Contributions to Political Science

Luana Martin-Russu

Deforming the Reform

The Impact of Elites on Romania's Post-accession Europeanization

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Author Notes

This open access book draws on my doctoral research conducted at the Faculty of Social and Cultural Sciences of the European University Viadrina Frankfurt (Oder) with my Supervisors, Prof. Dr. Jürgen Neyer, Europa Universität Viadrina and Prof. Dr. Ulrich Sedelmeier, London School of Economics and Political Science, and concluded on 18 January 2019.

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This book emerged from my doctoral research at the European University Viadrina in Frankfurt (Oder), Germany. The aim was to find a narrative that gives a complete picture of Romania's post-accession developments while acknowledging the positive changes that took place in the country since January 2007. I did not want to write a book on corruption in Romania, and I strongly hope that this study will not be perceived as such. This book is an attempt to stimulate debate on the long-term effects of Europeanization and the important contribution of civil society in this process.

This project has benefitted widely from the support of others. I am deeply grateful to have been guided and encouraged by my academic supervisor Prof. Dr. Jürgen Neyer at the Chair of European and International Politics of European University Viadrina. He gave me brilliant ideas, insightful comments, and valuable suggestions that shaped the way my arguments were crafted; this project owes a lot to his intellectual inspiration and his unfailing support. I also want to express my sincere gratitude to Prof. Ulrich Sedelmeier from the Department of International Relations at LSE. I am immensely grateful for his willingness to devote his time and share his expert knowledge and reflections. I owe much to Dr. Camilla Bausch, my all-time mentor, for encouraging, supporting, and challenging me in many different ways, and also to all my colleagues at Ecologic Institute Berlin for creating a friendly and thought-stimulating environment.

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Contents

Abbreviations

ACDB	Association for the Biological Diversity Conservation
ALDE	Alliance of Liberals and Democrats
ANANP	National Agency of Natural Protected Areas
ANI	National Integrity Agency
ANPM	National Environmental Protection Agency
APADOR-CH	Association for the Defense of Human Rights in Romania—the Helsinki Committee
Art.	Article
BU	Republic of Bulgaria
C	Cabinet
CD	Chamber of Deputies
CEE	Central and Eastern Europe
CEO	Chief Executive Officer
CeRe	Resource Center for Public Participation
CSFR	Czech and Slovak Federative Republic
CSO	Civil Society Organization
CVM	Cooperation and Verification Mechanism
CZ	Czech Republic
DCC	Decision of the Constitutional Court of Romania
EEC	European Economic Community
EST	Republic of Estonia
EU	European Union
FCC	Foundation Conservation Carpathia
FDSN	Democratic National Salvation Front
FSN	National Salvation Front
GDP	Gross Domestic Product
GNM	National Environmental Guard
HU	Hungary
L	Legislature
LAT	Republic of Latvia
LIT	Republic of Lithuania

MEP	Member of European Parliament
MP	Member of Parliament
NGO	Non-Governmental Organization
OG	Government Ordinance
OUG	Government Emergency Ordinance
PC	Conservative Party
PD	Democratic Party
PDL	Democratic Liberal Party
PDM	Democratic Party of Labour
PDSR	Romanian Party for Social Democracy
PiS	Prawo i Sprawedliwość Party
PL	Liberal Party
PLD	Liberal Democratic Party
PLR	Liberal Reformist Party
Pl-x nr.	Legislative Proposal Number
PMP	People's Movement Party
PNL	National Liberal Party
PNL-AT	Young Wing of the National Liberal Party
PNL-CD	Democratic Convention of the National Liberal Party
PNTCD	Christian Democrat Peasant Party of Romania
PO	Republic of Poland
PP-DD	Dan Diaconescu People's Party
PR	Proportional Representation
PRM	Greater Romania Party
PRO	Pro Romania Party
PSD	Social Democratic Party
PSDR	Romanian Social Democratic Party
PSRN	National Revival Socialist Party
PUR	Romanian Humanist Party
QMV	Qualified Majority Voting
Reex.	Re-examination
RO	Romania
S	Senate
SAR	Academic Society of Romania
SAC	Special Areas of Conservation
SCI	Sites of Community Importance
SLK	Slovak Republic
SLO	Republic of Slovenia
SOR	Romanian Ornithological Society
SPA	Special Protection Areas
SUMAL	Integrated Information System for Wood Tracking
TEU	Treaty of the European Union
UDMR	Democratic Alliance of Hungarians in Romania
UNESCO	United Nations Educational, Scientific and Cultural Organization

