salvation Front called upon miners to assault their newly emerged political opponents. Being one of the best organised groups of all Romanian civil society, the miners could mobilise quickly, helping Iliescu and the Front hold onto power in the uncertain days after December 1989.³³⁶ Even when, a few years later in the mid-1990s, the economy slumped and the government was obliged to privatise or close down the worst revenue-losing enterprises, the miners managed either to resist closure of even the most unprofitable operations or to negotiate excessive severance pay. They succeeded in this because they were well-organised and could bargain collectively, but above all because their leaders had close ties with the ex-Communists who ruled Romania until 1996.

Few also were the pressures from abroad for reform. As the EU had no jurisdiction before the *acquis* began to be negotiated in 2000, it played an insignificant role in incentivising the re-construction of the mining sector.³³⁷ What little external

³³⁴ Horea Avram, Environmental Officer of Rosia Montana Gold Corporation, e-mail posted on the Environment Discussion List Mediu@ngo.ro, 18 August 2003.

³³⁵ Former senior civil servant, Environment Ministry, interview, 11 November 2005.

³³⁶ Gallagher, *Theft of a Nation*, p. 80; Tom Gallagher, 'The Balkans: Bulgaria, Romania, Albania and the Former Yugoslavia' in Stephen White, Judy Batt and Paul G. Lewis (Eds) *Developments in Central and East European Politics* (2). (Macmillan Press, 1998), p. 48.

³³⁷ Former senior civil servant, Environment Ministry, interview, 11 November 2005.

pressures there were came from international institutions like the IMF and the World Bank, who conditioned their support on the adoption of free-market reforms including budget deficit cuts and an end of State subsidies to industry.³³⁸ They had too little leverage to push through reformation of the mining sector, however. The lack of sufficient external incentives, plus the vested interests of the ex-Communists interlocked with the trade union elites, combined with a severe scarcity of resources that made development alternatives impossible, meant that the mining sector stagnated throughout the 1990s.

By the mid-1990s the massive subsidies to industry had begun to be an intolerable burden on the State, and the Romanian government was weighing up diverse policy options for stemming its losses. In theory technological upgrading ('retooling') was the most promising, as it would have rendered profitable the mining of some of Romania's most valuable metal ores.³³⁹ But in practice, even with the latest technology (which Romania would have had to import), a profit could never have been squeezed out of most of the 44 State-owned mines at prevailing world market prices.³⁴⁰ In the case of metal mining, the ore was usually too poor to be worth the re-tool;³⁴¹ hence closure was left the only viable option in most cases. Retooling could work for only a few mines (the gold mine at Rosia Montana included), and only if external finance could be found.³⁴² The World Bank was only prepared to help Romania draft legislation and design mine-closure programmes while financing ecological rehabilitation of the mining works and environs.³⁴³ They were not

³³⁸ Interview by the author with former senior official, The National Agency for Mineral Resources in Romania, 22 December 2005.

³³⁹ Interview with Nicolae Dicu, former Minister and State Secretary for Mines, Romania by Elena Vijulie, 'Colapsul industriei miniere din Maramureş', *BBC Romanian*, 22 August 2006.

³⁴⁰ Former senior civil servant, Environment Ministry, interview, 11 November 2005.

³⁴¹ Former senior official, Mineral Resources Agency, interview, 2005.

³⁴² *Ibid.*

³⁴³ *Ibid.*

prepared to finance expensive retooling.³⁴⁴ Privatisation was the only option left standing.

The idea of reform through privatisation received a boost in 1998, two years after the accession to power of the centre-right Democratic Convention coalition government.³⁴⁵ The Mining Act, Romania's first 'Western-based' mining law was passed in 1998. Modelled primarily on US and Australian legislation, the law was drafted with the assistance of World Bank experts.³⁴⁶ It incorporated some elements of Spanish and German law, thus constituting one of the earliest examples of the Europeanization of Romanian public policy.

Designed expressly to encourage privatisation and foreign direct investment, the law provided that all mining activities, whether exploration or exploitation, should be undertaken under licence.³⁴⁷ Licences were to be granted through public tendering overseen by the National Agency for Mineral Resources, the public body charged with managing Romania's mineral resources and enforcing her mining-regulatory regime.³⁴⁸ The Act also provided for the transfer of licences from State-owned régies to foreign companies, a mode of privatisation formerly forbidden by Communist law.³⁴⁹ The hope was that the new Act would encourage private investment in the mining sector, and so speed its re-construction.

By 2006 many of the privatisations and investments undertaken during the 1990s had

³⁴⁴ Ibid.

³⁴⁵ The coalition was made up of pre-1945, centre-right political parties; civic leaders; and the party representing the Hungarian minority.

³⁴⁶ Former senior official, Mineral Resources Agency, interview, 2005.

³⁴⁷ Gabriel Resources, *Romanian Government Reiterates its Support of the Mining Industry*, 31 March 2000, <<http://www.gabrielresources.com/home.htm>> (accessed January 2003).

³⁴⁸ World Energy Council, *Restructuring the Coal Industries. Central and Eastern Europe and the CIS. PART II - COUNTRY PROFILES ROMANIA, 2004*, <http://www.worldenergy.org/wecgeis/publications/reports/coal/country_profiles/romania.asp> (accessed June 2003).

³⁴⁹ Paul Cristian Radu, Dan Badea et al. 'Aurul Romaniei, pe mina unui aventurier' *Cotidianul Online*, 22 May 2002, <<http://www.crji.org/arhiva/020522.htm>>.

been exposed as ill-thought-out and mediated through unprofitable contracts with foreign investors.³⁵⁰ Moreover, the liberalisation of trade in concentrated ore after 1998 meant that large quantities of raw metal were exported under massive State subsidies,³⁵¹ a subvention that the foreign importers in most cases never had to refund to the Romanian State, due to the complicity of Romanian *régie* directors and government ministers.³⁵² As with the economic reform in general, so in the mining sector too, ‘money poured from the state budget through these enterprises straight into the directors’ pockets’.³⁵³ By 2006 the rampant corruption had come to be blamed for having led to the collapse of important mining centres like that in the north of Romania.³⁵⁴

A case in point is the gold mine at Baia Mare in the northwest of Romania. Privatised in 1990 through a joint venture between the Romanian *régie* Remin and the Australian company Esmeralda Exploration, the mining works employed cyanide-heap leaching to extract gold from the tailings left over from previous mining operations.³⁵⁵ This proved an ecological as well as an economic disaster. After privatisation in 1992, the joint venture’s books were ‘cooked’ to appear as if no profits were ever made.³⁵⁶ The Romanian State apparently never saw any of the profits that actually were made, even though Remin had a 44% stake in the joint venture – a contribution paid for by State subsidies (by taxpayers’ money, that is).³⁵⁷ This and similar cases allegedly happened with the full knowledge of the highest

³⁵⁰ Dicu, interview with by Vijulie, 2006.

³⁵¹ Ibid.

³⁵² Ibid.

³⁵³ Vachudova, p. 48.

³⁵⁴ Dicu, interview by Vijulie, 2006.

³⁵⁵ Vlad Gabriel Hogeia (Greater Romania Party MP), *Intervention*, Sittings of the Chamber of Deputies, 11 February 2003.

³⁵⁶ Dicu, interview by Vijulie, 2006.

³⁵⁷ Ibid.

Romanian Executives.³⁵⁸ The joint venture at Baia Mare was also responsible for one of the worse industrial accidents and ecological disasters of modern times in Europe, when in January 2000 the cyanide retaining dam burst. It is noteworthy that by contrast to what was to come at Rosia Montana after 2001, nobody inside or outside Romania ever rose to question the gold mining project at Baia Mare, notwithstanding that it employed the same cyanide-heap leaching method that was to become so controversial in the Rosia Montana case.

2.2.2 The Communist Executive legacy

Rosia Montana was one of the first metal mines to be privatised under the 1998 Mining Act. Run by the *régie* MinVest Deva, the mine is situated in the Rosia Montana valley (Western Carpathians) within the so-called ‘Golden Quadrilateral’ – considered one of Europe’s richest gold and silver ore-bearing regions. Native gold at Rosia had been extensively exploited by MinVest, which the Communists had created after the WWII by nationalising private mines.³⁵⁹ Beginning in the 1960s, gold was extracted using cyanide solution, although on a smaller scale than with heap-leaching.³⁶⁰ Nobody, not even trans-national civil society, has ever challenged the *régie*’s use of cyanide during this time.³⁶¹ This would change, but only after the *régie* had partnered with a private company in 1999, and only after trans-national civil society entrepreneurs intervened in 2002.

MinVest continued to exploit open pits after the 1989 revolution, but by 2005 its operations had been scaled back and its workforce downsized ten-fold.³⁶² Even on the smaller scale the subsidies did not cover costs: by 2005 MinVest had become one

³⁵⁸ Ibid.

³⁵⁹ Interview by the author with Crai Pompiliu, MinVest Director, 26 August 2005.

³⁶⁰ Former senior official, Mineral Resources Agency, interview, 2005.

³⁶¹ Ibid.

³⁶² Pompiliu, interview, 2005.

of the State's biggest debtors in arrears.³⁶³ With Rosia Poieni and Baia de Aries (50 kilometres from Rosia), the largest mines in the area, already closed, and the remaining ones threatened, the populace of the Rosia district, mostly miners, became impoverished.³⁶⁴ The village of Zlatna suffered 95% unemployment; Rosia Montana had 50%, expected to rise to 90% once MinVest was wound up.³⁶⁵ Young people were deserting the area in search of employment.³⁶⁶ Only foreign investment could rescue the region from industrial implosion.³⁶⁷

Sometime in 1995 MinVest announced that it was seeking a partnership with a foreign company 'to process mining waste containing precious metals from old tailings in the area of Rosia Montana', and that offers should be tendered within the next 30 days.³⁶⁸ No investors showed up nor submitted any offers.³⁶⁹ It was therefore perceived as a godsend³⁷⁰ by the local populace and officialdom when one Frank Timis, a Romanian national representing the Canadian company Gabriel Resources Ltd., arrived in Rosia Montana to prospect investing in its mineral deposits. Gabriel Resources, it was later revealed, was a startup penny-stock on the Vancouver Exchange, registered in Jersey Island, a 'tax haven', and Timis to have been convicted several times in Australia for drug dealing.³⁷¹

Timis propose a partnership to the directors of MinVest to extract gold from tailings, promising that Gabriel could provide capital and advanced technology in exchange

³⁶³ In June 2004, the Nastase government forgave the tax obligations of 11 mining companies owing 19 million EUROS to the State; MinVest was one of them (*Adevarul*, 12 June 2004); Former senior official, Mineral Resources Agency, interview, 2005.

³⁶⁴ Interview with Virgil Naritsa, Rosia Montana Mayor by Raluca Damian, *Presa Regionala*, Cluj, 30 July 2004.

³⁶⁵ Interview by the author with Vice President, RMGC, 20 September 2005.

³⁶⁶ Former Vice President, RMGC, email, 30 September 2005.

³⁶⁷ Former senior official, Mineral Resources Agency, interview, 2005.

³⁶⁸ Radu et al. *Aurul Romaniei*, 2002.

³⁶⁹ Interview by the author with former Environmental Director, RMGC, 4 July 2005.

³⁷⁰ Alex Dobrota, 'Canadians go home!' *The Gazette*, 29 May 2005, Montreal

<<http://www.canada.com/montreal/montrealgazette/news/insight/story.html?id=6db6781c-adf2-4e86-b853-44c772d0de01>>; Interview by the author with Eugen David, President, Alburnus Maior, 28 June 2005.

³⁷¹ No author, 'Focus: The gusher', *The Sunday Times* (Business), 22 May 2005.

<<http://www.timesonline.co.uk/article/0,,2095-1622093,00.html>> (accessed 25 May 2005).

for a mining concession. The Romanian directors were easily convinced³⁷² and the companies entered into a partnership, the Rosia Montana Gold Mining Company (RMGC). RMGC was established in the virtual legal void that existed at that time, before the promulgation of the 1998 Mining Act. The legality of this partnership was to come under fire from civil society opposition a few years later. The partnership proceeded in earnest to explore how best to make a profit, but it soon became clear that extracting gold from tailings would not be profitable.³⁷³ The partnership decided to expand their joint operations to include prospecting uncharted areas, which MinVest's experts had suspected for some time still contained native gold, but had lacked the money to explore.

Meanwhile, the Mining Act was introduced in 1998, and MinVest and Gabriel Resources could not proceed as they had in 1995. The Act required them to obtain a licence from the State by following certain public tender procedures. Embodying both European and international norms and values, the Act imposed new constraints on the State and its discretion to let public contracts. Yet when RMGC applied for the licence, the Industry Minister, Liberal Party member Radu Berceanu, ignored the Act. Far from a public tender, negotiations over price and terms were conducted in secret between Gabriel Resources and representatives of the Industry Ministry (to which MinVest was subordinated). The deal likely involved bribes of senior Executives, who in exchange undercharged Gabriel for the licence.³⁷⁴ (Gabriel apparently paid only US\$3 million to work a deposit later revealed to be worth US\$3

³⁷² Cornel Ivanciuc, 'Frank Timis a inhatat aurul din Apuseni printr-o caruta de falsuri, iar Tariceanu a inchis ochii', *Academia Catavencu*, 20 April 2005.

³⁷³ Former senior official, Mineral Resources Agency, interview, 2005.

³⁷⁴ Ibid.

billion).³⁷⁵ The Government Decision granting the licence was never published, as the Act required.³⁷⁶ The contract itself was then apparently classified a State secret, likely so as to prevent the public from accessing the terms of the deal.

At the time, nobody – neither Parliament, media nor civil society – challenged how the Executive had proceeded. It was only years later that the civil society that had arisen in the meantime to oppose the gold mining sued the government over their omission to publish the terms of the licence. Surprisingly in a Romanian context, the court overruled the Agency for Mineral Resources, ordering it to disclose the terms of the licence.³⁷⁷

In disregarding public tender, the political Executives overrode the regulatory body, the National Agency for Mineral Resources, provided under the Act to oversee the licensing proceedings. The Agency was entirely excluded from all proceedings. Its Directors were presented by the Industry Ministry with a *fait accompli*: ‘This is the boy and this is the girl. They arrived at [the Agency] already married’.³⁷⁸ The Act failed in practice to constrain Executive discretion. The way MinVest was privatised is redolent of Executive behaviour in Communist times, when decision-making was characterised by ‘strong hierarchical control’, ‘political control over the administration’ and ‘disregard for the rule of law’.³⁷⁹ That the lawful public tender requirements, codifying norms typical of a Western liberal democracy, could be so easily ignored by the Minister, evidences that, a mere year before the commencement

³⁷⁵ Paul Cristian Radu, Dan Badea, Stefan Candea and Sorin Ozon, ‘Vasile Frank Timis, the Mastermind Behind the Rosia Montana Operation, Was Sentenced Twice, Charged with Possession of Heroin’, *Centrul Roman de Jurnalism pentru Investigatie*, 22 May 2002. http://www.crji.org/arhiva/e_020522.htm (accessed 3 May 2004).

³⁷⁶ Lucian Augustin Bolcaş (Greater Romania Party MP), Debates of the simple motion over Rosia Montana. Chamber of Deputies, 10 December 2002.

³⁷⁷ Alburnus Maior, *Analiza Actualizata a Riscurilor*, report, 22 November 2005, <http://www.crji.ro/files/AnalizaRisc.pdf> (accessed 4 December 2005).

³⁷⁸ Former senior official, Mineral Resources Agency, interview, 2005.

³⁷⁹ Goetz, 2001, p. 1033.

of *acquis* negotiations, actual behaviour was still lagging far behind legal forms, although these were becoming (gradually) Europeanized.

Another important legacy of Communism that likely played a role in the Rosia Montana affair was the interlocking of the *régies* with the political apparatus, which throughout the 1990s had mutually benefited the political parties and the *régie* directors. The latter enjoyed broad autonomy, while the State continued to guarantee their income. As late as 2000 it transpired that some directors were earning salaries as high as US\$100,000, when the average monthly wage in Romania was only US\$100. In exchange, the directors donated 10% of their earnings to the Party.³⁸⁰ This state of affairs was known to be the norm under the Social Democrat government and persisted, no matter which party controlled the government. In 2005 Tom Gallagher observed the ‘continuing influence [over the political party elites] of the directors and managers of ailing state industries, known as “the directocracy” (*directoratii*). They had been a key pillar of the Iliescu regime [1990-1996 and 2000-2004] and were still able to prevent [in 2000] their plants and utilities being placed under proper budgetary constraints even in the absence of their patron [Iliescu]’.³⁸¹ MinVest, one of the biggest *régies*, the directocracy was likely at work in this case, which would explain, together with bribery, why the Industry Minister signed off on a partnership of such murky legality.

Once RMGC obtained its licence in 1999, it began exploration in earnest. As prospecting advanced, the company made a series of discoveries. These culminated in 2000 with the discovery of the largest gold and silver deposit in Europe,³⁸²

³⁸⁰ Personal communication with Social Democratic Party County Councillor in Sibiu, 20 April 2003.

³⁸¹ Gallagher, *Theft of a Nation*, pp. 181-2.

³⁸² Stephanie Roth, *A Storm in the Making*, 5 June 2002.

containing up to 300 more tonnes of gold and 1,600 tonnes of silver³⁸³ and worth more than US\$3 billion.³⁸⁴ Two deposits in particular, La Cetate and Cârnic, were extensive but, as it later emerged, only of low grade.³⁸⁵

Profitable mining would be impossible without a large-scale open-cast operation – four open-pits covering 722 hectares for 15-16 years – and without increasing Romania's total annual gold production from three to 13-14 tonnes per year.³⁸⁶ This would in turn entail a massive increase of gross extraction from 500,000 to 11-12 million tonnes per year.³⁸⁷ The operation would only be profitable if, like Baia Mare, cyanide heap-leaching was used. This would entail building a 185-metres high dam to contain a tailings-pond covering 300-400 hectares, which would necessitate the evacuation of the Corna Valley: 1,000 families and about 2,000 private and public estates would have to be removed, including the exhumation and reburial of the dead in the cemeteries of several churches.

The company directors were convinced that the project would appeal to everybody.³⁸⁸ It would bring to Romania the most foreign direct investment ever; convert into a state-of-the-art operation a poorly managed, technically obsolescent *régie* hugely indebted to the State; (allegedly) clean up the district's legacy pollution; create 25,000 jobs in a region afflicted by high unemployment; and develop the local infrastructure – thus contributing much to the regional and something even to the

³⁸³ Gabriel Resources, *Update On Rosia Montana Development* (Press Release), 10 April 2000; Vice President RMGC, interview, 20 September 2005; Former senior official, Mineral Resources Agency, interview, 2005.

³⁸⁴ Radu et al., 2002.

³⁸⁵ European Parliament, *The Environment Committee Delegation fact-finding visit to Romania on 7-9 December 2003*, p. 3, <<http://www.rosiamontana.org/documents/english/EPreport.htm>>.

³⁸⁶ Email communication with former RMGC Vice-President, 30 September 2005; European Parliament, p. 38; Former senior official, Mineral Resources Agency, interview, 2005.

³⁸⁷ Ibid.

³⁸⁸ Vice President, RMGC, interview, 20 September 2005.

national economy.³⁸⁹

For such reasons, the project was strongly supported by the local councillors and mayor so that the permits local authorities had the power to issue were easily obtained.³⁹⁰ (It later emerged that the many local government officials or their family members, including the mayor's brother and sister, had been employed by the company – a flagrant conflict of interest, according to Romania's Local Public Administration Act 215/2001.³⁹¹ But such illegalities were only revealed a few years later by domestic civil society and their Western environmental activist-mentors.) The project also had the support of the central government, both the centre-right coalition under which the licence had been approved and, after the 2000 elections, the Social Democratic Party.³⁹² Nobody, therefore, had any reason to expect that the permits necessary for exploitation would be denied or delayed, or that the mining would not soon begin in earnest.

2.2.3 The Communist legacy for civil society

By 2001 the company was already negotiating and buying up local properties, although not all the requisite permits had been obtained.³⁹³ The company called their resettlement programme 'voluntary', and claimed that locals were glad to sell out and leave a moribund locale. Yet reports surfaced that strong-arm tactics were being used on recalcitrant villagers. Reflecting the Romanian cultural norm of zero-sum adversarialism, local farmers were allegedly being told to sell out 'or else' by the

³⁸⁹ Radu et al., 2002.

³⁹⁰ Former Environmental Director RMGC, interview, 2005; Former senior official, Mineral Resources Agency, interview, 2005.

³⁹¹ Centru de Resurse Juridice, *Sesizare Consilieri*, 12 May 2005, <<http://www.cri.ro/reforma.php>> (accessed 13 June 2005).

³⁹² Former senior official, Mineral Resources Agency, interview, 2005.

³⁹³ Robin Hickson, Bruce Marsh and Lee Doran, *Rosia Montana Project, Romania. Environment and Social Impact Study and Actions Plans*, 11 March 2003, <<http://www.pdac.ca/pdac/publications/papers/2003/Marsh.pdf>> (accessed November 2003).

Romanian directors of MinVest and by miners trade union leaders.³⁹⁴

It was under these circumstances that the first organised opposition emerged in February 2000. The founding members of Alburnus Maior were goaded into mobilising by a local Member of Parliament from the Party for National Unity, one of Romania's nationalist parties. This MP warned them to get organised 'if they wanted to avoid trouble and face down the company, who are all crooks'.³⁹⁵ Those who organised were a handful of local professionals – mining engineers and surveyors – and former employees of MinVest. The leaders, Aurel Manta, the local historian, and Zeno Cornea, a now-retired chief of MinVest's geological service, recruited a dozen villagers to create the Association of Alburnus Maior (the ancient Latin name for Rosia Montana).³⁹⁶ Some were resentful of having been sacked by MinVest; Cornea, for example, had been forced into retirement by a trade union leader. This is a common story in Romania, where the norm is for trade unions to defend, not the interests of workers but of the union bosses.³⁹⁷ Others had had 'their land or family hurt by the mining operation in some way'.³⁹⁸ Still others resented how Romanian managers granted new jobs on the basis of personal connections, just as in communist times.³⁹⁹ Finding employment through who you are or who you know ['pe pile'] was the norm under Ceausescu, an adaptation Romanians evolved in response to an 'arbitrary and threatening regime'.⁴⁰⁰ Those who emerged to challenge the project were thus 'privately' motivated; at this early stage their

³⁹⁴ European Parliament, p. 7; Interview by the author with Codruta Nedelcu, geologist and environmentalist ARIN, 10 February 2006; Interview by the author with Zeno Cornea, Alburnus Maior, 4 February 2006.

³⁹⁵ David, interview, 28 June 2005.

³⁹⁶ Ibid.

³⁹⁷ Cornea, interview, 2006.

³⁹⁸ Email communication by the author with former RMGC Vice-President, RMGC, 4 February 2006.

³⁹⁹ Nedelcu, interview, February 2006.

⁴⁰⁰ Ken Jowitt, *New World Disorder. The Leninist Extinction* (University of California Press, 1992), p. 78.

mobilisation had no connexion with Romania's accession to the European Union.⁴⁰¹

They stood in the minority, however. A local majority concerned with economic survival – 75% of the local inhabitants in 2003 – favoured the project, without ever questioning its impacts on their cultural heritage or the environment.⁴⁰²

Alburnus's official aim was to defeat the company's resettlement and relocation plans: 'We had in our heads a very important matter: that nobody was going to take our properties away'.⁴⁰³ Alburnus thus attracted individuals of varying interests.

Owners of petty concessions for gold exploitation dating from before World War II, which the Communists had nationalised, joined Alburnus seeking restitution.⁴⁰⁴

Others were holding out in hopes of driving a better bargain with the company. Still others, particularly those with political aspirations, saw opposition as an opportunity to make or burnish their image before their prospective electorate.⁴⁰⁵ Most if not all of them were unconcerned with public-goods values like environment or cultural heritage, the issues likeliest to grab the attention of trans-national civil society organisations like Greenpeace. Originally, 'the environment' featured in Alburnus's rhetoric only insofar as it meant their most vital resource – their farmland.⁴⁰⁶

Alburnus proceeded to utilise whatever domestic opportunities they perceived would further their goals. They appealed for help to Members of the Romanian Parliament representing nationalist parties, whom they perceived as 'patriots who cared about

⁴⁰¹ David, interview, 28 June 2005.

⁴⁰² Eddie O'Hara, *Rosia Montana Information Report*. 21 December 2004, Committee on Culture, Science and Education, Council of Europe, Doc. 10384. <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc04/EDOC10384.htm> (accessed 3 January 2005).

⁴⁰³ David, interview, 2005.

⁴⁰⁴ Interview with Michael M. Cernea, World Bank Expert by Ion Longin Popescu, 'The Truth about the Resettlement of the Apuseni Mountains', *Formula AS*, no. 582, September 2003..

⁴⁰⁵ Nedelcu, interview, February 2006.

⁴⁰⁶ Ibid.

the gold deposit'.⁴⁰⁷ This strategy backfired when RMGC turned the nationalist connexion against them, charging the opposition was driven by the xenophobia of the local elite.⁴⁰⁸ This negative spin may have deterred the more progressive and outward looking domestic environmental groups from supporting the protest. Indeed, in 2002 Terra Mileniul III, one of Romania's major environmental NGOs, sent staff members to Rosia to spy out Alburnus's real motives before they were willing to support them. Terra were anxious not to join a protest motivated by traditional Romanian nationalism ('we shall not sell out our country').⁴⁰⁹ Thus, at its founding, Alburnus was inward-oriented and unaware of the new opportunities beckoning from abroad.

By the end of 2001, almost two years after its creation, Alburnus's campaign had pretty much failed. Its membership lacked the skills, knowledge and resources necessary to run an effective protest campaign.⁴¹⁰ Apparently, on their own they did not know how to convert into a source of power even the vital expertise of their own members who, being former miners, understood well some of the implications of such a large-scale project.⁴¹¹ Their campaigning consisted of little more than writing letters of complaint to sundry authorities, who gave them either no answers at all or perfunctory ones.⁴¹² They did stage one demonstration, but it attracted hardly any media attention outside Rosia.⁴¹³ Without media savvy, Alburnus could not effectively publicise their anti-gold mining protest, which remained a 'monologue' to which few paid attention.⁴¹⁴ Alburnus was handicapped by their lack of vision in framing their campaign to appeal to a wider audience.

⁴⁰⁷ Cornea, interview, 2006.

⁴⁰⁸ Vice President, RMGC, interview, 20 September 2005.

⁴⁰⁹ Nedelcu, interview, February 2006.

⁴¹⁰ Email communication with former RMGC Vice-President, 2 February 2006.

⁴¹¹ Interview by the author with Stephanie Roth, Alburnus Maior, 7 July 2005.

⁴¹² Nedelcu, interview, February 2006; former senior official, Mineral Resources Agency, interview, 2005.

⁴¹³ Roth, interview, 2005.

⁴¹⁴ Ibid.

But Alburnus was handicapped not by its own weaknesses alone, but also by constraints imposed on it, deliberately or inadvertently, by other Romanian actors and institutions. The Romanian directors of MinVest tried to strangle Alburnus in the cradle by threatening to sack miners who had joined if they did not withdraw from the Association.⁴¹⁵ The company refused any dialogue, treating them to a ‘half-neglectful, half-aggressive’ strategy⁴¹⁶ and labelling them ‘a bunch of crazy people’.⁴¹⁷ The authorities ignored their requests for information and marginalised them at local public consultations.⁴¹⁸ The media did not cover their protests. Most Romanian environmental organisations (NGOs) remained passive. Only one NGO attempted to mount a campaign; but failed, apparently due to incompetence, or to fear of being assaulted by proponents, or of losing influence with the local government.⁴¹⁹ Potential allies amongst Romanian NGOs were also constrained by the cloak of silence enveloping the project. Most heard nothing about the company’s plans before 2002. Even those who did were faced with so novel a situation that they did not know what to do or where to start.⁴²⁰ Even the best-connected and most professional of all Romanian environmental NGOs admitted not understanding the consequences of such a project.⁴²¹ Meanwhile, the company was making swift progress, winning permits and buying out properties.

⁴¹⁵ Cornea, interview, 2006.

⁴¹⁶ Former Environmental Director, RMGC, interview, 2005.

⁴¹⁷ Vice President, RMGC, interview, 20 September 2005.

⁴¹⁸ Nedelcu, interview, February 2006; Interview by the author with Mercedes Echerer, Green MEP for Austria, 5 October 2005.

⁴¹⁹ Interview by the author with Laszlo Potozky, Director, Environmental Partnership Foundation, 22 September 2005.

⁴²⁰ Ibid.

⁴²¹ Ibid.

Conclusions

This chapter reveals the tenacity of the Communist legacy in Romanian, and its impact on both Executive and civil society actors and on institutions. The Executive's behaviour displays many pre-1989 characteristics of Romanian political culture, as opposed to what one might expect from an Europeanized or Western Executive. They acted unconstrained, enjoying wide discretion over State assets and their privatisation. Operating under so few domestic and external constraints during this time, the Executive did not bother to seek even formally legal ways of circumventing the public-tender requirement of the Western-inspired Mining Act, as they would have to do in the Transylvanian Motorway case. They simply ignored it. The conduct of State and quasi-State actors like Romanian company directors and trade union leaders toward the civil society opposition also reflects one of the classic pre-1989 Romanian legacies: opposition is to be ignored at best, or heavy-handedly mistreated.

The predominance of pre-1989 norms of behaviour is also noticeable in civil society, as evidenced by the tightly shut domestic opportunity structure available to the civil society opposition and by the general passivity of environmental organisations. Alburnus were not only powerless and resource-less; their vision and strategy looked inward, revealing a lack of awareness of the possibilities of utilising Europe or international resources to achieve their goals. Although some of their weaknesses were peculiar to their rural, grassroots origin, Alburnus Maior reflect in many ways the general state of Romanian environmental civil society at the end of the 1990s. The general passivity is particularly surprising given the international uproar over the cyanide-spill at nearby Baia Mare in 2000. One would have expected this to have made Romanian environmental groups more aware of the impacts of cyanide-based

mining techniques. Most of them did nothing, even though the local opposition furnished a very convenient nucleus for wider mobilisation.

The background of the Rosia Montana affair is one of scant Europeanization of domestic actors' power resources and norms of behaviour. The evidence is rather of continuity and tenacity of communist and pre-communist patterns of power relations between State and civil society. All actors have yet to become aware of the possibilities of constructing and utilising Europe. With Romania's accession to the EU, however, Europe and its benefits for them begin to dawn on all parties concerned. How they began to construct and utilise Europe and the EU, and with what effects on domestic power relations, are treated in the following chapters.

Chapter 3: Empowerment of domestic civil society through Executive self-constraint in anticipation of EU accession
- The case of the Dracula theme Park -

This chapter traces the evolution of a political contest between, on the one hand, the Romanian Executive led by Social Democrat Prime Minister Adrian Nastase, and on the other a resourceless and virtually powerless domestic civil society opposition. These two actor-collectives clashed over plans laid by the Executive to build a Hollywood-style Dracula theme park in the midst of a nature reserve on the outskirts of an UNESCO-protected World Heritage Site. Domestic civil society was empowered to overcome the Executive contrary to all expectations. It was an empowerment that could only have happened because the Executive was constrained by a cumulative series of external interventions on the part of UNESCO, the European Parliament and Charles, Prince of Wales. How did these external interveners move the Executive? And what role did Romania's accession to the EU play, if any?

Section One of this chapter presents the Romanian *status quo* – the Executive decides unilaterally, and few, if any constraints stand in their way. Section Two presents the emergence of a handful of local protestors; the domestic constraints under which they laboured; their reaching out to find stronger allies abroad; and their treatment at the hands of the State. Section Three shows how powerful external mediators and arbiters drawn-in by domestic civil society and their newfound trans-national allies gradually constrained the Executive so as to tip the balance of power in the favour of the protestors. Section Four details how the Executive combined Europe with its domestic power resources to minimise the impact on themselves of these constraints.

3.1 The Executive unbound

The broad-brush characteristics of the Romanian Executive have been presented in Chapter 2, and are well exemplified in the planning of Dracula Park: closed and opaque decision-making; a wide latitude of discretion; and a neglect of consultation with anyone outside the Executive circle. Their over-arching values are to gain material benefits and to boost theirs and Romania's reputation abroad.

Dracula Park emerged from the determination of Nastase and his Cabinet, a few months after winning the 2000 elections, to develop Romania economically and to integrate it into international and European markets and trading regimes. Part of their solution for opening up Romania was to revive its moribund tourism industry.⁴²² This had been in decline as to absolute numbers of tourists and new investment, the latter having been frozen at the level of the 1970s.⁴²³ The Cabinet hoped to prove that they could do better and be more effective than the centre-right government had just they replaced.⁴²⁴ The previous government's plans to modernise Romanian tourism had failed, apparently due to a 'lack of political will, correlated with a defective legal framework and outmoded managerial practices'.⁴²⁵ The Nastase government's ambition was to lift Romania up to Western standards in the field of tourism by emulating the successes of reputable tourist operators in Europe and beyond.⁴²⁶ This was to be done through a package of 'integrated tourism products' executed to the new public managerial paradigm. Projects would be developed as 'programmes with concrete objectives, deadlines and clearly defined responsibilities'.⁴²⁷ By March

⁴²² Romanian Government, *Reasons for Emergency Ordinance 3/2001 approving and implementing the Special Tourism Development Program for Sighisoara*, Bucharest, 2001

⁴²³ <http://www.cdep.ro/proiecte/2001/400/10/1/em411.pdf> > (accessed December 2004).

⁴²⁴ Ibid.

⁴²⁵ Interview by the author with Gelu Trandafir, BBC journalist, 24 February 2006.

⁴²⁶ Romanian Government, *Reasons for Emergency Ordinance*.

⁴²⁷ Ibid.

2001 the Ministry of Tourism, headed by Dan Matei-Agathon, announced a battery of 'golden tourism products' aimed at 'rapidly integrating Romania into the international tourist flow'.⁴²⁸ One of these was to be 'Dracula Park', which the Cabinet approved in the spring of 2001.

The Ministry in their planning narrowed the Park's potential sites to three: Bran in the Carpathian Mountains of southern Transylvania; Tihuta-Cobilita in Bistrita in northern Transylvania; and Sighisoara in the very heart of Transylvania. To the surprise of many, Sighisoara was finally chosen. A small and still intact medieval town, Sighisoara is renowned for its well-preserved medieval edifices and Saxon traditions dating from the 12th century.⁴²⁹ Because of these riches, its Historic Centre had been inscribed in 1999 as a World Heritage Site under the United Nations World Heritage Convention.⁴³⁰ Sighisoara is not well known for its associations with the Dracula legend that the new Cabinet was so keen to exploit. Some claim it is the birthplace of Vlad the Impaler, the 15th-century ruler who inspired Bram Stoker's 'Dracula'. The claim, however, has never been substantiated by any credible evidence.⁴³¹ The selection of Sighisoara was formalised by Executive Decree in July 2001. This was the first that the public had heard about their Dracula Park plans.

Because of the discretionary nature of the Romanian political system, it remains a mystery for most people how the Executive came to select Sighisoara. Many believed that the man behind the Sighisoara site was Miron Mitrea, the Transportation Minister and a major power-broker in the inner circle of the Social

⁴²⁸ Ibid.

⁴²⁹ CNN, 'Romania to build Dracula themepark'. 9 July 2001, <www.CNN.com>.

⁴³⁰ United Nations Educational, Scientific and Cultural Organization, <www.unesco.org>.

⁴³¹ Claudia, Constantinescu, 'Sighisoara, Half Way Between Protection and Valorisation. Interview with Peter Derer, Former Minister Secretary of State on European Institute for Cultural Routes', 2 April 2001. <http://www.culture-routes.lu/php/fo_index.php?lng=en&dest=bd_ar_det&id=00000037> (accessed January 2006).

Democrat Party (PSD). Originally from Sighisoara, Mitrea apparently championed the site because he wanted ‘to do something’ for his home town.⁴³² In the process Mitrea and a clique of private interests interlocked with the PSD elite (both centrally and locally)⁴³³ were to enrich themselves from property speculation. (In fact, local housing and land prices boomed as soon as Dracula Park was announced; the average house price appreciated overnight from €35,000 to €180,000, while the price of a hectare of land increased 100 times.)⁴³⁴ The truth of these allegations has been impossible to establish, but, given the nature of the Romanian political system, it would come as no surprise if indeed Mitrea did try to divert ‘pork’ to his district. Indeed, Executive discretion under Nastase was poorly checked and balanced, creating ample opportunities for corruption – opportunities that were soon taken advantage of by the highest Executives, Nastase included (as evidenced by the 2005 and 2006 investigations into their conduct).

Regardless of who chose Sighisoara, the Cabinet insisted that it was the optimal site for Dracula Park. The claim was justified by reference to advice from ‘experts in the Tourism Ministry’.⁴³⁵ It is unknown who these experts were, but the likelihood is that they were certain personal friends and advisers to Agathon. At least one of them is known to have been a successful tourism operator, and suspected to have vested interests in the tourism industry and its development.⁴³⁶ It is the norm in Romanian

⁴³² Interview by the author with Alex Gota Sustainable Sighisoara, 10 November 2006; Interview by the author with Popa, National Liberal Party MP, 13 December 2005; Remus Radu, ‘The man who conquered Dracula Park’, *Evenimentul Zilei*, 31 March 2004; Trandafir, interview, 2006.

⁴³³ Interview by the author with Hans Bruno Fröhlich, Head Priest of the Evangelical Church in Sighisoara, 14 December 2005; Interview by the author with Hermann Fabini, architect and former National Liberal Party Deputy, 16 December 2005; Popa, interview, 2005; Radu, 2004.

⁴³⁴ Radu, 2004; Popa, interview, 2005.

⁴³⁵ Fabini, interview, 16 December 2005.

⁴³⁶ Romanian Parliament, ‘Întrebări și interpelări adresate Guvernului de către senatori’, Nicolae Popa, *Sittings of the Senate*, 10 February 2003, <<http://www.cdep.ro/pls/steno/steno.stenograma?ids=5405&idm=13,01&idl=1>> (accessed 10 March 2003).

politics, and in fact more generally in CEE,⁴³⁷ for ministers to rely not on advice from senior civil servants, but on that of personal friends and counsellors whom they bring with them into government from outside.⁴³⁸ The political Executive's discretion to rely on cronies and appoint them to public office greatly amplifies the opportunities for corruption.

These experts of the Tourism Ministry had allegedly formulated their advice on the basis of a pre-feasibility study carried out by a certain Balzer Continental Inc. of the United States.⁴³⁹ The Executive kept silent about this private company, conceding only that it was a US company. Sighisoara was recommended because: it stood near two domestic airports 50 and 100 kilometres away; it was close to a future pan-European motorway, the Budapest-Bucharest-Constanta; and it was rich in natural and architectural heritage.⁴⁴⁰ These factors made Sighisoara an ideal site for Dracula Park. In the end the Executive would be forced to re-site the project for the very same reasons they had used in justification – evidencing how worlds-apart the Executive's values were from those of the civil society actors who rose to challenge them.

Except for their personal counsellors, the Executive consulted nobody inside Romania. Having control of Parliament, they treated it as a rubberstamp. The Emergency Ordinance mandating Dracula Park was submitted for ratification in August 2001, well after all plans had been finalised.⁴⁴¹ Parliament ratified it in December 2001 virtually without dissent, although it is also true that the matter was

⁴³⁷ Klaus H Goetz and Hellmut Wollmann, 'Governmentalizing central executives in post-communist Europe: a four-country comparison', *Journal of European Public Policy* (2001), vol. 8, no. 6, pp. 864 – 887.

⁴³⁸ Fabini, interview, 16 December 2005.

⁴³⁹ Romanian Government, *Reasons for Emergency Ordinance*.

⁴⁴⁰ Ibid.

⁴⁴¹ Popa, interview, 2005.

too small for a fragmented opposition to make an issue out of it.⁴⁴² The little dissent there was came from a marginal ethnic party, the German Democratic Forum, and a handful of Liberal Party deputies.⁴⁴³ The latter opposed the Park not out of ethical scruples but because they wanted it built in their own district. As for civil society, the Emergency Ordinance claimed to commit the authorities to an ‘active partnership’ with them as well as with any private companies involved.⁴⁴⁴ This created the impression that the Executive was ready to engage with civil society. In fact, as shown by later events, civil society was not even ‘on the radar screen’.

The speed and secrecy with which the Executive acted was likely intended to forestall opposition from other politicians and businessmen rather than from civil society. Later, Sighisoara’s mayor confessed that other players wanted the Park on their own land, and given the opportunity would have stolen the idea.⁴⁴⁵ This may explain why the Executive drafted their plans in the utmost secrecy and implemented them by Executive decree – an instrument designed for swift execution – even though they were operating against few veto points. Indeed, as soon as plans for Dracula Park at Sighisoara were revealed in July 2001, a very similar project – ‘Park Dracula’ – was produced ‘out of the blue’ by a local Liberal Party group in Brasov close to Bran Castle, the historical home of Count Dracula.⁴⁴⁶ The two groups were to fight fiercely over the location of Dracula Park in the coming years. The Liberals’ vision of Park Dracula contrasted to that of Agathon who, at least to begin with,

⁴⁴² Popa, interview, 2005.

⁴⁴³ Interview by the author with Wolfgang Wittstock, President of the German Democratic Forum, 14 December 2005.

⁴⁴⁴ Romanian Government, *Reasons for Emergency Ordinance*.

⁴⁴⁵ Dan Danesan, Sighisoara’s Mayor paraphrased in Hans Bruno Fröhlich, *Only God Can Stop Us!!! Memoirs of the Protest Against Dracula Park [Numai Dumnezeu de poate opri!!! Amintiri despre protestul impotriva proiectului “Dracula-Park”* (personal diary), 2003; Fabini, interview, 2005.

⁴⁴⁶ Cornel Nistorescu, ‘Editorial’, *Evenimentul Zilei*, 14 November 2001.

presented it as ‘a 100% Romanian project for Romanians’.⁴⁴⁷ The Liberals saw it as ‘a project made with American money for the Americans’.⁴⁴⁸ They had already allocated public land in the Brasov area,⁴⁴⁹ proceeding with as much speed and as little consultation as the PSD Executive. The opposition parties in their own fiefdoms exercised equally unlimited discretion.

The Executive rammed-through Dracula Park at Sighisoara without thinking through their plans in detail. They were reportedly impressed by 3-D computerised models of the Park created by an architect, ‘one of Agathon’s men’, and easily convinced to go ahead.⁴⁵⁰ Their planning consisted of little more than this model, and, as in Communist times when ends mattered more than means,⁴⁵¹ the project was launched at speed with very little businesslike analysis.⁴⁵²

The Executive took little notice of their obligations under the World Heritage Convention, which obligated them to inform and consult with the United Nations Educational, Scientific and Cultural Organization (UNESCO) about any major development projects that might affect the integrity of a World Heritage Site. In 2001 they had informed UNESCO several times of their intention to build two theme parks – Dracula Park and a ‘Western Land’ park – and a golf course in the proximity of Sighisoara.⁴⁵³ Each time they were advised against it.⁴⁵⁴ The Executive adjusted their plans somewhat in response – the idea of Western Land was dropped – but they went ahead with the Sighisoara site for Dracula Park in the teeth of UNESCO’s

⁴⁴⁷ Fabini, interview, 2005.

⁴⁴⁸ Fabini, interview, 2005.

⁴⁴⁹ Popa, interview, 2005.

⁴⁵⁰ Fabini, interview, 2005; Fröhlich, interview, 14 December 2005.

⁴⁵¹ Ken Jowitt, *New World Disorder. The Leninist Extinction*, (California: University of California Press, 1992). p.78.

⁴⁵² Fabini, interview, 2005.

⁴⁵³ World Heritage Committee. 2002. *Report of the UNESCO-ICOMOS Joint Mission to Romania, 22-28 March 2002*, WHC-02/CONF.202/INF.11. Paris, p 3.

⁴⁵⁴ Ibid.

concerns.

At this early stage, the Romanian Executive was still treating UNESCO opportunistically. This seemed to hardly matter to them, as ‘Sighisoara had never gotten any money out of it’.⁴⁵⁵ The Executive nonetheless justified their plans by exploiting UNESCO’s warnings and forecasts. The Emergency Ordinance implementing the Park referred to the pressing need to rehabilitate and repair the mediaeval citadel, which UNESCO had estimated would become totally degraded within 50 years.⁴⁵⁶ Indeed, in 1998 part of the town’s old fortifying wall had collapsed, and another part still standing had developed ‘an ominous bulge’ urgently calling for repair.⁴⁵⁷ The Executive argued that Dracula Park would save the citadel by bringing in investors and tourists. The number of tourists was estimated to increase from 10,000 to 800,000 a year.⁴⁵⁸ These would bring with them the much needed treasure that neither the local nor central government had been able to afford since 1989.⁴⁵⁹ The material facts provided by UNESCO were thus re-interpreted by the Romanian Executive in the light of their own values to serve their own interests.

Dracula Park was envisioned to be a ‘mega-park’ modelled on the Hollywood image of Dracula and designed for mass tourism.⁴⁶⁰ As Agathon put it: ‘If Hollywood can exploit the Transylvanian legend so profitably, why can’t we package it nicely, wrap a ribbon around it, and sell it [ourselves]?’⁴⁶¹ Based on vampire mythology, the Park would feature amusement rides; a castle wired for spooky effects; a maze garden; a golf course; themed restaurants (blood); shops and hotels; and a self-styled ‘Dracula

⁴⁵⁵ Dan Danesan (Mayor of Sighisoara) paraphrased in D.S. ‘We are not afraid of historians, ethnographers and journalists’, *Romania Libera*, 6 Nov 2001.

⁴⁵⁶ Romanian Government, *Reasons for Emergency Ordinance*.

⁴⁵⁷ World Heritage Committee, p. 4.

⁴⁵⁸ Romanian Government, *Reasons for Emergency Ordinance*.

⁴⁵⁹ Radu, 2004.

⁴⁶⁰ Fröhlich, interview, 14 December 2005; Popa, interview, 2005; World Heritage Committee, p. 11.

⁴⁶¹ Dan Matei-Agathon, Romania’s Tourism Minister (2001-2003) quoted in *Romania Libera*, 13 July 2001.

Institute⁴⁶² given out as an ‘international centre for vampirology’.⁴⁶³ Visitors would be shuttled by chairlift from the Breite Plateau, where Dracula Park would be located, into the citadel.⁴⁶⁴ The idea prompted some critics to comment later, ‘It is as if the Italians had chosen to build a Disneyland in Siena’.⁴⁶⁵ The Executive, however, perceived no incongruity between their plans and the World Heritage Site of Sighisoara. At that stage they appeared not to have been aware of, let alone cared about, affronting the alternative universe of values embodied in the UN Convention. The mass-tourism design of Dracula Park and its siting so close to a UNESCO-protected area were to become the centre of the controversy, to be targeted above all by the domestic and trans-national civil society opposition.

The Executive appeared ready not only to defy UNESCO and the World Heritage Convention, but also to breach domestic law. The 120-hectare Park was to be built just outside Sighisoara on the Breite Plateau, which the local government had offered to the Tourism Ministry free of charge.⁴⁶⁶ The Plateau hosted 70 hectares of one of Romania’s ecological treasures, an oak forest estimated to be 400 years old.⁴⁶⁷ For this reason it had been declared a nature reserve by the Mures County Council in 1993 and by the Romanian Parliament in 2000 in Parliamentary Act No. 5 on Protected Areas.⁴⁶⁸ Act 5/2000 forbids any development of a nature-protected site.⁴⁶⁹ The reserve, which the authorities should have protected according to the law, had been completely neglected until then. A few months later, when the controversy

⁴⁶² BBC, ‘Coming Soon – Dracula Land’, *BBC News*, 9 July 2001.

⁴⁶³ Eugen, Tomiuc, ‘Romania: Dracula Park Expected to Pump Fresh Blood Into Ailing Tourism Industry’, *Radio Free Europe*, 8 November 2001.

⁴⁶⁴ Jessica Douglas-Home, ‘Dracula goes Disney. A Transylvanian theme park with dungeons and blood-festoned tunnels could destroy a historic gem’, *The Times*, 6 November 2001.

⁴⁶⁵ *Ibid.*

⁴⁶⁶ ‘News: Dracula Empire (120 ha) is renamed “Dracula Park”’, *RoZiare.com*, 22 October 2001.

⁴⁶⁷ Tomiuc, 2001.

⁴⁶⁸ *RoZiare.com*, 2001.

⁴⁶⁹ Alex Gota, *Letter Addressed to the Romanian Information Services*, 14 November 2001; Gota, interview, 10 November 2006.

burst, the local mayor even denied that the Breite Plateau was protected by Romanian law⁴⁷⁰ – it was nothing but a ‘derelict place’.⁴⁷¹ (Apparently the mayor had been genuinely ignorant that the Breite Plateau was a nature reserve.)⁴⁷² Building a 120-hectare Park would have been entailed bulldozing the land and cutting down much of the forest, disfiguring the reserve beyond recovery.⁴⁷³ But environmental considerations did not feature in the Executive’s planning. The fact that they seemed ready to build a large infrastructure project on a nature reserve protected by Romanian law evidences the persistence of Communist and pre-Communist norms of behaviour and values.⁴⁷⁴ It also suggests their indifference to, or ignorance of, the subtler tones of the European community that they were hoping to join, especially respect for the rule of law. Nevertheless, their behaviour was probably more a conditioned response than malice aforethought.

The Executive’s opportunism extended to the EU and its member-States. The plan was to attract European tourists and German investment. The choice of the Sighisoara site likely was partly aimed at involving the Saxon community, much of which had left Sighisoara and now lived in Germany. Their involvement might ‘politically leverage opportunities for direct and indirect investment by the German Federal and Länder governments’.⁴⁷⁵ The fact that the Executive hoped to attract investment from the German government, yet were prepared to disregard the rule of law and the Park’s impact on the Saxon heritage suggests that they may indeed have been unaware of the incongruity between their domestic behaviour and their

⁴⁷⁰ Danasan, Dan (Mayor of Sighisoara) quoted in Corina Ruje and Aura Alexa Ioan, ‘Hundreds of Sighisoarans protest against the building of Dracula Land’, *Jurnalul National*, 21 October 2001.

⁴⁷¹ Ibid.

⁴⁷² Gota, Letter; Gota, interview, 10 November 2006.

⁴⁷³ Interview by the author with Sherban Cantacuzino, ICOMOS expert to UNESCO, 3 January 2006; Douglas-Home, *Dracula goes Disney*; Fabini, interview, 2005.

⁴⁷⁴ Goetz, *Making sense*, p. 1033.

⁴⁷⁵ Romanian Government, *Reasons for Emergency Ordinance*.

Europeanized material goals.

If the Saxon community would be used to attract money from one member-State, the norms and values of the EU were taken into account only insofar as necessary to avoid their interfering with the Executive's vision of attracting hard currency. For this purpose, the Cabinet drafted into its Ordinance a clause directing the Tourism Ministry to draw up a contract that would bind the bond-issuing authority that was to finance the park, that is, the local Council, 'to respect ... the technical and ecological standards applied in the EU'.⁴⁷⁶ By referring to EU standards, which Romania would someday have to comply with, the Cabinet may have intended to evade subsequent challenges for violating them. But this was the extent of their Europeanization at this stage: to avoid future difficulties with the EU, whose *acquis* the Romanian government had been planning to begin negotiating.

In planning Dracula Park, the Executive was motivated not solely by material incentives, but also by a thirst for higher status and international renown. Tourism Minister Agathon, for example, touted that Dracula Park would 'propel Romania to stardom'.⁴⁷⁷ In pursuing this goal as well, the Executive's behaviour was 'rational' within the context. They sought to maximise status and material benefits in a social environment not only materially poor, but so steeply hierarchical that the highest status is severely scarce and fiercely contested. From a material standpoint, the Park would create 3,000 jobs, revitalising the Sighisoara area. This was suffering 17% unemployment brought on by the collapse of the regional textile industry, which only subsidies had kept alive in Ceausescu's time.⁴⁷⁸ As for money, annual revenues of

⁴⁷⁶ Romanian Government. 2001. *Emergency Ordinance No. 3/2001 approving and implementing the Special Programme of the tourist development of the Sighisoara area*, 13 July 2001.

⁴⁷⁷ Dan-Matei Agathon quoted in Rose George. 2002. Dracula Park is supposed to revitalise Romania's tourist industry. But the locals think it sucks' in *The Independent*, 26 January 2004.

⁴⁷⁸ George, *Dracula Park is supposed to revitalise*.

US\$25 million were projected to accrue, if each of the one million tourists forecast to visit the Park spent US\$25, as the local Council's feasibility pilot-study had claimed. This would double Romania's income from tourism, and revitalise the whole industry.⁴⁷⁹ Although the Executive claimed that half of these revenues would be used to restore the Citadel,⁴⁸⁰ no plans were ever drafted to actually spend any revenues on restoration. It was this lack that, a few months later, convinced UNESCO to suspect the Executive's real motives.⁴⁸¹

The Executive's style of planning Dracula Park and proceeding with its implementation puts on display many norms typical of Communism: cloaking in secrecy; total discretion; decisions by a clique formed around the Party's powerbrokers; the motivation of material gains for private persons and interest-groups; amateurish planning in disregard of other stakeholders. The Executive also appeared unaware of or unwilling to respect the spirit and the letter of international and Romanian law. As for the EU and UNESCO, the Executive perceived them merely as opportunities to be exploited. Their conformity to EU norms and values appears to have been at this stage purely formal and strategic, and driven by material gain as the dominant value.

3. 2 The upstarts

In comparison with the untrammelled discretion of the Executive, Romanian civil society languished under severe constraints. This situation persisted until intervention came from abroad. This section will show how civil society took proactive steps to overcome these liabilities and to empower themselves to constrain

⁴⁷⁹ Nick, Thorpe, 'Romania scraps Dracula Land', *BBC News*, 28 June 2002.

⁴⁸⁰ Radu, 2004.

⁴⁸¹ Cantacuzino, interview, 2006

an unconstrained Executive.

The Cabinet's plans had been welcomed with enthusiasm by a majority of the local populace, and regarded with sympathy by local government and business.⁴⁸² Agathon and the Mayor of Sighisoara, Dan Danesan, inaugurated Dracula Park 'with great pomp' on the 6th November 2001.⁴⁸³ At Agathon's behest the local Orthodox priest led the attendees in prayer. The government had enlisted the Church – one of Romania's most influential 'demagogues' (as it were) – to cement local and national support for the project.⁴⁸⁴ Just as in Communist days, some participants carried banners reading 'Agathon we love you' and 'Dracula saves Sighisoara'.⁴⁸⁵ The prospect of better jobs and a higher standard of living appealed to most.⁴⁸⁶ Indeed, by March 2002 5,000 people had applied to the Mayor's office for employment.⁴⁸⁷ Few questioned the Executive's motives for so oddly juxtaposing a Dracula theme park next to a mediaeval Saxon citadel unaffiliated with the legend. The fact that the Nastase Cabinet's values and ways of thinking resonated with those of the local populace raised an expectation that Dracula Park would be implemented more or less as planned.

A small minority of local civil society entrepreneurs nevertheless did rise to challenge not just the Executive's choice of location, but their most basic values and ways of thinking and proceeding. This marked the first time Romanian civil society had ever challenged a development project sponsored by the government, indicating that the classical passivity of Romanian civil society and its acquiescence to the State were perhaps beginning to change. The first spark of opposition was lit after the

⁴⁸² Fröhlich, interview, 14 December 2005.

⁴⁸³ Fröhlich, *Only God Can Stop*; Gota, interview, 10 December 2006.

⁴⁸⁴ Fröhlich, interview, 14 December 2005.

⁴⁸⁵ Ibid.

⁴⁸⁶ Fabini, interview, 2005; Fröhlich, interview, 14 December 2005.

⁴⁸⁷ World Heritage Committee, p. 22.

Executive published the Emergency Ordinance of July 2001. A local Lutheran pastor, the ethnic German Hans Bruno Fröhlich, addressed a letter of protest to the local authorities. He petitioning them to intervene to keep the town from succumbing to an 'atmosphere beneficial to "evil spirits"', which Dracula Park threatened to promote.⁴⁸⁸ Fröhlich had little rational expectation that the letter, published out of an internal need – ('I can't stay on the sidelines; I must do something'), – would change anything, for 'what could a single man do ... before a government decision?'⁴⁸⁹ As expected, the authorities ignored his letter.⁴⁹⁰

This first gesture of protest appeared insignificant in the circumstances then prevailing. Yet it did not pass wholly unnoticed. Published by the local newspaper, it caught the attention of Alexandru Gota, a local freelance journalist and 'nature lover'. His concerns resonated with those of Fröhlich. Heartened by his example, Gota gave voice to his own concerns, which centred on the Breite Plateau – already under pressure from overgrazing and neglect by the local administration.⁴⁹¹ The two teamed up to plan a way of stopping Dracula Park.⁴⁹² They expected no reprisals; that the Romanian authorities would respect their freedom to dissent from government policy was taken for granted. Had the costs of defying the authorities been higher (*i.e.* imprisonment) they would likely have never mobilised. This change in their expectations of how the State would react to protest may have been due to Romania's accession to the EU or simply to the fall of Communism. Their mobilisation suggests that the expectations and values of at least a minority had been changed by something since the days of Ceausescu. As for values, theirs were the

⁴⁸⁸ Fröhlich, *Only God Can Stop*.

⁴⁸⁹ Fröhlich, *Only God Can Stop*; Gota, interview, 10 December 2006.

⁴⁹⁰ Fröhlich, interview, 14 December 2005.

⁴⁹¹ Fröhlich, *Only God Can Stop*; Gota, interview, 10 November 2006.

⁴⁹² Fröhlich, interview, 14 December 2005; Gota, interview, 10 November 2006.

polar opposites of the local populace's and the government's – values that would prove to fit in better with those held by trans-national actors and organisations from Europe.

Like most Romanian civil society, neither Fröhlich nor Gota had resources or experience enough to organise an effective campaign. Locally, only a few friends and relatives responded positively to their efforts to gather signatures on a protest petition. Gota's account of the first demonstration in Sighisoara illustrates vividly how little support they had in Sighisoara: 'In October 2001 when I went out with a banner in the main square, I was alone'.⁴⁹³ The majority either did not care or, anticipating the jobs the authorities had promised, were unsympathetic and even hostile. Realising that they stood no chance of success on their own, they proceeded to mobilise other Romanian civil society actors.

At the national level, only one Romanian civil society organisation responded promptly – the Pro-Europe League, a civic group campaigning primarily for civil rights. The League had been founded in December 1989, directly after the downfall of Ceausescu, by a group of intellectuals for the purpose of promoting Romania's integration into the EU.⁴⁹⁴ It was the threat they perceived in Dracula Park to the Romanian and Saxon cultural patrimony, to the environment, and to democracy and the rule of law that motivated them to 'take all necessary action to stop this project'.⁴⁹⁵ Most of Romanian civil society, including even the environmental organisations, remained passive, immobilised and unreliable, limiting themselves to private letters of support. This disappointed Fröhlich and Gota, who had expected

⁴⁹³ Gota, email communication, 5 January 2006.

⁴⁹⁴ Pro-Europe League, 2004, <<http://www.proeuropa.ro/>> (accessed January 2005).

⁴⁹⁵ Interview by the author with Judit Kacso, Program coordinator, Pro-Europe League, 7 April 2006; Pro-Europea League, 'NO to the transformation of Sighisoara in Dracula Park' (Press Conference), Tîrgu Mureş, 8 November 2001, <<http://www.proeuropa.ro/document/CP8noi2001.html>> (accessed 1 December 2005).

more than one organisation to mobilise, particularly given that Romania had many environmental organisations, and that many of the significant issues raised by the Park were environmental ones.⁴⁹⁶

At length, the local protestors were empowered after all, when they were joined by norm entrepreneurs from the West. The first to join were ethnic Germans who had emigrated from Sighisoara but had kept in contact with Fröhlich. One of them was Andreas Mausolf, a German environmental activist specialising in ecological and cultural tourism. Mausolf taught the local protestors the concept of sustainability [Nachhaltigkeit], and inspired them to found a civic initiative group, which they named 'Sustainable Sighisoara'.⁴⁹⁷ The group's stated mission was to enter into dialogue with the local and central authorities in order to seek local development solutions alternative to Dracula Park.⁴⁹⁸ They were ignored.

Empowered by the Germans and by the Pro-Europe League, Sustainable Sighisoara proceeded to lobby domestic and international organisations to intervene and help them to persuade the government to relocate the project. They had observed that the Romanian authorities were highly sensitive to international pressures, especially those coming from the EU. If they ever modified their behaviour, this tended to happen only after 'receiving messages from abroad'.⁴⁹⁹ The protestors constructed discourses featuring the EU as well as the European identity which the Romanian political elites like to claim for themselves: 'The Government is forever declaring that its first priority is integration into Europe; if so, it should refrain from any act that might taint the European cultural heritage. Moreover, the Government should be

⁴⁹⁶ Gota, interview, 10 November 2005.

⁴⁹⁷ Fröhlich, interview, 14 December 2005.

⁴⁹⁸ V. S. Muntean, 'The Sustainable Sighisoara Association', *Jurnalul de Sighisoara*, 2001.

⁴⁹⁹ Gota interview, 10 November 2005.

in the vanguard of any campaign aimed at protecting this ... the cultural heritage in Transylvania is our evidence that we belong to the European cultural space'.⁵⁰⁰ Sustainable Sighisoara had a double aim in invoking the EU thus. On the one hand they were trying to alert EU and other international organs to what was happening in Sighisoara and to the Romanian government's two-level game; that is, that their internal discourse was a 180 degrees opposite to that 'for external consumption'.⁵⁰¹ The hope was that these organs 'would give a signal', making the Romanian authorities fear negative repercussions for their EU accession.⁵⁰²

Besides deploying discourses featuring the EU, the protestors took the initiative to lobby Brussels. Believing that the European Commission was 'professional' and 'interested in the issue of cultural heritage' (or, that if it was not, they could make it feel it ought to be), the Pro-Europe League wrote Enrico Grillo Pasquarelli, Commissioner for Enlargement, charging the Romanian authorities with breaching domestic and international law.⁵⁰³ The protestors perceived the power asymmetry between the Commission and the Romanian government as an opportunity to empower themselves over the Executive. They believed that the Commission must have a 'weighty say' in Romania's accession, and would at least enquire of the Romanian government about the project'.⁵⁰⁴ That the Commission did not intervene in the end suggests that civil society might construct opportunities out of the EU which nonetheless might not necessarily lead to any empowerment.

The protestors achieved greater visibility with the intervention of the media in the affair. In the beginning, the domestic media had paid no attention to them. With the

⁵⁰⁰ Pro-Europea League, *NO to the transformation*.

⁵⁰¹ Gota, interview, 10 November 2005.

⁵⁰² Ibid.

⁵⁰³ Kacso, interview, 2006.

⁵⁰⁴ Ibid.

exception of *Cotidianul* and *Romania Libera*, all newspapers had focused only on the benefits of the Park claimed by the government.⁵⁰⁵ Many suspected that the government 'bought silence' by buying a lot of adverts in the main newspapers and television channels: 'all media [had] eulogised the government's grand investment and its grand design ... and [had] excluded the voice of those opposing the park'.⁵⁰⁶ Foreign mass-media were the first to cover the local protest. Ironically it was the inauguration of Dracula Park by Agathon in Sighisoara in November 2001 that had brought the protestors to the attention of the foreigners. The *Financial Times*, *Business Week*, and TV channels like the German ZDF and ARD and the French Arte reported not only the Romanian government's plans but also the local opposition to it.⁵⁰⁷ Later on, aggressive articles authored by the opposition were published by *Le Monde*, *The Guardian*, *The New York Times*, and *Deutsche Welle*.⁵⁰⁸ The German and the British press were particularly critical of the Park,⁵⁰⁹ presenting it to their respective publics as a non-viable project.⁵¹⁰ The intervention of the foreign media prodded the domestic Romanian press to give more 'objective coverage' to the affair.⁵¹¹ Indeed, *Evenimentul Zilei*, perhaps Romania's premier broadsheet, became one of the most incisive critics, investigating the project's finances and concluding that the sums 'did not add up ... were completely unrealistic and ... made-up from start to finish'.⁵¹² The media was crucial to the empowerment of the civil society

⁵⁰⁵ Fröhlich, *Only God Can Stop*; Gota, interview, 10 November 2005.

⁵⁰⁶ Trandafir, interview, 2006.

⁵⁰⁷ Ziua de Ardeal, 'Dracula Park's enemies searched by the External Information Services', *Ziua de Ardeal*, 24 October 2001.

⁵⁰⁸ Pro-Europe League, S.O.S. Sighisoara, 'Gala Premiilor Societatii Civile', 2002.

http://www.galapsc.ro/1024_ro/projects.php?pid=177 > (accessed 1 March 2003).

⁵⁰⁹ Hermann Armeniu Fabini (National Liberal Party Senator), Sessions of the Senate of April 29, 2002, Romanian Parliament.

⁵¹⁰ Fröhlich, interview, 13 January 2006.

⁵¹¹ Fröhlich, *Only God Can Stop*; Gota, interview, 10 November 2005.

⁵¹² Gota, interview, 10 November 2005.

opposition.⁵¹³

The opposition to Dracula Park surprised both the local and central Executives,⁵¹⁴ until then so confident in their unchallenged dominance. The protest risked deterring foreign investors, becoming a lightning-rod for bad publicity by ‘media channels of great prestige from Western Europe as well as from the East’.⁵¹⁵ Worried that the negative publicity might deter German involvement, Agathon himself wrote a letter to the association representing Sighisoara’s German repatriates, to assure them that their Saxon heritage and the environment would be taken special care of. For Agathon, the protestors were ‘obscure forces ... who propagate false information ... aimed to discredit and undermine [Romania’s] resort to the capital market’.⁵¹⁶

In response to the protest, the Executive actors in charge of implementing Dracula Park became aggressive and took to personal attacks, thus making recourse to ‘Communist methods’ of vindicating their exercise of discretion and stifling opposition. The leading protestors fell under a torrent of verbal abuse from the authorities and many local media. The Mayor summoned Gota and Fröhlich to render an account, demanding to know ‘Who are you representing?’ and ‘Who pays you?’⁵¹⁷ He told them bluntly that they were under surveillance by the Romanian secret service ‘because they had opposed a governmental project ... thus subverting State power’.⁵¹⁸ The Park Manager, Marius Stoian, called Fröhlich ‘a nutcase’; others accused him of being a spy because he was an ethnic German and had regular contact

⁵¹³ Evenimentul Zilei, 22 July 2002; Gota, interview, 10 November 2005.

⁵¹⁴ Fröhlich, *Only God Can Stop*.

⁵¹⁵ Dan Matei-Agathon (Tourism Minister of Romania), *The Message of Mr. Dan Matei-Agathon, Tourism Minister, addressed to the Annual Reunion of Ethnic Germans of Sighisoara*, Letter to the City Hall of Sighisoara, 2001.

⁵¹⁶ Ibid.

⁵¹⁷ Fröhlich, *Only God Can Stop*.

⁵¹⁸ Fröhlich, *Only God Can Stop*; Trandafir, interview, 2006.

with Germany.⁵¹⁹ The distribution of *Romania Libera*, the main opposition newspaper was, alone of all the national broadsheets, even interdicted in Sighisoara, apparently at the behest of the local mayor.⁵²⁰ The Mayor went so far as to slander Gota on an issue unrelated to Dracula Park leading to a lawsuit now before the European Court of Human Rights.⁵²¹ For his part, Agathon himself called Gota on his mobile and threatened to sue him, and an ‘emissary’, presumably sent by Agathon, offered Gota ‘an appreciable sum of money’ to soften his stance.⁵²²

Contrary to expectations, a civil society minority, whose values differed to those of the majority and of the government, was thus prepared to challenge the Executive. To do so, they seized every opportunity they could make shift, including discourses featuring the EU and lobbying of EU organs. Their lack of expertise and resources, the immobile public, the dismissive domestic media, and the Executive’s promptitude to use intimidation and corruption were significant obstacles. The local protestors overcame some of these on their own – they involved more experienced and resourceful German civil society actors and gained visibility through the media. They even garnered some supporters from amongst Romanian civil society, who had been so passive to begin with. However, they did not succeed on their own in casting off their most burdensome constraint. The Executive, local and central, not only did not change its plans, they even moved to shut down the protest, thus threatening that critical expectation upon which Sustainable Sighisoara had been founded: the freedom to express an opinion and dissent from government policy without fear of reprisal. Therefore, to move the Executive off its course, Sustainable Sighisoara and its trans-national allies proceeded to involve much more powerful mediators and

⁵¹⁹ Fröhlich, *Only God Can Stop*; Fröhlich, interview, 14 December 2005.

⁵²⁰ Fröhlich, interview, 13 January 2006.

⁵²¹ Gota, email communication, 6 January 2006.

⁵²² Ibid.

arbiters.

3.3 The *posse comitatus*

The domestic protest's bottom-up engagement of Europe was to be complemented by the intervention of external actors, acting at their own initiative, more powerful than either Sustainable Sighisoara or the Romanian Executive. The serial intervention of The Mihai Eminescu Trust, UNESCO, the European Parliament and Prince Charles would gradually pressurise the Executive to the point where the external costs of pursuing Dracula Park came to be perceived by them as outweighing the domestic benefits.

3.3.1 The Mihai Eminescu Trust

One of the most consequential external interveners constraining the Executive, and by default empowering the domestic protest, proved to be The Mihai Eminescu Trust (MET). The MET was a London-based organisation under the leadership of Jessica Douglas-Home that worked to protect the Romanian cultural heritage. The MET has a relatively long history of involvement in Romania. Under Ceausescu Douglas-Home had helped Romanian dissidents and got involved in saving Romanian villages that Ceausescu had planned to bulldoze.⁵²³ Compared to Romanian civil society, the MET had access to more power resources. The organisation is under the patronage both of Prince Charles and of Prince Sherban Cantacuzino. The latter is an eminent Romanian *émigré* and architect of the Romanian diaspora elite in London and an expert of the International Council for Monuments and Sites (ICOMOS) and advisor to UNESCO. Cantacuzino is also the President of the Pro Patrimonio Trust, which together with the MET have been actively involved since 1989 in preserving the

⁵²³ Jessica Douglas-Home, *Once Upon a Time. Ventures Behind the Iron Curtain*, (Michael Russell, 2000); Gota interview, 10 November 2005.

cultural heritage, in particular the Saxon villages of Transylvania. One of their goals was to head off what they deemed the ‘wrong sort of development’.⁵²⁴

Both the Pro Patrimonio Trust and the MET, and patrons, shared a vision of sustainable development centred on traditional agriculture, crafts and ecological tourism.⁵²⁵ They doubted Dracula Park would bring ‘sustainable prosperity’ to Sighisoara.⁵²⁶ Douglas-Home, for example, believed the Park was ‘tacky’, ‘badly made’, and sited ‘in the wrong place’, and was convinced that the government had exaggerated the prospects of jobs and tourists.⁵²⁷ If built anywhere, the Park should be located on a brownfield site – of which there are plenty in Romania – closer to a major city like Bucharest.⁵²⁸ Cantacuzino and Douglas-Home provided the expertise and the social leverage that would draw into the affair UNESCO and Prince Charles, those whose acts were eventually to constrain the Executive. Their intervention was not in any way incentivised by the EU but by their own values alone. Insofar as they had an impact on the outcome of Dracula Park, they were bottom-up causes of Europeanization by private means and initiative – ‘norm entrepreneurs’ – active largely in individual EU member-States.

Although Douglas-Home and the MET did not specifically aim to aid the local protest,⁵²⁹ in the end this was the effect they had. They empowered Sustainable Sighisoara and its domestic allies with ideas, information and strategies. Sustainable Sighisoara first met with the MET in December 2001, and agreed informally to support each other’s efforts. The agreement produced ‘fruitful collaboration’ on both

⁵²⁴ D.S., *We are not afraid of historians*.

⁵²⁵ The Mihai Eminescu Trust, *Letter summarising the outcome of the meeting with Agathon*, 26 June 2002.

⁵²⁶ Jessica Douglas-Home, email communication, 2 January 2006.

⁵²⁷ George, *Dracula Park is supposed to revitalise*; Douglas-Home, *Dracula goes Disney*.

⁵²⁸ Douglas-Home, *Dracula goes Disney*.

⁵²⁹ Douglas-Home, email, 2 January 2006.

sides.⁵³⁰ Not only did the MET empower Sustainable Sighisoara, but they were in turn empowered by them – first with a constant flow of local information, but later, more importantly, with domestic legitimacy, without which the intervention of the MET might have backfired for being unilateral and foreign. Prince Charles’s subsequent intervention – arranged by the MET – might well have been perceived more negatively by Romanians had they not enjoyed local allies.⁵³¹

The MET targeted the Executive for constraint.⁵³² Douglas-Home was particularly successful in creating negative publicity about Dracula Park in Britain. In order for this to have any effect, she had to rely on the Nastase Cabinet’s keenness to accede to the EU. She knew that Romanians gave ‘considerable importance’ to their ‘special relation with England’ generally, and even more in the context of accession, so that British coverage of Romania was closely monitored by the Romanian embassy.⁵³³ The MET calculated that bad publicity in Britain was ‘incredibly important’ for the Romanian government at that sensitive time in the accession process.⁵³⁴ Well-connected to the British press – her husband used to be the editor of *The Times* – Douglas-Home’s articles were published by *The Guardian*, *The Times*, *The Spectator*, and *The BBC Wildlife Magazine*.⁵³⁵ Most of these were then translated and carried by the Romanian press.

The negative publicity in Britain did not escape the Nastase Cabinet’s notice. In January 2002, the PM reacted to one of Douglas-Home’s articles in *The Spectator* ridiculing Dracula Park. By juxtaposing the medieval beauty of Sighisoara with torture dungeons and restaurants serving brains and blood-coloured cotton candy, the

⁵³⁰ Gota, email, 9 January 2006.

⁵³¹ Fröhlich, interview, 13 January 2006.

⁵³² Douglas-Home, interview, 12 April 2006.

⁵³³ Ibid.

⁵³⁴ Ibid.

⁵³⁵ Douglas-Home, email, 2 January 2006.

article implied that the Park was a white elephant that would never attract foreign investment.⁵³⁶ Such a portrayal of his project angered Nastase, who counteracted by redoubling his Cabinet's support: 'We must promote an aggressive tourism ... Romania cannot endlessly have a traditional tourism ... This is a governmental project; we support it, and this is the sort of thing we want to do, to bring money to Romania ...'.⁵³⁷ Nastase's anger suggests that the MET's negative publicity campaign had got the Executive worrying about loss of reputation and foreign investors, even if the publicity was not still enough at that point to make the Executive change course.

3.3.2 The World Heritage Committee and UNESCO

The MET played a critical role in getting UNESCO and the World Heritage Committee (WHC) involved. The WHC superintends the implementation of the World Heritage Convention. Alerted by the MET and Sustainable Sighisoara, they first intervened in December 2001.⁵³⁸ They succeeded in constraining the Executive to some extent by themselves, but lacked the coercive mechanisms to actually keep the Park from being built at Sighisoara. They became influential only once the Cabinet perceived a connexion between complying with the World Heritage Convention and accession to the EU. Thus, even the WHC's and UNESCO's influence over the Executive ultimately piggybacked on the latter's keenness to accede to the EU and their fear of being sanctioned in this process by the EU.

UNESCO's first intervention was a letter to the PM expressing concern over the

⁵³⁶ *Adevarul*, 'In the prestigious British magazine, The Spectator: Dracula Park covered with blood in', *Adevarul* 16 January 2002

⁵³⁷ Adrian Nastase, PM of Romania quoted in Corina, Dragotescu, 'Adrian Nastase says that we cannot have a tourism only for the working class tired of capitalism', *Adevarul*, 19 January 2002.

⁵³⁸ Douglas-Home, email, 2 January 2006; Mihai Eminescu Trust web site, 2002.
<<http://www.mihaieminescutrust.org.uk/files/newsletter2002.pdf>>; Interview by the author with Mechtild Rössler, Chief, Europe & North America UNESCO World Heritage Centre, 11 December 2005.

impact of mass-tourism on the citadel and the Park's visual impact on the town centre.⁵³⁹ They advised the Romanian government to carry out an Environmental Impact Assessment and explore sites alternative to Sighisoara.⁵⁴⁰ The Cabinet responded by trimming the Park's design to exclude the chairlift and the golf course. This was done informally, without any modification actually being made in the implementing Emergency Ordinance.⁵⁴¹ They were unwilling to concede more at this point; no steps were taken to explore or even to plan to explore alternatives.

The Executive even took steps to hasten the project. Around the same time UNESCO's letter arrived, in December 2001, the Executive floated their bonds, authorising the issue of US\$5 million worth.⁵⁴² Hoping to entice emulation, Nastase and Agathon publicly bought hundreds of pounds worth.⁵⁴³ There followed other politicians and businessmen as well as civil servants.⁵⁴⁴ Apparently Nastase even interrupted a TV channel to announce he was investing in Dracula Park and to urge Romanians to get involved – news which disheartened the opposition.⁵⁴⁵ UNESCO's letter thus had a minimal effect on Nastase and the Cabinet. Their scant accommodation of UNESCO's recommendations was likely driven by their calculation that UNESCO may recommend, but has no coercive power to enforce its recommendations. It was only 'an informal group', as the Park Manager put it;⁵⁴⁶ therefore, in the Cabinet's view, UNESCO was irrelevant and had no right to call a

⁵³⁹ World Heritage Committee, p. 8.

⁵⁴⁰ Ioan F Pascu., 'UNESCO's letter to the Romanian government' *Jurnalul Sighisoara Reporter*, 23-20 January 2002.

⁵⁴¹ World Heritage Committee, p. 8.

⁵⁴² 'Romanian Tourism Minister Launches Public Offering for Shares in Dracula Park', *Radio Free Europe Newlines*, 13 December 2001.

⁵⁴³ Sean Hillen, 'Prince of Wales defeats Prince of Darkness', *Daily Telegraph News*.

⁵⁴⁴ Ion Teleanu and Ovidiu, Zara, 'Dracula Park investors tremble for their money' (CD-ROM source, no date and publisher recorded).

⁵⁴⁵ Douglas-Home, email, 26 May 2006; Cornel, Nistorescu, 'About failures, only good words' *Evenimentul Zilei Online*, 2 July 2003.

⁵⁴⁶ Marius Stoian (Dracula Park Manager) quoted in 'We are not worried about Dracula Park', *Adevarul*, 17 January 2002.

halt to a project undertaken by a sovereign government.⁵⁴⁷

The Executive was nonetheless forced to defend itself when in January 2002 an aggressive Romanian press widely publicised UNESCO's letter (until then apparently kept secret).⁵⁴⁸ The letter had been re-interpreted by the press and civil society opposition to mean that UNESCO had in fact demanded, not merely recommended that the Park is scrapped. The Executive counterattacked by constructing discourses featuring the EU in deploying information about EU member-States held by UNESCO. They contextualised UNESCO's concern over Dracula Park, pointing out that there were 82 other cases in Germany, Italy and France alone where UNESCO had also signalled concern.⁵⁴⁹ By this argument the Executive was seeking to empower itself by 'tagging along' with powerful and unquestionably legitimate members of the EU. The Tourism Ministry endeavoured to counteract opposition by commissioning a poll into the views about the Park of the local populace. The poll showed that the majority supported it.⁵⁵⁰ The Executive deemed this showing of popular support to have legitimised their plans.

Having failed to move the Executive off course, the WHC in March 2002 dispatched a joint UNESCO-ICOMOS Mission to investigate matters at Sighisoara. The Mission included Sherban Cantacuzino – patron of the MET and President of Pro Patrimonio – who cherished values that clashed with the Executive's but resonated with those of the civil society opposition. Even before arriving in Romania, the Mission conceived that their report could not possibly support Dracula Park, and that they 'would find as many reasons as they possibly could to discourage the Executive'

⁵⁴⁷ Ibid.

⁵⁴⁸ Ovidiu Nahoi, 'What Minister Agathon forgot to tell us: UNESCO does not want Dracula Park next to Sighisoara', *Evenimentul Zilei Online*, 16 January 2002.

⁵⁴⁹ Marius Stoian (Dracula Park Manager) quoted in *Adevarul*, 17 January 2002.

⁵⁵⁰ Nicoleta Burtan, 'With an opinion poll ordered up from an institute founded by a fellow minister, Agathon tries to show that Sighisoarans support Dracula Park unanimously', *Evenimentul Zilei Online*, 20 December 2001.

and to make them agree to find another site.⁵⁵¹ Because their formal remit was to ‘evaluate objectively’ the project’s impact on the heritage values of the Site and ‘make recommendations’ to WHC, the Mission took care to express its opposition stealthily.⁵⁵² They asked ‘loaded’ and ‘sensitive’ questions of the most vehement supporters, *viz.* Agathon, Danesan the local mayor, and Covali the architect.⁵⁵³ The Mission implicitly threatened the Executive by warning them that by going ahead with Sighisoara they risked having it removed from the Heritage List onto the Danger List.⁵⁵⁴ That would forfeit Romania’s right to apply to the World Heritage Fund or nominate other Sites in future. Such an outcome would be widely perceived in the international community to be a ‘pretty disreputable thing to happen to a State’.⁵⁵⁵

The Mission had some effect on the Executive. The provocation of their questions triggered angry responses from proponents. Covali, for example, ‘became quite heated at one point because he felt that [the Mission] were prejudging their plans’.⁵⁵⁶ For his part, Agathon sensed that ‘[Cantacuzino] was very much against Dracula Park’, and that ‘the Mission’s report was not going to be favourable’.⁵⁵⁷ However, when it became clear that they had failed to convince the Mission about the merits of their project, the Cabinet took several *ad hoc* decisions that they hoped would influence the Mission toward a more positive evaluation. On the Mission’s last day, Agathon informed them that the Emergency Ordinance would be formally amended to exclude the chairlift and the golf course, and that the ‘Dracula Castle’ towers would be lowered below the tree-line to minimise their visual impact. The

⁵⁵¹ Cantacuzino, interview, 2006

⁵⁵² Rössler, interview, 2005.

⁵⁵³ Cantacuzino, interview, 2006.

⁵⁵⁴ *Ibid.*

⁵⁵⁵ *Ibid.*

⁵⁵⁶ *Ibid.*

⁵⁵⁷ *Ibid.*

Environment Minister promised that the 400 year-old oak trees on the Breite Plateau would be included in the design and protected inside the development zone; moreover, that the Park would feature a natural history museum and a laboratory, and offer environmental education and guided tours of the Plateau.⁵⁵⁸ For its part, the Culture Ministry promised to undertake archaeological diggings in order to substantiate claims that a Roman road runs through the site.⁵⁵⁹ The Mission, then, did succeed in constraining the Executive to a certain extent, but not as much as they had intended. The Cabinet still did not commit itself to considering alternative sites.

The Executive's *ad hoc* efforts to cajole the Mission did not have the intended effect. The Mission report was negative, recommending that the WHC 'requests the Romanian government to reconsider the proposed theme park'.⁵⁶⁰ It also threatened the Executive with putting Sighisoara on the List of World Heritage in Danger if no immediate steps were taken to rehabilitate the Site with national and international funds – as opposed to waiting for tourism revenues from Dracula Park.⁵⁶¹ The Mission did succeed in giving the Cabinet the impression that the WHC was prepared to criticise the Romanian government severely in Budapest in June 2002. This would have sanctioned them for their disrespect for cultural heritage, for the international conventions which they had signed but did not enforce, and for the international bodies to which they were endeavouring to accede.⁵⁶² Such criticism could 'mark' the Romanian government,⁵⁶³ provoking a negative reaction from the European Commission, which had advised the accession countries that they must

⁵⁵⁸ World Heritage Committee, p. 9.

⁵⁵⁹ Ibid.

⁵⁶⁰ World Heritage Committee, p. 13.

⁵⁶¹ World Heritage Committee, p. 12.

⁵⁶² Interview by the author with Nicolae Ratiu, Pro Patrimonio, 13 June 2006.

⁵⁶³ Ibid.

comply with all international conventions and treaties to which they were parties.⁵⁶⁴

Non-compliance with a UN Convention would signal that Romania was not prepared to abide by the rule of law, and thus casting doubt on its accession-worthiness.

The perception that the Commission might sanction a Romanian government that flouted its international obligations was played upon and reinforced by Romanian civil society, the MET and the press; they all deployed discourses linking UNESCO to the EU. One such discourse asserted, 'Censure from UNESCO will carry no legal force. However the stigma it would carry should worry the Romanian government as it seeks to enter the EU, which sets much store on environmental issues'.⁵⁶⁵ The European Parliament, intervening a mere three weeks after the Mission, played an important role in stressing the connection between UNESCO and the EU. Absent such a linkage, many observers agreed that it would have been doubtful that UNESCO alone could have significantly influenced the Romanian Executive.⁵⁶⁶

3.3.3 The European Parliament

The only EU supranational actor who intervened following appeals by civil society was the relatively powerless Culture Committee of the European Parliament (EP). In March 2002, the Culture Committee sent one of its members to Sighisoara, Mercedes Echerer, a Green Austrian MEP and former Greenpeace leader. Echerer discovered to her surprise that Sustainable Sighisoara, the local civil society in opposition, had the competence to network trans-nationally and to formulate sound arguments against the Park.⁵⁶⁷ Yet she was left with the impression that competence might not, on its own, suffice to move the Cabinet. Upon her return to Brussels, Echerer

⁵⁶⁴ Interview by the author with Henriette Faergemann, Desk Officer for Romania, DG Enlargement, European Commission, 6 July 2005.

⁵⁶⁵ Jessica Douglas-Home, 'East of Order. A new Dracula Park in Romania', 2002 (CD-ROM source, no date or publisher recorded).

⁵⁶⁶ Ratiu, interview, 2006.

⁵⁶⁷ Interview by the author with Mercedes Echerer, former Green Austrian MEP, 15 December 2005.

prevailed on the Culture Committee to intervene. Her apparent intention was to empower domestic civil society by signalling to all parties that the EP sympathised with the opposition.⁵⁶⁸ The MEPs were well aware of their powerlessness over EU member-States, yet they expected the Romanian Executive's keenness to accede to the EU would motivate them to heed even relatively weak external pressures.⁵⁶⁹ Romania was already experiencing accession woes, giving the MEPs hope that the government would want to avoid worsening things by showing themselves insensitive to warnings from the EP.⁵⁷⁰

Lacking a solid legal basis for intervention, the Committee relied on implicit threats like non-accession and damage to reputation, as well as on the promise of rewards. In April 2002 the President of the Culture Committee wrote a letter to the Nastase, his Culture Minister, his Tourism Minister, as well as to the local authorities in Sighisoara, warning them that the World Heritage Convention had been incorporated into the EU acquis by an EP Resolution (16/2001).⁵⁷¹ He called on the PM 'to suspend all work that already began on the designated site and wait for the decision of UNESCO in June 2002'.⁵⁷² Linking the EU to UNESCO was intended to suggest to the Romanians that 'UNESCO's ideas and concerns do have an influence on the European level'.⁵⁷³ Nastase was admonished that 'the international community will be sensitive' to his decision on Dracula Park (the threat), and offered the proposal that the Committee might 'examine together [with the Cabinet] all the possibilities of

⁵⁶⁸ Email communication with Mercedes Echerer, former Green Austrian MEP, 16 June 2006.