UNPR	National Union for the Progress of Romania
USAID	United States Agency for International Development
USD	Social Democratic Union
USR	Save Romania Union
WWF	World Wide Fund for Nature

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Chapter 1
Introduction: The European Paradox of Expecting Corrupt Political Elites to Lead the Fight Against Corruption

The only stable state is the one in which all men are equal before the law (Aristotle)

1.1 The Limits of Europeanization

On 1 January 2007, Romania became a full member of the European Union. The *state* that joined the EU was already since 1991 a constitutional republic with a bicameral Parliament elected by popular vote and with a dual executive formed by a directly elected president and an appointed prime minister. In the lead-up to its accession, Romania had to amend and adopt numerous laws in order to bring them into line with the EU's basic requirements for its member states. The body responsible for overseeing the constitutionality of these laws was the Romanian Constitutional Court, an extra-judiciary body with judges appointed by the president and each of the two parliamentary chambers, tasked with reviewing acts adopted by lawmakers and often arbitrating disputes that failed to be negotiated politically. Romania's basic law provides guarantees of political pluralism, of checks and balances in the political system, and of a clear separation of powers, with its representative authorities constitutionally required to act in the public interest. However, post-accession, it became clear that in certain areas, laws that had been implemented in order to meet EU standards were being undermined or reversed by a self-serving political elite.

The *people* that became EU citizens in January 2007 enjoyed long before accession the right to vote for their representatives, with fair, free, competitive and reasonably well organized elections being held every 5 years for president and every 4 years for the Parliament. However, electing representatives does not always mean having their interests represented. Indeed, since then, there has been an increasingly low level of public trust in political representatives, which stems mainly from a lack of appropriate governance. Rather than losing hope though, in the last 15 years citizens started to take matters into their own hands, with civil society organizations taking up the role of policy implementers. For example, independent media was saved by the engagement and dedication of journalists who attracted donations in

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support of independent outlets; a non-governmental organization (Dăruiește Viață) raised funds for building, without state help, a much needed children's hospital, which turned out to be the best equipped hospital in the country until now; another non-governmental organization (Code for Romania) offered its services pro bono to the government, deploying in the shortest time an entire digital ecosystem to inform and support citizens affected by the COVID-19 pandemic; and more recently a great number of non-governmental organizations and volunteers mobilized to welcome and assist the more than half a million refugees that crossed the border fleeing the war in Ukraine. The *people* that became EU citizens in 2007 did exercise their right to free movement, with more than 20% of the population emigrating to live and work in other member states during the last 15 years. They remained, however, politically engaged: they queued for hours to cast their ballot when too small a number of polling stations were established across Europe, and in 2018 they returned spontaneously to Bucharest to stage an unprecedentedly large-scale diaspora protest against the government and its failure to curb high-level corruption.

After 7 years of accession negotiations followed by another 15 years of full EU membership, Romanian representatives still prove to be incapable of meeting voter's demands for responsible and responsive law-making and of ensuring the rule of law. In its most recent report of 2021, the European Commission raised concerns about the slow pace of the member state's judicial reform, the ongoing necessity to enhance the legal framework for the fight against high-level corruption and more generally highlighted the need for the stable separation of powers. The independence of Romanian judicial authorities and anti-corruption agencies was questioned over and over again in Commission's reports, demonstrating that Romania's political elites themselves are hardly above suspicion when it comes to corruption. Almost every Romanian government formed after January 2007 has faced charges of graft and corruption against one or more of its ministers; in addition, numerous members of parliament and high-ranking dignitaries are serving prison sentences for offences involving misuse of public office, and many more would face prosecution if they did not enjoy freedom from civil arrest under parliamentary immunity. Furthermore, relevant bills in the field of justice reform continue to be passed through Government Emergency Ordinances, allowing the executive to legislate by decree, bypass the regular legislative process and parliamentary consideration, and preclude public discussion on matters of great political salience. To what extent can Romania's lingering problems in such key policy fields as justice and anti-corruption be regarded as a predictable post-accession syndrome? Could it have been anticipated? How can it be explained? The European Union cultivates democracy and respect for rule of law as its core values and its member states willingly bind themselves to share these values, while candidate states (particularly since the previous three enlargement rounds) have to meet high democratic standards upon their accession. Is EU membership not the guarantee for balance, genuine reform and the subsequent implementation of European norms that it intends to be?

The post-accession developments in Hungary and Poland, among other states, make these questions appear somehow futile and naïve. After the election of 2010, which brought a complete victory for the Fidesz party, Hungary started a radical and

widely criticized revision of its constitution. Supported by more than two-thirds of the members of parliament, Fidesz used this supermajority to capture the Constitution and turn it into a mere instrument to maintain control and silence opponents.[1] Five years later, Poland set on a similar path towards a so-called liberalization of its constitutional order.[2] After 2015, when the Prawo i Sprawedliwość (PiS) party won the parliamentary elections with an outright majority, Poland started to introduce a series of legislative amendments with questionable democratic credentials, which significantly affected the structure of the justice system and the functioning of the Constitutional Tribunal.[3] It did not make any significant changes to the basic law, but developed instead a routine of ignoring it[4] while at the same time insulating its own actions from any constitutional scrutiny. Employing different legislative tools and practices, Poland reached the same result as Hungary: a centralization of power, a weakening of checks on executive discretion and a departure from the rule of law. Disregard for the rule of law is unfortunately far from exceptional among European Union (EU) members;[5] the developments in the two member states have been singled out here, however, because they triggered an unprecedented institutional reaction. Article 7(1) of the Treaty of the European Union (TEU) was activated by the European Commission against Poland in December 2017[6] and by the European Parliament against Hungary in September 2018,[7] invoking a clear "risk of a serious breach" of European values, such as democracy, the rule of law, and the protection of fundamental rights.[8] Several resolutions were adopted by the Parliament and several recommendations were issued by the Commission within its Rule of Law Framework,[9] all aimed at highlighting the two states' deviations from the rule of law, initiating a dialogue and proposing remedial measures which, however, met with very disappointing results. Without going deeply into the background of these cases, suffice it here to admit that the long years of action and reaction between the EU and the two member states ultimately show that it would be a mistake to consider membership in itself to be a guarantee of successful implementation of European laws and full alignment with the Union's values. Even beyond such cases of governance taking obviously illiberal directions, the substantial heterogeneity in the preferences, interests, capabilities and institutional traditions of the states forming the European Union makes it very likely for each and every member to

[1] Kochenov (2021: 137).

[2] Bień-Kacała (2021).

[3] Koncewicz (2018) and Sadurski (2018).

[4] Kochenov (2021: 137).

[5] Lachmayer (2017), Ioannidis (2017), and Vachudova (2016).

[6] European Commission (2017a).

[7] European Parliament (2018).

[8] For an excellent assessment of the strengths and weaknesses of Article 7 TEU see Kochenov (2021).

[9] European Commission (2014a).

be, at times, in certain policy areas and for certain periods of time, reluctant to bear the costs of compliance.[10]

Where laws are concerned, while the responsibility for the transposition and implementation of the *acquis* rests largely with the member states, the European Union does have a system for securing rule transfer. It has at its disposal a number of mechanisms in order to ensure the successful transposition and implementation of its laws. Either through learning, socialization, consultation, expertise, negotiation, capacity building, but most importantly through monitoring and sanctioning, the Union proves largely efficient in bringing member states into compliance.[11] A much weightier challenge to be met with a much narrower set of tools is ensuring commitment to European values, democratic standards and constitutional principles, an endeavour which largely falls beyond the scope of the enforceable *acquis*.[12] Abuse of power, corruption and poor administration are said to represent fundamental challenges to the core democratic principles of the European Union, likely not only to disturb the implementation of the *acquis communautaire*, but also to affect the proper functioning of the single market. Therefore, the EU has attached—and continues to attach—a high priority to states' good governance practices and their commitment to the rule of law, justice and democracy; it remains limited, however, in its power to see these priorities carried out in the member states.[13]