⁵⁶⁹ Echerer, interview, former Green Austrian MEP, 15 December 2005.

⁵⁷⁰ Ibid.

⁵⁷¹ European Parliament. 2002. *Minutes of the meeting of 25 March 2002 and 26 March 2002*, Committee on Culture, Youth, Education, the Media and Sport, BRUSSELS PE/XIII/PV/02-04.

⁵⁷² *Scrisoarea domnului Michel Rocard, preşedintele Comisiei de Cultură a Parlamentului European*, April 2002, (translated by Pro-Europe League), <<http://www.proeuropa.ro/document/ScrisEUParl.html>> (accessed December 2005).

⁵⁷³ Echerer, interview, 15 December 2005.

supporting the development of Transylvania, the conservation of its patrimony and the development of tourism projects' (the reward).⁵⁷⁴

The Cabinet was advised to consider matters very carefully before taking a decision that might damage the World Heritage Site, and to keep the EP informed.⁵⁷⁵ The Committee tried to influence the Cabinet by making them 'feel under pressure', and by inducing in them a perception of 'being watched' by the EU.⁵⁷⁶ This perception would only have been reinforced by the EP Delegation that visited Romania in October 2002 to assess her progress toward living up to the environmental *acquis*. Dracula Park was one of three 'specific issues' (along with Rosia Montana and the Danube Delta) which the Delegation inquired into.⁵⁷⁷ Through these interventions, the EP constrained the Romanian Executive a step further by making them believe that if they built Dracula Park at Sighisoara, it might, at a minimum, 'disturb' Romania's accession.⁵⁷⁸ The Parliament's intervention reinforced the Cabinet's perception of risk created by all the other external interveners – WHC-UNESCO's before them and Prince Charles's after – but did not decisively move the Cabinet to relocate Dracula Park.

3.3.4 Prince Charles's intervention: the straw that broke the camel's back

The last and, according to most actors in the controversy, the decisive influence on the Cabinet was Charles, Prince of Wales and heir to the British throne. This final external intervener tipped the balance of power against the Park's proponents. Charles intervened during a private visit of his to Transylvania in May 2002, likely at

⁵⁷⁴ *Scrisoarea domnului Michel Rocard.*

⁵⁷⁵ Echerer, interview, 15 December 2005.

⁵⁷⁶ *Ibid.*

⁵⁷⁷ European Parliament. 2002. *Summary Note of the Environment Committee Delegation to Romania on 28-30 October 2002*, < <http://www.europarl.eu.int/comparl/envi/pdf/delegations/1999-2004/romania.pdf>>, p. 3.

⁵⁷⁸ Echerer, interview, 15 December 2005.

the instance of Jessica Douglas-Home.⁵⁷⁹ The visit included a stopover in Sighisoara immediately he arrived in Romania, a priority seemingly intended to signal his concern for the town. Charles telephoned the Romanian President, Ion Iliescu – known for his reservations about the Park, and for being ‘more receptive to signals from abroad’.⁵⁸⁰ Charles reportedly urged Iliescu that development through ecotourism and traditional farming and crafts would suit Sighisoara better than a large-scale development like Dracula Park. The latter ‘would be wholly out of sympathy with the area, and will ultimately destroy its character, [leading to] a tragic loss for the local inhabitants and for Europe as a whole’.⁵⁸¹ Charles’s telephone call had an immediate effect on Iliescu. The next day he declared that Romania was ‘open to all suggestions’, and that the project ‘will not be implemented blindly’.⁵⁸² This was the first time an influential member of the government had publicly expressed reservations over the project.

The most vehement Cabinet supporters, however, remained defiant. Before Parliament Agathon’s Secretary of State downplayed Charles’s opposition as merely a ‘personal standpoint’, publicised by people close to Charles but not by Charles himself.⁵⁸³ Such declarations aside, Prince Charles’s intervention came to be regarded by many as ‘the straw that broke the camel’s back’.⁵⁸⁴ It was the last in a series of interventions that had gradually constrained the Cabinet. Indeed, after Charles’s visit, the discourse of the most vehement park proponents budged

⁵⁷⁹ Cantacuzino, interview, 2006.

⁵⁸⁰ on Iliescu’s ‘de-radicalization’ see Vladimir Tismaneanu, *The Great Shock at the End of a Short Century: Ion Iliescu in Dialogue with Vladimir Tismaneanu on Communism, Post-Communism and Democracy*, East European Monographs, (Colorado: Boulder, 2004), p. 13; Wittstock, interview, 2005.

⁵⁸¹ Prince Charles quoted in ‘Prince Opposes Dracula Park’, *BBC News*, 6 May 2002; Fabini, interview, 2005; Douglas-Home, email, 2 January 2006.

⁵⁸² Douglas-Home, interview, 2 January 2005; Fabini, interview, 2005.

⁵⁸³ Alin Burcea (Secretar de Stat, Tourism Ministry), *Sittings of the Senate of October 14, 2002*, Romanian Parliament

⁵⁸⁴ Ratiu, interview, 2006.

noticeably. A week after the Prince's visit members of the Cabinet hinted that Dracula Park might be re-sited.⁵⁸⁵ Agathon himself declared that he would resign if the park was not built 'in Romania' – as opposed to 'in Sighisoara'. In all likelihood Agathon was dismayed by Charles's opposition: only a few months before the controversy erupted, Agathon had been planning to invite the Prince, along with other VIPs, to celebrate the grand opening of the Park at Sighisoara.⁵⁸⁶ A month after Charles's visit, however, the Cabinet was already looking for alternative sites. They officially commissioned Price Waterhouse Coopers (PWC) of London to conduct a feasibility study comparing Sighisoara to other locales.

Charles's visit not only constrained the Executive, it had the side effect of empowering Romanian civil society in opposition, enhancing their legitimacy and perhaps prestige, even though Charles had surely not specifically intended this. These effects were only by-products of Charles's intervention, depending in part on civil society's interpretation of the visit. For example, throughout his stay in Sighisoara, Prince Charles omitted to meet with the local elite, who supported the Park, as protocol would have recommended.⁵⁸⁷ The opposition trumpeted to the world the local elite's disappointment, interpreting the Prince's omission as a snub that signalled his own opposition.⁵⁸⁸ Charles's intervention was similarly interpreted and discursively deployed by the Liberal MPs who were trying to move Dracula Park to their own patch.

Prince Charles's influence over the Romanian Executive might at first seem unaccountable. It is probably best explained by combining the insights of rational

⁵⁸⁵ Lucian Purcareanu, Nicoleta Burtan and Lidia Moisei, 'Agathon withdraws: Dracula no longer haunts Sighisoara', *Evenimentul Zilei Online*, 15 Mai 2002.

⁵⁸⁶ Jessica Douglas-Home, A new Dracula horror in Romania (CD-ROM source; no date or publisher recorded).

⁵⁸⁷ Fröhlich, *Only God Can Stop*.

⁵⁸⁸ Gota, interview, 10 November 2005.

choice with constructivist theory. From a rational-choice standpoint, the Executive feared that if they disregarded Prince Charles's concerns over Sighisoara, this might trigger a negative reaction from the British government. Prince Charles had been a strong supporter of Romania's interests;⁵⁸⁹ he had for a long time been seen as 'fabulous public relations for Romania'.⁵⁹⁰ Had the Executive 'slapped him in the face' by flouting his publicly proffered advice, they might have lost his goodwill, from which the Romanian government had been benefiting without actually having done anything 'to deserve or keep it'.⁵⁹¹ Some in the Executive even believed that Prince Charles might have quit lobbying for or might even have lobbied against Romania's interests, the most important of which for Nastase were accession to the EU and to NATO.⁵⁹² Britain was one of their strongest allies in achieving this, being one of the few EU member-States who had given 'essential and very consistent support' to Romania's accession, right from the beginning of the negotiations.⁵⁹³ The government were keen to preserve their 'special relation' with Britain.⁵⁹⁴ Even if the Cabinet knew that Dracula Park was not important enough for the British government to abandon Romania over, they still would have calculated that they could not afford the risk of disrespecting the future British monarch.

From a sociological standpoint, Charles wielded influence over the Cabinet because they feared losing his friendship for its own sake. Some observers have conjectured that this consideration had 'a big effect' on the Cabinet.⁵⁹⁵ Prince Charles is 'greatly appreciated' by the Romanian government for his 'Romania-philia'.⁵⁹⁶ Many times

⁵⁸⁹ Interview with Robin Barnett (British Ambassador to Romania) by *BBC Romania*, 16 June 2006.

⁵⁹⁰ Ratiu, interview, 13 June 2006.

⁵⁹¹ Ibid.

⁵⁹² Former senior civil servant, Environment Ministry Romania, interview, 3 June 2006.

⁵⁹³ Interview by the author with senior official, Romania's negotiations team, 16 June 2006.

⁵⁹⁴ Douglas-Home, interview, 12 April 2006.

⁵⁹⁵ Ratiu, interview, 2006.

⁵⁹⁶ Fabiani, interview, 2005; Ratiu, interview, 2006.

since 1989 Charles had holidayed in Romania, and was known to have a 'soft spot' for its Saxon villages, monasteries, countryside and history.⁵⁹⁷ Directly after a 1997 visit by the Prince, the MET, in collaboration with Romania's Culture Ministry, set up a large conservation project for Saxon villages, apparently with Charles's financial support.⁵⁹⁸ The Romanian government 'feel[s] very flattered' by Charles's personal involvement in the development of Transylvania, and 'this gives him a certain authority over them'.⁵⁹⁹ All this suggests that the Cabinet had been socialised into an international community to which Prince Charles belongs, just as one would have predicted from a sociological perspective, and that their identification with this community constrained them.

Prince Charles' visit was the culmination of several external pressures which in combination with an intensification of domestic pressures, the Prince had prevailed on the Cabinet to constrain themselves. Nastase and his Cabinet began to believe that the external costs of pursuing the Park at the Sighisoara site exceeded both the domestic and the external benefits they were hoping for. Indeed, 'a word may have been put in [Nastase's] ear' (so it is rumoured) that if he persisted with Sighisoara in the teeth of so many opponents, it would jeopardise issues of great importance to his government, putting Romania in a difficult situation in relation to EU membership and even NATO accession.⁶⁰⁰ Despite the fact that the Cabinet were still enthusiastic about the Sighisoara site, they decided they must 'extricate themselves from it' at all costs.⁶⁰¹

⁵⁹⁷ Ratiu, 2006.

⁵⁹⁸ Cristina Modreanu 'The Saxon villages in Transylvania in the attention of the British Royal House', 2002 (CD-ROM source, no date or publisher recorded).

⁵⁹⁹ Cantacuzino, interview, 2006.

⁶⁰⁰ Ratiu, interview, 2006; Email communication by the author with Danesan's office, 6 February 2006.

⁶⁰¹ Ratiu, interview, 2006.

3.4 The Executive evades liability

None of these cumulative external interventions may have been ‘quite enough’.⁶⁰²

The Cabinet had to find a way to pull out with minimal loss and saving face.

Agathon in particular did not sign a commitment to re-site the Park until after an ‘exit strategy’ was proposed to him.⁶⁰³

The strategy was to retain Price Waterhouse Coopers to evaluate Dracula Park ‘from an international perspective’ and assess the opportunity costs of building it close to a UNESCO-protected site.⁶⁰⁴ In fact, PWC was commissioned with the ‘anticipated result’ that Sighisoara would not be found optimal.⁶⁰⁵ The consultancy firm had been chosen carefully. It was not the odd consultancy; it was not even PWC of Bucharest, but PWC of London. It was likely reckoned more prestigious and thus for the Executive a more potent source of empowerment. PWC were to consider two sites alternative to Sighisoara – the greater Bucharest area and Constanta, and recommend the optimal one.⁶⁰⁶ They were also commissioned to bring-in direct foreign investment and/or international investment funds so as to secure the US\$30 million necessary for building the Park, a sign that the Cabinet had every intention of pursuing the project elsewhere.⁶⁰⁷ By employing PWC, the Cabinet was deploying one of its domestic power resources, access to finance. Agathon justified hiring the London consultancy on the grounds that ‘Romania has neither the necessary financial resources nor the necessary specialists’ to evaluate such a project.⁶⁰⁸ This immediately called into question the validity of the original, Ministry-sponsored

⁶⁰² Ibid.

⁶⁰³ Ibid.

⁶⁰⁴ Carol Popa, ‘The shareholder have no control over Dracula’, *Capital*, 11 July 2002.

⁶⁰⁵ Ratiu, interview, 2006.

⁶⁰⁶ Dan Matei-Agaton quoted in Liana Subtirelul and Livia Avram, ‘Sighisoara a scapat de Dracula Park’, *Adevarul*, 21 January 2003. ‘Vampire Theme Park Seeks Funds’ (World Business Briefing), *The New York Times*, 19 June 2002.

⁶⁰⁷ Ibid.

⁶⁰⁸ Ibid.

feasibility study, on the basis of which tourist flows and revenues had been forecast, and bonds sold. The fact that PWC had to delay its evaluation for lack of data on Romania's tourist flows⁶⁰⁹ strengthens the claim of civil society and the press that the Ministry's forecast of tourists and revenues was hot air.

The idea of using PWC as a pretext for relocating Dracula Park had been suggested to Agathon by a London-based Romania expatriate and member of the Pro Patrimonio Trust. Pro Patrimonio had from the beginning collaborated with the MET to stop Dracula Park at Sighisoara. They shared the hope (and the strategy) of moving the Executive off its course with as little damage as possible to Romania's interests. The two organisations offered to help the Cabinet find alternative funding to rehabilitate Sighisoara. Agathon acceded finally to the plans of the two Trusts to develop Sighisoara through sustainable alternatives,⁶¹⁰ despite the fact that their proposal embodied values and a paradigm of development polarly opposite to that which he and the other Executive power brokers of Nastase's Cabinet cherished. Agathon gave in not because the Cabinet were persuaded of the value of cultural heritage by these Western 'norm entrepreneurs', but because they feared more accession woes.⁶¹¹ Once Agathon had agreed, the Trusts were in position to relay to WHC-UNESCO the message that the Romanian government was 'very seriously looking for alternative sites'.⁶¹² This, it was hoped, would soften the severe criticism of Romania planned WHC for the Budapest meeting in June 2002.

The Executive used PWC for two purposes. One was to contain the damage that might be inflicted on them by those who had already bought the Dracula Park bonds

⁶⁰⁹ Sorin Marica (Dracula Park Manager) paraphrased in Nicoleta Burtan and Lidia Moise, 'Seful Dracula Park, Leafa de 20 milioane de lei, *Evenimentul Zilei*, 22 July 2002.

⁶¹⁰ The Mihai Eminescu Trust. 2002. *Letter summarising the outcome*.

⁶¹¹ Ratiu, interview, 2006.

⁶¹² *Ibid*.

issued by the local municipal government. They feared being sued and found liable to compensate the investors for their losses.⁶¹³ Their other purpose was to utilise PWC as a face-saving pretext and thus as a counter-tool to minimise the damage to their reputation. Indeed, after the commissioning, the Executive frequently referred to PWC in their public discourses so as to deflect criticism by shifting responsibility onto PWC. It was no longer the government who would take a decision on Dracula Park, but the PWC experts, who now became ‘the only ones qualified to recommend re-siting’.⁶¹⁴

Agathon backed down as soon as PWC reported on the 3rd October 2002. Sighisoara was assessed second-best; Dracula Park would be more profitable if built near Bucharest. Dracula Park at Sighisoara was ‘inopportune’,⁶¹⁵ it was concluded, because a theme park opposed by organisations such as UNESCO and built on a nature reserve was likely to deter foreign investors.⁶¹⁶ On 22 October Agathon tipped the press to a possible re-siting, and in March 2003 officially announced that the Park would in fact be build at a site near Bucharest.⁶¹⁷ Agathon remained bitter. Sighisoara had been abandoned, he admitted, ‘because of the international and internal pressures, because of the rabid and threatening attacks’.⁶¹⁸

Agathon was dismissed from his post as Minister in June 2003 and the Tourism Ministry subsumed under Miron Mitrea’s Transportation Ministry. Many have conjectured that the Dracula Park fiasco, together with other blunders – such as buying expensive palm trees and planting them where they do not thrive, which drew

⁶¹³ Ibid.

⁶¹⁴ Dan Matei-Agathon paraphrased in Nicoleta Burtan and Lidia Moise, ‘Dracula Park - pe un teren nesigur’, *Evenimentul Zilei*, 2 July 2002.

⁶¹⁵ Email communication with Dan Danesan (Mayor of Sighisoara), 6 February 2006.

⁶¹⁶ Carol, Popa, ‘Actionarii nu mai au nici un control la Dracula’, *Capital*, 11 July 2002.

⁶¹⁷ Fröhlich, *Only God Can Stop*.

⁶¹⁸ Dan Matei-Agathon quoted in Ovidiu D. Popica, ‘Teapa lui Dracula’, *Evenimentul Zilei*, 3262, 23 January 2003.

fire even from the US ambassador, – persuaded Nastase to dismiss him together with the European Integration Minister, Hildegard Puwak, accused of diverting EU funds to her husband’s business.⁶¹⁹ Nastase was reluctant to dismiss these Ministers, but the politics of the situation gave him little choice. Now that the accusations and demands for accountability from the domestic civil society elite were receiving wide coverage by the press and reinforcement from the European Commission, only a year before the general elections the two had become too costly.⁶²⁰ The dismissed Ministers were nonetheless looked after. Agathon, for example, was promoted to become Executive Secretary of the Social Democrat Party. This implies that, close enough to elections, civil society may also be empowered by the Executive’s fear of the electorate. Their empowerment may piggyback on accession conditionality externally and on the nearness of elections internally.

In July 2003 Mitrea, now the Minister in charge of tourism, deprioritised Dracula Park. The Executive and other PSD power-brokers, however, who had speculated in adjacent land were able to recoup their losses ahead of any possible PSD election loss. Close observers of Romanian politics claim that the route of the Transylvanian Motorway was altered in 2004, not coincidentally, to pass near the Breite Plateau.⁶²¹ These well-connected speculators then had the opportunity to profit after all from land expropriations for the sake of the motorway.⁶²²

The Executive tried to revive Dracula Park near Bucharest in October 2004, just one month before the general elections. They proceeded surreptitiously this time, giving it a different name – The Snagov Touristic and Entertainment Park⁶²³ – and

⁶¹⁹ Tismaneanu and Mihaies, p. 224.

⁶²⁰ Fröhlich, interview, 14 December 2005.

⁶²¹ Fröhlich, interview, 14 December 2005; Gota, interview, 10 November 2006.

⁶²² Interview by the author with senior official, European Commission Delegation in Bucharest, 10 May 2006.

⁶²³ ‘Dracula Park la Snagov’, *BBC Romanian*, 13 October 2004.

mandating it by Government Decision, a mere administrative act addressed to an Executive body which need not pass Parliament. The Liberal Party MPs who had lobbied for Dracula Park to have been sited in the Bran area claimed that the reason the park was revived so near the elections was because the PSD were 'trying to fill up their pockets before the end of their mandate'.⁶²⁴ In 2006 the same Liberals brought the Dracula Park affair to the attention of the National Anti-Corruption Department, charging Nastase and Agathon with damages amounting to €1 million.⁶²⁵ Dracula Park was finally scrapped by the new Liberal Party PM Tariceanu.

Conclusions

Dracula Park shows how, ten years after the fall of Communism, domestic civil society were still labouring under a closed domestic opportunity structure that gave them little chance to participate in Executive decisions affecting themselves and the general public. They rose to mobilise because they perceived a misfit between the Executive's plans and behaviour and those of the West whom they had contact with, either directly or through trans-national norm entrepreneurs. It was this motive of improving the *status quo* that fired these domestic norm entrepreneurs to reach beyond Romania and connect up with trans-national allies. These allies, not Brussels, were the first to enhance their capacity to act. Together the allies drew into the controversy European and international actors more powerful, at least at that juncture, than the Romanian Executive. Without them, domestic civil society would have been highly unlikely to have obtained any concessions at all from the Romanian Executive. Neither persuasion nor the rhetorical threat of non-accession, however

⁶²⁴ Eugen Nicolăescu (National Liberal Party MP) quoted in *BBC Romanian*, 13 October 2004.

⁶²⁵ *BBC Romanian*, 'Dosarul Dracula Park la Direcția Anticorupție', 16 March 2006.

extensively deployed by domestic civil society, would have exerted any significant influence over the Executive.

The Executive exhibited behaviour that was still dominated by the Communist executive legacy, tempered with a few formal attempts at modernisation and Europeanization; *e.g.* the ‘new public management’; the mention of EU standards in the Emergency Ordinance. This reflects well Tismaneanu’s cogent characterisation of the Romanian political system as ‘baroque combinations of Leninist residues with nationalistic-populist vestiges, combined with a more or less cosmetic liberalism’.⁶²⁶ Indeed, Ministers still took advice from an entourage of personal cronies, instead of professional civil servants; civil society was ‘off the radar screen’; decisions were taken autocratically and planning could be quite amateurish, as evidenced by Dracula Park; and, as Agathon’s dismissal shows, the Party elite was still being rotated in lieu of being held to account.

The Romanian Executive strongly resisted the pressures coming from external Europeanized actors. One intervener after another ‘piled on’, increasing the constraints until a tipping point was finally reached. No single cause, like ‘the EU’, tipped the balance, but multiple causes cumulating and reinforcing one another, though ultimately piggybacking on the Executive’s incentive to accede to the EU. It was this incentive and their perception that the costs, including the cost to their accession prospects, of pursuing Dracula Park in the teeth of so much combined opposition would outweigh the benefits.

Their cost-benefit analysis seems to have begun with the assumption that only one game mattered – the domestic one (game 1). They were oblivious of all benefits

⁶²⁶ Tismaneanu and Mihaies, p. 44.

except the domestic ones (b_1) and expected to incur no domestic costs ($c_1=0$). External costs were not on the 'radar screen' at first. Once Dracula Park became a pan-European controversy, it dawned on them that other games interplayed with the domestic one which they controlled, and that each of them had costs and benefits for the Nastase government. These included the game with UNESCO (game 2); the game with the EU (game 3); and the game with the Prince of Wales (game 4). Sticking with their decision to build the Park at Sighisoara would have entailed costs in all of their external games ($c_2+c_3+c_4>0$) and no benefits ($b_2=b_3=b_4=0$). The successive intervention of opponents in each of these games incrementally heightened the external costs until they finally topped the domestic benefits ($c_2<b_1$... $c_2+c_3=b_1$? ... $c_2+c_3+c_4>b_1$). Dracula Park was given up when the total external costs outweighed the domestic benefits ($c_2+c_3+c_4>b_1$). It is also worth pointing out that the game with the EU was the key game, in that the stakes in that game were so high as to exert what one might call a 'multiplier effect' on the other games, all of which were linked into it including the domestic one.

However, even after reaching this breakpoint, the Executive still managed to draw upon superior power resources to find ways to evade liability and save face as well as pursue the project, albeit at a different site. Had the controversy emerged at a different stage in the process, *e.g.* after accession had become assured, or had the cost-benefit ratio of re-siting been different, *e.g.* had they too much to lose at the elections, the Nastase Cabinet might have stood firm against the domestic and external pressures [see the Transylvania Motorway case].

The Executive's self-constraint empowered an elite minority amongst Romanian civil society by default. They were empowered only because they, their trans-national allies, and even UNESCO 'piggybacked' their influence on the Executive's

sensitivity to loss of reputation before the EU and Great Britain, from whom they sought recognition and acceptance. Domestic civil society empowered itself through trans-national alliances only because their norms, values and paradigms resonated with those of the interveners. The civil society that got empowered comprised a thin upper crust of domestic cultural elites and Romanian expatriates operating trans-nationally. The constrained were the majority of the local population and the Social Democrat Executive. This suggests that the EU has already in the pre-accession phase begun to create a cleavage between the 'modern' and 'traditional' elements of Romanian society.

There is no evidence to suggest that the Social Democrat Executive's 'traditional' values, norms and paradigms, which triggered the clash in the first place, were changed by the process or outcome of the Dracula Park controversy. Many of the Party's leaders having been socialised and conditioned under Communism [see Chapter 2], it is not surprising that their behaviour reflected Communist rather than European norms; *e.g.* the populist utilisation of the Church, the conditioned reaction of persecuting opponents rather than dialoguing with them. Executive behaviour may well have been merely an one-off tactical concession to external and domestic pressures, and ultimately to EU norms and values – the rule of law, the right of individuals to freely express their opinion, sustainability and the value of cultural heritage, – and only because of the delicacy of the moment. It remains to be seen whether this affair marked the beginning of a long-term trend toward Europeanization in the sense of the Romanian Executive's internalisation of (presently contested) European and international norms and values. Meanwhile, Dracula Park remains a single instance; it may therefore be treated methodologically

as a case to be ‘verified’ or ‘falsified’ by the cases to follow: – the Rosia Montana gold mining project and the Transylvania Motorway.

Tracing the process of the rise and fall of Dracula Park has revealed that, although the net outcome of the contest was zero-sum – *i.e.* civil society won and the Executive lost – this elite civil society would have been marginally empowered even had they lost. Through contact with civil society from EU member-States, they were able to access expertise and resources and gain valuable information, visibility and prestige, because they advocated what the external authorities whom the Executive respected or feared also advocated. By receiving reinforcement from so many European authorities, the values and expectations of an elite in Romanian civil society were reshaped or reinforced, and their confidence boosted. Such social learning and the consequent fundamental changes in their cognates are likely to empower them again in the future to constrain the Executive.

4. Positive-sum gamesmanship: The Executive compromises with trans- and supra-nationalism -The Rosia Montana Gold Mining Project (2002-2004) –

This chapter re-engages with the Rosia Montana case study (see Chapter 2) so that by tracing the evolution of one case study over time the Europeanization effects stand out more clearly. The process traced is that of empowerment of Romanian civil society after several Western norm entrepreneurs joined Alburnus Maior, the local group protesting the gold mining project. Together they transformed the project into a controversy that spilled over Romania's borders, capturing the attention of the Western media and civil society, and of the supranational organs in Brussels. This unexpected mobilisation contrasts starkly with the inertia that had characterised the evolution of Romanian civil society's reaction to the project before the advent of Europe [see Chapter 2].

The ensuing controversy peaked in the period 2002-2003, coinciding with the height of *acquis* negotiations between the Commission and the Romanian Executive over the Environment Chapter. At such a critical juncture the Romanian Executive may be expected to be more than usually sensitive to signals from the EU organs, and more willing to make concessions to smooth the progress of the negotiations. Their fresh memory of the disastrous gold mining accident at Baia Mare in northwest Romania in January 2000, and their loss of face over Dracula Park also suggest an expectation that, this time, the Executive might proceed more cautiously, both with implementing the project and with how they treat domestic civil society in opposition. They might even become more open to civil society input. If in fact the Executive should be found to have proceeded in these ways, that would suggest that the concessions made over Dracula Park indeed marked the beginning of a deeper shift in the Executive's values and norms of behaviour, the better to fit in with the EU and its values. On the

other hand, if fear of EU sanctions is what forced them to heed to civil society pressure then this would suggest that they have merely learnt how to deal with civil society and the EU strategically, while resisting any substantial change in their values or norms of behaviour. The expectation about domestic civil society is that their recent success in Dracula Park might have boosted their confidence, galvanising them to mobilise again and perhaps exert influence over Executive decisions.

Section One of this chapter documents the empowerment of Alburnus Maior by West European norm entrepreneurs. Once empowered at the most basic material and cognitive level, Alburnus is traced as they take further steps to influence Executive decision-making in Rosia by drawing in the supranational EU institutions (Section Two). Once alerted, these EU organs are traced as they act to prevent the Executive from approving the project in the expected way (*e.g.* little respect for the rule of law or much concern for environmental consequences) (Section Three). Section Four focuses on the actual behaviour of the Executive, showing how they took the EU into account in their decision to postpone the approval of the Rosia Montana project and how they tried to utilise it to empower themselves.

4.1. Western norm entrepreneurs empower the grassroots

By the beginning of 2002 Alburnus's inward-looking and ineffective campaign had led them nowhere. The chances were that they would have utterly failed had they not been joined by norm entrepreneurs from the West. The latter's intervention transformed Alburnus's campaign by providing them with resources, both material and cognitive. These efforts and their effects were little facilitated by the political or administrative organs of the EU, and can only be explained within the wider pan-European and global context in which the Rosia controversy evolved.

4.1.1 The material effects

Transnational alliances and visibility

The first Western norm entrepreneur to get involved in the Rosia Montana affair was Stephanie Roth a Cambridge-educated Swiss who had previously worked for *The Ecologist* magazine as a journalist. Roth arrived in Romania in 2002 to help with the anti-Dracula Park campaign, after learning about it from Jessica Douglas-Home, the Chair of the Mihai Eminescu Trust (MET) [see Dracula Park chapter]. The two met in London at a public presentation on Romania's cultural heritage, suggesting that they were part of an epistemic community of shared ideas, norms and values about environmental protection and sustainability, and about civil rights and lawful government behaviour.

Roth was further incentivised to join Alburnus to help them escape the closed domestic opportunity structure they were operating under including abusive State behaviour. Particularly outrageous for a Westerner was the fact that the Romanian authorities were breaching and ignoring all laws silently approving large-scale mining in an area where archaeological monuments were in theory protected by Romanian law.⁶²⁷ Indeed following archaeological discoveries of Roman and Dacic mining galleries in 1999, Rosia Montana's Carnic Massif as well as its historic centre became protected as 'cultural monuments of national importance' under Parliamentary Act 5/2000. The large-scale cyanide heap-leaching operation was likely to destroy most of this heritage.

By initiating Alburnus into the ways and means of the Western new social movements, Roth enabled them to mount a professional anti-gold mining campaign that succeeded largely due to her blend of shrewd communications, pioneering

⁶²⁷ Interview by the author with Stephanie Roth, Campaign Manager, Alburnus Maior, 7 July 2005.

lawsuits, empowering trans-national alliances and lobbying of international organs like the World Bank and the EU. A new world of opportunities was thus opened up not only for Alburnus, but also for the other Romanian civil society organisations that joined later. New campaigning tactics were imported to Romania, and domestic civil society initiated into using them. Some, like lawsuits and lobbying, were entirely novel not only to Alburnus but to most of Romanian civil society at the time. The success of their new fundraising efforts allowed Alburnus to employ technical experts and lawyers who could challenge the legality and soundness of the project.⁶²⁸

Civil society alliances, until then far beyond Alburnus's reach, were made strategically 'with everybody who could make a contribution'.⁶²⁹ The result was an unprecedented mobilisation that attracted trans-national actors such as Greenpeace, CEE BankWatch and MiningWatch. Greenpeace contributed their expertise in lobbying EU organs and utilising EU law, and their extensive experience of direct-action tactics. These were alien enough to Romania to attract much domestic media attention, rendering Alburnus's campaign much more visible. MiningWatch, a Canadian-based NGO campaigning against mining abuses across the world, initiated Alburnus in how to lobby the World Bank against lending money to the Rosia Montana Gold Corporation (RMGC). The negative publicity they created around the project in Canada, where RMGC was registered on the Toronto stock exchange, led to much lobbying of the European Commission against the project.⁶³⁰

In the beginning of the controversy, except for Terra Mileniul III, most Romanian NGOs had remained passive. Once Alburnus was reinforced by its alliance with

⁶²⁸ Vice President RMGC, interview, 20 September 2005; David, interview, 2005.

⁶²⁹ Roth, interview, 2005.

⁶³⁰ Interview by the author with DG Environment, European Commission, 6 July 2005.

trans-national and international civil society, they too joined the campaign.⁶³¹ In June 2002 34 Romanian NGOs formed an anti-gold mining coalition that subscribed a 'Rosia Montana Declaration' – one of the first such declarations ever adopted by Romanian civil society.⁶³² The coalition not only augmented Alburnus's campaign, until then handicapped by feeble mobilisation and a lack of resources,⁶³³ it subsequently became a model that the rest of Romanian environmental NGOs strove to imitate; as witness the many copycat mobilisations, such as the 'Save Vama Veche' and 'Save the Danube Delta' coalitions.⁶³⁴ The collaboration of so many domestic and trans-national organisations on an environmental issue, was unprecedented in the context of Romanian politics and society, as the mining company, RMGC, itself admitted: 'Alburnus's campaign did wonders in providing a catalyst for civil society development in Romania which until then had nothing like an NGO network'.⁶³⁵ The purpose of this heightened mobilisation was to render the campaign visible, credible and legitimate, enhancing the likelihood that Romanian and international authorities would give Alburnus the attention they believed they deserved.⁶³⁶

That attention was not slow in coming. Indeed, the coalition's campaign having captured their attention, other Romanian and trans-national actors mobilised to challenge the gold mining project, in a way that reinforced Alburnus's coalition. In November 2002, at the initiative of CEE BankWatch, more than a 1,000 archaeologists from all over Europe petitioned the Romanian government not to

⁶³¹ Interview by the author with Codruta Nedelcu, geologist and environmentalist (ARIN), 13 September 2005.

⁶³² Stephanie Roth, email posted on Discussion List on Environment, mediu@ngo.ro, 2 June 2003.

⁶³³ Roth, interview, 2005.

⁶³⁴ Interview with Anamaria Bogdan, Greenpeace Romania, 23 August 2005.

⁶³⁵ Email communication with Vice President, RMGC, 23 September 2005.

⁶³⁶ Roth, interview, 2005.

allow mining to destroy ‘the highest concentration of antique relics of Europe’.⁶³⁷ Around the same time the NGO coalition managed to persuade⁶³⁸ the Catholic, Protestant and Unitarian Churches – the largest landowners in Rosia Montana – to turn against the project and refuse to sell out their vicinal land to the company.⁶³⁹ This was followed, a year later, and after much NGO lobbying, a similar decision by the Romanian Orthodox Church, which had originally agreed to sell its properties to RMGC.

With so much mobilisation, Rosia Montana started to receive unprecedented press coverage. Roth’s role was crucial in this. Having previously been an environmental journalist, she understood the importance of communication and the mobilisation potential of the Internet.⁶⁴⁰ A polyglot Swiss citizen, she could communicate with the world beyond Romania, which Alburnus’s founding members, who only spoke Romanian, were incapable of.⁶⁴¹ According to both allies and enemies, Roth indeed was a ‘very good communicator’ who knew how to persuade by appealing to human emotions, using evocative images like ‘lakes of cyanide’ and hard-hitting labels like ‘genocide’.⁶⁴² The mining company characterised her as being a ‘specialist in outrage management’ and accused her on basing her campaign on incorrect information and of using a ‘good mixture of lies and truth’.⁶⁴³

The campaign came to receive extensive coverage from Formula AS – a very popular Romanian family magazine – but also from *Evenimentul Zilei* and *Romania Libera*,

⁶³⁷ Ioan Piso quoted in Alburnus Maior, *Press Communiqué*, 11 December 2002. <<http://www.rosiamontana.org/documents/english/press/communiquedec11.htm>>

⁶³⁸ Bogdan, interview, 2005.

⁶³⁹ Alburnus Maior, *Anticipating Surprise – Assessing Risk Investors. Guide to Gabriel Resources Rosia Montana Mine Proposal* (Report), 8 October 2004, <http://www.rosiamontana.org/>.

⁶⁴⁰ Vice President, RMGC interview, 20 September 2005.

⁶⁴¹ Roth, interview, 2005.

⁶⁴² Bogdan, interview, 2005; Vice President, RMGC interview, 20 September 2005.

⁶⁴³ Vice President, RMGC interview, 20 September 2005; Former Environment Director, RMGC, interview, 2005.

Romania's foremost broadsheets. As in Dracula Park, the media played a role crucial to Alburnus's success, as the mining company itself also admitted.⁶⁴⁴ The press brought Rosia out of obscurity and into the national and international public arena, transforming it from a parochial matter of a few villagers' concern for their own property to an issue of much wider importance.⁶⁴⁵ This is what Alburnus under Roth had wanted: if the project would have stayed only in Romania than the government would have found it easy to approve it.⁶⁴⁶ Now, with so many watchdogs monitoring Rosia, it became impossible for the authorities to shortcut the legal pathway,⁶⁴⁷ which would have been likely to happen.⁶⁴⁸

Two other consequential civil society actors that mobilised against Rosia were the Romanian Academy of Economic Studies (ASE) and the Romanian Academy (RA), Romania's most prestigious institutions in the field of economics and of science respectively. In August 2002 eighty-two ASE academicians called on the Executive 'to take action to stop the Rosia Montana project ... which has all the ingredients of an economic failure and an ecological disaster'.⁶⁴⁹ ASE demanded that the Romanian government justify their decision to exempt the RMGC from taxes and customs duties, declare the legal basis for the State's indirect subsidy of RMGC (through MinVest) and give an account about why the State continues this subsidy when these must be reduced as required by the EU and other international organs.⁶⁵⁰ ASE's calls were reinforced by the Romanian Academy, which in November 2002 wrote an open letter to PM Nastase asking him to do everything he can 'to avoid irreparable

⁶⁴⁴ Former Environment Director, RMGC, interview, 2005.

⁶⁴⁵ Nedelcu, interview, 13 September 2005; Interview by the author with Laszlo Potozky, Director, Environmental Partnership Foundation, 22 September 2005.

⁶⁴⁶ Interview by the author with Herwig Schuster, Greenpeace in Central and Eastern Europe, 12 September 2005.

⁶⁴⁷ Former senior civil servant, Environment Ministry Romania, interview, 11 November 2005.

⁶⁴⁸ DG Environment, 6 July 2005.

⁶⁴⁹ Romanian Academy of Economic Studies, 'Memoriu in problema Rosia Montana', 14 February 2005.

⁶⁵⁰ Ibid.

damage' at Rosia.⁶⁵¹

The intervention of the Academies, Romania's two most prestigious scientific bodies, has been alleged to have made a difference to the Rosia affair, (as for example admitted by a former RMGC director).⁶⁵² Furthermore, their intervention boosted the efforts and legitimacy of Alburnus and its coalition who could now show that they were not the only ones who believed the project was ill-conceived and must be stopped. Yet, neither the incentive behind the academies' intervention nor their strategy and tactics can be traced to having been caused or inspired by the EU at this juncture.

Judicial review, for the first time

Western norm entrepreneurs brought with them not only new resources, ideas and expectations but also new routines. If in the West, using the courts is a routine method used by civil society, in Romania, prior to Roth's intervention there have been very few instances of civil society fighting the authorities in the court on environmental issues. Rosia Montana changed this. Soon after Roth joined, Alburnus attempted several times to assert their legal rights to dialogue with the authorities and to argue their position in public. Yet at all governmental levels the authorities' response typified business as usual in Romania:

In the beginning, when we requested information, they did not give it to us. Then we demanded it under Act 544 [on Access to Information] according to which they ought to have given it to us ... We also set up our application such that they could not refuse (because the authorities will always find a reason not to respond). And then they needed 30 days, they could never do it in 10 days, no matter how little the document you needed from them, even if it was trifling ... only a scrap. According to law, the 30 days applies only if you request a lengthy document,

⁶⁵¹ Romanian Academy, 'Open letter addressed to PM Nastase by the Romanian Academy [Scrisoare deschisa a membrilor Academiei Romane, primului ministru Adrian Nastase]', *Revista* 22, no. 667, 15 November 2002.

⁶⁵² Former Environment Director, RMGC, interview, 2005; Valentin Vasilescu (Greater Romania Party MP), 'Intervention', Chamber of Deputies, Romanian Parliament, 3 June 2003.

otherwise it is only supposed to take 10 days. Then they come back and say: 'Oh, you did not formulate it like this, you formulated it like that ... I didn't understand [your request], I didn't see, I know nothing'.⁶⁵³

So many frustrating experiences convinced Alburnus that the authorities would never behave as they ought – (*viz.* obey the law and serve the citizen rather than themselves and their political masters, as the Romanian bureaucracy has always done⁶⁵⁴) – unless sued in court.⁶⁵⁵ Resorting to courts of law was, as Roth learnt while working for The Ecologist, a particularly powerful strategy. Lawsuits can take a long time, which Alburnus, made of locals, had plenty of. For the company, however, time meant money.⁶⁵⁶ By 2005, Alburnus had initiated scores of lawsuits against the company and the authorities. In 2005 Alburnus struck gold for the first time – taking the company by surprise (as one of its directors admitted⁶⁵⁷) by winning two court cases. One challenged the Culture Ministry's decision in 2004 to annul the Carnic Massif's archaeologically protected status. The other challenged the local Council for disregarding their own land-use planning law. These rulings were 'without precedent' in Romania⁶⁵⁸ and were particularly surprising given that Alburnus had faced 'the most celebrated' law firm in Romania (Musat & Associates), who even represented PM Nastase.⁶⁵⁹

Alburnus had prevailed in the teeth of the expected conformism and incompetence of Romanian judges, who are notorious for giving in to economic and political pressures. In 2006 80% of Romanian magistrates acknowledged having been under political or economic pressures; of whom 60% acknowledged having given-in.⁶⁶⁰

⁶⁵³ Roth, interview, 2005.

⁶⁵⁴ Vladimir Pasti, *The Challenges of Transition. Romania in Transition*, (New York: Columbia University Press, 1997).

⁶⁵⁵ Roth, interview, 2005.

⁶⁵⁶ Ibid.

⁶⁵⁷ Former Environment Director, RMGC, interview, 2005.

⁶⁵⁸ Alburnus Maior, *Carnic – arie restrictionata!*, Press release, 21 June 2005, <www.ngo.ro/rosiamontana>

⁶⁵⁹ Email communication, Maria Hambasan, Romanian judge, 14 February 2006.

⁶⁶⁰ Radio Free Europe, 10 March 2006.

Good lawyers are also known to get judges ‘tied up in knots’ due to their own ‘nearly absolute lack of professionalism’ and incognisance of legal substance and procedure.⁶⁶¹ In 2006 alone President Traian Basescu received 50,000 complaints from Romanian citizens against the incompetence and un-professionalism of judge.⁶⁶² As Alburnus themselves acknowledged, what spelled the difference in these cases was the exceptional ‘quality’ of the judge: ‘We were lucky that in Carnic, for example, we had a very good judge who actually listened’.⁶⁶³

Lobbying

Lobbying was another routine that the Western norm entrepreneurs that joined Alburnus taught to Romanian civil society. Together with ‘exposing the project to the whole world’ and suing in courts, lobbying would prove to be the most important tactics accounting for Alburnus’s eventual success.⁶⁶⁴ Lobbying in general, and lobbying an international organisation in particular, was not, before the Rosia affair, a practice which Romanian civil society was accustomed to. Of Western origin were both the idea of, and a feasible plan for lobbying organisations of the calibre of the World Bank and the EU. On its own Alburnus would have been unlikely to have ever considered lobbying.⁶⁶⁵ Not even the representative of Terra Mileniul III who joined Alburnus in 2002, and who had been active for years in the Romanian environmental movement, ‘had a clue about how these things worked’.⁶⁶⁶

The coalition began by trying to lobby the central Executive in Bucharest, but, with the exception of a few replies from the Environment Ministry,⁶⁶⁷ the Executive either

⁶⁶¹ Interview with Calin Avramescu (Romanian Political Scientist) by BBC Romanian, 22 February 2006.