It was with the introduction of the Copenhagen criteria in 1993 that the EU tightened its accession requirements to include not only economic conditions for establishing a functioning market economy, but also value-driven political conditions amenable to maintaining institutional stability and a well-balanced constitutional system; respect for rule of law and the protection of national minorities were regarded as highly relevant indicators of democratic stability. In effect, the Copenhagen criteria marked a shift away from taking for granted democracy and the rule of law and towards laying down a broader set of political principles to guide EU accession. The Union requested from its candidates to membership an ex ante proof of their capacity to nurture a stable democracy, institutional and legislative equilibrium and respect for human rights. Introduced in the context of eastern enlargement, this type of conditionality[14] required states to prove their democratic credentials before accession negotiations were opened. The EU thus offered the Central and East-European candidates a viable path towards membership only if they were able to prove their democratic maturity and conditional upon the fulfilment of certain *acquis*-related criteria. By responding positively to their application and by opening the accession negotiations, the EU acknowledged their capacity to establish a stable democratic order and rule of law, as well as their willingness and ability to

[10] Börzel (2002: 195).

[11] See Börzel et al. (2010), Hartlapp (2007), and Börzel (2003).

[12] Kochenov (2017: 430–1).

[13] For a wide range of perspectives and solutions to this problem see the contributions in Closa and Kochenov (2016).

[14] What Schimmelfennig and Sedelmeier (2004) term as '*democratic conditionality*'.

fully implement the *acquis communautaire*, i.e. their readiness to become full members. Implicit in the Copenhagen criteria was thus the expectation for states to align with basic democratic principles and the rule of law already during accession. What is more, the European Commission not only extended the scope of its conditionality during the eastern enlargement, but also strengthened its mechanisms. Along with the broadened conditionality, the Commission developed stronger and more targeted mechanisms to ensure compliance at the time when states were bidding for membership. The dividing up of the enlargement process into distinct stages proved to be an important innovation, as it allowed the Commission to attach conditions to every stage, which provided a major momentum for aspiring members to maintain their reform efforts.[15] Given the number and the very diverse nature of aspiring countries, the Commission constantly re-adjusted its bargaining strategy during the eastern enlargement process; as a result, reform demands and the intensity of conditionality varied significantly across time and from candidate to candidate. The Union's approach to eastern enlargement thus combined a rule-governed process with clearly established accession criteria, but preserved a significant degree of discretion in interpreting and applying these rules.[16] By means of regular monitoring and benchmarking, the Commission not only assessed candidate states' reform performance, their democratic stability and their respect for rule of law, it also singled out for each aspiring country individual conditions for access to the Union, the Schengen area or other types of rewards.

However, regardless of how successfully this values-enforcement-mechanism was used in the pre-accession context to ensure candidate-states' compliance with core EU principles, it had no implications for states once they joined the Union. The higher the hopes associated with the Copenhagen criteria for rule of law observance and good democratic governance, the greater the disappointment with the EU's inability to impose the same standards once states gained full membership. An answer to this so-called Copenhagen dilemma was the establishment in 2014 of the above-mentioned Rule of Law Framework,[17] an early warning instrument applicable to all member states and aimed at triggering and guiding dialogue in the event of a serious threat to the Union's values. The ongoing situation in Hungary and Poland stands as proof, however, of the fact that the light-touch[18] of the mechanism falls short of an effective control of member states' respect for the rule of law.

In this context, Romania stands out as an EU member whose leaders (like in the case of Hungary and Poland) attempted to weaken the institutional checks and balances and capture the constitution,[19] but whose attempts (unlike in the case of Hungary and Poland) were effectively blocked, apparently by virtue of EU's

[15] Steunenberg and Dimitrova (2007: 11).