⁶⁶² Radio Free Europe, 10 March 2006.

⁶⁶³ Roth, interview, 2005.

⁶⁶⁴ Ibid.

⁶⁶⁵ Interview by the author with Petr Hlobil, CEE Bankwatch, 7 December 2005.

⁶⁶⁶ Nedelcu, interview, 13 September 2005.

⁶⁶⁷ Interview by the author with former Secretary of State, Environment Ministry, 11 October 2005.

ignored their letters, petitions and reports or answered them perfunctorily.⁶⁶⁸ Disappointed, the coalition sought ways of circumventing Bucharest's opacity and unresponsiveness by indirect but more powerful means: by lobbying the World Bank, the EU supranational organs, and the Hungarian government (because in case of an accident at Rosia Montana like the one at Baia Mare, Hungary would suffer the most). Had the relationship between the Romanian government and civil society been different – *i.e.* more co-operative and open to negotiation of differences, – the need to mobilise EU and international organs might have never arisen.

The first international organ to empower civil society was the World Bank. In 2002, the RMGC applied for a loan with International Finance Corporation (IFC), the private-lending arm of the World Bank. If the IFC approved the loan, nothing would have stopped the mining from going ahead. The loan would not have only provided much of the necessary capital, but would have also attracted other, commercial banks and private investors who would automatically perceive the risks to be within reason.⁶⁶⁹ Cutting off the project's funding was deemed by the NGOs to be crucial before anything else. An IFC-approved loan would have also made it easier for the Romanian government to grant the company the requisite permits. Already, during the 2001 local public consultations on Rosia, the local authorities were using misinformation about the World Bank's involvement in the project to strengthen their position against their local opposition.⁶⁷⁰ Local officials allegedly tried to convince Alburnus that the World Bank had already conducted an Environmental

⁶⁶⁸ Roth, interview, 2005; Interview by the author with former Task Officer for Romania, DG Environment, European Commission, 5 July 2005.

⁶⁶⁹ Nedelcu, interview, 13 September 2005; Bruce Marsh (RMGC Vice president, Environment and Regulatory Affairs), quoted in Tijn Sadee, 'Romanian goldmine "new Chernobyl"' *Volkskrant*, 13 July 2002 <<http://www.rosiamontana.org/documents/english/press/volks13july2002.htm>> (accessed January 2005); Roth, interview, 2005.

⁶⁷⁰ Nedelcu, interview, 13 September 2005.

Impact Assessment that showed the project posed no environmental problems.⁶⁷¹ The officials apparently had confused the World Bank's own environmental and social guidelines with the Environmental Impact Assessment for the gold mining project.⁶⁷² Civil society were apprehensive that, if the IFC got involved, the Romanian authorities would use IFC approval to legitimise their decision: – 'we must listen to the World Bank: if they support Rosia, then we must approve what they want'.⁶⁷³ The loan negotiations between the IFC and the RMGC collapsed in November 2002. The conditions imposed by the IFC were too stringent for RMGC to accept. This event had the side-effect of empowering the domestic civil society in opposition.

Emboldened by the collapse of the loan negotiations, the coalition proceeded to empower themselves further by lobbying Brussels to intervene. They – mainly Roth and Greenpeace – targeted these 'as deliberately as possible'.⁶⁷⁴ They expected that the European Commission would be more sympathetic to civil society than the Romanian government, and hoped that the Commission would provide the 'missing link' that would 'network' them with the Romanian authorities. Letters were sent to DG Enlargement and DG Environment, to MEPs and even to the EU Presidency.⁶⁷⁵ The coalition had reasonable expectations of success in attracting the attention of EU organs. They had learnt that the Romanian government, whatever its party orientation, was so sensitive to pressures stemming from organisations or personalities outside Romania, that even 'a word [from somebody influential] may be sufficient' to alter a course of action taken or planned by the government. This would achieve more than Romanian civil society could ever do acting on their

⁶⁷¹ Ibid.

⁶⁷² Ibid.

⁶⁷³ Ibid.

⁶⁷⁴ Schuster, interview, 2005.

⁶⁷⁵ Schuster, interview, 2005; Interview by the author with Mercedes Echerer, former Green Austrian MEP, 5 October 2005; Roth, interview, 2005;

own.⁶⁷⁶

The short-term goal of the Alburnus coalition's lobbying was merely to put Rosia on the Commission's negotiations agenda with the Romanian government', which hopefully would prevent the project becoming a *fait accompli*.⁶⁷⁷ The coalition did not expressly ask the Commission to tell the Romanian government to stop the project. They had learnt that this would overstep the Commission's and European Parliament's formal powers over the government of an accession country.⁶⁷⁸ Partly through their own previous experience of trying to involve the Commission in Romanian controversies over EU funds fraud, and partly through social contact with and initiation by Western norm entrepreneurs, the domestic coalition understood that so long as Romania remained an accession country, no EU organs could be expected to command the Romanian government to take any particular decision in the case of gold mining at Rosia Montana.⁶⁷⁹ They did hope, however, that the Commission might use leverage it held through accession- and funding conditionality to pressurise the Romanian government discreetly to heed the environmental acquis it had recently transposed.⁶⁸⁰

The coalition demanded that the EU investigate the project, in particular those aspects of the decisional proceedings which had been 'inadequately addressed by the Romanian government'.⁶⁸¹ To what the EU's interest in engaging the issues, the NGOs formulated discourses and arguments around respect for the rule of law and

⁶⁷⁶ Potozky, interview, 2005.

⁶⁷⁷ Mititean, interview, 2004; Roth, interview, 2005.

⁶⁷⁸ Bogdan, interview, 2005; Former task officer, 2005; Potozky, interview, 2005.

⁶⁷⁹ Roth, interview, 2005; Former task officer, interview, 2005.

⁶⁸⁰ Interview by the author with Ionut Apostol, Project Co-ordinator, Terra Mileniul III, 3 September 2004; DG Environment, interview, 6 July 2005; Potozky, interview, 2005; Roth, interview, 2005.

⁶⁸¹ DG Environment, interview, 6 July 2005.

other values commonly espoused by the Commission and MEPs.⁶⁸² The coalition claimed, for example, that EU environmental law had been ignored or breached by the company with the connivance of the Romanian government, including the Environmental Impact Assessment Directive, certain provisions of other EU environmental directives, and the principle of sustainable development.⁶⁸³ The EU ought to interest itself in a mining project, the coalition argued, which could become ‘an “ecological bomb” ... which would threaten the EU if Romania becomes a member State’.⁶⁸⁴ In case of an accident ‘you [the EU] are going to have to pay for it’.⁶⁸⁵ The coalition also invited MEPs and the Commission to visit Rosia and see with their own eyes the social and environmental havoc already caused by the project, and to picture the further environmental destruction that would surely follow.⁶⁸⁶ The coalition hoped that an official visit by representatives of the EU would embarrass the government – which was trying so hard to prove its accession-worthiness – by making it look as if the government were so incompetent as to call for outside intervention to mediate Romania’s internal conflicts: ‘We hoped that the EU would come again and tell the Romanian government what to do’.⁶⁸⁷ The coalition widely publicised at home their ostensibly ‘informative’ letters and messages to Commission and Parliament. This made part of a ‘sabre-rattling’ strategy, which the coalition resorted to in hopes that the government might be intimidated by the fact that ‘powerful foreigners had become aware of Rosia’.⁶⁸⁸

The coalition also lobbied Hungary, whose government and civil society were still anxious after the 2001 cyanide spill at Baia Mare, which had ‘spilled over’ into

⁶⁸² Potozky, interview, 2005.

⁶⁸³ Mititean, interview, 2004.

⁶⁸⁴ Ibid.

⁶⁸⁵ Roth, interview, 2005.

⁶⁸⁶ Apostol, interview, 2004; Mititean, interview, 2004; Roth, interview, 2005.

⁶⁸⁷ Bogdan, interview, 2005.

⁶⁸⁸ Mititean, interview, 2004.

Hungary. In the summer of 2002 17 Hungarian NGOs, including CEE Bank Watch and Friends of the Earth, Hungary lobbied their Environment Ministry to ‘activate the Espoo Convention on Environmental Impact Assessment in a Transboundary Context’.⁶⁸⁹ The Romanian government had obligated itself under Espoo to consult potentially affected neighbours, including of course the Hungarian government and public, before granting environmental permits like the one the gold mining company had applied for. Whether or not because of this lobbying, the Hungarian government did become more actively involved in the Rosia Montana case after 2003. With Hungary’s accession to the EU in 2004, the Romanian Executive became even more sensitive about how it proceeded in Rosia, for fear of upsetting a neighbour and now EU member-State who would have a vote on Romania’s own accession to the EU.

4.1.2 The cognitive effects

The civics lesson

The Western norm entrepreneurs who empowered Alburnus with material resources, tactics and strategies also empowered them with cognitive resources. They broadened the scope of the campaign beyond mining issues alone, in order to empower the local citizens to participate in this and all future decisional proceedings. When Roth first met them, Alburnus’s membership were not only unaccustomed but actually fearful of the whole notion of challenging State authority. Like most Romanians, Alburnus’s founders had been conditioned over a lifetime of growing up under the Communist dictatorship to think of themselves as powerless serfs before an almighty State whose decisions were immutable and to whom ‘they must sacrifice

⁶⁸⁹ CEE Bankwatch, *Hungary to Invoke Espoo Convention towards Romania in Response to Proposed Gold Mine*, Press release, 12 August 2002.

themselves'.⁶⁹⁰

Roth was already familiar with this 'defeatist' Romanian mentality⁶⁹¹ having encountered it pervasively during the campaign against Dracula Park.⁶⁹² She awakened Alburnus to the actuality that they enjoyed political and civic rights under Romania's new democratic Constitution: the right to challenge the authorities' decisions (including on Rosia); the right to express their personal viewpoint; the right to obtain from the State information of public interest; the right to hold public officials accountable – whom they had elected to represent them; and the right and freedom to communicate their concerns to the international community.⁶⁹³ These ways of thinking were later reinforced by Romanians interaction with other international civil-society entrepreneurs who joined the campaign. These new ways of thinking about the role of government and democratic accountability, and about the exercise of civil and political rights, had profound influences on the mentality of Alburnus and their allies amongst Romanian civil society.⁶⁹⁴

Reframing the campaign's discourses

Western norm entrepreneurs also re-framed Alburnus's dominant discourses, initiating them into previously unheard-of discourses. In achieving this, they strategically co-opted and elaborated Alburnus's own members' knowledge about mining, which until then had lain un-mobilised. Alburnus came to oppose the project because: (1) it was to use the dangerous cyanide heap-leaching technique; (2) it would entail large-scale strip-mining; (3) it would force the removal of at least 800 settlements housing 2000 people; and (4) it would mar a historically and

⁶⁹⁰ Roth, interview, 2005.

⁶⁹¹ Jessica Douglas-Home, *Once Upon Another Time. Ventures Behind the Iron Curtain*. (Michael Russel, 2000).

⁶⁹² Roth, interview, 2005.

⁶⁹³ Ibid.

⁶⁹⁴ David, interview, 2005; Roth, interview, 2005.

archaeologically delicate and valuable site.⁶⁹⁵ Later, Alburnus's goals and discourses widened to include sustainable alternatives to local economic development: small-scale gold mining without cyanide, eco-tourism, agro-commerce, traditional handicrafts, and infrastructure development.⁶⁹⁶ It is highly unlikely that Alburnus would ever have conceived such concepts by itself.

The change in the nature of Alburnus's discourses likely reflected a strategic choice on the part of the Western norm entrepreneurs. By downplaying private property and linking their cause to environmental and cultural heritage protection, Alburnus and their Western allies intended to broaden the campaign's appeal to a wider range of national and international interests who valued sustainability and environment. This would mobilise more powerful allies and increase Alburnus's chances of success better than the original narrow focus on the property rights of a few farmers in a remote village in Romania.⁶⁹⁷ Nevertheless, Alburnus was to remain an association of property owners. This was likely a compromise between Alburnus's grassroots base and what the Western norm entrepreneurs thought the international community cared about. Emphasising ideas like environmentalism and sustainability was reckoned to have the power of persuasion at this point in time only because of changes in Romania's environment, the biggest being accession to the EU. Such ideas would have fallen on deaf ears in Ceausescu's time⁶⁹⁸ (had anybody dared to protest), or even a few years before the start of accession negotiations.

Deploying EU rhetoric

One of the cognitive effects of Europeanization is the rhetorical construction of the

⁶⁹⁵ Roth, interview, 2005.

⁶⁹⁶ Alexandru Bara, *The decision-making process for the gold mine project of Rosia Montana, Romania*, MSc. Dissertation, Central European University, Budapest, 2002, p. 89

⁶⁹⁷ Nedelcu, interview, 13 September 2005.

⁶⁹⁸ David, interview, 2005.

EU by domestic actors, and the utilisation of these constructs for the purpose of legitimising their domestic goals and agendas. The literature of Europeanization contains relatively little documentation of such effects for the accession countries of CEE. The evidence presented herein shows that, at least during the *acquis* negotiating phase, domestic civil society entrepreneurs and their trans-national allies were actively engaged in constructing the EU rhetorically. Their discourses combined an ethical EU⁶⁹⁹ – made up of formal and informal norms, values, and principles that are to be respected at least as much as, if not above any others – with a ‘punitive’ EU that would use accession conditionality to condemn the Romanian government if they ‘misbehaved’. Alburnus’s coalition expected and intended such discourses to legitimise themselves before domestic and international audiences; to mobilise domestic and international actors; and to threaten the Executive and their other domestic opponents.⁷⁰⁰ The deployment of discourses featuring the EU is a signal example of ‘bottom-up’ Europeanization, a cognitive effect whose occurrence depends entirely on actors having the ability of making use of the EU as a resource without the EU doing anything.

Romanian civil society’s first deployment of EU discourses in the case of Rosia Montana – in the June 2002 Rosia Montana Declaration – coincided with the arrival of Western norm entrepreneurs, suggesting that this deployment was likely influenced by them. The Declaration pledged the subscribers not only to support Alburnus’s campaign to stop the project and find sustainable development alternatives for the region, but it also threatened the project’s supporters with involving the EU and other international organs in ‘finding solutions for this

⁶⁹⁹ suggested by Donatella della Porta, EUI workshop on Discourse Analysis, 13 June 2006.

⁷⁰⁰ Schuster, interview, 2005.

region'.⁷⁰¹ By committing themselves to seeking support from the EU, its member-States, and other international bodies, the coalition had constructed the EU and the other international organs as a gamut of unidentified but not unreal sanctions with which to threaten the Romanian government – then in the midst of accession negotiations over the Environmental Chapter of the *acquis*.

The civil society actors knew that the EU could not formally threaten the Romanian government with accession conditionality because of Rosia.⁷⁰² Nevertheless, they calculated that the Romanian Executive would fear the EU's reaction.⁷⁰³ Such a calculation was based on a socially constructed, universally assumed power asymmetry between the EU and the accession countries. It also reflected the hierarchical, authoritarian nature of specifically Romanian society and politics, where the stronger lashes the weaker forward – as opposed to, say, leading the weaker by example. Such a construction would resonate with how Romanian civil society generally perceives the EU: as Romania's saviour who will punish corruption and inefficient government.⁷⁰⁴

The NGO coalition made deployment of discourses featuring the EU an integral part of their gamut of strategies and tactics throughout their campaign. A threatening EU featured in the discourses that accompanied the first-ever Greenpeace direct-action in Romania in December 2002, which was intended to pressurise the Nastase government, and to gather signatures on a petition against the project from Romanian MPs and the general public.⁷⁰⁵ Greenpeace activists from Europe carried banners reading 'Stop cyanide exploitation at Rosia Montana' and 'Don't risk Romania's

⁷⁰¹ The Rosia Montana Declaration, < <http://www.greenagenda.org/rosiamontana/indexen.htm>>, (accessed 10 April 2004).

⁷⁰² Ibid.

⁷⁰³ Ibid.

⁷⁰⁴ Interview by the author with Sabin Muresan, PATRIR, 31 August 2005.

⁷⁰⁵ Bogdan, interview, 2005.

integration into the EU'.⁷⁰⁶ The protesters charged that the mining at Rosia would contravene EU environmental law, and that Greenpeace and Alburnus were ready if necessary to appeal to the EU to guarantee the civil liberties and interests of those affected by it.⁷⁰⁷ The rally drew unprecedented coverage of Rosia from the national press and from international media like the BBC and Reuters.⁷⁰⁸ The rally, in which the coalition rhetorically deployed the EU as a threat, was repeated several times over the next couple of years, and strategically timed to coincide with junctures when the Romanian government would be particularly vulnerable, as for example just before the Presidential and Parliamentary elections of 2004.

By the middle of 2003 not only the Romanian NGOs but also the two Academies had learnt to use EU discourses to back up their opposition to Rosia. If in 2002 the EU had been absent from the Academies' public declarations about the project, by 2003 they were amply deploying references to EU law, norms and values. Some of the most inert and conservative Romanian institutions – since 1989 none of them have ever spoken out against a government project – even the Academies were waking up to the new opportunities created by Romania's accession to the EU. In their report issued in May 2003, for example, the Romanian Academy of Economic Studies justified their opposition to Rosia on the grounds that it would breach European environmental law⁷⁰⁹ – though no concrete evidence was offered on this point. A whole section of the report was devoted to the damage to Romania's external credibility and image that the mining might cause, particularly after the Baia Mare accident, which has also been widely blamed for marring Romania's image

⁷⁰⁶ Greenpeace, *Greenpeace Protest a Canadian Gold mine project in Romania* (Press release), 5 December 2002.

⁷⁰⁷ Greenpeace website, www.greenpeace.ro, 5 December 2002.

⁷⁰⁸ BBC Romanian, 'Greenpeace opposes Romanian Gold Mine', 6 December 2002; Bogdan, interview, 2005; Reuters, 'Greenpeace Slams Canadian Gold mining project', 4 December 2002.

⁷⁰⁹ BBC Romanian, 'Premierul Tăriceanu face prima sa vizită în străinătate', 17 January 2005.

abroad.⁷¹⁰ Taking the wrong course in dealing with the Rosia affair, the report claimed, might cause the EU to cut its financial support to Romania, and ultimately compromise her accession-worthiness. The report accompanied the Academy's demands for Executive accountability: PM Nastase was asked to make public the Executive's analysis of the Rosia Montana project, and to divulge who had determined, and on what basis, that Rosia Montana was of 'economic importance'.⁷¹¹ As of 2005, the Academy was still awaiting a reply.⁷¹²

Interestingly, by the end of 2002 not only the opponents of the mining, but even the company were intensifying their rhetorical deployment of the EU, adapting their public discourse to the new environment. The failure of their negotiations with the IFC-World Bank in October 2002 had taught the company what international organisations expect a project to demonstrate from the social and environmental standpoints.⁷¹³ Having lost some legitimacy and credibility in what the NGO coalition were portraying as the 'loan fiasco', the company used every occasion to announce to the wider world that it intended to demonstrate that its mining project would conform to all applicable EU law and international conventions. The reference to EU law was likely intended to signal both the Romanian government and the EU that all was well with their project, and that it would not be permitted to burden Romania's accession to the EU. Nevertheless, the company was constructing a very different EU from that of their opposition. Their EU was one of rationality and legal certainty; a can-do EU who would approve any project that showed it could meet businesslike standards of corporate responsibility.

⁷¹⁰ Vlad Gabriel Hogeia (Greater Romania Party MP), *Intervention of Mr. Deputy Vlad Gabriel Hogeia, PRM*, *Sittings of the Chamber of Deputies, Romanian Parliament*, 11 February 2003.

⁷¹¹ Email communication with Afrodita Iorgulescu, Professor, Romanian Academy of Economic Studies, 8 November 2005.

⁷¹² *Ibid.*

⁷¹³ Former Vice President, RMGC, email, 11 October 2005; Vice President, RMGC interview, 20 September 2005.

This section has shown that the EU could be discursively constructed and deployed by any domestic actor. These discursive constructs are not mere verbal ornaments, but rather ‘speech-acts’ carefully timed and *intended* to affect events, whether they actually do or not. If EU rhetoric does become a weapon that domestic actors can use to gain relative advantage at home (*i.e.* ‘differentially empower’ themselves), this can only be because they have the competence to craft it and deploy it at the right time. What’s more, actors appear to learn from each other how to construct such rhetoric, which appears to diffuse and become more sophisticated over time. The content of the discourse might differ from actor to actor, depending on what they are trying to achieve. Yet, often, even when discourses are deployed by actors with opposing interests, they will be found to have been made of the same EU ‘building blocks’; *viz.* organs, authority, law.

4.2 European Parliamentarians rattle their sabres

The coalition’s lobbying and discourses had the effect of bringing Rosia to the attention of the EU organs in Brussels. Until then neither the Commission nor the EP had heard of it.⁷¹⁴ Socialist and Green MEPs were the first to intervene, prodding the Commission to act, and themselves undertaking action to signal to the Romanian government that the EU organs were beginning to pay attention to Rosia. Their interventions, however weak, did in fact have the effect of empowering civil society and constraining the Executive.

The first ‘signal’ came in August 2002 from Dutch MEP Erik Meijer from the Nordic Green Left who queried the Commission over whether or not it intended to ‘establish contact with Alburnus Maior and take measures to prevent a Chernobyl-

⁷¹⁴ Interview by the author with DG Enlargement, 1 July 2005; DG Environment, interview, 6 July 2005; Interview by the author with Jonas Sjostedt, Green MEP, 7 July 2005.

type accident?’⁷¹⁵ The second and more active intervention was that of Austrian Green Mercedes Echerer, a member of the EP’s Culture Committee. Alerted by Stephanie Roth, with whom she had become acquainted in the campaign against Dracula Park, Echerer took immediate steps to intervene.⁷¹⁶ She prevailed on the Culture Committee to send her as an EP representative to Rosia Montana.⁷¹⁷ Echerer’s intention was by her visit to signal all Romanian parties that the environment matters to the EU, and those therefore who care about it in Romania have legitimate concerns which will be listened to in Brussels.⁷¹⁸ She hoped that her visit as an EP delegate would give ‘a hopeful signal’ that would hearten the Romanian civil society opposed to the project, and raise concerns in Bucharest.⁷¹⁹

Echerer’s visit did have an effect on the Romanian environmental authorities, on whom she called after visiting Rosia Montana on 16 November 2002. Environment Minister Petre Lificiu and Secretary of State for the Environment Ioan Jeleu responded very promptly to her calls, making ‘visible efforts’ to convince her of the government’s intention to respect EU environmental and safety standards.⁷²⁰ Echerer challenged Lificiu and Jeleu with queries about alternatives to cyanide, public safety and contingency plans, but these were left unanswered.⁷²¹ The purpose of the queries was to make them think about the potential impacts of the project, in hopes they might realise it could become a controversial issue with the EU. Echerer expressed concern over the project, and warned them that if the project was not designed from the outset to comply with EU standards, then as soon as Romania acceded to the EU,

⁷¹⁵ European Parliament, ‘Written Question (E-2449/02) by Erik Meijer (GUE/NLG) to the Commission’, *Official Journal of the European Union*, C 33 E/6 EN 6.2.2004.

⁷¹⁶ Roth, interview, 2005.

⁷¹⁷ Echerer, interview, 5 October 2005.

⁷¹⁸ Ibid.

⁷¹⁹ Echerer, interview, 2005; Roth, interview, 2005.

⁷²⁰ Echerer, interview, 5 October 2005.

⁷²¹ Ibid.

it would be required to overhaul and upgrade the whole thing, which would surely prove very expensive. She suggested that they clarify the company's willingness to pay the costs of compliance with EU standards.⁷²² She also prodded them to consider applying for a PHARE grant to fund a commission of international experts who could help assess the environmental impact of such a project, with which Romania had had little experience.⁷²³

Echerer left Romania with the impression that on balance the authorities, including the environmental ones, favoured the project, although the Baia Mare accident, which had happened in 2000, had made some of the Executive – certainly some of the senior civil servants in the Environment Ministry,⁷²⁴ – more cautious than they would have been otherwise.⁷²⁵ Indeed, Echerer was reassured that the gold mining company would be required to lower the cyanide concentration below the maximum limit allowed by European and international law before introducing it into the tailings-pond at Rosia.⁷²⁶

Had such preventive measures been taken at Baia Mare, the spill would have been less disastrous. Described by environmentalists as 'the worst environmental disaster in Europe since Chernobyl',⁷²⁷ the accident had happened when a tailings-pond dam burst, releasing 100,000 cubic meters of concentrated cyanide solution and heavy metals into the Tisa and Danube rivers.⁷²⁸ The ecological damage had conspicuously provoked concern from the EU with which the Romanian government was then

⁷²² Echerer, interview, 5 October 2005; Roth, interview, 2005.

⁷²³ Ibid.

⁷²⁴ Former senior civil servant, Environment Ministry, interview, 11 November 2005.

⁷²⁵ Echerer, interview, 5 October 2005.

⁷²⁶ Former senior official, Mineral Resources Agency, interview, 2005.

⁷²⁷ Stephanie Roth, 5 June 2002, <http://www.corporatewatch.org/news/romania.htm>.

⁷²⁸ Ibid.

negotiating the Environmental *acquis*.⁷²⁹

Baia Mare seems to have made the Romanian Executive more environmentally aware and more cautious. It impinged upon business as usual amongst the Romanian political elite with their conventional ignoring of the environmental risks of large-scale industrial operations. Baia Mare may not have supplanted the Executive's most fundamental values, but it must have at least compromised them through the apprehension and the expectation of the risk of such an operation, and of the international repercussions of another industrial disaster. This is evidenced by the number of safety standards that were enacted into Romanian domestic law in the wake of the accident. These included the Dam Safety Act, to be found in only two other EU member-States at the time, making the new Baia Mare dam one of 'the safest in the world'.⁷³⁰

Back in Brussels, Echerer reported the findings of her visit to the EU Commissioners on Environment, Enlargement and Agriculture, as well as to the MEPs in charge of drafting the EP's annual report on Romania's progress towards accession.⁷³¹ She hoped that Rosia would be mentioned in the EP's 2003 annual report.⁷³² In the event, Rosia was left out; other issues like corruption and freedom of the press proved higher priorities for the EP than sustainable development, and were given more space and consideration.⁷³³

With hindsight, Echerer's intervention was only one 'small event' in the overall story of Rosia Montana.⁷³⁴ Even so, her visit did influence the final outcome. It was the

⁷²⁹ Hoge, Intervention, 2003.

⁷³⁰ Former senior civil servant, Environment Ministry, interview, 11 November 2005.

⁷³¹ Echerer, interview, 5 October 2005.

⁷³² Ibid.

⁷³³ Ibid.

⁷³⁴ Ibid.

first publicly visible act on the Rosia affair undertaken by an EU official; it recognised Alburnus and thus legitimised it, firing up its efforts.⁷³⁵ The mere fact that the EP had sent a representative to check up on Rosia, and that she had appeared unsympathetic, aroused concern within the Romanian government – as witness Lificiu and Jelev’s visible efforts to present themselves to her in the best possible light.⁷³⁶ Evidently, they felt obliged to reassure the EU of their keenness to hold the project to EU legal standards and to the principle of sustainability.⁷³⁷ That Echerer did have an influence was confirmed by a former director of RMGC, who claimed to have had a good relationship with Lificiu.⁷³⁸ Her visit ended up being one of the main causes that prodded the Executive to pro-act on Rosia before it become controversial with the EU. The EP was to become more actively involved in Rosia as Romania approached the close of negotiations. In December 2003, for example, the Environment Committee sent another fact-finding delegation to Rosia. Again, the MEPs endeavoured to include Rosia ‘in all matters to do with Romania’s accession’;⁷³⁹ however, amendments critical of the Executive’s conduct in the Rosia affair were never included in the EP’s reports on Romania’s progress towards accession.

The EP’s interventions, weak though they may seem, did empower the civil society opposition both over time and relative to other actors in the controversy. By themselves the MEPs did not redistribute domestic power in any obvious way; they nevertheless provided much needed moral support, confirmation and legitimacy to domestic civil society. These less tangible forms of empowerment were delivered

⁷³⁵ Echerer, interview, 5 October 2005; Roth, interview, 2005.

⁷³⁶ Ibid.

⁷³⁷ Echerer, interview, 5 October 2005.

⁷³⁸ Former Vice President, RMGC, email, 11 April 2005.

⁷³⁹ Sjöstedt, interview, 2005.

largely through symbolic action (*viz.* visits and probing questions), the meaning of which was left to domestic actors to interpret themselves. But even these weaker forms of empowerment mattered to the Romanian environmental civil society, who normally have no domestic allies and who since 1989 have played insignificant roles in Romanian environmental politics. Empowerment occurred partly because accession to the EU made available new supranational organs to appeal to, and partly because Alburnus's coalition were competent enough to utilise them and interpret their interventions to their own advantage. Such competence, however, was concentrated in a mere handful of individuals, many of whom were the Western norm entrepreneurs.

4.3 The Executive Plays a Two-Level Game

4.3.1 Pro-acting to Temporise

By contrast with Dracula Park, in Rosia Montana the Executive not only did not resist the protestors, they even pro-acted to forestall the Rosia Montana affair before it became too controversial. In November 2002, PM Nastase asked Environment Minister Lificiu to draft a plan of action for deciding the case.⁷⁴⁰ Nastase was moved by the bad publicity the NGOs and media had created around Rosia, which had capturing the EU's attention, as MEP Echerer's visit in mid-November indicated. Her visit resulted from Romanian civil society's lobbying of EU organs and their success in transforming Rosia from non-issue to an 'extraordinarily controversial' affair in Romania.⁷⁴¹ The Executive was keen to forestall yet another turbulent situation that might draw-in trans-national actors, with all the ensuing unpleasant consequences – damage to reputation and external image, especially – which they

⁷⁴⁰ Interview by the author with Petre Lificiu (Environment Minister, 2000-2004), 17 June 2005.

⁷⁴¹ Ibid.

had recently experienced. Dracula Park had peaked only a few months earlier, and the Baia Mare gold mining accident, which happened the year before, was also still fresh in mind.

The Executive was also moved to pro-action by RMGC, which had begun to lobby the government for an environmental permit. The company submitted its Technical Memorandum (a non-technical description of the project)⁷⁴² to the Environment Ministry at the end of October 2002, declaring its intention to obtain the permit, begin building in 2003, and start up production in 2006.⁷⁴³ The company's permit petition came mere months before Romanian law was due to be overhauled to harmonise its Environmental Impact Assessment regulations with the EU's. RMGC's timing was likely driven by a strategy to be 'grandfathered-in' under the older, less demanding regulatory regime.

Indeed, transposition of the environmental *acquis* had speeded up after the Nastase government submitted its Position Paper on the Environment in October 2001, in which they committed themselves to full transposition of the EIA Directives by the end of 2002. This meant amending not only the domestic EIA regulations (Order 125/1996 being the most important one) but also the main environmental statute, Parliamentary Act No. 137/1995. These changes – wholly driven by Romania's accession to the EU – had important repercussions for the Rosia Montana project by making the permit process more cumbersome and ultimately costly for the company.

The new regulations, introduced in January 2003, featured the most extensive provisions ever introduced into Romanian law for public participation and

⁷⁴² Council of Europe, *Rosia Montana, Report*. 21 December 2004, p. 12. Doc. 10384; Rompress, Statement by Minister Lificiu', 30 October 2002, <<http://www.rosiamontana.org/documents/english/press/lficiustatement.htm>>
<<http://www.rosiamontana.org/documents/english/press/lficiustatement.htm>>

⁷⁴³ Romanian Academy of Economic Studies, *Memoriu*, p. 4.

consultation in environmental decision-making, expanding and clarifying the previous regulations, and specifically mandating that decision-makers take public opinion into account.⁷⁴⁴ They further mandated that Affected Parties (neighbouring countries) were to have an input in the decision on any project that might affect them. This meant, concerning the Rosia project, that the governments and publics of Bulgaria, Hungary, Moldavia and Ukraine would have to be consulted and their views taken into account as part of the permit proceedings.⁷⁴⁵ This additional layer of public consultation with Romania's neighbours risked drawing-out the permit process for the company, possibly more than a year, delaying the start-up of gold mining. The *acquis* had thus introduced new constraints on the company and for that matter on the Executive's freedom of action, and created new opportunities for civil society.

Likely, then, the company deemed the end of 2002 to be a brief window of opportunity in which to obtain an environmental permit under the old law. They therefore rather hastily demanded an environmental permit on the basis of a weak application⁷⁴⁶ which was not up to the Romanian (and likely EU and other international) environmental regulatory regime. Company directors themselves admitted that at that point they had been technically unprepared for the environmental permitting process.⁷⁴⁷ Yet, they must have hoped at the same time that the support they could expect from powerful members of the Executive (*e.g.* the Industry Minister) would suffice to get the project grandfathered-in and thus exempted from new EIA regulations to be introduced in January 2003. Indeed, had the Nastase government been doing business as usual for Romania – that is,

⁷⁴⁴ Personal communication with Dimitrie Clepan, Director, Alba Environment Protection Agency, 11 June 2005.

⁷⁴⁵ Former Secretary of State, interview, 2005.

⁷⁴⁶ Vice President, RMGC interview, 20 September 2005.

⁷⁴⁷ *Ibid.*

exercising entire discretion unchallenged – the company might have got the permit regardless of their weak application.⁷⁴⁸

It was in response to the pressures described above that the PM urged Lificiu to propose a plan of action for approving or disapproving Rosia.⁷⁴⁹ Being the Environment Minister, Lificiu in theory had sole responsibility for deciding RMGC's permit petition; at that time only decisions on environmental permits for nuclear power devolved on the whole Cabinet. Lificiu and the senior civil servants in the Environment Ministry appear to have been afraid to take such a momentous decision, which could well perturb the accession process itself.⁷⁵⁰ It was for this reason that the plan Lificiu came up with featured a proposal to involve the European Commission and the World Bank in the decision. This would have entailed: briefing Environment Commissioner Margaret Wallstrom about the Rosia affair and the government's plan; inquiring in particular whether any EU mining directives were applicable, and whether the EU had banned cyanide-based gold mining (both inquiries deriving from the claims of Alburnus in its communiqués);⁷⁵¹ soliciting the Commission's and the World Bank's opinion on Rosia's suitability; and having them help set up and be part of a special body of international experts on environment and mining to assist the Environment Ministry.⁷⁵² Such a commission, Lificiu claimed, would enable Romania to learn from EU member-States who had more experience with handling complex, large-scale mining projects like Rosia.⁷⁵³ Lificiu hoped that by getting the Commission to express 'some opposition, give [him] some direction, or just box [his] ears', he would have 'something to cling onto', rather than having to take the

⁷⁴⁸ DG Environment, interview, 6 July 2005.

⁷⁴⁹ Lificiu, interview, 2005.

⁷⁵⁰ DG Environment, interview, 6 July 2005; Former senior civil servant, Environment Ministry, interview, 3 June 2006; Senior official, negotiations team, interview, 2006.

⁷⁵¹ Former Secretary of State, interview, 2005.

⁷⁵² Lificiu, interview, 2005.

⁷⁵³ Lificiu, interview, 2005; Former senior civil servant, Environment Ministry, interview, 11 November 2005.

decision all by himself.⁷⁵⁴

Lificiu's arguments convinced the Cabinet to adopt the plan. It had several advantages for the Cabinet. First and foremost, it postponed taking a decision on Rosia. Gaining time was desirable since the costs and benefits of the project were uncertain and subject to change with the changing price of gold. The project did not seem robust at that time, given the low price of gold on the world market in 2002. And the company had convincingly forecast neither the revenues the project was supposed to yield nor the jobs it was supposed to create. On the other hand, the Ministers of Employment and Industry would have liked to see the project go ahead: they were feeling pressure from the trade unions and wished to avoid being seen to discourage foreign direct investment.⁷⁵⁵ It is quite plausible, too, that somebody in the Cabinet thought that if the price of gold were to appreciate in the foreseeable future – which did in fact happen a few years later when the price of gold increased from US\$300 to \$650 per ounce,⁷⁵⁶ – then the case for going ahead would become stronger. The Environment Minister believed that little was to be gained from 'approving this private project',⁷⁵⁷ since under the licence agreement approved by the previous government, the State owned only 19% of the shares, the other 80% being owned by Gabriel Resources.⁷⁵⁸ The State's 19% stake and the relatively little tax revenue projected were minor incentives, and did not justify granting the environmental and other permits at all costs.⁷⁵⁹ He and other members of the Cabinet feared that 'we are going to have our gold taken away' and be 'left with an

⁷⁵⁴ Lificiu, interview, 2005.

⁷⁵⁵ Ibid.

⁷⁵⁶ Ovidiu Hategan, 'Gabriel Resource does not have money to build the Rosia Montana mine', *Romania Libera*, 24 Iulie 2006.

⁷⁵⁷ Former Secretary of State, interview, 2005; Former senior civil servant, Environment Ministry, interview, 11 November 2005; Lificiu, interview, 2005.

⁷⁵⁸ Albus Maior, *Anticipating Surprise – Assessing Risk*, *Mediafax*, 18 June 2003

⁷⁵⁹ Former senior civil servant, Environment Ministry, interview, 11 November 2005.

ecological disaster'.⁷⁶⁰ Besides, the Cabinet could not predict how the European Commission might react if they were to permit the project under the old domestic law, or on the basis of so weak a permit application as RMGC had submitted. Indeed, 'everybody [in the Cabinet] wanted to know whether the Commission was for or against Rosia Montana'.⁷⁶¹ Whatever divergent tendencies might have existed inside the Cabinet over Rosia were not enough to divide it. (Indeed, the Nastase Cabinet was known for a cohesiveness and a sub-ordination to the PM that were unusual for Romanian politics).⁷⁶² As Lificiu himself admitted, 'there was no real opposition'; the Cabinet were eager to avoid conflict, either amongst themselves or with the EU.⁷⁶³

The Executive also doubted the company's seriousness and its capacity to finance the project. Gabriel Resources' inability to raise or unwillingness to invest more than US\$100 million in a project costing US\$400 million, and the collapse of the loan negotiations between the company and IFC-World Bank raised serious doubts about the robustness of the company.⁷⁶⁴ As for their credibility, the Executive is likely to have wanted to avoid being seen to help a company whose Director, Frank Timis, had been exposed as a drug dealer. Had the company been more robust financially and more reputable – like Bechtel in the Transylvania Motorway case – the Executive might have felt empowered by that and pushed the project harder, even in the teeth of opposition.

In sum, although the Cabinet were not keen on the gold mining project, neither were

⁷⁶⁰ Lificiu, interview, 2005.

⁷⁶¹ Ibid.

⁷⁶² Tismaneanu and Mihaies.

⁷⁶³ Lificiu, interview, 2005.

⁷⁶⁴ Ibid.

they totally indifferent.⁷⁶⁵ The benefits were too uncertain at that juncture (the end of 2002) for the Cabinet to risk any political capital to see the project through in the teeth of troubled EU negotiations and raging controversy in the press.⁷⁶⁶ The one thing they did decide was that the project ought not to be a national priority.⁷⁶⁷ By temporising, the Cabinet stood to gain time to wait and see whether for them any actual benefits would turn up. In the meantime, negotiations on the Environment chapter would not be burdened further, and the pressures from civil society might ease off. They were helped to this decision by the fact that Rosia Montana had been the pet project of the Social Democrat Party's rivals, the previous centre-right government.⁷⁶⁸ In Romanian politics this means that the Social Democrats would have perceived themselves as gaining little credit from it. It is part of Romanian political culture that projects initiated by one government are discontinued by the next, as political capital and public credit rarely transfer from party to rival party. (Indeed, 'every new cabinet has a tendency to downplay the achievements of its predecessor and to spend time and effort to re-write a substantial amount of laws and regulations without running any public program assessment').⁷⁶⁹ Had the project been 'theirs', the Executive might have fought harder for it (as they did in Dracula Park).

4.3.2 Pro-acting to avoid loss

Lificiu's proposal to involve the Commission had several advantages not only for him but also for the whole Cabinet. If they were to succeed in involving the Commission and EU experts, they would gain both domestically and in their

⁷⁶⁵ Ibid.

⁷⁶⁶ Former senior civil servant, Environment Ministry, interview, 11 November 2005 and 3 June 2006.

⁷⁶⁷ Former Secretary of State, interview, 2005; Former senior civil servant, Environment Ministry, interview, 11 November 2005 and 3 June 2006; Lificiu, interview, 2005.

⁷⁶⁸ Lificiu, interview, 2005.

⁷⁶⁹ Ionita, *The Cargo Cult*.

relations with the EU – in several ways. They could have assurance that their decision on Rosia would not frustrate relations with the Commission and upset the *acquis* negotiations. At the same time they would enhance their credibility before the EU and burnish their external image before the Environment Ministries of the EU member-States.⁷⁷⁰ They would be demonstrating their willingness to co-operate, their earnestness about environmental protection, and their reliability as a future EU member-State.⁷⁷¹ Domestically, they were hoping that the involvement of the EU would convince civil society, in particular the media, to ease off the pressure, as suggested by a comment of Nastase's: 'If this project is not validated by international experts, we are going to have all the Greenpeaces in the world on our head. This is a hot topic, and we don't like having it in our hands'.⁷⁷²

Lificiu's plan suited Nastase, the ultimate Executive and powerbroker, who had the real power to approve or disapprove the mining project. At the time, he appeared ambivalent. Those who observed Nastase closely have inferred that he 'never focused on [Rosia]',⁷⁷³ as he had on Dracula Park and the Transylvanian Motorway. Nastase apparently decided that his involvement in Rosia was unlikely 'to bring clear benefits'.⁷⁷⁴ Likely distracted with other, more significant matters,⁷⁷⁵ he 'simply preferred to let others handle it and slow progress down without his personal involvement'.⁷⁷⁶ And yet Rosia could not have been entirely unimportant to him, as witness the several years of vacillation, when no concrete steps were taken to stop it – which many agree he easily could have done.

⁷⁷⁰ Former senior civil servant, Environment Ministry, interview, 11 November 2005 and 3 June 2006.

⁷⁷¹ DG Environment, interview, 6 July 2005.

⁷⁷² Adrian Nastase (PM Romania) quoted in Alburnurs Maior, 'Nastase cere expertiza internationala pentru Rosia Montana', *Evenimentul Zilei Online*, 29 Noiembrie 2002.

⁷⁷³ Email communication, senior official (1), European Commission Delegation in Bucharest, 10 May 2006.

⁷⁷⁴ *Ibid.*

⁷⁷⁵ *Ibid.*

⁷⁷⁶ *Ibid.*

Having decided to postpone the project for the time being and to involve the Commission, Nastase and Cabinet tasked Lificiu with working out the tactical details: 'They were extremely happy that this is Lificiu's job and that he has to think and come up with a solution ... and that they do not have to get involved'.⁷⁷⁷ He must find a solution that would reassure the Commission that EU environmental law had been respected and ecological rehabilitation factored in,⁷⁷⁸ while leaving open the option of pursuing the project at a later date in case the Commission and civil society could not be placated. That the Cabinet decided to temporise is also confirmed by a senior civil servant in the National Agency of Mineral Resources:

The EU put pressure on the government leadership and the Presidency to stop [the Rosia project] ... They [the Cabinet] said, we are not going to stop it, let's do something else. Let's delay it until we get into the EU. In other words we proceeded in the Romanian way of 'we befriend the devil until we cross the bridge'. So until we get into the EU I don't think this project will be approved; and the delay will come from the Environment Ministry. It [the Environment Ministry] has been moved like a pawn to delay the approvals for a while, and after Romania's entrance into the EU, 'we'll see'. Then we'll discuss the matter on different terms.⁷⁷⁹

The Commission guessed Lificiu's strategy and declined to get involved.⁷⁸⁰ His proposal to involve them, which he actually submitted to the competent Commissioners, was interpreted as an attempt to dump responsibility on the Commission: 'If the EU had been represented on the committee [proposed by Lificiu], it would have been difficult for the EU not to take a position either for or against the project'.⁷⁸¹ The Romanian government could have blamed the Commission, had the resulting decision proved controversial.⁷⁸² Wallstrom, replying to Lificiu, disclaimed any applicable EU regulations on mining or ban on cyanide

⁷⁷⁷ Lificiu, interview, 2005.

⁷⁷⁸ Ibid.

⁷⁷⁹ Former senior official, Mineral Resources Agency, interview, 2005.

⁷⁸⁰ DG Environment, interview, 6 July 2005.

⁷⁸¹ Ibid.

⁷⁸² Former task officer, interview, 2005; DG Environment, interview, 6 July 2005.

heap-leaching. Because no such EU laws applied and because the EU was also uninvolved in the project financially, the Commission lacked competence to advise Romania, a sovereign state, whether to permit or not. Wallstrom only asked that the government take care that Romanian law conforms to EU law, and that the EIA procedure is strictly followed.⁷⁸³ Furthermore, if Romania wanted to impose conditions more stringent than EU law, she had the right to do so.⁷⁸⁴ Wallstrom further declared that the EU could provide the Romanian government no funding for the project, a private one, and suggested the government resort to the Baia Mare Task Force, a body of experts created in the aftermath of that accident.⁷⁸⁵ Wallstrom also asked that the Romanian government keep the Commission updated on the evolution of Rosia Montana and of the environmental permitting process.⁷⁸⁶ The decision was thus to remain firmly in the hands of the Environment Ministry.

4.3.3 Using the Commission to diffuse responsibility

Having failed to dump the responsibility on the Commission, the Environment Ministry proceeded to find other ways to delay the project on the one hand, and to avoid taking any positive decision by itself on the other. To diffuse responsibility, they appropriated some of the PHARE money, which the EU had granted them in order to strengthen the institutional capacity of the Ministry of Environment,⁷⁸⁷ and used it to set up an independent commission of experts. They were to issue guidelines clarifying which EU procedures and conditions RMGC must comply with. To placate the media and civil society, Lificiu publicised the Ministry's demands that

⁷⁸³ Former senior civil servant, Environment Ministry, interview, 11 November 2005 and 3 June 2006; Lificiu, interview, 2005.

⁷⁸⁴ Former Secretary of State, interview, 2005.

⁷⁸⁵ Former Secretary of State, interview, 2005; Former task officer, interview, 2005.

⁷⁸⁶ Former senior civil servant, Environment Ministry, interview, 11 November 2005 and 3 June 2006; Former Secretary of State, interview, 2005.

⁷⁸⁷ Former Director, RMGC, interview, 2005; Lificiu, interview, 2005.

the company guarantee its financial capacity to rehabilitate the mining site.⁷⁸⁸ Lificiu stipulated that the company must either undertake rehabilitation every six months under monitoring by a commission made up of Romanian academicians and experts, or else deposit in the national treasury a certain amount of all the gold that the company extracted.⁷⁸⁹ The deposits were supposed to have covered the risk that at project's end the company would disappear, leaving 'an environmental mess' behind them.⁷⁹⁰ It was also stipulated that the company was to rehabilitate mining works that had previously been exploited by MinVest, in addition to their own works.⁷⁹¹

Such requests might be interpreted as evidence that the Executive genuinely cared about environmental rehabilitation; however, this does not appear to have been the case. As a senior civil servant in the Ministry admitted, Lificiu's demands on the company were not 'technical' but 'political conditions'.⁷⁹² Asking the company to rehabilitate an open-cast operation every six months was a 'technical impossibility'.⁷⁹³ The demand was merely a 'political declaration' in response to pressure from journalists.⁷⁹⁴ In reality, when the time should have come, this condition would have operated more as a principle 'within a deadline that was actually technically possible'.⁷⁹⁵ This meant (most likely) that when the six months' deadline should have come, the Ministry 'would have looked the other way; that rehabilitation was not required every six months'.⁷⁹⁶

The Environment Ministry also found other ways to diffuse responsibility. In 2003 the Environmental Act 137/1995 had to be amended to further harmonise Romania's

⁷⁸⁸ Former senior civil servant, Environment Ministry, interview, 11 November 2005 and 3 June 2006

⁷⁸⁹ Lificiu, interview, 2005.

⁷⁹⁰ Ibid.

⁷⁹¹ Former Secretary of State, interview, 2005.

⁷⁹² Former senior civil servant, Environment Ministry, interview, 11 November 2005 and 3 June 2006.

⁷⁹³ Ibid.

⁷⁹⁴ Ibid.

⁷⁹⁵ Ibid.

⁷⁹⁶ Former Vice President, RMGC, email, 31 May 2005.

law with the EU's. The Ministry took the opportunity to introduce a new clause – not required by EU law – that all decisions on large-scale, complex, open-cast mining projects above a certain production limit shall be taken by the whole Cabinet, and not the Environment Ministry alone, as had been the case until then.⁷⁹⁷ (The 1995 Act contained a similar provision, but applicable only to nuclear power).⁷⁹⁸ Rosia Montana fell into the new category – hardly surprising given that the senior civil servants in the Environment Ministry who drafted the clause had Rosia in mind.⁷⁹⁹ Indeed, by their own admission, they wanted to guarantee that in future the whole government should be responsible for projects which, like Rosia, might become highly controversial and/or might pose highly complex social, environmental and economic issues.⁸⁰⁰ They may also have deemed it advisable insofar as they sensed that the almightiness of the Romanian Executive was ebbing away, that it was being increasingly called upon to give an accounting to others. As this new accountability would be prone to devolve on the ministry deemed to have competence of the controversial matter, the Environment Ministry, or more precisely its senior echelon, may have been 'writing insurance' against anyone amongst them taking the blame if another, similar project became as controversial.

4.3.4 All sides keep up the pressure

By June 2003 it had become clear that civil society had no intention of relenting. The two Academies had become even more aggressive in their criticism. In May 2003 each issued lengthy, unfavourable reports that made ample use of references to the EU. By now the European Commission, too, had become involved in monitoring the

⁷⁹⁷ Former Secretary of State, interview, 2005.

⁷⁹⁸ Ibid.

⁷⁹⁹ Ibid.

⁸⁰⁰ Former Secretary of State, interview, 2005; Former senior civil servant, Environment Ministry, interview, 3 June 2006.

Rosia project. The many communications the Commission received from the NGO coalition, from MEPs, and, beginning in November 2002, from the Romanian government, moved it to intervene in the matter.⁸⁰¹ The Commission had, at least in theory, very limited formal authority over Rosia. They could not tell the Romanian government whether to permit the project or not; that decision rested entirely with the Romanian authorities.⁸⁰² The only thing they could do was to monitor the project and demand that the authorities make it comply fully with all relevant EU environmental legislation.

Throughout 2003 both DG Enlargement and DG Environment used every formal and informal channel of influence at their disposal to let the Romanian government know that they were monitoring Rosia Montana closely. It was put on the agenda of most of the political and technocratic meetings of EU-Romanian joint bodies; the Commission would ask their Romanian counterparts about developments in Rosia, particularly the progress of reform of environmental permitting procedures.⁸⁰³ DG Enlargement, going far beyond what it could ever have demanded of a member-State, demanded that the Romanian government apply the draft EU Directive on Mining Waste,⁸⁰⁴ notwithstanding that this had not yet been adopted by the EU itself. DG Environment ‘encouraged’ the Romanian government to hold the company to all relevant EU law.⁸⁰⁵ The project must not only go through a ‘full and complete EIA’, but also comply with all other applicable Directives, including the ones on waste

⁸⁰¹ Echerer, interview, 5 October 2005.

⁸⁰² DG Environment, interview, 6 July 2005; DG Enlargement, interview, 2005; Former task officer, interview, 2005.

⁸⁰³ DG Environment, interview, 6 July 2005; DG Enlargement, interview, 2005; Former Secretary of State, interview, 2005.

⁸⁰⁴ DG Enlargement, interview, 2005

⁸⁰⁵ DG Environment, interview, 6 July 2005; DG Enlargement, interview, 2005; Interview with Margot Wallstrom, Environment Commissioner by Tuca Victor Iulian, ‘Un capitol neincheiat: protectia mediului’, Dilema Veche, 13 Aug 2004, no. 31.

management, industrial pollution control, and water protection.⁸⁰⁶ The government was expected to allow the Romanian public to participate in the decisional processes and to take its concerns into account.⁸⁰⁷ The government was also frequently reminded of the disastrous consequences of the gold mining accident at Baia-Mare in 2000, where cyanide heap-leaching had also been used, warning that if another such accident happened at Rosia, it would certainly harm Romania's negotiations with the EU.⁸⁰⁸ Rosia was brought up for discussion by name at all Environmental Sub-Committee meetings involving representatives of the Romanian government, the Commission, and member-States. Rosia was, however, never formally discussed during meetings to negotiate the Environmental Chapter.

The Commission tried to exert influence both at the administrative and at the political levels. At the administrative level, officials of DG Environment and Enlargement would ask the Romanian State Secretary for Environment – the highest administrative post in the Ministry of Environment – to keep the Commission informed about developments at Rosia.⁸⁰⁹ At the political level, Rosia was raised at the level of the Prime Minister.⁸¹⁰ By making Rosia a 'permanent topic of discussion' in informal as well as formal meetings, the Commission not only kept itself up-to-date on the affair, but also (and especially) conveyed to the Romanian government the message that the EU was monitoring their behaviour.⁸¹¹ The hope was that the government would 'feel under threat' and proceed with caution.⁸¹² The Commission did not explicitly threaten Romania with non-accession, but rather used

⁸⁰⁶ Former task officer, interview, 2005.

⁸⁰⁷ DG Environment, interview, 6 July 2005; DG Enlargement, interview, 2005.

⁸⁰⁸ DG Enlargement, interview, 2005.

⁸⁰⁹ DG Environment, interview, 6 July 2005.

⁸¹⁰ Ibid.

⁸¹¹ Email communication with DG Enlargement, 1 July 2005.

⁸¹² Former task officer, interview, 2005.

diplomatic language like ‘we invite you to pay attention to ...’.⁸¹³ The Romanian government were to read between the lines that if EU law was not fully implemented in the Rosia case, or if another accident happened, their credibility before the EU could be compromised, and accession negotiations negatively affected.⁸¹⁴

Because the Commission refused to give a formal ‘yes’ or ‘no’ to the project, Romanian civil servants resorted to seeking out DG Enlargement’s candid opinion informally. At one meeting between the Commission and the Romanian delegation, the State Secretary for Environment informally asked one of DG Enlargement’s Desk Officers in charge of Romania what the Commission thought about Rosia. The Secretary was ‘reminded’ that once the landscape was destroyed, which a large-scale open-cast mining operation would do, it was destroyed for ever. Romania should think very carefully about local economic development alternatives to cyanide-based gold mining that did not mar the prospects of sustainability. The Secretary was reminded, too, that the EU provides generous PHARE grants to help accession countries develop sustainably, and suggested that Romania might consider applying for some.⁸¹⁵ In sum, informally, civil servants in the Commission seem to have suggested to their Romanian counterparts that they had rather not see Rosia permitted.

In spite of the Commission’s activism, Romanian negotiators perceived them as paying only limited attention to Rosia, and then only toward the end of the Environment Chapter negotiations.⁸¹⁶ This was due partly to the not very advanced state of the Rosia project itself and partly to the Romanians having proceeded exactly

⁸¹³ Ibid.

⁸¹⁴ Ibid.

⁸¹⁵ Former task officer, interview, 2005.

⁸¹⁶ Senior official, negotiations team, interview, 2006.

as the Commission had asked.⁸¹⁷ Indeed once Romanian EIA regulations had been fully harmonised with those of the EU as of January 2003, and once the Romanian government had begun to apply the Espoo convention, inviting all interested States to take part in the EIA consultations, the issue was no longer a sensitive one for the Commission. They more or less dropped their expressions of concern, although continuing their monitoring.⁸¹⁸

In addition to the Commission and civil society, the Hungarian government also appear to have exerted some influence over the Romanian Executive. Having been stricken the hardest by the cyanide spill at Baia Mare, Hungary became particularly active on Rosia in 2003, near the close of their own negotiations with the EU. Rosia found herself discussed in the Council of Ministers.⁸¹⁹ Although at the time the Hungarians could not vote in the Council, the EU member-States, because of the proximity of Romania, did listen to the Hungarians' concerns.⁸²⁰ Thereafter, the Council regularly asked questions of the Commission about the progress of the project, which prodded the latter to continue its monitoring.⁸²¹ Following Hungary's intervention, Hungary and Romania set up a number of bilateral commissions and working groups to facilitate information exchange and consultation.⁸²² Once it became an EU member-State in 2004, Hungary became even more active and influential⁸²³ – it now had a vote on whether the EU should close the environmental acquis negotiations with Romania.⁸²⁴ Indeed, Hungary insisted that Romania should commit herself, before closing the Environment Chapter, to transposing the Mining

⁸¹⁷ Ibid.

⁸¹⁸ Ibid.

⁸¹⁹ DG Environment, interview, 7 June 2006.

⁸²⁰ Ibid.

⁸²¹ Ibid.

⁸²² Former senior civil servant, Environment Ministry, interview, 11 November 2005 and 3 June 2006.

⁸²³ Ibid.

⁸²⁴ Ibid.

Waste Directive by the time of her accession in 2007. This would guarantee the neutralisation of the cyanide-bearing tailings-pond, and lower the risks to Hungary of another cyanide spill.⁸²⁵

The Romanian Executive was well aware of Hungary's 'extremely negative' view of the project, and, wanting to maintain good relations,⁸²⁶ took this into account in reaching their decision to proceed cautiously with Rosia.⁸²⁷ Romania's negotiators with the EU came to perceive Rosia Montana as posing 'an extraordinary political risk', creating not only 'very serious problems of image' for Romania but also 'political problems' with EU member-States like Hungary.⁸²⁸ This must be avoided at all costs, given that 'every member state has a vote, and such things [as Rosia] matter within the entire framework of the process deciding [Romania's accession]'.⁸²⁹

But the PSD Executive's regard for Hungary's worries was not motivated solely by fear that Hungary might create difficulties for Romania's accession; they also wanted to preserve their good relations with their Hungarian counterparts for its own sake. Lificiu admitted that he and the Hungarian Environment Minister 'worked together extremely well', and that he perceived him to be a 'colleague and neighbour'.⁸³⁰ This suggests that it was not only the 'rational' fear of sanctions but also non-coercive influences such as socialisation within a European community and within the Socialist International that played a role in determining the Executive's stance on Rosia.

⁸²⁵ Ibid.

⁸²⁶ Ibid.

⁸²⁷ Senior official, negotiations team, interview, 2006.

⁸²⁸ Ibid.

⁸²⁹ Ibid.

⁸³⁰ Lificiu, interview, 2005.

Given these manifold pressures, the Romanian Executive resolved that they wanted no further complications with the EU and maintained their prudent course notwithstanding that some powerful Cabinet members favoured Rosia.⁸³¹ On 5 June 2003, for the first time since the controversy began, Nastase publicly declared, ‘This project is not a priority for us’, because ‘the risks to the environment are very high’.⁸³² He also asked Parliament to form a special committee to investigate Rosia and to make recommendations.

Nastase’s very public de-prioritisation of Rosia seems puzzling at the first glance. There was no need to do this, as the government had followed the letter of the law strictly, and the Commission had stopped pressurising them once they had shown that they were proceeding lawfully. However, viewed in a wider trans-national context, Nastase’s declaration was likely intended to boost their public image both at home and abroad. The declaration was widely reported in the Romanian press, which members of the Executive regarded as have been ‘very good for the NGOs’, by giving them ‘grist for the mill’.⁸³³ The declaration came to be regarded by insiders as essentially a ‘political declaration’, in that Nastase and his Cabinet continued to harbour the intention to go ahead with Rosia at some later date.⁸³⁴ His own Environment Minister, Lificiu, noted that the declaration was ‘a very shrewd and diplomatic statement’: Nastase had parlayed the word ‘now’, which meant, according to Lificiu, that the project ‘is not a priority now, at 6.20, but it might become a priority at 6.30’.⁸³⁵ On this interpretation, the Executive had decided to await the opportune moment for going ahead with Rosia.

⁸³¹ Senior official, negotiations team, interview, 2006.

⁸³² www.ngo.ro, ‘Romanian prime minister criticizes Canadian gold mine project’, June 2003.

⁸³³ Lificiu, interview, 2005.

⁸³⁴ Former senior civil servant, Environment Ministry, interview, 11 November 2005 and 3 June 2006.

⁸³⁵ Lificiu, interview, 2005.

Given that Nastase's declaration was made just before the Social Democrat Ecologist Forum was held on International Earth Day, Nastase may also have intended to win over environmentalist civil society to the Social Democrat Party, likely with a view to the forthcoming elections. This idea might have come from Lificiu, who has made repeated attempts over the years to co-opt the environmental movement under various green political formations set up by him.

Nastase's declaration had the effect of constraining the company and thus empowering the civil society opposed to the project, even if perhaps only temporarily. Indeed the declaration had an immediate effect on the environmental permitting process, as admitted by the company itself:

[After Nastase's declaration] nobody in the administration would do anything. There were continual apologies and moves designed to block every attempt by RMGC to obtain the necessary permits ... Every civil servant wants to keep his/her job. When the PM says that 'we don't like the project', what do you expect? Never mind what the Industry Ministry was saying – 'This is a good project, the government wants it' and so on – never mind all the documents we possessed, signed by the government⁸³⁶

With keen supporters like the Industry Minister inside the Cabinet, the Rosia Montana Gold Corporation had been hoping that they would eventually convince Nastase to give Rosia the green light. But once Nastase spoke out against it, they understood that the project would not be permitted before the 2004 elections. Consequently, the company announced in June 2003 that it was withdrawing their Technical Memorandum submitted in October 2002, and would petition the government to cease processing its documentation. The withdrawal was portrayed by the Alburnus coalition as a major setback for RMGC, and by the European

⁸³⁶ Former Director, RMGC, interview, 2005.

Commission as ‘significant for the progress of the project’.⁸³⁷

The company itself admitted that the withdrawal cost it money and credibility⁸³⁸ – the latter having already been damaged by Alburnus’s campaign. On the other hand, they may have gained credibility by showing their willingness to respect the law and submit a better proposal.⁸³⁹ By constantly reiterating their eagerness to comply with EU and international law, the company endeavoured to turn failure into a strategic opportunity to reconstruct their public image. Displaying commitment to EU law would foil the bad publicity generated by the coalition, particularly regarding the dubious circumstances in which the Rosia project had been started up. Thereafter the company re-branded itself as a respectable Western investor fully committed to EU and international norms.⁸⁴⁰ The company resubmitted its documentation in December 2004, more than a year later, immediately after Nastase had lost the elections to the Democrat Party candidate, Traian Basescu. The company hoped that Basescu, who in his electoral campaign had declared support for the Rosia project, and his Democratic Party, which had originated it in the first place, would be more sympathetic.

This section has traced how, no less than civil society, the Executive exploits the opportunities offered by Europe and the EU. Just like the NGOs, they make shift with whatever of the EU they can utilise – supranational organs, funds, authority, law – to circumvent the constraints of others and empower themselves. The constraints they strove to circumvent were domestic (pressures both from civil society and from the company) and also external (the anticipated EU reaction). The empowerment

⁸³⁷ DG Environment, interview, 7 June 2006.

⁸³⁸ Vice President, RMGC interview, 20 September 2005.

⁸³⁹ Lificiu, interview, 2005.

⁸⁴⁰ Bogdan, interview, 2005.

they sought after was: room for manoeuvre; opportunity for pursuing the project at a later and more convenient date; opportunity for gaining credibility before the EU member-States; and, in the case of the Environment Ministry, an outlet for diffusing responsibility. In the end, the Executive compromised with domestic and trans-national civil society, with the EU organs and with the Hungarian government. They did this, however, only because they perceived that they had little to gain immediately from the Rosia project, compared to the immediate costs to Romania's accession which they feared they might incur.

The Executive acted to constrain the company, not because their values and expectations regarding the environment or civil society had changed, but because, at that point in time, the costs of permitting the project ran higher than the benefits. Had the controversy occurred at a less vulnerable juncture for the Executive (*e.g.*, after the close of negotiations, or after accession itself) or had they had more to gain immediately from permitting it, the Executive might well have behaved differently. A proxy for this latter scenario is presented in the Transylvania Motorway case study. Nonetheless, some of the evidence presented in this chapter suggests that, aside from these rational calculations, the Executive also worried about their image and their credibility before Hungary and before the EU more generally. This would suggest that the effects of socialisation within EU institutions and the European framework may have played a role, too – albeit (it might seem) a less important one.

Conclusions

After Dracula Park, Rosia Montana is the second instance since 1989 where civil society exerted any influence over the Romanian Executive concerning an economic development project. The outcome of the contest between civil society on the one hand, and the Executive and the company on the other, ended with the

empowerment, at least temporarily, of the former. As in Dracula, an initially powerless and resource-less civil society opposition managed to find leverage over the Executive. But the leverage was possible only because the grassroots group was initiated into basic competences by the intervention of Western civil society environmentalists, and empowered by them with material and cognitive resources unprecedented for Romanian civil society. Their intervention transformed the original protest, until then largely motivated by private material interests.

Moreover, civil society empowerment piggybacked on the Executive's self-constraint. The latter's behaviour is best explained 'rationally' by their perception of the prospective costs and benefits of gold mining, which included an anticipation of accession woes. These perceptions in turn were heavily influenced if not created by trans-national civil society and the media, and by the Executive's own construction of how EU supranational organs and the Hungarian government would react.

The nested-games model elegantly captures the Executive's calculations. In contrast to Dracula Park, the Executive by then had become quite aware of the importance of the external games they were engaged in. They factored into their domestic calculations estimates of the external costs and benefits entailed. Besides the domestic game (game 1), the Executive was involved in the EU game (2), and in a game with the Hungarian government (3). By contrast with Dracula, the domestic benefits of the gold mining to the Nastase government were instantly very low ($b_1[t_1] \geq 0$), but liable to increase in the foreseeable future ($b_1[t_2] > b_1[t_1] \geq 0$), for example, if the price of gold were to rise, or if labour unrest were to urge job creation. Their domestic costs were also low at first ($c_1 \geq 0$), but increased over time as Rosia became more controversial. The balance of domestic costs and benefits was thus always precarious, risking that, at any time, the domestic costs might come to

outweigh the domestic benefits, or *vice versa*. The external games offered no comfort. In the EU game, played with the Commission, proceeding with the mining yielded no benefits ($b_2=0$). The costs, although apparently low once the government was seen to obey the EU law of Environmental Impact Assessment, remained greater than zero, in that Commission personnel privately continued to express implicit or explicit reservations about the project ($c_2>0$). This meant that the costs in this game must have outweighed the benefits ($c_2>b_2=0$). A similar logic applied to the game with the Hungarian government, who also expressed misgivings ($c_3>b_3=0$). The estimated future costs in this third game rose considerably after Hungary acceded to EU membership, and after Nastase had cemented a personal friendship with the Hungarian PM. At this point the Nastase government might have been expected to abandon the project ($c_2+c_3>b_1[t_1]\geq 0$). The possibility of a large future increase in domestic benefits nevertheless remained ($b_1[t_2]>c_2+c_3>b_1[t_1]\geq 0$?). This was probably what motivated the government to postpone rather than cancel the project.

Importantly, Executive's room for manoeuvre was also narrowed from the top down by the transposition of the *acquis*. This revised domestic environmental law, opening up the decision-making process not only to the public and civil society but also to neighbouring countries. This increased the number of veto points constraining the Romanian Executive, which was no longer free to exercise the same discretion as it had before.

Although constrained, the Executive was less so than in Dracula Park, in that, first, they had less to lose, and second, they found a 'win-win' alternative in temporisation. Their values as regards the environment and civil society seem not to have substantially changed, but they had learnt how to handle these issues and persons more strategically. They also learnt to handle the European Commission

more strategically, even attempting to exploit it to shift the blame off of themselves while enhancing their image before the member-States.

Chapter 5: The Executive strikes back: the flowering of Romanian inter-governmentalism
- The case of the Transylvania Motorway -

This chapter traces the processes of a political contest in Romania over the accountability of the Nastase government for their breach of the EU law of public procurement. This law was breached when, without the public tendering that the law required, the government let a motorway-building contract – Romania’s largest-ever infrastructure project – to the American firm Bechtel International. Because the law and its breach involved the Single Market, so fundamental to the EU project, the expectation must be that the European Commission will intervene to constrain the Executive more forcefully than it did in the other cases studied herein. As the Nastase government was only a year away from closing negotiations on the whole *acquis*, they may be expected to be more susceptible than before to the pressures of accession conditionality. Under these circumstances, domestic civil society, provided they mobilise, may be expected to be empowered even more than in the other cases.

On the other hand, the elections were very near and the Nastase government may be expected to do whatever they think will get them re-elected. If any of their election-driven decisions come into conflict with accession conditionality, they must keep within the limits of Brussels’ tolerance. If circumstances force them to proceed in ways that might upset Brussels, they may be expected to act strategically to forestall or minimise any consequent difficulties with accession.

By contrast with the other case studies, the Nastase government in this case operates under the pressures of two separate conditionalities: the domestic ‘election conditionality’ and the EU’s accession conditionality. These two conditionalities may be expected to compete with the other as the main motive driving Executive behaviour. Whatever course they decide, the government must take care to strike a

winning balance between these possibly opposing pressures.

Certain expectations also arise on the side of civil society. The controversy in this case was primarily over procedure rather than substance; therefore, the pattern of environmental civil society mobilisation and its interaction with the Executive may be expected differ from that in Rosia Montana or Dracula Park. Environmental civil society may be expected to mobilise, but not so much around the issue of public tender as around the Environmental Impact Assessment (EIA) procedure and the specifically ecological issues raised by the Motorway. An infrastructure project on so large a scale is bound to impact Transylvania's cultural heritage and ecological balance significantly. It will likely displace more people than all the other projects studied herein combined. That the motorway was to pass through Transylvania, Romania's most civically active region, is further reason to expect at least as much civil society mobilisation as in the case of the Dracula theme park or the Rosia Montana gold mining project. Moreover, the successes in Dracula Park and Rosia Montana reasonably raise expectations that environmental civil society should have learnt by now how one deploys Europe to constrain the Executive. Lastly, the comprehensive harmonisation of Romania's EIA regulations with those of the EU may be expected to have opened up the domestic political system and its decisional processes to civil society influence.

Section One provides a background to the case study, identifying domestic and EU constraints on the Executive. Section Two traces step by step the Executive's tactical moves toward realising the project. Section Three traces Brussels' reaction, and the factors that constrained them in their endeavours to offset or correct the Executive's circumvention of EU supranational constraints. Section Four, the last section, traces the feeble and opportunistic reaction of Romanian civil society, analysing the reasons

why, in this case, they could exert no influence over the Executive.

5.1 The Executive in check

This section presents the political situation confronting the Romanian Executive and why it determined them to let the contract for a large-scale infrastructure project without any public tender. By doing so, they flouted rules only just agreed with the European Commission. With less than a year to go before the November 2004 elections and before the scheduled close of the *acquis* negotiations, the Executive stands revealed as operating under tighter constraints than in Dracula Park or Rosia Montana. Domestically, the Social Democratic Party (PSD)'s overriding priority was re-election, but their odds of forming a majority were slim. They would have little choice but to cultivate the loyalty of their lone likely coalition partner, the Democratic Union of the Magyars in Romania (UDMR), the party representing ethnic Hungarian interests. One of the bargains the PSD had already struck with them was to build a motorway linking the isolated Hungarian-dominated areas of Transylvania with Hungary. The volatile Transylvanian electorate and their traditional suspicion of the PSD also contributed to forcing the PSD's hand, obliging them to commence construction before the elections.

However, to bring this off, the Executive must obviate a formidable EU constraint, the Trans-European Network (TEN) routes agreement negotiated under the previous Romanian government. This agreement had etched in stone Romania's transportation priorities in order of fiscal allocation, putting the TEN first. The negotiations on the TEN network could have been re-opened but this was a solution unfavoured by the Romanian government since it would have given the Commission the opportunity to raise other contentious transportation issues.

5.1.2 The shifting sands of the coalition with the Hungarians

By the time the elections loomed, the promised motorway through Transylvania had become a necessity for UDMR, the PSD's main coalition partner. The UDMR were facing a rebellion within their own ranks from a minority within the Hungarian minority, the Székely.⁸⁴¹ The Székely are East Transylvanian Hungarians of Turkish origin who had been brought in by a Hungarian king in the 13th century to guard the eastern marches.⁸⁴² Constituting 670,000 out of the 1.4 million ethnic Hungarians in Romania, they are nowadays concentrated in just a few counties of Transylvania: – Covasna (where they are 74% of the population), Harghita (85%) and Mures (53%). Throughout the centuries past, the Székely had counted as a constituent nation of the Transylvanian polity, distinct from either Hungarians or Saxons. They had even allied themselves with the Romanians against the Hungarians in the period of 19th century nationalism. Even today, the Székely perceive themselves as a distinct ethnic group from the Hungarians, notwithstanding that they have lost most of their distinctive customs and speak Hungarian.⁸⁴³

Under Ceausescu this group, like all ethnic minorities, had been aggressively marginalised from both the economic and social standpoints; for example, education in the Hungarian language was forbidden, and a former Autonomous Magyar Region abolished.⁸⁴⁴ Their situation did not significantly improve after 1989, most areas continuing to be poor and isolated from the Romanian transportation network. This, and the feeling that UDMR, their political representative, had not done enough for

⁸⁴¹ Called Secui in Romanian.

⁸⁴² Razvan Amariei, 'The Unsettled Szeklers', *Transitions Online* 26 January 2004., <http://www.tol.cz/look/BRR/article.tpl?IdLanguage=1&IdPublication=9&NrIssue=1&NrSection=1&NrArticle=11495> (accessed January 2005).

⁸⁴³ Ibid.

⁸⁴⁴ Michael Schafir, The political party as national holding company: the Hungarian Democratic Federation of Romania in Jonathan P. Stein (ed.), *The Politics of national minority participation in post-communist countries*, (London: M.E. Sharpe, 2000), p. 101; Michael Schafir, *Romania. Politics, Economics and Society. Political Stagnation and Simulated Change* (London: Frances Pinter, 1985), p. 162.

them, was causing, by the end of the 1990s, the ‘biggest wave of radicalism in the Hungarian community’.⁸⁴⁵ The UDMR had come to be viewed as too moderate by the Székely, who were upending the Party platform by demanding the status of an ethnic minority separate from Hungarians, as well as autonomy for their enclave.⁸⁴⁶ The Székely were also dissatisfied that the UDMR were ‘collaborating’ with rather than confronting the political parties dominated by ethnic Romanians.⁸⁴⁷ Only a year before the elections, the Székely were threatening to break away from UDMR and form their own party,⁸⁴⁸ which eventually did happen but not until just before the 2004 elections.⁸⁴⁹

The UDMR’s leadership worried about the Székely radicalisation and their threat to defect. If the Székely formed a party of their own, they would become the UDMR’s main competitor for Hungarian votes.⁸⁵⁰ Moreover, without Székely votes, estimated at between 20,000 and 50,000, UDMR risked failing to cross the 5% threshold necessary for being seated in Parliament.⁸⁵¹ The UDMR’s electoral prospects were further darkened by the rapid dwindling of the Hungarian population in Transylvania, which between 1989 and 2002 had dropped by all of 200,000 (15% of the total population).⁸⁵² These internal problems prompted the UDMR’s leader, Bela Marko, representing Mures (the ‘capital’ of the Székely area), to ‘do something’ for the Székely that would help to ‘disenclave and de-radicalise’ them.⁸⁵³ The UDMR

⁸⁴⁵ Interview by the author with senior official (1) European Commission Delegation in Bucharest, 26 June 2006.

⁸⁴⁶ Raluca Crisan, ‘Secuții în ora PRM’, *Evenimentul Zilei Online*, 29 Octombrie 2004; Sorin Dragomir, ‘Autonomia Ținutului Secuiesc în dispută’, *BBC Romanian*, 19 November 2004.

⁸⁴⁷ Crisan, 29 Octombrie 2004; Tökes Laszlo (Székely Leader) quoted in Dragos Bardosi, ‘Tökes indeamna la lupta pentru Ardeali’, *Evenimentul Zilei Online*, 11 Martie 2004.

⁸⁴⁸ Dragos Bardosi, ‘Separatism între autonomisti’, *Evenimentul Zilei Online*, 26 Ianuarie 2005.

⁸⁴⁹ The Székely would go so far as to sign, in October 2004, only a month before the national elections, a protocol of electoral collaboration with Romania’s most nationalist party, the Greater Romania Party (Crisan, 29 October 2004).

⁸⁵⁰ Dragomir, 19 November 2004.

⁸⁵¹ Crisan, 29 Octombrie 2004; Dragomir, 19 November 2004.

⁸⁵² Gallagher, *Theft of a nation*, p. 328.

⁸⁵³ Senior official (1), Delegation, interview, 26 June 2006.

leadership insisted before and after the 2004 elections that a Transylvanian motorway should be routed through the Székely area and built sooner rather than later.⁸⁵⁴

Inasmuch as UDMR were the PSD's margin of control in Parliament, its problems became the PSD's problem as well. Opinion polls had indicated that the PSD were likely to win the 2004 elections but not with a majority: of the 43% of the vote they were forecast to receive,⁸⁵⁵ they could only count on a nucleus of about 20-22%.⁸⁵⁶ Their main opponent, the Liberal-Democratic Alliance, was forecast to win 28% of the votes.⁸⁵⁷ What is worse, Romanian voters are notoriously volatile: studies have shown that undecided voters are unpredictable all the way up to election day.⁸⁵⁸ In these circumstances, none of the contenders could have any certainty of forming an absolute majority on their own; thus the necessity of coalescing with lesser parties.

Their choices, however, were extremely limited. The PSD was shut out of a coalition with either party that formed their main opposition. The Democrats and the Liberals who made up the Alliance had pledged to each other to 'build a united front before the PSD',⁸⁵⁹ hoping to win votes by distancing themselves from 'a corrupt party and government'.⁸⁶⁰ They signed and published a protocol committing themselves to remain in opposition (*i.e.* to refuse a coalition with the PSD) if their Alliance lost.⁸⁶¹ For that matter, the PSD as well as the Alliance had also committed themselves to refusing a coalition with the Greater Romania Party (GRP),⁸⁶² a party tainted with nationalistic extremism. This had made it an outcast in Europe, and both the Alliance

⁸⁵⁴ Bela Marko (UDMR Leader) quoted in 'UDMR insistă pentru contractul cu firma Bechtel', *BBC Romanian*, 2 Aprilie 2005; Senior official, negotiations team, interview, 2006.

⁸⁵⁵ Razvan Braileanu, 'Mizele electorale ale anului 2004', *Revista 22*, March 2004, no. 732.

⁸⁵⁶ Traian Basescu (Leader of the Democratic Party) in Braileanu, 2004.

⁸⁵⁷ Braileanu, 2004.

⁸⁵⁸ Theodor Stolojan (Leader of the National Liberal Party) in Braileanu, 2004.

⁸⁵⁹ Braileanu, 2004.

⁸⁶⁰ Email communication by the author with Raimonda Boian, Spokeswoman for Emil Boc, Leader of the Democratic Party, 16 March 2006.

⁸⁶¹ Basescu in Braileanu, 2004.

⁸⁶² Petru Clej, 'Cum arată viitorul Parlament?', *BBC Romanian*, 1 December 2004; Stolojan in Braileanu, 2004.

and PSD feared that a coalition with the GRP would make a bad impression on the EU.⁸⁶³ The Humanist Party (PUR), a junior partner in Nastase's governing coalition between 2000 and 2003, could not be counted on by either the PSD or the opposition Alliance. In 2003 the PUR broke with the PSD, citing the latter's 'permanent arrogance', and announced that they would stand as an independent party in the 2004 local and general elections.⁸⁶⁴ Besides the PUR, all of the other micro-parties put together held a mere handful of seats in Parliament. Under these circumstances the UDMR was the only viable coalition partner left standing for either the Alliance or the PSD.

UDMR never enters into pre-electoral alliances, lest they betray or give the impression of betraying the interests of the Hungarian minority.⁸⁶⁵ Like most Romanian political parties, UDMR is renowned for its pragmatism and lack of ideological commitments, being 'open to collaboration with all democratic parties in Romania'⁸⁶⁶ that 'accept its very specific agenda'.⁸⁶⁷ For example, in the 2004 local elections, which preceded the general elections by a few months, UDMR supported indifferently either the PSD or the Liberal-Democratic Alliance, depending on who won. The unpredictability of the UDMR's opportunism makes it especially difficult for the main parties to reckon the odds of forming a majority governing coalition. Both main contenders were wooing UDMR before, during and after the elections. (Indeed, after the local elections the Alliance is said to have been negotiating with UDMR 'on its knees'.⁸⁶⁸) The stakes were higher for the PSD than for the Alliance,

⁸⁶³ Petru Clej, 'Analiză a alegerilor din România', *BBC Romanian*, 26 November 2004.

⁸⁶⁴ 'PUR a rupt protocolul cu PSD', *Evenimentul Zilei*, 31 August 2003.

⁸⁶⁵ Gyorgy Frunda (UDMR Leader) quoted in 'UDMR colaborează și cu PSD și cu Alianța D.A', *BBC Romanian*, 23 June 2004.

⁸⁶⁶ *Ibid.*

⁸⁶⁷ Monica Ciobanu and Michael Shafir, 'The 2004 Romanian elections: a test for democratic consolidation?', *RFE/RL Reports*, 7 April 2005, vol. 7, no. 3.

⁸⁶⁸ *BBC Romanian*, 'UDMR s-a aliat cu alianța PNL-PD la Cluj', 23 June 2004.

because they needed only the UDMR to form a majority coalition by a comfortable margin.⁸⁶⁹

The PSD had already formed a coalition with UDMR right after the 2000 elections, and had been bargaining with them throughout their joint tenure. UDMR's agenda was topped by three main demands on the PSD: the restoration of the Freedom Statue of Arad; the re-establishment of the two separate universities in Cluj – Victor Babes in Romanian and Bolyai in Hungarian;⁸⁷⁰ and facilitation of economic development of the Hungarian minority region by improving its infrastructure links.⁸⁷¹ The goal was improve the conditions of the Székely so as to de-radicalise them.⁸⁷² The PSD was prepared to concede on the first and the third points but not on the second,⁸⁷³ arguing that a linguistically separate university would encourage ethnic segregation and even separatism. It was thus that the Transylvania Motorway resulted from pork-barrel bargaining between the PSD and the UDMR, in hopes both of shoring-up the UDMR's base and of securing its loyalty to the PSD in the run-up to the 2004 elections.⁸⁷⁴ The PSD was all the more prepared to deliver on the motorway, as this might help them win over to their side some of the non-Hungarian component of the Transylvanian electorate.

5.1.3 Brussels constrains the Executive

To pacify the Hungarians, however, would oblige the Nastase government to finesse one of the settlements negotiated between the previous Romanian government and

⁸⁶⁹ Petru Clej, 'Rezultatul alegerilor prezidențiale și viitorul guvern', *BBC Romanian*, 8 December 2004.

⁸⁷⁰ Radio Free Europe, Romanian Hungarian Leader Demands Hungarian-Language Faculty at University, 22 February 2005 vol. 9, no. 34, <http://www.rferl.org/newsline/2005/02/4-see/see-220205.asp>.

⁸⁷¹ Senior official (1), interview, Delegation, 26 June 2006.

⁸⁷² Ibid.

⁸⁷³ Ibid.

⁸⁷⁴ Ionita, email, 2006; Senior official (1), Delegation, interview, 26 June 2006; Interview by the author with European Commission senior official (2), 12 April 2006; Interview by the author with DG Enlargement, European Commission, 13 April 2006; *The Economist*, 15 April 2004, 'Romania and the EU. Don't count your chickens: 2007 may be too early an entry date for a big, poor country'.

the EU. The corridor routes through Romania had been agreed in 1997 and 1999, when Romania was ruled by the PSD's arch-rivals, the centre-right Alliance, who conformed the routes to their own preferences.⁸⁷⁵ The siting of the routes had been driven by a concern common to all Romanian Transportation Ministries throughout the 1990s, who had been 'focused on transportation links to, from and through Bucharest' so as to keep the capital from being isolated from the Pan-European Network.⁸⁷⁶ Led by Transportation Minister Traian Basescu, who in 2004 was to contest the Presidency with Nastase, the centre-right government had actually skewed the routes, marginalising Transylvania.⁸⁷⁷ Of the two TEN corridors that were to cross Romania, Corridor IX would link Helsinki through Kiev to Iasi, Bucharest and Giurgiu, in Moldavia – the eastern margin of Romania, – and thence to Dimitrovgrad, Bulgaria and Alexandroupoulos, Greece.⁸⁷⁸ Corridor IV would link Vienna through Budapest to Arad, Bucharest and Constanta, mostly in Wallachia – the southern margin, – and thence to Sofia, Bulgaria and Istanbul.⁸⁷⁹ Only one branch of Corridor IV was to cut the southern corner of Transylvania, leaving most of it, including the areas inhabited by the Székely, isolated and unserved.

By submitting a Position Paper on Transportation to the European Commission the centre-right coalition had committed Romania to building the Corridors before any other comparable transportation infrastructure.⁸⁸⁰ The Corridors would benefit from EU funding schemes, and must be given fiscal priority by the Romanian

⁸⁷⁵ Senior official (1), Delegation, interview, 26 June 2006.

⁸⁷⁶ Ibid.

⁸⁷⁷ Ibid.

⁸⁷⁸ Romanian Government, *Transylvania Motorway Project will continue as soon as the legal issues are solved through the contract renegotiation between the Romanian authorities and the construction company* (Press release), 30 November 2005 <www.gov.ro>.

⁸⁷⁹ European Commission, *Regular Report – Romania* (Brussels, 1999), p. 44.

⁸⁸⁰ Antal Istvan (UDMR MP and President of the Committee on Industries and Services), *Parliamentary Debates. Sittings of the Chamber of Deputies*, 10 February 2004; Email communication by the author with Andra Mihalcioiu, Romania's negotiations team, 16 June 2006.

government.⁸⁸¹ The routes were codified by Executive decree (Emergency Ordinance 16/1999), which mandated Romania's first Priority Programme for Motorway Building.⁸⁸² It transpired only with the publication of this Ordinance in 1999 that the core of Transylvania had been shut out of the Trans-European Network.

The routes immediately became contested. Greatly dissatisfied, Transylvanian politicians from all parties mobilised to lobby the government for changes.⁸⁸³ The MPs' reaction to this agreement with the EU reflected the excessive discretion that the Romanian polity allows to whichever government currently holds the Executive power. It is this that allowed the previous government to negotiate a very one-sided TEN that did not reflect the interests of the whole country. Particularly vociferous were the Liberals, the Democrats and the UDMR, who up till then had always dominated Transylvanian politics. In June 2001 MPs of these parties reached a common position, which they published as the Oradea Declaration, demanding the inclusion in the Priority Programme of a motorway linking Oradea on the Hungarian border with Bucharest. Such a motorway would 'develop Romania's economic relations with the West and the European Community', and therefore ought to be a priority, because: (a) Hungary is currently planning a corresponding motorway terminating in Bors, potentially linking up any Romanian motorway terminating there to Budapest and beyond; (b) the state of Transylvania's roads was utterly and unfairly worn-out, and does not repay the region's contribution to the national economy; and (c) Transylvania is the bedrock of any 'multi-functional relationship' between Romania and the EU, hence no transportation network without Transylvania

⁸⁸¹ Ibid.

⁸⁸² Paul Magheru (Greater Romania Party MP), 'Declation: The Truth about the Transylvanian Motorway', *Sittings of the Chamber of Deputies*, Romanian Parliament, 8 March 2005.

⁸⁸³ Magheru, 2005.

would be 'viable'.⁸⁸⁴ The Oradea Declaration was also signed by those Members of the Hungarian Parliament representing districts near the border with Romania⁸⁸⁵ – a trans-nationalism that would have been unlikely before accession to the EU had facilitated to such an extent the construction of common interests between the two countries.

The Romanian government changed in 2001, and the routes negotiated by the centre-right coalition in 1997 were found to clash with the preferences of the new coalition made up of the PSD and UDMR. The new Executive tried to work with its allies in Parliament to rebalance the Programme's priorities. When in January 2002 the Parliament finally adopted the 1999 Priority Programme (Act 1/2002), it had been amended to include certain items not negotiated with the EU. One of these was a 167-kilometre motorway linking Bors on the border with Hungary to Cluj in the heart of Transylvania.⁸⁸⁶ But this Bors-Cluj motorway was only a spur running more or less parallel to Corridor IV, only deeper inside Transylvania. This inclusion reflected only the UDMR MPs' preferences. The interests of the rest of the Transylvanian caucus were ignored, as Parliament was now dominated by the PSD-UDMR coalition, from which the other, non-Hungarian Transylvanian MPs were excluded. The latter were disappointed,⁸⁸⁷ but their fragmented majority presented no significant challenge. The PSD-UDMR ruling coalition claimed in justification that a Bors-Cluj motorway was but the first step toward one comprehending all of Transylvania and ending in Bucharest. The coalition may have perceived that

⁸⁸⁴ Cornel Popa (National Liberal Party MP), *Interpellation addressed to the PM Nastase regarding the critical state of infrastructure in Bihor county*, 2 June 2003, National Liberal Party website <http://www.pnl.ro/?id=par154>; Cornel Popa (National Liberal Party MP), 2002. 'Proiecte uitate [Forgotten projects]'. www.pnl.ro, 17 June 2002.

⁸⁸⁵ Cornel Popa (National Liberal Party MP), *Autostrada Oradea-Bucuresti* Chamber of Deputies, Romanian Parliament, 22 October 2003.

⁸⁸⁶ Cornel Popa, *Marginalizarea judetului Bihor*, Romanian Parliament, 16 April 2003; Magheru, 2005.

⁸⁸⁷ Damian Brudaşca (Greater Romania Party MP), Meeting of the Chamber of Deputies, 11 September 2001.

planning comprehensively would at this point be too conspicuous a departure from what had been negotiated with the EU.

These amendments aroused the European Commission. The Romanian government was going to implement a different Priority Programme to what had been agreed, but which would entail an obligation by the EU to fund it all the same. The TEN agreement had not forbidden Romania to build other motorways, provided that she could finance them without prejudice to the Pan-European Network.⁸⁸⁸ However, the Priority Programme adopted in 2002 by the PSD government broke these promises, particularly given that a branch of the Corridor IV had already been planned to pass through the south of Transylvania parallel to the offending Bors-Cluj motorway. In 1997, and again in 1999, the TEN Corridor had been judged by European experts the most advantageous and cost-effective, all things considered.⁸⁸⁹ Besides cost, another important consideration for routing Corridor IV through the south of Transylvania, at least in the early 1990's, had been to bypass – on the way to Bulgaria and Istanbul – the conflict zone in Yugoslavia, which had blocked West-East traffic.⁸⁹⁰ A motorway through the south was thought best to circumvent these problems.

The European Commission demanded that the government exclude the Bors-Cluj Motorway from their 2002 Priority Programme.⁸⁹¹ It was a demand that tightly constrained the PSD-UDMR government. The Bors-Cluj Motorway was de-prioritised in November 2002, when Act 1/2002 was amended again to harmonise the whole of Romania's transportation law with the *acquis*. In Parliamentary debates over the new bill, UDMR fought to keep the Bors-Cluj Motorway in. Transylvanian

⁸⁸⁸ Mihalcioiu, email, 16 June 2006.

⁸⁸⁹ Ibid.

⁸⁹⁰ Senior official (1), Delegation, interview, 26 June 2006.

⁸⁹¹ Popa, 2 June 2003; Senior official, Negotiations team, interview, 2006.

MPs of the Liberal and Democratic Parties, too, objected that the Programme was unfair. The south of the country would be ‘webbed’ in motorways before 2007, while motorway-building in the north was to be postponed until after 2015.⁸⁹² All amendments, even those moved by UDMR, were nonetheless rejected. Miron Mitrea, the Transportation Minister, told MPs that Romania had more important commitments with the European Union, and that ‘a motorway through the centre of Transylvania will remain a dream until financial support is found’.⁸⁹³

5.1.4 The Romanian Executive plays inter-governmentalism from the bottom up

The dream of a motorway through Transylvania, however, was never given up. The government continued to seek ways of circumventing the supranational constraints imposed on it. A motorway linking Bucharest with Budapest through Transylvania reappeared in the context of the Partnership that PM Nastase forged with the newly elected Social Democrat Hungarian PM Peter Medgyessy in 2002. A motorway project was discussed in July 2002, when the two PMs had first met. Nastase’s *aide-mémoire* ‘On the Strategic Romanian-Hungarian Partnership for the 21st century Europe’ included cooperation on infrastructure between Romania and Hungary.⁸⁹⁴ It was in November 2002, after the Bors-Cluj Motorway had been excluded from the Priority Programme, that the two PMs began to discuss in earnest a motorway linking their countries through Transylvania.

Nastase and Medgyessy decided that they shared common interests as new members of both the European and Euro-Atlantic communities; therefore, a ‘new way of

⁸⁹² Popa, 2 June 2003.

⁸⁹³ Miron Mitrea (Transportation Minister for Romania, 2000-2004) paraphrased in Popa, 2 June 2003.

⁸⁹⁴ Liviu Alexa, Ioana Tiganescu, and Sorin Rosca-Stanescu, ‘Premierii Nastase si Medgyessy au vorbit trilingv’, *Ziua*, 8 July 2002.

approaching [their] bilateral relations' was needed to further these interests.⁸⁹⁵ Nastase's July 2002 *aide-mémoire* became consolidated in a Partnership centred on EU and NATO integration, minority relations, and economic co-operation.⁸⁹⁶ A motorway linking Bucharest to Budapest would 'foster [this economic] co-operation'.⁸⁹⁷ A month later, in December 2002, Nastase and Medgyessy announced a joint plan to link Bucharest and Budapest by motorway.⁸⁹⁸ Both countries agreed on the crucial importance of transportation to the development of the EU internal market and to their own economic growth within it.⁸⁹⁹ The motorway also had symbolic value: 'the building of a motorway can, at times, say much more than the many agreements left in the drawers'.⁹⁰⁰ The announcement heralded a *rapprochement* between the two countries, whose relations had been tense throughout the 1990s over the civil rights of the Hungarian minority in Romania and the Romanian perception of a threat of a revision of its borders with Hungary.⁹⁰¹

The motive on the Romanian side for the *rapprochement* was likely that, without it, Hungary might well have complicated Romania's accession to the EU. But the fact that the new Hungarian Prime Minister was a Socialist like Nastase also contributed. Indeed, relations between the two countries improved markedly after the Hungarian Socialist Party won the 2002 elections and Hungary's new Prime Minister cemented

⁸⁹⁵ Adrian Nastase (PM Romania, 2000-2004), *Common press conference Năstase-Medgyessy*, 30 November 2002, <http://arhiva.informatia.ro/Article7832.phtml> (accessed January 2005).

⁸⁹⁶ *Ibid.*

⁸⁹⁷ Peter Medgyessy (PM Hungary), *Common press conference Năstase-Medgyessy*, 30 November 2002, <http://arhiva.informatia.ro/Article7832.phtml> (accessed January 2005).

⁸⁹⁸ Razvan Amariei, 'Deals Without Tenders', *Transitions Online*, 23 February 2004, <http://www.tol.cz/look/BRR/article.tpl?IdLanguage=1&IdPublication=9&NrIssue=1&NrSection=1&NrArticle=11625>; 'Autostrada Prieteniei', *Adevarul*, 2 December 2002, no. 3870.

⁸⁹⁹ Conference on Accession, Brussels 5 March 2001 to the European Union (Romania) RO 6/01. *Romania's Position Paper on Transportation*.

⁹⁰⁰ Adrian Nastase (PM Romania, 2000-2004) quoted in Hungarian Prime Ministerial Office, 'Prime Minister in Cluj-Napoca - meeting with Romanian PM' (Press Release), 6 July 2002.

http://www.meh.hu/english/activities/events/cluj_e20020706.html?sq=nastase

⁹⁰¹ Gallagher, *Theft of a nation*, p. 230.

a friendship with his fellow Socialist, Nastase.⁹⁰² This improvement of relations was, therefore, the result of bottom-up inter-governmental co-operation, which effectively supplanted the not very successful 2000 co-operation pact between Romania and a Nationalist-led Hungary – which had been driven from the top down by Brussels.⁹⁰³

In the spring of 2003 Nastase and Medgyessy despatched a joint letter to Commission President Prodi asking him ‘to convince the European Union to grant some special funds for this [motorway] route’.⁹⁰⁴ Prodi’s reply was: “‘yes” [but only] when the project’s turn comes’.⁹⁰⁵ Apparently he told them to wait until Romania and Hungary acceded, or else to finance the project from private sources.⁹⁰⁶ Thus, Brussels’ supranational agenda ran counter in this case to domestic priorities.

Neither PM was discouraged by Prodi’s refusal. In June 2003, when they met again and discussed the motorway plans, Medgyessy stressed that ‘Hungary wanted to see the road run through the middle of Transylvania, and not simply skirt it’.⁹⁰⁷ For his part, the Hungarian PM had decided that they would ‘use loans and their own [financial] resources so as to accelerate the process of building motorways’.⁹⁰⁸ Nastase, too, decided to find another way of financing a motorway through Transylvania.⁹⁰⁹ The de-prioritisation of the Bors-Cluj motorway by the Commission, and Prodi’s rejection of Nastase’s and Medgyessy’s pleas for financial support, made it harder for the PSD to satisfy the UDMR’s demand for

⁹⁰² Lificiu, interview, 2005.

⁹⁰³ Gallagher, *Theft of a nation*, p. 327.

⁹⁰⁴ Miron Mitrea (Transportation Minister, 2000-2004). *Response to parliamentary questions on the Emergency Ordinance 120/2003*, Chamber of Deputies, Romanian Parliament, 12 February 2004.

⁹⁰⁵ Ibid

⁹⁰⁶ Mitrea, 12 February 2004; Amariei, 23 February 2004.

⁹⁰⁷ Peter Medgyessy (PM Hungary) paraphrased in Hungarian Prime Ministerial Office, ‘Hungarian, Romanian Prime Ministers Hold Talks’ (Press Release), 6 June 2003.

http://www.meh.hu/english/activities/events/romanian_e20030606.html (accessed January 2005).

⁹⁰⁸ Interview with Helga Repassy, Vice-President of the Hungarian National Office for Territorial and Regional Development by Raul Matis, ‘Strategic Motorways’, *Evenimentul Zilei Online*, 5 April 2006.

<http://www.autostrada-transilvania.ro/articole/evz/art81.htm> (Accessed 6 April 2006).

⁹⁰⁹ Mitrea, 12 February 2004.

infrastructure. As the alternative of setting up Hungarian-language faculties at Babes-Bolyai University continued to be unacceptable, the PSD was forced to look for alternative sources of finance for building the motorway and thus secure the UDMR's loyalty.

5.2 The Executive moves out of check

This section traces the process of how the Executive found a way of financing the Transylvanian Motorway alternative to the EU, and how they exploited not only their own domestic power resources but even the very EU to get around those EU constraints that might have prevented commencing its construction before the elections. Two constraints in particular impeded them more than any others. The first was the Priority Programme for Motorway Building agreed with the European Commission, insofar as it precluded the engagement of credit to build the Transylvania motorway at the expense of the Pan-European Corridors. The second was the Romanian Executive's agreement with the Commission to act as if the EU public procurement rules were applicable before they had in fact become domestic law.

5.2.1 The window of opportunity

In pursuit of a way out of the Pan-European Agreement fiscal straightjacket, Nastase sent representatives of the Romanian External Trade Department to the US to sound out the five biggest US construction companies about building that Motorway.⁹¹⁰ The idea that the Bechtel Corporation might build it gelled around July 2003. At that time, Romania and the US signed a Declaration of Intent to co-operate in the field of transportation. Samuel Bodman, the US Deputy Secretary of Commerce expressed

⁹¹⁰ Ibid.

interest in helping Romania develop its transportation infrastructure, as a first step in ‘strengthening’ their bilateral relationship.⁹¹¹ It was also to be seen as ‘a token of appreciation for the support given by the Romanians in the fight against international terrorism’.⁹¹² At this point, it was also apparently agreed that the Export-Import Bank of the United States (EXIMBANK) would act as guarantor in the financing of projects generated by the Romanian-US cooperation.⁹¹³ The Executive thus hoped that hiring Bechtel would bring EXIMBANK along as guarantor of the project’s finances.⁹¹⁴ The US and Bechtel had thus opened a financial window of opportunity which the Cabinet could exploit to go around Brussels’ competing priorities and slip out of its supranational constraints.

Nothing prevented the Cabinet from signing the contract with Bechtel immediately except for Romania’s previous undertaking with the Commission to submit all major infrastructure projects to a public tendering process.⁹¹⁵ The Commission ‘had insisted very strongly’ on this.⁹¹⁶ The EU public procurement procedures would have changed the general rules of the Romanian game radically. Consequently, the Cabinet for their part had dragged their feet in fulfilling this undertaking.⁹¹⁷ The new procedures were resisted because they impinged on many economic interests of the ruling party elite.⁹¹⁸ Despite their reluctance, the Cabinet had been obliged in the end

⁹¹¹ Ibid.

⁹¹² Oana Branzan, ‘Romanian-American Agreements for Transports’, *The Railway Journal*, no. 8 <www.cfr.ro> (accessed January 2006).

⁹¹³ Mitrea, 12 February 2004.

⁹¹⁴ Laura Griesmer (Economic Attaché of the American Government in Romania) quoted in Iulia Roibu, ‘Guvernul american, lobby pentru Bechtel’, *Evenimentul Zilei*, 13 February 2004.

⁹¹⁵ DG Enlargement, *Chapter 9 Transport Policy*, European Commission web site, <http://66.102.9.104/search?q=cache:UDEfSc6eJyEJ:www.eu.int/comm/enlargement/negotiations/chapters/chap9/index.htm+Romania+transportation+chapter+2003&hl=en&gl=uk&ct=clnk&cd=3>

⁹¹⁶ Senior official, Negotiations team, interview, 2006.

⁹¹⁷ Ibid.

⁹¹⁸ Ibid.

to agree being bound by the new procedures before the Commission would agree closing negotiations on the Transportation Chapter by the end of 2003.⁹¹⁹

This commitment created an enormous difficulty for the Nastase government's pursuing a contract with Bechtel. A year would have to pass from the opening of negotiations with Bechtel in July 2003 to the actual commencement of building in June 2004. A public tender would delay this timetable for a minimum of six more months, and maybe for as much longer as 18⁹²⁰ – making it impossible to commence before the elections in November 2004. The PSD and UDMR's expected electoral difficulties in Transylvania strongly motivated the Cabinet to look for ways of obviating the delay to be caused by a public tender. They had to wait, however, until after they had closed negotiations on the Transportation Chapter, and until after the EU Summit in December 2003.⁹²¹ The awaited events happened on schedule: the Transportation Chapter was closed in December 2003,⁹²² and the EU Summit that took place soon thereafter saw Romania given the concrete accession date of 2007, 'if ready'. This opened up a brief window of opportunity for the Cabinet to slip through. It was a narrow one, which would close before the end of 2004 when the public procurement *acquis* had to be fully transposed and the general elections faced. They had to shoot rather than amble through it.

The close of the Chapter and the EU Summit created an opportunity which on its own might not have sufficed to move the Executive to act. Further necessary was competence in the Executive to take it up, including especially the confidence to act.

⁹¹⁹ Senior official (2), Delegation, interview, 2006.

⁹²⁰ Representative of Transportation Ministry quoted in Iuliana Roibu, 'Autostrada Bors-Brasov, construita de Bechtel', *Evenimentul Zilei*, 16 December 2003, www.evz.ro/afaceri/?news_id=140460; Romanian Government, 'Expunere de Motive for Emergency Ordinance 120/2003', Chamber of Deputies, Romanian Parliament, 2 February 2004.

⁹²¹ Interview, European Commission (1), 12 April 2006.

⁹²² DG Enlargement, *Chapter 9 Transport Policy*.

At the Summit the member-States, for the first time, had given Romania and Bulgaria a concrete accession date. The sole condition that all *acquis* negotiations must be closed by 2004 seemed fulfilled by anticipation.⁹²³ Verheugen, the Enlargement Commissioner, had already hinted in May 2003 that this deadline would indeed be met.⁹²⁴ Where the EU had before spoken only of ‘support’, Verheugen had used the word ‘commitment’, echoing Romano Prodi, the Commission President, who had hinted much the same two weeks before.⁹²⁵ These acts of the EU made the Romanian Executive confident of accession. The Summit had boosted their confidence and their willingness to take risks; thereafter they proceed quickly and decisively.

In getting so close to membership, the Nastase government had benefited from the support of the Heads of many important EU member-States. By the end of 2002 the PSD government had secured ‘consistent’ and ‘strong support’ from Britain, Italy and Spain in particular.⁹²⁶ Driven by its self-interest in obstructing the creation of an EU superstate, Britain had from the beginning strongly supported enlargement to the East.⁹²⁷ Romania had unexpectedly ‘found in [Britain] a selfish, yet welcome ally’.⁹²⁸ Tony Blair ‘permanently supported’ Romania, and ‘kept all his promises and even more’.⁹²⁹ Indeed, it was his ‘bolt from the blue’ speech in 1999 that may well have moved the member-States to begin negotiating with Romania in 2000.⁹³⁰ (Blair also

⁹²³ Radio Free Europe, 14 December 2003.

⁹²⁴ EUbusiness.com, ‘Romania accession talks to end by October 2004 says EU’s Verheugen’, 2 May 2005.

⁹²⁵ Ibid.

⁹²⁶ Senior official, negotiations team, interview, 2006.

⁹²⁷ Dimitris Papadimitriou, *Negotiating the New Europe* (Aldershot: Ashgate, 2002), p. 104-5.

⁹²⁸ Ibid. p. 111.

⁹²⁹ Tismaneanu and Mihaies, p. 260.

⁹³⁰ Adviser for EU and NATO affairs to the Romanian President, speech delivered to the *Romania and the European Union: The Challenge of Domestic Reform* conference, London School of Economics, 31 October 2003.

supported Nastase in integrating the PSD into the Socialist International.⁹³¹) Already by 1992 Spain had become a supporter of Romania;⁹³² as had Italy, which had conceived a strategic interest in Romania's accession. Italy's support was driven by security fears for the closeness of the Balkans and by special economic interests in Romania, where Italy is one of the largest foreign direct investors.⁹³³ Language affinity and a shared Roman history also contributed to the mutual sympathy between the two countries.⁹³⁴ Berlusconi became Romania's 'most vocal champion'.⁹³⁵ Indeed, during the Italian Presidency of the Council, the Italian government imposed an end-of-2004 timetable for the close of all negotiations with Romania. These were indeed closed – ('under pressure') – just before the November 2004 elections.⁹³⁶ Besides Britain, Spain and Italy, the Romanian government also enjoyed some support from France, although surprisingly, France proved to be a much more 'reluctant patron'⁹³⁷ than the Romanians had hoped for.⁹³⁸ Although President Chirac had vehemently denounced Romania's support for the US invasion of Iraq, he appeared to have put his anger aside by the end of 2003, when he 'publicly reverted to being a strong supporter of Romania'.⁹³⁹

Such alliances had been the result of years of intense bilateral diplomatic effort by the Romanian government on all levels. Romania's negotiators themselves admitted that they learnt relatively late in the accession process that it was business as usual in Brussels for weaker countries to seek patrons amongst the more powerful member-

⁹³¹ Radio Free Europe, 'Romanian Premier Meets Blair', *RFE/RL Newswire*, 9 November 2001, <http://www.rferl.org/newswire/2001/11/091101.asp> (accessed March 2005).

⁹³² Papadimitriou, p. 112.

⁹³³ Papadimitriou, p. 114.

⁹³⁴ Interview by the author with Arie Oostlander MEP, 11 April 2006.

⁹³⁵ Gallagher, *Theft of a nation*, p. 349.

⁹³⁶ Senior official (2), Delegation, interview, 2006.

⁹³⁷ Papadimitriou, 2002, p. 97.

⁹³⁸ Adviser for EU and NATO affairs, 31 October 2003.

⁹³⁹ Gallagher, *Theft of a nation*, p. 327.

States. As a result Romania lost precious time at the beginning of the accession process for failure to realise the importance of patronage. Once they did realise it, although a bit tardily (sometime in 1999), the Romanians strove to make up lost ground by shifting from ‘poor diplomacy’ to ‘professional lobbying’ of EU member-States.⁹⁴⁰

Since coming to power, Nastase had also been building bridges to key players in the Commission and Parliament, creating ‘a powerful lobby in Brussels [that was] pleading for half-measures’.⁹⁴¹ As an European Commission official put it: ‘They [the Nastase government] had lobbied at high levels and cemented good relations – never done what was necessary, but relied on good relations’.⁹⁴² Several sources inside the Romanian Executive and the Commission have indicated that Verheugen was permissive toward the Nastase government,⁹⁴³ and that this was helped by the personal friendship Nastase had built with him.⁹⁴⁴ Outside political commentators also opined that, at least through 2003, Romania had been benefiting as well from a ‘too permissive’ Foreign Affairs Committee in the European Parliament. The Committee’s Vice-President and *rapporteur* for Romania, Emma Nicholson, was sympathetic to the Nastase government, even at a personal level.⁹⁴⁵ All these relationships buoyed Nastase’s confidence to proceed with the motorway in the way he did. ‘They took the risk ... [because they] were too confident in the good relations they had with certain individuals in the EU, including our former Commissioner Verheugen’.⁹⁴⁶ Nastase was likely relying on these relationships to buffer him against any untoward consequences of the Bechtel contract.

⁹⁴⁰ Adviser for EU and NATO affairs, 31 October 2003.

⁹⁴¹ Tom Gallagher, Radio Free Europe, 30 November 2004 (audio recording).

⁹⁴² Senior official (2), Delegation, interview, 2006.

⁹⁴³ Interview by the author with Gelu Trandafir, BBC journalist, 24 February 2006.

⁹⁴⁴ Senior official (2), Delegation, interview, 2006; Mihalcioiu, email, 2006.

⁹⁴⁵ Nicolae Manolescu (Romanian Political Analyst), Analysis, *Radio Free Europe*, 5 February 2004 (audio).

⁹⁴⁶ Senior official (2), Delegation, interview, 2006.

5.2.2 Executive discretion

In planning how to commence the building of the motorway before the looming elections, the Nastase Cabinet utilised not only their domestic power resources but even the EU itself. They first drew on their Constitutional power to issue Emergency Ordinances and define matters of ‘national importance’. Then they utilised their prerogative of Government Decision to commit the State before creditors. Next, they exploited the vagueness and loopholes of the existing Romanian law of public procurement. Because they controlled Parliament, they were able to ram through nonce legislation exempting their negotiations with Bechtel from any public procurement rules. Finally, they used the EU discursively from the bottom up to justify their proceedings.

The Cabinet, interpreting what constituted ‘public safety and national security’ without consulting anyone else, classified the motorway as being one such project. This classification invoked one of the many exemptions from public tender provided in the Romanian law of public procurement. The exact reasons for classifying this Motorway were never made clear, and indeed, the law as written did not obligate the Cabinet to justify themselves. Miron Mitrea, the Transportation Minister, made no more than a few vague references to ‘regional security’, which the Motorway would allegedly promote.⁹⁴⁷ The right of the Executive to make such classifications without accountability is a weak point of Romania’s institutional framework that allows wide latitude for abuse. Apparently, it was the ‘usual practice’ under Nastase to overuse the ‘national security’ justification to shield projects from public scrutiny.⁹⁴⁸ Once

⁹⁴⁷ Transportation Ministry quoted in Roibu, 16 December 2003.

⁹⁴⁸ Ionita, email, 2006.

they had classified the motorway, the details of the contract could be concealed behind a veil of secrecy.

In making the contract a State secret, the Cabinet had found the legal technicality – the Executive power to decree – that allowed them to circumvent all existing public procurement procedures. This power of decree comprises Emergency Ordinances and Government Decisions. Emergency Ordinances have the effect of laws, and although they have to be debated and approved by Parliament eventually, they take effect in the meanwhile. The Executive's power to issue such Ordinances is contained in Art 115(4) of the Romanian Constitution, which provides that the Government may adopt Emergency Ordinances only in 'exceptional cases'.⁹⁴⁹ What constitutes an exceptional case is left up to an undefined discretion. Government Decisions, on the other hand, are commands of the Executive addressed to other executive organs of the State, which need not to be approved by Parliament. Legislation by Executive decree has been commonly practiced by all Romanian governments since 1989, leading many observers to claim that it has been abused. It is a particularly powerful tool when the Executive controls Parliament. Even organic laws have been amended by Ordinance, notwithstanding the Constitution provides that organic law may be amended only by Parliament. By reason of such abuses the European Commission during the *acquis* negotiations endeavoured unsuccessfully to constrain the Executive's resort to decrees. When in June 2003 the Romanian Constitution was amended, this loophole was purportedly narrowed, although in practice it continued to be exploitable and exploited.

On the 27th November 2003 the Cabinet issued Emergency Ordinance 120/2003, mandating that negotiations over a Transylvanian Motorway shall be carried on only

⁹⁴⁹ Constitution of Romania (amended 2003).

with Bechtel International Inc.⁹⁵⁰ The Ordinance exempted the negotiations from the public tender proceedings mandated under Romania's domestic public procurement law (Emergency Ordinance 60/2001, as modified and approved by Parliamentary Act 212/2002), which was not, at that time, fully harmonised with the *acquis*. Two days later (29th November 2003) the Cabinet issued Government Decision 1362/2003 directing the Transportation Ministry to 'contract external credit' of €2.8 billion for building the Motorway. The Public Finance Ministry was directed to guarantee the credit 100%, as well as insurance premiums, interest rates, charges and other related costs necessary to the execution of the contract.⁹⁵¹ Four weeks later, on 18th December, Government Decision 1513/2003 directed the *régie* for national roads to sign with Bechtel.⁹⁵² It further directed the Transportation Ministry to expedite the permitting and thus the commencement of the works, and to pay customs duties on all equipment and machinery imported by Bechtel from the US.⁹⁵³ In practice, the latter directive meant that Bechtel would be exempt from custom duties, an important exemption for any company, and which in fact breaches the free market competition principle – thus constituting State aid.⁹⁵⁴

In the period of the Parliamentary review of the Emergency Ordinance, before the contract had been finalised, almost no MPs had risen to challenge this exemption of the negotiations with Bechtel. Those who did stood no chance, given the Social Democrat-UDMR coalition's control of Parliament. But even had the Executive not

⁹⁵⁰ Romanian Government, 'Emergency Ordinance 120/2003', *Official Journal*, 27 November 2003, no. 846. <http://www.autostradatransilvania.ro/www/files/mo/MO846.pdf>

⁹⁵¹ Romanian Government, 'Hotarare privind aprobarea contractarii de catre Ministerul Transporturilor, Constructiilor si Turismului a unor credite externe, garantate de catre Ministerul Finantelor Publice, destinate realizarii Autostrazii Brasov-Cluj-Bors', *Official Journal*, 29 November 2003, no. 851, <http://www.autostradatransilvania.ro/www/files/mo/MO851.pdf>.

⁹⁵² Romanian Government, 'Hotarare No. 1513 privind mandatarea Companiei Nationale de Autostrazi si Drumuri Nationale din Romania – S.A. sa semneze Contractul de proiectare si construire a autostrazii Brasov-Cluj-Bors', *Official Journal*, 19 December 2003, no 912, <http://www.autostradatransilvania.ro/www/files/mo/MO912.pdf>.

⁹⁵³ *Ibid.*

⁹⁵⁴ Email communication by the author with Radu Mititean, 1 November 2006.

controlled Parliament, it is unlikely that the Ordinance would have been vetoed, so broad was support for the Motorway across all political parties. Parliament did nothing to investigate the facts, swallowing whole the Executive's claim that Bechtel would handle the finances. The Cabinet's Notice of Grounds (justification for the Ordinance) clearly implied this: Bechtel would 'mobilise ... financial resources', as they had for a similar motorway in Croatia; Bechtel would 'work together' with the Romanian government to 'ensure the necessary finance'.⁹⁵⁵ In the end this was not to happen, and Romania was 'left in the lurch' to finance the Motorway alone.

The few MPs who did challenge the Executive – only about 20 from the Greater Romania Party – deployed the EU discursively to try and buttress their otherwise poorly argued position. Notwithstanding that they probably did not genuinely believe the exemption would delay Romania's accession, these MPs found it advantageous to posit accession conditionality as their standard of accountability. Constantin Biciu, MP from the Greater Romania Party, for example, warned that the Ordinance would constitute 'a blot, probably the decisive one, against the EU's granting Romania the status of a "functioning market economy"',⁹⁵⁶ a status that had been denied to Romania the year before, in 2002. The Cabinet's disregard for the principle of market competition, the MPs denounced, proved that they were only paying lip-service to EU principles.⁹⁵⁷

The contract was signed on the 19th December 2003. The Motorway was to start in

⁹⁵⁵ Romanian Government, 'Notice of Grounds for Emergency Ordinance no. 120/18-11-2003 pentru aprobarea demarării de către Compania Națională de Autostrăzi și Drumuri Naționale din România - S.A. a procedurii de negociere cu o singură sursă cu firma Bechtel International Inc., în vederea încheierii contractului de proiectare, construire și finanțare a autostrăzii Brașov - Cluj – Borș', *Official Journal M.Of.* nr. 846/27-11-2003 <http://www.guv.ro/notefundam/afis-nota.php?id=419>.

⁹⁵⁶ Constantin Biciu (Greater Romania Party MP), 'Intervention during Parliamentary debates over the Emergency Ordinance 120/2003 approving the start of negotiations between the National Company on Motorways and National Roads and only Bechtel', Chamber of Deputies, Romanian Parliament, 17 December 2003.

⁹⁵⁷ Ibid.

the centre of Romania, northwest of Brasov, and end in Bors, a town on the border with Hungary. It would traverse the whole of Transylvania from southeast to northwest, a distance of 415-kilometres.⁹⁵⁸ Its southern-most terminus would connect to the Brasov-Bucharest motorway which also began to be upgraded in 2004. The segments linking the Hungarian community in Romania to Hungary proper were expected to be completed by 2008, and the rest by 2012.⁹⁵⁹

The contract was thus ‘signed, sealed and delivered’ before the full Parliament had a chance to ratify the Ordinance, which only happened in March 2004. In February 2004, when the debate in Parliament heated up following Brussels’ critical reaction, the challengers were still few, except that now the leadership of the Liberal and Democratic Parties joined in. Imitating Brussels, they opposed not so much the Motorway itself as the circumvention of public tender proceedings. Other than this, however, Nastase held onto strong cross-party support for the Motorway. To outsiders, the political class appeared to have ‘acted as one’ in approving the project.⁹⁶⁰

Thus, a few power-brokers in the Cabinet, acting essentially at their own discretion, committed the Romanian State to repaying a loan of more than €2.8 billion, with interest. The Executive’s acts, far-reaching though they were, drew surprisingly little domestic public attention before the intervention of Brussels. But for the rarest of exceptions, the decision passed unremarked by civil society watchdogs and by the media.⁹⁶¹ Even major broadsheets like *Evenimentul Zilei* or *Romania Libera* reported perfunctorily the content of the legal instruments by which the contract had been let,

⁹⁵⁸ The Transylvania Motorway web site, www.autostradatransilvania.ro (accessed June 2004).

⁹⁵⁹ Amariei, *Deals Without Tenders*.

⁹⁶⁰ Email communication with Alex Gota, former leader of Sustainable Sighisoara, 24 January 2006.

⁹⁶¹ Interview by the author with Bogdan Chiritoiu (Presidential Councillor to Basescu), 15 March 2005; Mititean, interview, 10 May 2006.

merely listing the government's arguments without inquiring into their motives or the contract's consequences.⁹⁶² This passivity is surprising, given that the Nastase Cabinet had just let – to a foreign company, under the most opaque circumstances – the biggest contract in Romania's history, for which Romanian taxpayers must foot the bill for years to come.

In a festive atmosphere regaled by the music of Vivaldi, Nastase himself inaugurated the Transylvania Motorway on the 15th June 2004. The ceremony was held close to Cluj in Transylvania rather than in Brasov to the south, though the latter would have been much easier to reach from Bucharest and was one of the Motorway's terminus points. The inauguration was timed only two weeks before the local elections of 2004. In Cluj these were expected to be tightly contested between the PSD and the Liberal-Democrat Alliance.⁹⁶³ The inauguration was obviously intended to bolster the PSD candidate in Cluj.⁹⁶⁴ Nastase's gesture was also interpreted as intended to symbolise the PSD's concern for the Hungarian minority and perhaps their *rapprochement* with the Hungarian government.⁹⁶⁵ Indeed, once the contract became controversial within the EU, the Hungarian government proved more favourable to the motorway than other EU actors,⁹⁶⁶ reflecting Hungary's mutual interest in linking up with Romania.

5.2.3 The EU deployed against the EU

Despite all their plenary domestic powers, the Cabinet nevertheless felt the need to justify themselves by reference to an EU framework. Their justificatory discourse to

⁹⁶² Miron Mitrea (Transportation Minister for Romania, 2000-2004) quoted in *Evenimentul Zilei*. 17 Decembrie 2003; Representative of Transportation Ministry quoted in Roibu, 16 December 2003.

⁹⁶³ M.P. 'Boc si Funar fara atestate', *Evenimentul Zilei Online*, 15 June 2004; Elena Toporcea, 'Vivaldi acompaniaza primele excavatii pentru magistrala Brasov – Bors Adrian Nastase: Autostrada Transilvania va fi legata Romaniai cu Uniunea Europeana', *Curierul National*, 17 June 2004. <http://www.curierulnational.ro/?page=articol&editie=549&art=40521> (accessed January 2006).

⁹⁶⁴ Boian, email, 2006.

⁹⁶⁵ DG Enlargement, interview, 2006.

⁹⁶⁶ *Ibid.*

Parliament conflated references to Europe with references to the Atlantic Alliance, and to Romania's need to modernise and to achieve a growth economy:

Romania belongs *de facto* in the family of European countries, and is committed to integration into the European and Euro-Atlantic structures. In this context modernisation of the system of motorways and national roads is an extremely important condition imposed by international bodies, and which has to be met, given the necessity of integrating Romania into the Euro-Atlantic structures ... The project of building a motorway between Bucharest and Budapest will constitute a first step toward physically connecting our country to the space dominated by NATO and the European Union, a space within which we play an important political and economic role.⁹⁶⁷

In this the Executive was appealing to the national pride and sentiment of Romanians who like to identify themselves with civilised Europe rather than with anywhere else (*i.e.* 'the Balkans', where Romania is often placed, much to Romanians' displeasure). On another occasion the Prime Minister even argued that the Motorway was 'an obligation of Romania toward the European Union'.⁹⁶⁸ These claims constituted the Nastase government's interpretation of Romania's priorities in the context of accession, though they were in fact contrary to what had been agreed with the Commission to be Romania's priorities in the field of transportation.

The Cabinet's justificatory discourses also referenced the European development banks, claiming vaguely that the European Bank for Reconstruction and Development (EBRD) and the European Investment Bank (EIB) had promised Romania 'development credit', which would be lost if not taken up quickly (hence the need to proceed by Emergency Ordinance)⁹⁶⁹. Whether this development credit applied specifically to the motorway was strategically passed over in silence and left

⁹⁶⁷ Romanian Parliament, *Exposal of Reasons*, 2004. <http://www.cdep.ro/proiecte/2003/700/50/2/em752.pdf> (Accessed December 2004).

⁹⁶⁸ Press release of the Romanian Transportation Ministry quoted on *Radio Free Europe*, 20 Feb 2004.

⁹⁶⁹ Representative of Transportation Ministry quoted in Roibu, 16 December 2003.

to the audience's imagination.⁹⁷⁰ It was later revealed that the government had indeed tried to obtain low-interest rate loans from these banks, but were refused because they had let the contract without public tender.⁹⁷¹

The Cabinet's discourses generally reflected a *Homo economicus* view of the EU. They also urged that Romania, the seventh largest country in Europe, should not enter the EU with a mere 150 kilometres of motorways built by Ceausescu in the 1960s.⁹⁷² In addition to the humiliation to Romania, it would also be too disadvantageous a position from which to profit from trade within the Single Market.⁹⁷³

Interestingly, the Cabinet's justificatory discourses before Parliament also referred to EU member-States who had allegedly breached EU public procurement rules. Miron Mitrea, the Transportation Minister admitted, for example, that the Cabinet had inquired into the ways and means that other EU candidate countries and member-States utilise to get around the EU public procurement procedure. The lesson drawn had been that not only new EU member-States, like Hungary, the Czech Republic, Slovakia and Slovenia, but even old and reputable ones like France and Germany had breached the procurement rules, granting contracts through nonce legislation.⁹⁷⁴ By deploying examples of worst practice in their discourses, the Executive was trying to empower themselves relative to their (few) domestic challengers.

⁹⁷⁰ Miron Mitrea quoted in *Evenimentul Zilei*, 17 Decembrie 2003.

⁹⁷¹ Senior official (1), Delegation, interview, 26 June 2006.

⁹⁷² Adrian Nastase (Prime Minister of Romania, 2000-2004) interviewed by Mihnea Berindei and Arielle Thedrel,

'For a Modern Romania: Interview with Adrian Nastase', *Revista 22*, December 2004, no. 770.

⁹⁷³ Eckstein Kovács-Péter (ÚDMR MP), *Sittings of the Senate, Romanian Parliament*, 17 December 2003.

⁹⁷⁴ Mitrea, *Repy to Questions*, 12 February 2004.

5.3 The endgame

Alerted by Romanian civil society and by the Commission Delegation in Bucharest, the supranational organs intervened to constrain the Romanian Executive. The Bechtel contract was conflated with other scandals involving high-level corruption, triggering an uproar in Brussels in February 2004. This brought Romania closer than any other accession country has ever come to having its accession negotiations with the EU suspended.⁹⁷⁵

5.3.1 The European Parliament calls for suspension of negotiations

The controversy began in January 2004 with the submission to the European Parliament's Foreign Affairs Committee of a routine report on Romania's progress towards accession. This had had been prepared by British Liberal MEP Emma Nicholson, the Committee's *rapporteur* for Romania. It was Arie Oostlander, a Dutch Christian Democrat MEP, who first drew the 'political conclusion' from Nicholson's report.⁹⁷⁶ Citing Romania's breach of the moratorium on international child adoptions, imposed by the EU in 2001, and 'orphan children's catastrophic situation', he censured Romania's 'frightening corruption' and denounced it 'a State without the rule of law'.⁹⁷⁷ Oostlander demanded that 'negotiations with Romania are stopped so as to allow concentration [of effort] on remedying its most fundamental problems'.⁹⁷⁸ On 4 February Nicholson chimed in with Oostlander, adding that Romania must have a 'genuinely independent' and 'impartial' judicial system.⁹⁷⁹ She called for immediate implementation of the transposed *acquis*:

⁹⁷⁵ Heather Grabbe quoted in Eugen Tomiuc, 'Romania: Brussels' Tough Stance Sends Clear Signal to Other EU Hopefuls', *Radio Free Europe*, 5 February 2004.

⁹⁷⁶ Interview by the author with Arie Oostlander MEP. 11 April 2006.

⁹⁷⁷ Arie Oostlander, quoted in Simona Gheorghe, Gelu Trandafir and Ovidiu Nahoi, 'Guvernul Nastase, in corzi' *Evenimentul Zilei*, 6 February 2004.

⁹⁷⁸ *Ibid.*

⁹⁷⁹ *Radio Free Europe*, 4 February 2004.

‘Integration means new laws and these cannot remain on books with nothing happening’.⁹⁸⁰ If these were not remedied, Nicholson threatened, there was ‘a serious possibility’ that the EP might ‘recommend the freezing of accession negotiations’.⁹⁸¹ Nicholson claimed that she ‘had proofs’ to support her accusations, but declined to make them public to avoid provoking a ‘massive storm’.⁹⁸² Nicholson and Oostlander reiterated their demands for suspension when the Foreign Affairs Committee met on 17 February.⁹⁸³

Two days later the Committee voted for a toned-down report. Under pressure from the Socialist Deputies on the Committee, the call for suspension was replaced by the more conciliatory language of ‘reprogramming’ and, in its final form, ‘reorientation of the accession strategy’.⁹⁸⁴ Besides the Socialists, British and Italian Conservative MEPs (the Tories and Forza Italia) also insisted on watering down the language.⁹⁸⁵ Nastase’s bridge-building, not only to the Heads of powerful member-States but also to his ideological confreres inside the EU organs, had thus proved its worth.⁹⁸⁶ The Committee singled out the Bechtel contract in its report, after certain member-States and European companies, sensitised by their exclusion from the re-building of Iraq, signalled their anxiety over being excluded from building contracts in Eastern Europe.⁹⁸⁷ There was also a fear that Bechtel might profit from EU funds earmarked for public infrastructure in Romania.⁹⁸⁸ The Committee requested the Commission to

⁹⁸⁰ Emma Nicholson quoted by Sabina Fatti, Radio Free Europe, 9 Feb 2004.

⁹⁸¹ Radio Free Europe, 4 February 2004; Nicholson, quoted in Gheorghe, Trandafir and Nahoi, 6 February 2004.

⁹⁸² Radio Free Europe, 12 March 2004.

⁹⁸³ Ziu, ‘Tunurile Uniunii Europene’, 6 February 2004.

⁹⁸⁴ Dan Alexe, Radio Free Europe, 18 February 2004.

⁹⁸⁵ Oostlander interview, 11 April 2004.

⁹⁸⁶ Tismaneanu and Mihaies, p. 165.

⁹⁸⁷ Dan Alexe, Radio Free Europe, 20 February 2004.

⁹⁸⁸ Ibid.

investigate the conditions under which the contract had been let, and to report back.⁹⁸⁹

Notwithstanding the Committee's tone-down, Nicholson and Oostlander considered their mission accomplished.⁹⁹⁰ The MEPs had intended their strong language (like 'suspension') as 'an alarm signal for Romanian politicians'.⁹⁹¹ Oostlander had also hoped that his comments would be heard in Romania and wake the public up to the government's misconduct.⁹⁹² Once these goals had been accomplished, they agreed a softer stance with less threatening language.⁹⁹³ Indeed, Oostlander himself was 'amazed' at the effect his and Nicholson's criticisms had on Nastase and his Cabinet, who reacted with great promptitude to the report.⁹⁹⁴

The day after it was published, Romanian Foreign Affairs Minister Mircea Geoana flew to Brussels to breakfast with Nicholson and Oostlander and sound them out.⁹⁹⁵ Nastase himself soon followed, meeting with the President of the European Parliament and with Verheugen, and presenting a plan of action with deadlines: a new Penal Code; a reform of the judiciary to eliminate any possibility of intervention by a Minister; and a draft bill on adoptions to be submitted to the Romanian Parliament by 15 March.⁹⁹⁶ This was to tighten adoption procedures so much that international adoptions became all but impossible in practice.⁹⁹⁷ Nastase himself ordered the Romanian National Anti-Corruption Department to investigate all

⁹⁸⁹ European Parliament, Committee on Foreign Affairs, Human Rights, Common Security and Defense Policy, *Report on Romania's progress towards accession*, 24th February 2004, (COM (2003) 676 - C5-0534/2003 - 2003/2203(INI)), <http://www.urr.ro/en/documents/officials/nicholson/nicholson.shtml>; and BBC Romanian, 'Presedintele Iliescu sustine ca parlamentarii europeni nu au dreptate in cazul Bechtel', 11 March 2004.

⁹⁹⁰ Arie Oostlander interviewed by Radio Free Europe, 24 February 2004.

⁹⁹¹ Ibid.

⁹⁹² Ibid.

⁹⁹³ Ibid.

⁹⁹⁴ Oostlander, interview, 11 April 2006.

⁹⁹⁵ Ibid.

⁹⁹⁶ Nicolae Manolescu, Radio Free Europe, 26 February 2006.

⁹⁹⁷ Senior official, Negotiations team, interview, 2006.

international adoptions in Romania over the previous 10 years.⁹⁹⁸ Nastase ‘pulled out all the stops’, enlisting the efforts of all Romanian political parties. At his behest, even members of the opposition Liberal Party lobbied their counterparts in the EP.⁹⁹⁹ To top it all, he reshuffled his Justice Minister with such alacrity that when a Turkish minister arrived in Bucharest for meetings with his counterpart, he was surprised to find that the latter had been removed since his departure from Turkey.¹⁰⁰⁰

There is thus a striking contrast between this solicitude for all of Brussels’ other concerns, and the cavalier way the Nastase government dismissed criticism of the Bechtel contract. Nastase and his Cabinet firmly dug in their heels over Bechtel, going so far as to counterattack Brussels in public. The Romanian Transportation Ministry, for example, responding rather tartly to the EP Foreign Affairs Committee, insisted that the contract conformed to the Romanian law of public procurement and had been approved in Parliament by special enactment.¹⁰⁰¹ Nastase himself retorted to the media that Brussels should ‘mind its own business’, as the Romanian State was paying for the Motorway.¹⁰⁰² He also implicitly criticised Brussels’ tardiness in coming to Romania’s aid: ‘We have had a lot of promises, but to be frank nothing has moved very fast ... Romania cannot wait for decades and decades for projects to begin’.¹⁰⁰³ Vasile Puscas, the Chief Negotiator with the EU, similarly cited in justification the ten years’ procrastination of the European Investment Bank (EIB) in financing Romania’s transportation infrastructure.¹⁰⁰⁴ Deploying inter-

⁹⁹⁸ Radio Free Europe Newline, 6 February 2004, vol.8, no. 24.

⁹⁹⁹ Sabina Fatti, Radio Free Europe, 5 February 2006.

¹⁰⁰⁰ Oostlander, interview, 11 April 2006; Sabina Fatti, Radio Free Europe, 10 February 2006.

¹⁰⁰¹ Vasile Puscas (Chief Negotiator for Romania) paraphrased in Ana-Maria Cadis, ‘Vasile Puscas crede ca negocierile cu UE nu vor fi suspendate’, *Evenimentul Zilei*, 7 Februarie 2004.

¹⁰⁰² Adrian Nastase (PM Romania) paraphrased in Iuliana Roibu and Alina Voaides. ‘Moftul lui Nastase ne costa 2.500.000.000 dolari’ *Evenimentul Zilei*, 7 Februarie 2004.

¹⁰⁰³ Adrian Nastase (PM Romania) quoted in ‘Romania says it is committed to the US\$2.5 billion Bechtel deal’, *Reuters*, 12 February 2004.

¹⁰⁰⁴ Ana-Maria Cadis, *Vasile Puscas crede ca negocierile*.

governmentalism against supranationalism, Puscas reminded Brussels that the European Council in December 2003 had already decided to support Romania in closing negotiations by the end of 2004.¹⁰⁰⁵ For his part, President Ion Iliescu called the EU criticism ‘unfair’, given that European firms had already received from Romania many motorway-building contracts.¹⁰⁰⁶

Thus, the most powerful Romanian politicians did not defer to Brussels over the Bechtel contract, and, unlike their responses regarding international adoptions, they deployed an alternative construction of Europe to justify themselves before Brussels. They refocused the debate in Brussels and in Bucharest away from the misfit between EU and Romanian norms and values and onto Romanians’ shared understanding of the EU as an engine of economic development for Romania. Romania needed motorways to take advantage of the new world of opportunity opened up by accession, and the EU should be helping rather than hindering this. They cunningly deployed the EU’s own institutional weakness – the slowness of its decisional procedures – which they converted into a legitimising opportunity.

In the event, the European Parliament avoided making a big issue out of the Bechtel contract, although it had been responsible for starting the controversy. Mention of the Bechtel contract was in the end excluded from the March 2004 Plenary’s overall favourable report on Romania.¹⁰⁰⁷ The Parliament preferred to focus instead on more general, endemic problems of Romania which had concerned them throughout the *acquis* negotiations. The relatively low profile the EP gave to the Bechtel contract in the controversy may to some extent be explained by the EU’s culture of consensus as

¹⁰⁰⁵ Dan Alexe, Romanian Political Analyst, Radio Free Europe, 5 February 2004.

¹⁰⁰⁶ BBC Romanian, ‘Presedintele Iliescu sustine ca parlamentarii europeni nu au dreptate in cazul Bechtel’, 11 March 2004.

¹⁰⁰⁷ EurActive, ‘MEPs to vote on controversial reports on Romania’, 19 February 2004..

manifested through the general policy of avoiding criticism of individual countries on individual issues.¹⁰⁰⁸ More important, however, must have been the Council's decision to admit Romania into the EU by 2007, a decision which most MEPs supported.

5.3.2 The Commission denies funding for the motorway

The Commission took a tougher line on the Bechtel contract than the EP, probably because they had more tools for sanctioning the Nastase government. Throughout the *acquis* negotiations, the Commission had treated compliance with domestic and EU public procurement law as a proxy for progress in 'the fight against corruption'.¹⁰⁰⁹ Public money has been a major temptation for Romanian politicians, and public procurement is the State practice most susceptible to diversion of public funds.¹⁰¹⁰ For these reasons DG Enlargement insisted that the Nastase government comply with EU public procurement rules – transparency and a fair and competitive public tender – for all large infrastructure projects, even before transposition of the public procurement *acquis* had been completed.¹⁰¹¹ It was on this condition that the Commission had closed negotiations on the Transportation Chapter in December 2003.¹⁰¹²

Following Oostlander and Nicholson's criticisms, on the 4th February 2004 Guenter Verheugen, the Enlargement Commissioner, wrote 'a firm letter' to Nastase asking him to clarify why the contract had not been let in pursuance of the agreed rules.¹⁰¹³ Civil servants in the Commission began to doubt that the Romanian government

¹⁰⁰⁸ Oostlander, interview, 11 April 2006.

¹⁰⁰⁹ European Commission, Regular Report on Romania (Brussels, 2001), p. 95.

¹⁰¹⁰ Freedom House, 'The Anticorruption Policy of the Romanian Government Assessment Report'. (Washington, D.C: Freedom House, 2004).

¹⁰¹¹ DG Enlargement, interview, 2006.

¹⁰¹² Ibid.

¹⁰¹³ Ibid.

understood the principles underlying the law they had circumvented.¹⁰¹⁴ They feared that the Romanian government neither appreciated how the EU operates nor respected its values.¹⁰¹⁵ Before the Bechtel contract, they had come to believe that Romania was willing to assume EU norms, not merely out of fear of sanction but out of a genuine allegiance to them.¹⁰¹⁶ The ‘mutual trust’ that had been built up between the two parties, leading the Commission to believe that Romania would abide by her negotiated commitments, had been dashed.¹⁰¹⁷ So prompt a circumvention of the EU law of public procurement suggested that no fundamental change in the values of the Nastase government had taken place.

But the Commission did not object only to the lack of public tender. It also objected to the fact that this motorway was to be built parallel to TEN Corridor IV and prior to it. The Transylvanian Motorway was ‘inconsistent’ with ‘the outline of the road network agreed during the negotiations’.¹⁰¹⁸ And because Romania’s depleted treasury had been made liable for Corridor IV and the Transylvanian Motorway at once,¹⁰¹⁹ the Commission apprehended that Romania had forfeited her fiscal capacity to prioritise TEN. Financing the Bechtel contract would likely limit her capacity to co-finance infrastructure under the Cohesion and Structural Funds;¹⁰²⁰ thus, the Nastase government’s decision had given *de facto* priority to the Transylvanian Motorway.

Although the Commission had no right to cancel the contract, they felt that the letting

¹⁰¹⁴ Ibid.

¹⁰¹⁵ Ibid.

¹⁰¹⁶ Ibid.

¹⁰¹⁷ Ibid.

¹⁰¹⁸ European Commission, *2004 Regular Report on Romania’s progress towards accession*, (Brussels, 2004),

<http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_ro_2004_en.pdf>, p. 83.

¹⁰¹⁹ Senior official (1), Delegation, interview, 26 June 2006.

¹⁰²⁰ European Commission, *2004 Regular Report*, p. 83.

of it must be sanctioned somehow to deter a repeat.¹⁰²¹ At this juncture, they could have chosen to reopen the negotiations on Transportation; and, in fact, they came very close to taking this step.¹⁰²² This would have precluded the close of all *acquis* negotiations by the end of 2004, sending an ‘extremely negative political signal’ to the EU as a whole about Romania’s accession-worthiness.¹⁰²³ It was an outcome the Romanian government would have avoided at all costs;¹⁰²⁴ a delay in closing *acquis* negotiations might well have devastated the Nastase government in the upcoming elections. As a comparative example of what might have happened, the Commission’s deployment of EU conditionality played a major role in ousting Slovakian PM Mečiar from power in 1998.¹⁰²⁵ Nastase would have had very good reason to fear for his own re-election.

Verheugen’s letter was followed by a ‘very detailed evaluation’ by DG Enlargement of the impact of the Bechtel contract on the political and economic accession criteria and on several chapters of the *acquis*.¹⁰²⁶ Nastase was also asked to assess the project’s consequences for the Romanian budget.¹⁰²⁷ Because the Commission itself was constrained by the fact that the contract had already been signed, they had to content themselves with ‘clarifying and correcting’ it by making an issue out of it in the still ongoing negotiations on Chapter 21 on Regional Policy.¹⁰²⁸ The Commission took steps to ensure that no Cohesion Funds could ever be spent on the Motorway or anything connected with it.¹⁰²⁹ Thereafter, the Commission took ‘all the security

¹⁰²¹ Senior official (1), Delegation, interview, 26 June 2006.

¹⁰²² Senior official, Negotiations team, interview, 2006.

¹⁰²³ Ibid.

¹⁰²⁴ Senior official (1), Delegation, interview, 26 June 2006.

¹⁰²⁵ Marek Rybář and Darina Malová, ‘Exerting influence on a contentious polity: the European Union’s democratic conditionality and political change in Slovakia’ in Antoaneta L. Dimitrova *Driven to Change. The European Union’s Enlargement Viewed from the East* (Manchester: Manchester University Press, 2004).

¹⁰²⁶ Senior official, Negotiations team, interview, 2006.

¹⁰²⁷ European Commission. 2004. *Letter to Terra Milleniul III*, 27 May 2004, ENLARG B3(2004)102078.

¹⁰²⁸ Senior official, Negotiations team, interview, 2006.

¹⁰²⁹ Ibid.

measures they could' to forestall any repeats, and kept the issue of public procurement high on their negotiating agenda as a way of deterring the Romanian government.¹⁰³⁰

The Commission thus settled on sanctioning Romania by taking an uncooperative stance toward the project's realisation. Both the Nastase and the successor Tariceanu governments petitioned the EU several times to help them finance at least some of the infrastructure peripheral to the Motorway.¹⁰³¹ Each time they were refused: 'Since there was no tendering, the European Commission ... will not be able to provide any financial support for this project. Furthermore, the European Commission will not be in a position to support any financing by the European Investment Bank or the European Bank for Reconstruction and Development for the construction of the highway'.¹⁰³² In fine, the contract with Bechtel has been said to have 'backfired' on the Romanian government, which has had to struggle to 'live up to it' ever since.¹⁰³³ The promises about Bechtel bringing finance never materialised, EXIMBANK only guaranteeing about a third of the contract price and only for the first four years.¹⁰³⁴ The heaviness of the burden is evidenced by the fact that in 2005 Tariceanu spent six months renegotiating with Bechtel, just in order to obtain a 5% reduction (or €126 million) in the contract price.¹⁰³⁵ Ultimately, the necessity for such a renegotiation has stemmed from Brussels' 'profound irritation' over this and similar contracts.¹⁰³⁶

¹⁰³⁰ Ibid.

¹⁰³¹ DG Enlargement, interview, 2006.

¹⁰³² European Commission, *Letter to Terra*.

¹⁰³³ Senior official (2), Delegation, interview, 2006.

¹⁰³⁴ Sorin Ovidiu Bota (Secretary of State, Transportation Ministry), Parliamentary Debates. Sittings of the Chamber of Deputies, 10 February 2004.

¹⁰³⁵ Mihai Nicut, Mihaela Radu, 'Bani de pe BCR se duc la Bechtel', *Cotidianul*, 31 January 2006.

<<http://cotidianul.ro/index.php?id=3853&art=8787&cHash=1bc77e55f7>>.

¹⁰³⁶ Calin Popescu Tariceanu (PM Romania 2004 -) quoted in *Adevarul*, 'Guvernul va cere verificari in cazul contractelor Bechtel, Vinci si EADS', 14 January 2005.

As of 2006 it remained unclear whether Romania would be able to afford the Transylvanian Motorway.¹⁰³⁷ The burden can only become heavier when in the near future Romania will have to meet its obligations to co-finance the TEN Corridors. Under the Cohesion Fund Romania will receive after accession only about 40-50% of what Corridor IV will cost.¹⁰³⁸ This will be insufficient to cover all of her infrastructure commitments. By interdicting ‘free or cheap money’ from the development Banks, the Commission has constrained the Nastase government to finance the project alone,¹⁰³⁹ forcing it to borrow from more expensive commercial lenders.¹⁰⁴⁰

It follows that, despite appearances, the Commission actually constrained the Executive more in the Motorway case than in any of the other cases studied herein. And yet, this greater constraint was not as heavy as it would have been had negotiations been re-opened. Brussels’ discreetness in handling the Motorway affair – publicising it sparingly and conflating it with the issues of adoptions and corruption in general – and the moderate sanction show a degree of lenience toward the Romanian Executive. This was driven by the political branch of the Commission, to the disappointment of the career civil servants, who seem to have preferred a tougher stance.¹⁰⁴¹ The Commission’s restraint was likely driven by Verheugen, who had the final say-so on Romania.¹⁰⁴² Sources inside both the Romanian Executive and the Commission have indicated that Nastase was able to rely on the personal friendship which he had forged with Verheugen to escape the worst consequences.¹⁰⁴³ A senior member of the Romanian negotiating team said as much: ‘[Verheugen’s relation with

¹⁰³⁷ DG Enlargement, interview, 2006.

¹⁰³⁸ Senior official, negotiations team, interview, 2006.

¹⁰³⁹ DG Enlargement, interview, 2006.

¹⁰⁴⁰ Senior official (1), Delegation, interview, 26 June 2006.

¹⁰⁴¹ DG Enlargement, interview, 2006; Senior official (2), Delegation, interview, 2006.

¹⁰⁴² Dan Alexe, Radio Free Europe, 23 February 2004.

¹⁰⁴³ Senior official (2), Delegation, interview, 2006; Senior official, Negotiations team, interview, 2006.

Nastase] was a good relationship and personal relationships in international affairs and in diplomacy matter *in processes of this kind*.¹⁰⁴⁴

And yet other motives were surely involved. The Commission's reluctance to set back the accession timetable given to Romania by the President of the Council may be explained as well by its desire to avoid fracturing the culture of consensus in Brussels upon which so much of the EU's operation relies. The Commission may also have preferred to avoid clashing with EU member-States, some of whom (including Romania's patrons) have been known to circumvent public procurement rules from time to time. If the Transportation Minister's declarations before the Romanian Parliament are to be believed, not only France and Germany but also Hungary, the Czech Republic, Slovakia and Slovenia have all granted contracts without public tender. Just like Romania, they have enacted nonce legislation that circumvented EU public procurement law, thus confronting the Commission with a *fait accompli* in the form of building works that in practice can hardly be unbuilt.¹⁰⁴⁵ Should the Commission have taken too aggressive a stance against Romania, this might in the fullness of time oblige them to proceed as strongly against EU member-States, with ill consequences for all parties concerned.

The Commission's chosen course of action proved little successful, however, in reining-in the Nastase government's subsequent public procurement conduct. The Commission was undermined by the member-States themselves. Powerful Heads of State were prepared to tolerate, even condone, discretionary infrastructure contracts, provided Nastase was prepared to let such contracts *quid pro quo* to companies headquartered in the same member-States. This was part of Nastase's shrewd

¹⁰⁴⁴ Mihalcioiu, email, 2006.

¹⁰⁴⁵ Mitrea, 12 February 2004.

strategy of cultivating powerful patrons. Observers of Romanian politics have noted Nastase's strategic alliances, concluding that many contracts let under his tenure were based not on business reasoning, but on the political logic of bridge-building to governments in the EU, as well as to the US.¹⁰⁴⁶ Apparently Nastase tried hard 'not to take sides', but to please all of his friends and 'keep them on his side' by fairly distributing 'presents' to them: – 'one present for the Americans and one present for the Europeans'.¹⁰⁴⁷

For example, just a few months later, in August 2004, Nastase let a €650 million contract to the European Aeronautic Defence and Space Company (EADS) to securitise Romania's borders, without a public tender.¹⁰⁴⁸ This time he did not even pass nonce legislation to legitimise the contract; he simply 'abused the existing law' by making recourse to 'national security'.¹⁰⁴⁹ (Such an exception is permissible under EU rules, but its interpretation in the European Court has always been extremely restrictive. Its use in the EADS case would not have been allowed).¹⁰⁵⁰

The EADS contract was allegedly intended to cement his friendship with German Chancellor Gerhard Schröder.¹⁰⁵¹ (According to the Romanian media, the contract allegedly benefited Bodo Hombach, a former Councillor in Schröder's government and the manager of the German Social Democrat Party's electoral campaign.)¹⁰⁵² The contract was signed in the presence of the Chancellor just one month before the publication of the Commission's 2004 Regular Report on Romania, and only a few

¹⁰⁴⁶ Senior official (1), Delegation, interview, 26 June 2006; Chiritoiu, interview, 2005.

¹⁰⁴⁷ Senior official (1), Delegation, interview, 26 June 2006.

¹⁰⁴⁸ Jurnalul National, '450 de zile pierdute', 8 March 2006,

http://stiri.rol.ro/stiri/2006/03/450_de_zile_pierdute.htm

¹⁰⁴⁹ Senior official (1), Delegation, interview, 26 June 2006.

¹⁰⁵⁰ Senior official (1), Delegation, email communication, 26 November 2006.

¹⁰⁵¹ *Cotidianul*, 'Afacerea frontiera trece granitele. Comisioane: Firma EADS a primit contracte in cadrul Pactului de stabilitate', 16 September 2004; Ovidiu Simonca, 'Cum poti sa compromiti o vizita a cancelarului Germaniei', *Revista 22*, December 2004, no. 755.

¹⁰⁵² *Cotidianul*, *Afacerea frontiera*.

months before the close of all accession negotiations.¹⁰⁵³ The implication was that the German leader condoned Nastase's behaviour, which surely undermined the Commission's leverage over the Romanian government. Indeed, a Commission official admitted that Schröder's involvement had put the Commission in 'an even more delicate situation' than in the Bechtel contract, because 'European companies and governments were informed and even involved'.¹⁰⁵⁴ The Romanian Executive was thus in a position to 'turn around and ask "why are you not criticising this one too if you criticised the one with Bechtel?"'.¹⁰⁵⁵ Possibly for the same reason – cementing friendships – Nastase circumvented public tender yet again a few months after the Bechtel controversy, contracting with French companies such as Airbus for airliners and Vinci Construction for a segment of the motorway that will connect the Transylvanian Motorway (Brasov) to Bucharest.¹⁰⁵⁶

In conclusion, the supranational organs in Brussels reacted more aggressively to the Transylvanian Motorway controversy, with more sanctions than in any of the other cases. They could have, in theory, have gone much farther in sanctioning the Nastase government, possibly threatening their domestic prospects for re-election. Instead, they chose to resolve the conflict in other, less politically damaging, but nevertheless constraining ways for the Romanian Executive. If the EU supranational organs did refrain, it was because they chose to constrain themselves by anticipation, for reasons to do with their own and other EU actors' agendas, like individual member-States' interests in Romania's accession and the EU's geo-political interests in the Balkans, all of which Nastase and his Cabinet would have been well aware of.

¹⁰⁵³ Cotidianul, *Afacerea frontiera*; Simonca, *Cum poti sa compromiti*.

¹⁰⁵⁴ DG Enlargement, interview, 2006.

¹⁰⁵⁵ Senior official (1), Delegation, interview, 26 June 2006.

¹⁰⁵⁶ Senior official (1), Delegation, interview, 26 June 2006; Tudor Mohora (Social Democrat Party MP), Chamber of Deputies, Romanian Parliament, 10 May 2005.

The Romanian Executive's deployment of Europe from the bottom-up in this case checked and balanced the top-down supranational constraints of the Commission. By building bridges to powerful patrons both in the member-States as well as in the supranational organs themselves, the Executive under Nastase constrained the power of the European Commission to deploy conditionality.

5.4 Civil society sweeps no stakes

It was only in January 2004 that a few Romanian civil society actors had alerted the Commission to the circumstances of the contract-letting.¹⁰⁵⁷ Brussels' subsequent criticism in February created an opportunity which Romanian civil society, until then dormant, pounced on in order to construct an attack on the Nastase government. The Romanian Academic Society (SAR) headed by Professor of Political Science Alina Mungiu-Pipidi was the first to react. SAR is the main non-partisan domestic advocate for government accountability and against corruption. SAR had opposed the Nastase government from the beginning, and was to become a major contributor to the PSD's defeat in the 2004 elections.¹⁰⁵⁸ By exposing PSD corruption just before the elections, SAR together with other advocacy groups had 'mown down entire lists of politicians'.¹⁰⁵⁹ From SAR's standpoint, the Motorway was just another 'white elephant' lacking any real economic justification.¹⁰⁶⁰ Given how underfinanced the transportation sector is – Romania spends only €400 million per year on maintaining and expanding its roads – the Motorway's final cost of €6-7 billion could have rehabilitated Romania's entire road network in all rural districts, with enough left

¹⁰⁵⁷ Ionita, email, 2006.

¹⁰⁵⁸ Interview with Catalin Avramescu (Romanian Political Scientist) by BBC Romanian, 12 August 2006.

¹⁰⁵⁹ Ibid.

¹⁰⁶⁰ Ionita, email, 2006.

over to build an additional 3,500 kilometres of national roads.¹⁰⁶¹ These criticisms were carried by *Evenimentul Zilei* and *Romania Libera*, but they had no discernable effect on the Romanian government.¹⁰⁶² SAR's intervention did little more than 'irritate Nastase and the American embassy'.¹⁰⁶³ By their own admission, they achieved nothing but to contribute to the ongoing domestic debate.¹⁰⁶⁴

By calling for 'rationality' and 'transparency',¹⁰⁶⁵ SAR tried to complement the EU's pressures with domestic ones. They considered themselves duty-bound to act, even though they expected the government to ignore them. The rendering of the contract as a *fait accompli* and Nastase's 'autocratic style' both discouraged SAR from demanding the declassification of the contract,¹⁰⁶⁶ however normal this should have been for an organisation whose *raison d'être* is to advocate 'good governance' in Romania. In fact, they did call for this once the PSD were ousted in favour of a coalition more willing to be accountable: 'It would have been a waste of time to ask a government like Nastase's to publish the contract. There have been other, simpler things we have asked for, which they have endlessly procrastinated. We are not so naïve as to waste time trying to build partnerships with non-credible politicians'.¹⁰⁶⁷

For that matter, they also deemed 'hypocritical' the EU criticism, in that 'nobody [in the Commission] would have breathed a word [of protest]' against an equally unaccountable contract let to a European company.¹⁰⁶⁸ It is likely, then, that SAR jumped on the bandwagon of EU criticism strategically, utilising the opportunity to

¹⁰⁶¹ Romanian Academic Society, *Criza finantarii sistemului de drumuri*, February 2004.

¹⁰⁶² Ionita, email, 2006.

¹⁰⁶³ Ibid.

¹⁰⁶⁴ Ibid.

¹⁰⁶⁵ Ibid.

¹⁰⁶⁶ Ibid.

¹⁰⁶⁷ Ibid.

¹⁰⁶⁸ Ibid.

harden their stance against the PSD government and bolster their reputation as a credible opponent to 'the corrupt PSD'.

Other domestic civil society actors seized the EU-created opportunity: 22 NGOs representing journalists and various other civil society interests published a letter to Nicholson, Oostlander and Verheugen, pleading with them to keep up the pressure on the Nastase government.¹⁰⁶⁹ They utilised Brussels' criticism as an opportunity to scathe the PSD only months away from the elections.

As for environmental NGOs, nearly all of them reacted weakly and belatedly, even though a motorway project on such a scale raises some important environmental and cultural heritage issues.¹⁰⁷⁰ The environmental values of Romanians have not yet been Europeanized enough for even environmental NGOs to deem motorways and cars ecologically destructive and thus unsustainable. Western NGOs active in sustainable transportation advocate shifting from motorcars and motorways to more sustainable practices: railways, cycling, and urban planning that reduces the need to travel. Such issues were not raised by any Romanian NGO in relation to the Transylvanian Motorway.

Even NGOs who campaign for sustainable transport, like Cyclo-Tourism Club Napoca, hesitated to oppose this particular motorway, except on the condition that all other motorways being built in Romania are also opposed within an overall policy of advocating sustainable transportation.¹⁰⁷¹ Cyclo-Tourism also argued that a Bechtel-built motorway might prove ecologically sounder than Romanian-built ones if 'it has environmentally friendly tunnels and bridges and if it disrupts fewer natural habitats

¹⁰⁶⁹ Radio Free Europe, 9 February 2004.

¹⁰⁷⁰ Serban Orascu (Political Analyst of Romania), Radio Free Europe, 13 December 2005; Senior official (1), Delegation, interview, 26 June 2006.

¹⁰⁷¹ Mititean, email, 1 November 2006.

than any national motorway ... which seldom have environmentally friendly tunnels. Besides, if use of the motorway is tolled, and if the toll internalises the environmental cost of transportation, the overall impact may be positive'.¹⁰⁷² Unlike the high density of motorways in the West, Romania has almost none, and so the issue for some of the leading NGOs was not so much whether or not motorways are desirable, as how the things being built can be used to reach certain goals, including environmental ones.¹⁰⁷³ If environmental NGOs in Romania had shared the values of trans-national environmental civil society, at least those that (for example) campaign against the motorway network to be built under TEN, environmental bridges and tunnels would not have been the issue, but whether motorways are sustainable at all.

Their social construction of what economic development means, then, conditioned the behaviour of Romanian civil society, who chose not to take as aggressive a stance in the case of the Transylvanian Motorway as they had in the Rosia Montana and Dracula Park cases. Even though some of them knew about the Executive's decision before the contract was signed the NGOs never did mobilise, unlike in Dracula Park or Rosia Montana. Most of them gave priority to end-of-year administrative tasks over any substantive issues about the Motorway.¹⁰⁷⁴ And, as the Executive had classified the contract secret, nobody knew the hard facts of the deal anyway.¹⁰⁷⁵

Environmental civil society took their first concrete steps only after the controversy broke in Brussels. On the 10th March 2004 Terra Mileniul III invited environmental NGOs to sign a petition in opposition, which made no environmental arguments

¹⁰⁷² Radu Mititean (Executive Director of Cyclo-Tourism Club Napoca), *Reply to Terra Mileniul III on Letter of Protest*, email posted on mediu@ngo.ro on 17 March 2004.

¹⁰⁷³ Mititean, email, 1 November 2006.

¹⁰⁷⁴ Ibid.

¹⁰⁷⁵ Ibid.

except that the Executive had ‘marginalised’ the environment in their decision;¹⁰⁷⁶ otherwise, the letter mostly rehearsed Brussels’ arguments.¹⁰⁷⁷ Only 14 NGOs signed, none of them active on sustainable transportation.¹⁰⁷⁸ The response rate was low, and many of those who earnestly debated the petition felt they could not sign it, lacking the capacity to analyse the technicalities of such a large-scale project, or propose in the requisite detail any alternatives.¹⁰⁷⁹ Even some of the signers did it half-heartedly, believing Romania needs motorways. For example, Alex Gota, who had led the anti-Dracula Park protest so successfully, confided that ‘travel[ing] by car from Sighisoara to Cluj [about 150 Km] is hell’.¹⁰⁸⁰ They nonetheless signed as a way of protesting Nastase’s perceived autocracy.¹⁰⁸¹ As in all other cases, their petition was ignored by all Romanian government institutions.¹⁰⁸² The Commission, by contrast, responded, offering reassurances that it had taken positive steps to constrain the Romanian Executive, including keeping an eye on the Motorway’s compliance with the latest EU directives on Environmental Impact Assessment.¹⁰⁸³

When the project reached the phase of EIA consultation, very few environmental groups tried to influence it.¹⁰⁸⁴ Cyclo-Tourism Club Napoca appears to have been the only one who studied the EIA documentation with a view to participating in decisions about the Motorway’s implementation. In endeavouring this the Club were constrained first by a lack of the most basic information, which the Executive either withheld or else had not even worked out. (For example, when the Club asked their

¹⁰⁷⁶ Terra Mileniul III, *Letter of Protest of the Brasov-Bors Motorway*, posted on Mediu@ngo.ro, 10 March 2004.

¹⁰⁷⁷ *Ibid.*

¹⁰⁷⁸ *Ibid.*

¹⁰⁷⁹ Bako, Mihali, ‘Nu suntem favorabili protestului impotriva autostrazii Bechtel’, email posted on mediu@ngo.ro, 16 March 2004; Sustainable Sighisoara Group, email posted on mediu@ngo.ro, 16 March 2004;

¹⁰⁸⁰ Gota, email, 2006.

¹⁰⁸¹ *Ibid.*

¹⁰⁸² Terra Mileniul III, *Report on the Brasov-Bors Motorway*, (Bucharest: Terra Mileniul III, 2004).

¹⁰⁸³ European Commission, *Letter to Terra*.

¹⁰⁸⁴ Mititean, interview, 10 May 2006.

local authorities for the whereabouts of the Motorway route, they were told that this had been decided only ‘in principle’.¹⁰⁸⁵)

The Club were next constrained by the Bechtel Corporation, who snowed them under a blizzard of complex technical detail, far more than they could handle in the little time the Executive had provided for consultation. Even with their long experience of EIA consultation Cyclo-Tourism were overwhelmed: the documentation amounted to five tomes totalling 1,500 pages for Cluj County alone.¹⁰⁸⁶ Such a volume of information would have put off any interested citizen or NGO; nobody could have digested it, particularly in the brief time available before the consultation was to begin.¹⁰⁸⁷ To top it all, the Cluj authorities held – (and if in Cluj then everywhere else too) – only *one* copy of the EIA report, which they made available for a time period that could be measured in hours, inasmuch as the consultation was timetabled during the Easter holiday.¹⁰⁸⁸ To get around this constraint, Cyclo-Tourism had to resort to photographing the documentation surreptitiously.¹⁰⁸⁹ Such obstacles would have discouraged anybody minded to mobilise.¹⁰⁹⁰ When finally the consultation was held, few ordinary members of the public turned up. As in many other cases, the proceedings were dominated by the authorities, who supported the Motorway.¹⁰⁹¹

The third constraint on environmental civil society was its own weaknesses. Previous controversies had shown that Romanian civil society is quite capable of attracting powerful trans-national allies, pooling sufficient resources, and organising effective campaigns. Although norm entrepreneurs did arise in this case, forming a hard core

¹⁰⁸⁵ Mititeanu, email posted on Mediu@ngo.ro, 11 Feb 2004.

¹⁰⁸⁶ Mititean, interview, 10 May 2006.

¹⁰⁸⁷ Ibid.

¹⁰⁸⁸ Ibid.

¹⁰⁸⁹ Ibid

¹⁰⁹⁰ Mititean, interview, 15 September 2004.

¹⁰⁹¹ Mititean, interview, 10 May 2006.

of opposition around which civil society at large could have rallied, they faced a much more formidable situation than their counterparts had in Sighisoara or Rosia Montana. Except perhaps for reaching out to trans-national civil society allies early enough, the norm entrepreneurs in this case took the same steps as their counterparts had in the other cases: they circulated petitions, deployed EIA law, and constructed EU discourses.

Attempts at mobilising trans-national allies, including reputable groups like the WWF, were made later, but only within the framework of 'Coalition Natura 2000', a trans-national network of NGOs keeping watch over the Natura 2000 nature reserves set up by EU law. However, by 2004, due to a lack of human resources, this Coalition had achieved no significant success;¹⁰⁹² they were 'just moving beyond the preparation phase' to 'addressing threats' like the Transylvanian Motorway.¹⁰⁹³ If only Romanian civil society had sought trans-national allies earlier on (*e.g.* before and during the EIA consultation), they might have become competent enough to formulate sound environmental arguments against the Motorway in time. On the other hand, because their supranational allies in Brussels preferred not to exercise most of the power they had to constrain the Executive, even a trans-national civil society alliance would probably have made little difference.

By contrast to the previous cases, civil society in this case was also constrained by the nature of the project and of the issue. They faced a project whose costs were diffused over all taxpayers and deep into the future, but whose benefits were more immediate and both highly localised and distributed along the entire length of a lengthy route. Essentially, any Romanian owing a car anywhere near the Motorway

¹⁰⁹² Email communication by the author with Erika Stanciu, World Wide Fund for Nature, 18 April 2006.

¹⁰⁹³ Email communication by the author with Andreas Beckmann, World Wide Fund for Nature, 5 March 2006.

stood to benefit enormously and fairly soon. The counter-resistance of such a vast concatenation of self-interests would have been formidable. It is not surprising, then, that Terra Mileniul III's direct action on the Motorway route was joined by no one from any of the main towns along the route, except Sighisoara.¹⁰⁹⁴ The attraction Romanians feel for good motorways was thus one the main factors discouraging civil society. By the norm entrepreneurs' own admission, 'Romanians cannot conceive of development without motorways, and no environmental NGO could have faced the general public with environmental arguments against this motorway', even if corruption was involved.¹⁰⁹⁵ In the cases of Dracula Park and Rosia Montana, by contrast, both costs and benefits had been highly localised, which meant, strategically, that the isolated local resistance to civil society could be overmatched by trans-national alliances.

Contrary to expectations, Romanian civil society did not mobilise in this case nearly as much as they had in Dracula Park and Rosia Montana. When they did mobilise, they did so primarily to exploit the opportunity presented by the critical reaction of Brussels for the purpose of sharpening their opposition to Nastase before the elections. Their mobilisation was thus opportunistic, rather than driven by moral or 'non-material' values. Once they did mobilise, they deployed the usual panoply of Europe; *viz.* accession conditionality, the environmental *acquis*, etc. However, since their influence over the Executive had always piggybacked on the power of Brussels, the waning of this meant that domestic civil society, too, had lost its power to piggyback.

¹⁰⁹⁴ Email communication with Ionut Apostol, Terra Mileniul III, 2 May 2006.

¹⁰⁹⁵ Gota, email, 2006; Apostol, email, 2006.

Conclusions

Romanian civil society was not empowered in the case of the Transylvanian Motorway: the Executive's decisions reflected none of their values and preferences. Although the Commission did constrain the Executive through a funding interdict in the aftermath of the Bechtel contract, this constraint did not empower domestic civil society on the Motorway issue itself. In fact, the Commission's sanction proved rather a double-edged sword. It was intended to deter the Romanian government (unsuccessfully as it turned out, at least during Nastase's tenure) from ever again breaching EU public procurement law. On the other hand, interdicting 'cheap money' harmed every taxpayer in Romania, not excluding civil society; an outcome not therefore among civil society's preferences. It may be arguable that civil society was empowered a little, in that the contract was renegotiated in 2006, so that at least one of their preferences (a cheaper motorway) came to be reflected in the final outcome. (This happened after this dissertation's endpoint, however, and would have to be researched in its own right.)

This case illustrates the limits of accession conditionality once an accession country becomes assured of membership. A year before the close of the *acquis* negotiations, the supranational constraints on the Romanian Executive had become considerably lighter compared to what they would have been at any previous point during the accession process. What had been decisive at the beginning and peak of the *acquis* negotiations was the availability of the 'carrot and stick' of accession conditionality in the hands of the supranational organs, upon which both Romanian and transnational civil society could piggyback. The EU organs themselves depended on this incentive to interest the Executive in behaving in ways that would further accession. Their expectation that the Romanian Executive would have become socialised

enough by the end of the *acquis* negotiations to comply with EU law for its own sake was not met. In fact, the Executive breached EU law as soon as they perceived that the pressure was off, showing that their values and norms have not been profoundly altered by the EU accession process; for if such norms had been internalised, the public procurement rules would have been respected for their own sakes.

The assurance of membership meant a loss of external incentive for the Romanian Executive to behave in ways acceptable to Brussels, tipping the balance of power toward the Executive and their inter-governmental allies and patrons. By the time of the Motorway affair, the Executive's intergovernmental bridge-building was well advanced, and with it confidence of accession. This was a major factor allowing the Executive to break out of supranational constraints. Whether breaking out of these constraints was permanent or temporary can only be established by further research inquiring, for example, into whether or not the Commission's 'safeguarding clause' in fact constrained the Executive. The clause was imposed at the end of this study's timeframe, and potentially could have delayed Romania's accession by a year, until 2008, if she did not respect accession conditionality.

As in the previous case studies, the Motorway case involved the Nastase government in several nested games: the domestic game (1), the EU game (2), and an Atlanticist or American game (3). The government would benefit in the domestic and Atlanticist games from disobeying the EU public procurement rules ($b_1 + b_3 > 0$), while incurring corresponding costs in the EU game ($c_2 > 0$). In the game with the EU, on the other hand, they would get no benefit from disobeying EU rules ($b_2 = 0$), while yet their disobedience would incur zero costs in the other two games ($c_1 + c_3 = 0$). This means that the benefits in the non-EU games must simply have outweighed the costs in the

EU game ($b_1+b_3>c_2$) for them to have been persuaded to stick with their decision to build the Motorway.

This case also illustrates more strongly than the other two, that the Executive, no less than civil society, can construct and utilise the EU to empower itself to circumvent the constraints imposed on it by their very accession to the EU. This is a significant finding, as it suggests the incorrectness of the claim that Europe and/or the EU consistently empowers one side or the other in domestic political contests. Indeed, this case and the others, taken together, show that differential empowerment varies along the temporal dimension, such that once membership becomes assured, it is the Executive rather than civil society who is more likely to be empowered by Europe. If this is true of the accession endgame, then one may expect the Executive's self-empowerment through inter-governmental networking to continue (if not expand) after accession. This does not necessarily mean that Romanian civil society has been consigned to eternal powerlessness; they, too, will enjoy unprecedented access to powerful resources like the European Court of Justice upon accession.

It is noteworthy however, that the Romanian Executive on its own would not have been so successful in its bridge-building, had the EU not had enough of its own interests invested in Romania's membership. The strategic self-interests of individual EU member-States, and likely other EU-wide geo-political considerations larger than Romania, such as stability in the Balkans, must have weighed heavily on the effectiveness of Romania's bottom-up inter-governmental networking.

From a methodological standpoint this chapter, more clearly than any of the previous ones, illustrates the interplay between top-down and bottom-up Europeanization. Viewing matters from the top-down, Romania's accession to the EU created new opportunities and constraints, regardless of whether domestic actors liked them or

not, or were able to influence them or not. Viewing matters from the other end, domestic actors found ways, even under tight top-down constraints, of constructing and utilising Europe and the EU to empower themselves from the bottom up at their own initiative. This was shown by the Executive's skilful deployment of the EU in parallel with their own domestic power resources, which in this Motorway case included the power to manipulate the timing and tempo of their acts.¹⁰⁹⁶ These findings suggest that Europeanization may be fully understood only by taking fuller account of both its top-down and bottom-up dimensions, and the dimension of time.

¹⁰⁹⁶ Goetz, *European integration and national executives*, p. 223.

Chapter 6: General conclusions

The key research questions of this dissertation were: 'How do domestic actors construct Europe?' and 'How do they utilise it in seeking to empower themselves against other actors?' These are some of the most topical questions in the field of Europeanization but have so far been largely unexplored in the context of the post-communist accession countries. This dissertation has adduced new evidence about constructions and utilisations of Europe gathered through in-depth case study drawn from domestic controversies in the post-communist Romania, a soon to be EU member-State. The focus was on civil society (the new social movements), which emerged in Romania for the first time ever after 1989, and the central government Executive. The study covered the period during which the EU *acquis* negotiations were negotiated under the Social Democratic government led by Prime Minister Adrian Nastase (2000-2004). The method was actor-centred process-tracing, best able to disentangle complex causal complex interactions between Europe and the domestic arena in ways sensitive to temporality as well as to the domestic and EU enlargement contexts.

This concluding chapter compares the three cases studied herein, as follows: The main findings are summarised in Section One. How civil society constructed and utilised Europe and the EU to empower themselves with basic action capacity as well as against the Executive will be analysed in Section Two. Section Three will analyse how and by whom the Executive was constrained. Section Four will analyse how the Executive too constructed and utilised Europe to escape or minimise these constraints as well as to empower itself relative to their domestic political opponents.

Before presenting the main conclusions, a short reminder of the outcome of each case study is necessary. In Dracula Park and Rosia Montana the civil society were

empowered relative to their main opponent, the Executive. They were differentially empowered because with the help of Europe they forced the Executive to do what otherwise it would not have done.¹⁰⁹⁷ Their values and interests prevailed over the Executive's. Contrary to strong Executive preference, Dracula Park was relocated away from Sighisoara; contrary to the Executive's usual practice in similar cases – and against all expectations – gold mining at Rosia Montana was strictly subjected to all EU legal requirements.

These outcomes are unprecedented in Romania's contemporary history. Under the Romanian *status quo* the expectation would have been that the Executive, the locus of most important political decisions in Romania, should have unilaterally implemented both of these projects, paying no heed to the minority that mobilised. The outcomes are even more unusual given that the Social Democratic Party then in power also controlled Parliament and all other significant constitutional veto points. Furthermore, with many of its elites being former apparatchiks, they were unaccustomed to reckoning-in the preferences of minorities. In fact they never seem to have imagined that their economic development projects would offend the preferences of any Romanians.

The outcomes are even more surprising given that the civil society that prevailed consisted of a small elite of civil society entrepreneurs advocating norms and values alien to Romania – Western-style accountability, democracy and the rule of law, human and minority rights and environmental and cultural heritage protection. They had low expectations of success and acted in the teeth of the little support and even the hostility of the local populace. Indeed, the populace shared with the Executive Romanian traditional 'proletarian values', namely economic development at all costs.

¹⁰⁹⁷ Steven Lukes, *Power*.

And yet, contrary to all these unfavourable conditions, the norm entrepreneurs prevailed. They prevailed not by directly pressurising or persuading the Executive, but by finding ways to ‘piggyback’ on European and other trans-national interveners more powerful than themselves and than the Romanian Executive.

These unexpected victories raised expectations of mobilisation and empowerment of civil society entrepreneurs in future cases where the Executive’s behaviour was out of touch with these entrepreneurs’ construction of how a future EU member-State ought to behave. The succeeding case of the Transylvanian Motorway – the third and last within the timeframe of this dissertation – disconfirmed these expectations: civil society mobilised feebly and only after Brussels intervened. None of their preferences were reflected in the final decision of the Executive, although, when they did mobilise, they constructed and utilised Europe in ways similar to the previous two cases. Most importantly, in this case, more than in the others, revealed that the Executive too constructed and utilised the EU to escape the supranational constraints on its discretion imposed by accession, the better to proceed with a domestic decision (building the Motorway) that would empower them over their domestic opponents before the elections.

6.1 The key findings

This section summarises the main findings of this dissertation. Firstly, the evidence suggests that at least in the case of a post-Communist accession country without a civil society tradition or a political culture of compromise and power sharing, the Diffusion thesis is likely to be supported only at that point when the State is most susceptible to EU influence; thereafter the leverage that accession conditionality lent to the EU organs (and to the civil society) expires, leaving the Executive empowered. The Executive may speed the expiry of conditionality by inter-governmental

networking with States already members, that can indirectly shield them from potentially damaging supranational constraints.

The evidence thus supported two of the differential empowerment theses – Diffusion and Executive Empowerment. No evidence for the Network Governance thesis was found pre-accession. Either Diffusion or Executive Empowerment was found to have happened, depending on the stage of the accession process at which domestic actors tried to empower themselves. The best evidence for Diffusion was found in the cases that occurred near the beginning and at the peak of negotiations (Dracula Park and Rosia Montana); whereas, the best evidence for Executive Empowerment was found in the case which occurred near the close of negotiations (the Transylvania Motorway). By then, the Executive had become assured of EU accession. With that, the power of EU supranational organs to constrain them – and empower domestic civil society by default – waned.

In Dracula Park and Rosia Montana, domestic civil society was empowered vis-à-vis an uncooperative Executive only because they piggybacked on the power of transnational civil society and of other international and European actors (*e.g.* UNESCO, Prince Charles). These in turn piggybacked primarily on the more powerful EU supranational organs which were the ones able to make the Executive constraint itself.

Civil society's empowerment in two relatively marginal or 'low politics' cases (Dracula Park and Rosia Montana), and their failure to have any influence in the 'high politics' case (Transylvania Motorway) suggests that they may have enjoyed only a brief window of opportunity in which the Executive was sensitive enough to EU conditionality to make some concessions on issues of (relatively) low importance to themselves. Accession appears to have only temporarily and marginally recast the

power relations between the Executive and the new social movements, without changing them fundamentally. Civil society's victories, although remarkable in the Romanian context, seem to have amounted to little against the overall background of 'business as usual', where the age-old 'gulf' between the State and civil society persists. Accession appears not to have transformed this pre-existing pattern – although post-accession research should be carried out to corroborate this conclusion.

Secondly, contrary to the claim in the East Europeanization literature that the accession process empowers the Executive,¹⁰⁹⁸ the evidence gathered in this research shows that the process has generally constrained the Romanian Executive's discretion, at least up to the point when EU membership became assured. Indeed, participation in the EU before this point had the opposite effect to Executive Empowerment. The Executive was so powerful within Romania already that any other actors' participation in policy-making, however slight, constituted a constraint on their autonomy. One constraint, accession conditionality, proved time-bound and transient. Other constraints, like those provided in the *acquis*, are likely to impose a weaker but more enduring constraint on Executive discretion – although this is merely a hypothesis awaiting further empirical investigation.

Nevertheless, despite their discretion being generally constrained, the Executive was able to minimise this top-down (and other) constraints imposed from the bottom up by domestic civil society entrepreneurs. They did so by using Europe as well as their own domestic power resources. This was self-empowerment, inasmuch as minimising constraints is empowerment.

The processes that led to executive empowerment here are different from the

¹⁰⁹⁸ e.g. Grabbe, *How does Europeanization affect CEE governance?*

mechanisms propounded by Moravcsik. Indeed, only one of his four mechanisms appears to be operative pre-accession – the construction of discourses aimed to legitimise the Executive’s domestic decisions ‘in the name of Europe’. The ‘inter-governmentalism’ that was observed here was different from that featuring in the West Europeanization literature. Excluded as an accession country from EU councils and from the ‘constitutional’ bargaining between EU member-State executives and so lacking opportunity to bargain inter-governmentally from an equal position, the Romanian Executive resorted to cultivating patrons bilaterally. These patron-client relationships were driven not only by Romania’s strategic interests but also by those of certain senior member-States with a strategic interest in Romania’s accession.

In spite of these differences Moravcsik’s thesis proved a useful heuristic device, however, in that the source of Romanian Executive empowerment stood out more clearly by contrast to his mechanisms. Moravcsik’s Central Executive Empowerment thesis is likelier to be observed after Romania’s accession. Then the Executive will be able to bargain inter-governmentally from a position equal to the other EU member-States (unless the Romanian Executive continued to be constrained after accession by the patron-client relations they built in pre-accession and, likely in the beginning, by their own incognizance of how the EU works).

Thirdly, on the point of winners and losers as between the Executive and the new social movements, neither all civil society actors nor all Executive actors were empowered or constrained (respectively) by Europe. Power was so centralised under the Social Democratic Party, that the constrained faction comprised only a few party power-brokers and their inner circle of advisers. Likewise, on the side of civil society the empowered comprised only an elite minority of domestic and trans-national norm entrepreneurs who mobilised against a background of passivity. They were

empowered because they cherished values that chimed with those of the European interveners, but clashed with those of the more traditionalist Romanian civil society and indeed the majority of the public. This much larger faction of civil society thus found themselves constrained by Europe. The very numerous 'losers' have not been researched, and yet the case studies do suggest that accession is creating social cleavages in Romania, just as in other newly acceded countries.¹⁰⁹⁹ The exact nature and extent of this phenomenon stands in need of further investigation.

Fourthly the kind of the differential empowerment outcomes observed has depended on the pre-existing pattern of relations between the State and civil society. The stark language of 'civil society's victories' or 'the Executive loses' characterising the outcomes in the case studies reflects the zero-sum nature of State-civil society relations in Romania. Although the following claim may overstretch the empirical evidence, the likelihood is that the new social movements are more likely to seek empowerment through Europe when the government is dominated by the centre-left (the ex-Communist Social Democratic Party), which tends to be friendly to trade unions but hostile to these movements. When the government coalition in power is less hostile, they might well try solving their problems through Romanian institutions. This latter point has in fact been observed in Romania under the centre-right, which is friendlier to civil society, as they have depended to some extent on them to win the elections. Nevertheless, this conjecture, however experienced, ought to be empirically investigated further.

The zero-sum nature of the differential empowerment outcomes observed in Dracula Park and Rosia Montana contradicts one of the claims in the literature about domestic winners and losers. According to Thatcher (2004), in the senior EU

¹⁰⁹⁹ e.g. Featherstone, *Cyprus and the Onset of Europeanization*, p. 149.

member-States the EU rarely creates 'complete' winners and losers.¹¹⁰⁰ This claim has not held true in Romania, and maybe not in any post-Communist country characterised by mutual hostility between State and civil society.

Lastly, no evidence was found supporting Network Governance. Evidence was rather found in favour of its critics, in particular in favour of Elite Empowerment, the claim that the EU empowers the elites of both civil society and the State. If the Network Governance thesis is stretched to cover trans-national as well as domestic networking, the evidence found in Romania is one of emerging governance networks of a trans-national rather than of a domestic type. The Motorway case revealed that trans-national networks were woven not only between Romanian civil society and trans-national civil society and supranational organs, but also between the Romanian Executive and Executives of EU member-States, and even between Romanian political parties in opposition and their counterparts in the European Parliament. As the three case studies herein have shown, such trans-national alliances can prove formidable resources for domestic actors, and can even tip the domestic balance of power. While this phenomenon calls for further research, it seems plausible that actors in Brussels and Romania with similar interests or ideologies have a mutual interest in weaving governance networks and that the networks that have been developed in the pre-membership phase will carry over after Romania's accession.

6.2 How civil society constructed and utilised Europe

In this section the evidence of the case studies concerning how Romanian civil society constructed and utilised Europe to empower themselves domestically is synthesised. The main finding is that, before domestic civil society can constrain a

¹¹⁰⁰ Thatcher, p.287.

hostile Executive through Europe three conditions must be in place. First, civil society must construct a misfit between the domestic *status quo* and their understanding of Europe, which will motivate them to mobilise for redress. Second, they must acquire basic action capacity to construct EU discourses from the bottom up and utilise top-down opportunities created by accession in ways that actually bring constraining pressure to bear on the Executive. Third, they must not be confronted with insuperable opposing veto points.

The social construction of Europe by domestic actors underlies and conditions their utilisation of it. Merely by wanting to be in the EU, Romanians had already constructed it as a desirable alternative to the domestic *status quo*. For most Romanians, the EU is nothing but a superior pathway to material well-being. A small cultural elite, however, has arrived pre-accession at constructing Europe as a community of more than material values. They have come to identify themselves with a Europe of shared values and norms alien to Romania for most of its history: democracy; respect for the rule of law; protection of human, minority and civic rights; protection of environmental and cultural heritage. It is by contrast with this construction of Europe that both domestic and trans-national civil society came to perceive a 'misfit' between Romanian Executive behaviour and EU norms. This construction of the EU as superior to the Romanian State has galvanised them to seek ways of bringing the Romanian State in line with it. Without such *a priori* constructions the domestic civil society entrepreneurs would likely have missed out on their opportunities to utilise it to achieve their domestic goals.

The finding that domestic civil society must acquire basic action capacity to avail themselves of Europe against a hostile Executive verifies the claim in the Europeanization literature, that domestic actors need 'basic competences' to exploit

the EU.¹¹⁰¹ In the case of Rosia Montana, for example, the local founders of Alburnus Maior were unable to construct the ‘right’ kind of Europe before Western norm entrepreneurs supervened. What was missing were basic cognitive (not just material) resources, without which they were incompetent to utilise the EU by themselves. Absent Western supervision, the likelihood would have been that Alburnus’s campaign against the gold mining would have failed, Europe never having heard of it.

In all cases, basic action capacity was acquired with the help of trans-national civil society¹¹⁰² or of already initiated domestic actors. These ‘supporting institutions’¹¹⁰³ can empower even the weakest grassroots opposition to tap Europe to the full. Despite its purported agenda of developing civil society in Eastern Europe, Brussels actually played no role in empowering domestic civil society at this most basic level – in all of the cases studied. Even the top-down opportunities that Brussels expressly designed for domestic civil society’s use (e.g. EIA law) lay unexploited until trans-national and a few Romanian norm entrepreneurs brought the necessary material and cognitive resources that empowered the local protestors to utilise the EU law.

Once made aware of the possibilities of using the EU to empower themselves and empowered with basic action capacity, civil society may proceed to exploit them in full. One of the most pervasive utilisations proved to be the construction of discourses featuring the EU. Civil society discourses had two main functions. When addressed to the Executive, they were ‘disciplinary’,¹¹⁰⁴ and were expressed through implicit or explicit threats of non-accession and through references to EU authority

¹¹⁰¹ Risse, Green Cowles and Caporaso, *Europeanization and Domestic Change*.

¹¹⁰² On the same note see also Sidney Tarrow, *Power in movement: social movements and contentious politics* (New York: Cambridge University Press, 1998).

¹¹⁰³ Börzel and Risse, *Conceptualizing the Domestic Impact*.

¹¹⁰⁴ Radaelli and Schmidt, *Conclusions*.

over the Romanian government. When addressed to other actors, the discourses were 'mobilising', and were expressed through references to EU norms and values. In most cases, civil society constructed an 'ethical' EU that stood in contrast to the Executive's 'economic' EU.

Much less utilised in the pre-accession phase was the top-down opportunity of that EU law which had already been transposed into domestic legislation. In the first place, civil society heeded EU law only if it supplied needs of their own. In Rosia Montana, once provided with material resources to employ legal experts, Alburnus Maior proved competent enough to utilise the transposed *acquis* in the Romanian lawcourts. They were not observed to construct EU law as a 'special' opportunity. They incorporated it into their strategies and resorted to alongside domestic law, without paying much attention to whether a legal rule came from Brussels or not. They were only preoccupied with whether it advances their goals. The latter point is crucial to the question of whether civil society mobilises around EU law. In the Transylvania Motorway civil society resorted to it primarily by featuring it in their discourses. Since even the most committed environmentalists in Romania counted motorways one of their needs, most civil society actors ignored the possibility of mobilising and using it to influence the implementation of the motorway.

When they did mobilise to utilise the EU law, the success ultimately depended less on their own competence and more on the strength of their domestic opponents. In the Motorway case, for example, those civil society actors who did resort to the EU law of Environmental Impact Assessment could not overcome the strength of the Bechtel Corporation. Bechtel's financial power and technical excellence permitted them to produce an EIA report of such voluminous technical detail that overwhelmed Romanian civil society. (By contrast, the permit application of Rosia Montana Gold

Corporation was amateurish, and constituted a much easier target for the norm entrepreneurs.)

Veto points may be socially constructed where none actually exist. For example, would-be opponents of the Transylvanian Motorway constructed in the Romanian public an irresistible adversary who would never tolerate it being cancelled, even though the public itself showed no signs of mobilising. The opponents reasoned that too many Romanians stood to gain from the motorway, unlike the few thousand miners of Rosia Montana or the local populace of Sighisoara. Even more subtly, both the Romanian public and civil society may well have been influenced in their acceptance of the Bechtel contract by the worldwide social construction of Bechtel as the 'Rolls Royce of building companies'. Gabriel Resources, by contrast, was constructed as a dodgy penny-stock run by a drug dealer, a negative image that probably influenced not only civil society's opposition but also the Executive's decision to postpone the project. Social constructions thus can contribute to incentivising or inhibiting actors' behaviour.

A domestic government that resists Europeanization is a crucial 'veto point' capable of constraining any civil society actors who promote EU norms and values. The way in which the State implements the transposed EU law can stultify its potential to empower civil society to participate in governmental decisions. In theory, EU law, once transposed, has the effect of pushing a State toward more inclusion of civil society in decision-making. In practice, however, the case studies show that the Romanian government under Nastase remained ever-ready to shut out their civil society opponents. In this, they utilised their domestic power resources which they controlled. Dracula Park was decreed by Emergency Ordinance, bypassing the procedures that mandated public consultation. Even after domestic law had been

fully harmonised with the EIA Directive, the Executive (interlocked with the Bechtel Corporation) ‘vetoed’ civil society in the Motorway case by withholding timely information about it prior to the EIA consultation over it.

The domestic government, however, cannot control all of the opportunities that the EU makes available to domestic civil society. The Romanian Executive had no control over Romanian civil society’s utilisation of the EU actors and organs. The resort to Brussels proved to be the most important top-down EU opportunity that actually brought about civil society empowerment over the Executive. Domestic and trans-national civil society availed themselves extensively of DG Environment and DG Enlargement in the Commission, and of Green and left-wing MEPs in the Parliament, whom they perceived as sharing the same values. They resorted to EU supranational organs without any specific invitation from Brussels, and regardless of whether these organs liked it or not.

Indeed, resort to them from the bottom up was more frequent than resort to top-down opportunities like EU funding or law. This may be due to relatively lower ‘transaction costs’: petitioning MEPs or the Commission, unlike bringing lawsuits or qualifying for funding, requires insignificant material resources. Cognitive resources, on the other hand, were requisite for even the most basic utilisation of EU organs. Incognizance at first prevented Alburnus Maior from communicating at all with Brussels or with anyone beyond Romania. They were incapacitated by having never in the first place socially constructed any kind of State-civil society relationship with the EU. On their own, Alburnus likely ‘projected’ onto Europe (lacking any experience to the contrary) their pre-existing social construct of the Romanian State. They would have taken for granted that the EU organs, like the Romanian State, would ignore their pleas. Such a construct would have strongly inhibited any idea of

utilising Europe strategically. No domestic actors are likely to overcome inhibitions like this unless 'initiated' into alternative social constructions of State behaviour by others.

In the end it was the intervention of EU supranational actors that (in tandem with other European actors like Prince Charles and the Hungarian government) proved crucial to the empowerment of Romanian norm entrepreneurs and their trans-national allies. The merit of civil society entrepreneurs was to put the contested issues on these more powerful actors' agenda – which in itself is a subtle but high-leverage form of power.¹¹⁰⁵ The entrepreneurs used their bottom-up discursive construction of a misfit between the Romanian Executive's behaviour and EU norms and values to motivate these supranational interventions. The supranational actors, and not civil society, proved to be the only ones powerful enough to oblige the Executive to constrain themselves. In sum, Europe in general and the EU in particular have indeed created new opportunities and resources for Romanian civil society, which the latter have utilised to empower themselves relative to their domestic opposition, the Executive in this case.

To conclude, before they resort to Europe to empower themselves, domestic norm entrepreneurs had first to perceive the availability and benefit of Europe to their own interests. Their motivation to utilise Europe sprang from their construction of a misfit between the EU and domestic norms and values. Before domestic actors proceed to utilise the EU they must have basic capacity to act or what the literature calls 'supporting institutions'.¹¹⁰⁶ In the East European context, where 'supporting institutions' are largely absent domestically, civil society must be (or at least are far

¹¹⁰⁵ Lukes, 1974.

¹¹⁰⁶ Börzel and Risse, *Conceptualizing the domestic impact*; Risse, Green Cowles and Caporaso, pp.11-12.

likelier to be) 'initiated' by trans-national entrepreneurs. Once initiated, domestic civil society's success in utilising the EU to change the *status quo* in line with their constructions of the EU depends on the domestic veto points they face.

Domestic veto points like the government may still constrain civil society's utilisation of those elements of Europe which have penetrated the domestic scene, the clearest example of which has been EU law. The Romanian government, however, has not been able to 'veto' civil society's construction of discourses – although, as the next section will show, they can neutralise it with counter-discourses. More importantly, the government is not able to prevent norm entrepreneurs from lobbying powerful international and European actors and organs. These are a source of power for domestic civil society that is outside of their government's control. It was this source of power which domestic civil society were able to use to obliged the Executive to constrain itself in two cases out of three, thus empowering themselves by default.

6.3 How the Executive became constrained

The Executive was constrained in all of the cases studied. The nature of the constraint, however, varied. The Executive mostly constrained itself in Dracula Park and Rosia Montana; in the Motorway case, by contrast, they threw off self-constraint, yet were unable to avoid the constraint imposed by the Commission.

In Dracula Park and Rosia Montana civil society empowerment through Executive self-constraint is best explained by a combination of Schimmelfennig and Sedelmeier's 'external incentives model' with a model of the socialisation and

internationalisation of new identities¹¹⁰⁷. The Executive abandoned their pet project Dracula Park in Sighisoara with great reluctance. They were constrained – more precisely they constrained themselves – only after coming to believe that their reputation and credibility with Brussels and/or with the British government might be damaged. They feared that, as a consequence, they might experience accession which might set back Romania's membership of the EU.

Similarly anxious to avoid upsetting their relations with Brussels and the Hungarian government, the Executive constrained themselves in the Rosia Montana case as well. The support of the Commission and of the Hungarian government was necessary to ensure a smooth and timely accession to the EU. But here they constrained themselves with less reluctance than in Dracula Park, as they perceived the gold mining project's material and political benefits to them to be smaller and more speculative.

In both cases the uncertainty not merely of accession but of the date of it was a factor which the Executive took account of in their cost-benefit calculations. The fact that accession itself and its timing were a determinant in explaining the Executive's behaviour resonates with the 'external incentives' model. The Executive constrained themselves, giving in to the EU norms and values advocated by the opposition, because they calculated that the prospective costs of ignoring or breaching these – the sanction of delayed accession to the EU – outweighed the prospective benefits (to themselves) of pursuing the projects. Executive self-constraint was achievable, however, only because of their desire to accede to the EU, and because of the conditionality attached to that desire. This appears to be the bedrock foundation of

¹¹⁰⁷ Schimmelfennig and Sedelmeier, *Governance by conditionality*.

civil society empowerment over the Executive, at least in the case where the Executive resists the kind of Europeanization that civil society and Brussels promote. Nevertheless, in both cases, motive forces other than EU conditionality also modified Executive behaviour, contributing to the tipping the domestic power balance. These did not originate in the EU centre in Brussels; they would be better imputed to 'Europe' at large. In the Dracula Park case the Executive socially constructed Prince Charles as a personal friend with whose importance and prestige they wished to be identified. Similarly, in Rosia Montana, key Executives including the PM himself were influenced by their newly cemented friendship with the Hungarian Social Democrat government. These findings suggest that sociological factors like internalisation of values and identities may also explain Executive self-constraint. Civil society empowerment then would depend not only on accession conditionality but also on the Executive's social relationships with European actors together with whom they had constructed an identity of some sort.

It is thus astonishing, *prima facie*, that the Executive should have flouted their commitments to the Commission in order to let the Transylvanian Motorway contract without a public tender. The Commission's reaction could have caused significant domestic political damage, if for example the Commission had refused to close *acquis* negotiations on schedule. The Nastase government's behaviour is hard to account for except on the theory that, having been given a firm accession date by the European Council, they had interpreted it to mean they had 'crossed the bridge' to membership; and that this in turn meant 'immunity' to accession conditionality. The perception that conditionality had expired then altered their calculation of the cost-benefit differential across the domestic and EU 'games' they were engaged in; it constituted a loss of 'external incentive'.

Nevertheless, this latter outcome cannot be fully understood without reckoning-in the point that such a calculation depended on the Nastase government's confidence in their interpretation of the implications of the accession date. Such confidence most probably stemmed from their social relations with the Executives of certain member-States. The date itself was a mere datum but the interpretation that Romania would actually accede on this date regardless of breaching EU rules in the meanwhile, was a construct of the Nastase government. It rested on a prior construction between Romania and its 'patrons' in the EU that Romania was as good as 'in'. The Romanian Executive's behaviour was also influenced by their interpretation of what their inter-governmental networking could do for Romania.

Moreover, by the time the Motorway controversy emerged, the Romanian Executive had learnt enough about the EU's workings to know how to avoid inflicting irreparable damage on themselves. Their socialisation within EU Executive circles had already prompted them to draw bad as well as good lessons from the behaviour of other Executives, including the lesson of how to get around EU rules. Such constructs and such lessons were then 'brought home' to a rational calculation about a domestic motorway. This example strengthens the claim that not only 'external incentives' but also 'lesson-drawing' and socialisation with other Executives are necessary to fully account for the outcome.

The rational choice dimension of Executive behaviour is perhaps best captured by Tsebelis's 'nested games' concept, which posits the simultaneous engagement of the actor in several rationalist games on several 'levels' or political arenas. In all of the case studies the Romanian Executive was engaged in games in arenas other than the domestic one (whether they always knew it or not), the configuration of games being slightly different in each case. In all cases they were playing the 'EU game'.

Additionally, they were playing an ‘international game beyond the EU’, which in the Dracula Park case involved the UN and the Prince of Wales; in Rosia Montana a bilateral international game with the Hungarian government; and in the Motorway case a similar game with the Americans. When the Nastase government was still new to office (in Dracula Park), they appeared to be ‘absentee’ players in the games external to Romania, at least when it came to relatively minor domestic policy issues. They were soon made aware, however, that they were no longer playing a single domestic game that they controlled, but several other games which they did not control. By the time of the Motorway case, they had already become skilled at playing multiple games and even winning.

The reasoning above shows that the empirical evidence gathered in the course of this research supports Schimmelfennig and Sedelmeier’s three models of explanation, but also that there is more to Europeanization than these explanations. Their ‘social learning’ model, for example, focuses rather narrowly on domestic actors’ identification with the ethical norms and values espoused by the EU. There is little evidence, in the case of the Romanian Executive, that any such norms and values were internalised in the pre-accession phase; they constructed the EU as a material exploit, not as a community of moral values to be lived up to for their own sakes. What mechanistic models leave out is the possibility that domestic actors might identify with the EU or Europe in other ways, and in their own ways. In general one might identify with any sort of ‘European community’ that one might construct with one’s domestic peers – a construct likely heavily shaped by past conditioning and actors’ identities. In the case of the Romanian Executive, they seem to identify more with powerful and prestigious EU member-States, from which they sought recognition and acceptance, than with any abstractions like ethical norms or values.

Insights into such phenomena are more clearly revealed by a constructivist/sociological perspective, which thus adds much depth to rational choice analyses.

The case studies have indeed revealed evidence of ‘lesson drawing’, Schimmelfennig and Sedelmeier’s third explanatory model. Although they do not clarify what the difference is between ‘social learning’ and ‘lesson drawing’, the latter seems to be an act that one does unilaterally; whereas, both social construction (if that is what ‘social learning’ is) and rational gamesmanship must be at least bilateral. The Executive (as well as civil society) was observed to draw lessons from experiences of the EU and to deploy them in public discourses aiming at self-empowerment. It is noteworthy that the lessons drawn reflected not only the best but also the worst practices of EU member-States, as well as of other European and non-European trans-national actors. In Dracula Park, for example, the Executive referred to worst practice by other EU member-States – flouting the UN World Heritage Convention – to justify their neglect of the Convention, but also to best practice by successful international tourism operators to justify Dracula Park. In the Motorway case they cited core EU member-States who had also circumvented EU public procurement rules. Worst-practice or best-practice lessons were drawn ‘rationally’, depending on which ones best served their strategic goals. The finding that the lessons drawn might not necessarily be best practice is missing in the East Europeanization literature, which has largely assumed uncritically that the accession candidates always learn the best lessons from Europe.

Although the above clearly show the benefit of combining rational choice and constructivist/sociological insights, some might argue that the results obtained from an exclusively rational choice nested games type of analysis would reach the same

conclusion, whether or not the insights of constructivism and sociological institutionalism are factored in. However, such a claim would ignore the fact that the Executive's moves in all games depended on their social constructs and lessons drawn from socialising with other Executives. Basic terms of the rational calculation in any game are not only set by rational calculation but also by perceptions and social constructions of reality, and the evidence herein shows that the Romanian Executive is no exception.

Moreover the conclusions of a rational choice analysis depend on the values the Nastase government assigned to the various costs and benefits facing them, and these could be imputed to them only *ex post*. For example, the costs of defying Prince Charles, as perceived by the Nastase government, proved far higher than any (Western) researcher would have been likely to have predicted *ex ante*. *Ex ante* there was little reason to expect Prince Charles would exert so much influence over the Romanian Executive as in fact he did, for in Britain he is generally dismissed as powerless and rather unimportant.

Thus, without a constructivist/sociological take on the story, a nested-games analysis and Schimmelfenning-Sedelmeier's model cannot fully account for any of the actors' behaviour, including the Nastase government's. All actors relied critically on perceptions, interpretations or constructions of reality that preceded their rational calculations and choices, decisively influencing their strategic moves. For example, the evidence shows that the EU supranational organs, in the midst of plying an external incentives strategy, overstepped it in ways not accounted for by top-down models. These models do not tell the whole story of how Commission personnel sent informal and ambiguous 'signals' which obliged the Nastase government to 'read between the lines'; how these signals were 'decoded' at the receiving end by all

domestic actors involved; how such informal signals affected these actors' behaviour; how the interpretations may have deviated from the meanings Brussels intended to send; and how all of these phenomena affected the Executive's and all other domestic actors' cost-benefit calculations. The Executive's perceptions were, however, also influenced by the discourses of domestic and trans-national norm entrepreneurs, and by the signals and acts of the interveners from Europe and beyond. Above all, for Romanian civil society to have been empowered, the Executive must have constructed the EU – their relation to it, and how the EU might react to their moves – in ways pre-susceptible to domestic and European pressures; otherwise, these pressures could not have exerted any motive force to alter Executive decisions.

Such insights coming from a sociological investigation as revealed through detailed process-tracing proved indispensable in explaining the outcomes. The actors' perceptions and interpretations are crucial to any full explanation of Europeanization, and all the more so in the context of Eastern Europe, where actors' perceptions of reality may be in many ways starkly different from that of Western Europeans (due to their conditioning under socialism as well as under a post-Socialist environment of scarcity in all resources). Yet positivist, top-down models gloss over the importance and the unpredictability (at least in detail) of these empirical realities.

6.4 How the Executive constructed and utilised Europe

The evidence of the case studies shows that the Executive no less than civil society may utilise Europe to empower themselves. Whatever the constraints that had been imposed on them, whether triggered by civil society or generally by accession, the Executive always found ways of minimising if not breaking free of them. They did not tolerate a 'zero' outcome for themselves in the 'zero-sum games' that Dracula

Park and Rosia Montana devolved into. In both cases they started up new games, albeit reactively, in order to get back their own, resorting to European as much as domestic power resources. By contrast, in the Motorway case, the Executive proactively incorporated Europe into their strategy of slipping the EU constraints standing in the way of commencing the Motorway before the elections. In this way they were endeavouring to empower themselves not so much against civil society as against their political party opponents.

In the Dracula Park affair they utilised PriceWaterhouseCooper as a face-saver to maintain their legitimacy and as a blame-shifter to escape legal liability. Minimising constraint is a form of empowerment, even when, as in this case, the outcome was not reversed in the Executive's favour. It is ironic that the idea of PWC was suggested by the very Romanian expatriates (trans-national civil society) who were fighting to keep Dracula Park out of Sighisoara. This shows, that like the civil society, the Executive too might be initiated by trans-national civil society actors into new ideas about how they might empower themselves through Europe. In this sense even the Executive, not only civil society, may be empowered by trans-national civil society entrepreneurs.

Similarly, in the Rosia Montana case the Executive resorted to the proposal of a commission of European experts to advise them how to proceed on the environmental permit – an idea that appears to have been suggested by a Green MEP. They utilised it in hopes of dumping responsibility on the European Commission and 'the experts', which they thought would enhance their credibility and burnish their external image before EU member-States. After this plan failed, senior career civil servants and the Environment Minister still succeeded in empowering themselves by using the opportunity of EU law transposition so as to diffuse decisional

responsibility for the Rosia environmental permit (and for future permits of similar kind) from them to the entire government. This diffusion of responsibility together with the newly transposed EU laws and the newly ratified international convention (under the stimulus of accession) had the effect of increasing the number of veto points that would have to approve the permit for Rosia, making it more likely that the decision would not be approved as easily as if only one ministry decided. This increase in veto points might have the unintended effect of empowering domestic civil society in opposition.

In the Motorway case, the Executive, although in theory their discretion was constrained by EU public procurement rules, deployed their domestic power resources (including timing and tempo) to throw off the constraint. Even after the Commission intervened to constrain them further, the Executive still managed, by prior networking with EU member-State Executive elites and supranational politicians (*e.g.* the Enlargement Commissioner) to limit what the Commission was able to do to constrain them.

In minimising constraints, the Executive, like civil society, constructed and utilised discourses featuring the EU, and quickly integrated these into their domestic panoply of power resources and strategies. Their initial bargaining position having been so much stronger than civil society's, it might have been expected that they would not have needed to construct such discourses. That they did do nonetheless reflects the gradual erosion of their plenary discretion (the legacy of Communism) by the accession process. This gradual erosion left its traces on the cases studied, as may be seen by examining them in chronological order. In the first case of Dracula Park, the Executive were so supremely confident that they hardly referred to the EU or to Europe at all. In Rosia Montana and particularly in the Motorway cases they soon

reached for EU discourses to help roll back opposition and to forestall it, respectively.

The Executive proved adept at utilising EU discourses to legitimise themselves and to disempower actual or anticipated challengers, especially by resetting the terms of public debate. In the Motorway case they endeavoured to disempower their critics with EU discourses meant to shift the debate away from the controversial issue of corruption (for lack of public tender) onto economic development and higher standards of living – what almost every Romanian cares about the most. Featuring the EU was deemed to enhance the appeal of these discourses, making it easier to rally public opinion to their side.

The mere fact that the Executive have been obliged by circumstances to construct discourses featuring the EU is evidence that something fundamental has changed for them. Had they never felt constrained, but remained as supremely confident as at first, they hardly would have taken the trouble to justify themselves in this way. This is thus further evidence that the accession process has constrained Executive discretion, increasing their need for Europe to legitimise their actions.

The content of these discourses opens a window onto the Executive's most fundamental values, of which the dominant ones proved to be materialistic, economic-developmental values that stood in contrast to those of the new social movements (at least in Dracula Park and Rosia Montana, if not in the Motorway case). The discourses also reflected their beliefs about Europe and about their relation to it: the fact that they had constructed Europe as a 'strategic' opportunity or resource to be exploited for material gain. The Executive hardly conceived of Europe as a community of 'softer' values, norms and principles that are to be respected even when they conflict with development. The Executive proved willing and ready to

imitate the EU's worst – as well as best – practices, depending on what worked for them. In this vein, Executive discourses often reflected the 'Delaware effect' (or 'race to the bottom'): they cited the worst practices of the best (in Romanian eyes) member-States in order to legitimise dodging the better practices favoured by civil society or decreed by Brussels. In the Dracula Park and Motorway cases, for example, they held up France and Germany as examples of those who successfully breached international law and EU law, respectively, in order to legitimise themselves in doing likewise.

A diachronic trend is observable across the case studies in the Executive's discourses featuring the EU toward higher frequency and sophistication. There is little evidence of the EU in their discourses in the first case, Dracula Park, except for a few documentary references to EU ecological standards. The scantiness of the EU in this case might be explained by Executive unawareness or confident indifference, and (as they had been out of power for four years) by their want of learning how they could utilise such discourses to advantage, even on relatively minor issues like Dracula Park. By contrast, their discourses in the last, Motorway case abound with references to the EU. By now they had become more adept at deploying 'Euro-speak' and more aware of its advantages. That the Romanian Executive knew how to utilise the EU to legitimise even decisions that Brussels itself publicly disapproved of, is evidence of at least strategic social learning.

To sum up, during the process of Romania's accession to the EU, only a minority of Romanian civil society elites and central Executives constructed or utilised Europe to empower themselves. Self-empowerment was always aimed at gaining relative advantage over domestic opponents. In this they constructed and utilised both material and cognitive resources that sprang at least in part from the EU and/or

Europe, and in part from Romanians' own hopes, expectations and needs. Their reaching out to Europe was always driven by their own interests and perceptions. These were implicitly shaped by their pre-existing conditioning under Romanian Communist (and likely pre-Communist) as well as post-Communist institutions. The fact that both actor-collectives utilised Europe strategically for purposes of self-empowerment shows that they behave just as 'rationally' as their counter-parts in the West.

Finally, that evidence was found supporting two mutually contradicting empowerment theses (Diffusion and Executive Empowerment) illustrates the importance of studying differential empowerment over a longer period of time, and of paying attention, not to one actor only but also to other actors involved in a given domestic political game. Only by going beyond the first instance of Europe's differential empowerment of civil society, and inquiring into how the Executive responded to the ensuing constraints was it possible to evidence how capable the Executive is of turning the tables on civil society and their allies, and counter-constructing and counter-utilising Europe, deploying it in tandem with its own domestic power resources. Not just civil society but the Executive, too, learnt over time which ways of resorting to Europe are the best for empowering themselves. They may be expected to become all the more adept once contact and socialisation within the EU intensifies upon Romania's accession in January 2007. Thus, by virtue of tracing not only how domestic civil society utilised Europe to constrain the Executive, but as well how the constrained Executive utilised Europe to minimise the constraints, this dissertation has gone beyond previous East Europeanization research.

What will happen after Romania's accession? Although a civil society minority was empowered over the Executive for a brief period in two marginal cases, the Romanian Executive also proved capable of breaking free of civil society and of trans- and supranational constraints, utilising their domestic power resources as well as Europe to undermine the empowerment of their opponents. If this was so pre-accession, what will happen after Romania's accession? Will Executives find in the EU new resources to empower themselves to escape domestic and supranational constraints? Will the new social movements come out ahead? Or will domestic power relations be recast more fundamentally? Will the EU, for example, foster co-operation between Executive and civil society elites, as the Network Governance thesis predicts, but for which no evidence was found pre-accession? These are key questions awaiting further study.

ANNEX 1: Interviewees

1. Ionut Apostol, Project Co-ordinator, Terra Mileniul III, Bucharest, 3 September 2004; 2 May 2006.
2. Lavinia Andrei, Director, Terra Mileniul III, Bucharest, 11 July 2003.
3. Andreas Beckmann, Deputy Director, WWF International, Danube Carpathian Programme, 5 March 2006.
4. Anamaria Bogdan, Programme campaigner, Greenpeace in Romania, 23 August 2005.
5. Raimonda Boian, Spokeswoman for Emil Boc, Leader of the Democratic Party, Cluj, 16 March 2006.
6. Sherban Cantacuzino, ICOMOS expert to UNESCO, London, 3 January 2006.
7. Bogdan Chiritoiu, Councillor to President Traian Basescu, 15 March 2005.
8. Dimitrie Clepan, former Director, Alba Environment Protection Agency, 11 June 2005.
9. Doina Constantinescu, senior civil servant, Environmental Department, Industry Ministry, Bucharest, 12 July 2003.
10. Zeno Cornea, founder member, Alburnus Maior, Rosia Montana, 4 February 2006.
11. Eugen David, President, Alburnus Maior, 28 June 2005.
12. Ioana Derscanu, Task Officer Civil Society, Delegation of the European Commission Bucharest, Bucharest, 2 September 2004.
13. Jessica Douglas-Home, Chair, Mihai Eminescu Trust, London, 2 January 2006; 12 April 2006; 26 May 2006
14. Mercedes Echerer, former Green MEP for Austria, 5 October 2005; 15 December 2005; 16 June 2006.
15. Hermann Fabini, architect and former National Liberal Party Deputy, Sibiu, 16 December 2005.

16. Hans Bruno Fröhlich, Head Priest of the Evangelical Church, Sighisoara, 14 December 2005; 13 January 2006.
17. Alex Gota, former Sustainable Sighisoara President, Sighisoara, 10 December 2005; 5 January 2006; 9 January 2006; 24 January 2006.
18. Maria Hambasan, Romanian judge, Bucharest, 14 February 2006.
19. Petr Hlobil, Campaigns Coordinator, CEE Bankwatch Network, 7 December 2005.
20. Afrodita Iorgulescu, Professor, Romanian Academy of Economic Studies, Bucharest, 8 November 2005.
21. Sorin Ionita, Research Director, Romanian Academic Society (SAR), Bucharest, 18 March 2006.
22. Judit Kacso, Program coordinator, Pro-Europe League, Targu Mures, 7 April 2006.
23. Viorel Lascu, Director European Integration, Oradea County Council, 14 July 2003.
24. Petre Lificiu, former Environment Minister (2000-2004), 17 June 2005.
25. Andra Mihalcioiu, member of Romania's Negotiations team, Bucharest, 16 June 2006.
26. Dumitru Mihiu, Former Civil Servant, the Ministry of the Environment in Romania, Bucharest, 14 July 2003.
27. Radu Mititean, Executive Director, Cyclo-Tourism Club Napoca, 15 September 2004; 10 May 2006.
28. Sabin Muresan, Programme Coordinator, The Romanian Institute for Peace Action, Training and Research (PATRIR), 31 August 2005.
29. Dolores Neagoe, Task Officer Civil Society, Delegation of the European Commission, Bucharest, 2 September 2004.
30. Codruta Nedelcu, geologist and environmentalist, ARIN, 13 September 2005; 10 February 2006.

31. Arie Oostlander Member of the European Parliament, Foreign Affairs Committee, Brussels, 11 April 2006.
32. Oana Penu, Project Coordinator, Regional Environmental Centre for Central and Eastern Europe, Bucharest, 3 September 2004.
33. Nicolae Popa, National Liberal MP, 13 December 2005.
34. Crai Pompiliu, MinVest Director, Rosia Montana, 26 August 2005.
35. Adrian Popescu, Romanian journalist, 15 July 2003, Sibiu, Romania.
36. Laszlo Potozky, Director, Environmental Partnership Foundation, 22 September 2005.
37. Nicolae Ratiu, Pro Patrimonio, London, 13 June 2006.
38. Stephanie Roth, Campaign Manager, Alburnus Maior, 7 July 2005.
39. Mechtild Rössler, Chief, Europe & North America UNESCO World Heritage Centre, Paris, 11 December 2005.
40. Herwig Schuster, Greenpeace in Central and Eastern Europe, 12 September 2005.
41. Ionut Sibian, Project Co-ordinator, Civil Society Development Foundation, 12 September 2004.
42. Jonas Sjostedt, Green Member of the European Parliament, Environment Committee, 7 July 2005.
43. Erika Stanciu, WWF International, Danube Carpathian Programme, 18 April 2006.
44. Elena Stefanescu, civil servant, Ministry of European Integration, Department for the Relation with the Public and NGOs, Bucharest, 12 July 2003.
45. Anca Tofan, Director, Regional Environmental Centre for Central and Eastern Europe, Bucharest, 14 July 2003.
46. Gelu Trandafir, former BBC Romanian journalist, Bucharest, 24 February 2006.
47. Michaela Turk, Public Relations Officer, Dan Danesan, Mayor of Sighisoara, 6 February 2006.

48. Florin Vasiliu, legal expert, Centre of Support for Non-Governmental Organisations (CENTRAS), 12 July 2003.
49. Wolfgang Wittstock, President of the German Democratic Forum, Sibiu, 14 December 2005.

Anonymised interviewees

1. Former senior civil servant, Romanian Environment Ministry, 11 November 2005; 3 June 2006.
2. Former senior official, Romanian National Agency for Mineral Resources, 22 December 2005.
3. Former Secretary of State Environment Ministry, 11 October 2005.
4. Task Officer, European Commission Delegation, Bucharest 13 July 2003.
5. Senior official, European Commission Delegation, Bucharest (1), 10 May 2006; 26 June 2006.
6. Senior official, European Commission Delegation, Bucharest (2), 12 April 2006.
7. Senior official, Negotiations team, Bucharest.
8. DG Enlargement, European Commission Brussels, 1 July 2005; 13 April 2006.
9. DG Environment, European Commission Brussels, 6 July 2005; 7 June 2006.
10. Former Task Officer for Romania, DG Environment, European Commission, Brussels, 5 July 2005
11. Vice President Rosia Montana Gold Mining Corporation, 20 September 2005; 23 September 2005; 4 February 2006.
12. Former Vice President Rosia Montana Gold Mining Corporation, 11 April 2005; 30 September 2005; 11 October 2005; 2 February 2006.
13. Former Director, Rosia Montana Gold Mining Corporation, 4 July 2005.
14. County Councillor, Social Democrat Party Sibiu, 20 April 2003.

15. Personal Communication with research officer, Regional Environmental Centre for Central and Eastern Europe, Bucharest, 14 July 2003.

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