[16] Papadimitriou and Gateva (2009: 153).

[17] European Commission (2014a).

[18] Kochenov and Pech (2015).

[19] Müller (2015); Perju (2015).

Cooperation and Verification Mechanism (CVM).[20] Arguably, CVM, which was applied only to Romania and Bulgaria, proved one of the Union's most successful instruments for values-compliance, enhancing the enforceability of the *democratic acquis*. Romania's trampling on the rule of law was allegedly halted by the EU's conditionality being extended, through the CVM, to the post-accession period.

Romania has since been subject to this vertical post-accession conditionality mechanism, which keeps the state under political pressure, a threat of concrete sanctions and a constant monitoring and benchmarking. The CVM will be effectively discontinued only once all the established benchmark criteria have been met: (1) to ensure a more transparent and efficient judicial process; (2) to establish an integrity agency with the responsibility to verify assets, incompatibilities and identify potential conflicts of interest, and to issue mandatory decisions on the basis of which dissuasive sanctions can be taken; (3) to build on progress already made and to continue to conduct professional, non-partisan investigations into allegations of high-level corruption; (4) to take further measures to prevent and fight corruption, in particular at the local government level. Should Romania fail to adequately address these benchmarks, the Commission is empowered to apply safeguarding measures as provided for in the country's Accession Treaty, which will subject the member state to potential cuts in EU aid or lead to non-recognition of its judicial decisions.[21]

Given these developments in the EU's mechanism of conditionality as extended to the post-accession period, Romania is deemed reasonably likely to remain compliant with European laws and values.[22] The fact that it is subject to stricter monitoring while still having a weak capacity to bear the costs of infringement procedures or financial sanctions, along with the fact that it is eager to build a reputation as a good member, both raise expectations with regard to its compliance record. After a long period of accession negotiations and more than a decade of monitoring and reporting in the area of justice and anti-corruption, it would only be plausible to assume that Romania is close to completing its judicial reform, thereby setting an example for the successful implementation and enforcement of the EU's *democratic acquis*.

Yet, an in-depth analysis of its legal compliance performance after January 2007 throws into question the effectiveness of the accession and post-accession conditionality in bringing about lasting reform. The case of Romania reveals that in the field of public integrity and anti-corruption, the country has not necessarily progressed since its accession, but in fact has been subtly backsliding in terms of transposition and implementation of EU legislation in these key areas. Already in

[20] Questioning their justice-reform portfolios and anticipating that the South-East European candidates would face even higher implementation costs than those faced in Central and Eastern-Europe, which would make them more reluctant to implement deep domestic or administrative reforms, the European Commission introduced back in 2006 a much stricter regime for inducing compliance in Romania and Bulgaria. Both member states are still subject to this post-accession conditionality.

[21] European Commission (European Commission, 2007a, b: 3).

[22] Buzogány (2021), Lacatus and Sedelmeier (2020), Vachudova (2016), and Epstein and Jacoby (2014).

2012, the Commission, in its assessment of Romania's developments under the Cooperation and Verification Mechanism during the first 5 years of EU membership,[23] raised serious concerns about the member state's failure to establish an independent judicial system and to respect the rule of law, questioning the state's reliability and the sustainability and irreversibility of its reform process. The Commission's 2012 report[24] took note of inconsistent jurisprudence, difficulties with enforcement and inefficient judicial practices, but more importantly it noted the prevailing political challenges to judicial decisions, the recent attempts to undermine the Constitutional Court, the growing disregard of the political elite for established law-making procedures, the repeated refusals of the parliament to allow the opening of criminal investigations against parliamentarians who are current or former Ministers, and the growing number of parliamentarians still holding their seats in parliament whilst being convicted of serious offences. In the same vein, the report marking the tenth anniversary of the Cooperation and Verification Mechanism[25] questioned the judicial independence and the authority of court decisions in Romania, and more importantly, it pointed out with even greater emphasis the specific attempts to reverse reforms, which have inevitably led Romania further away from meeting its objectives. The Commission's latest report of 2021[26] cautions against several amendments to Justice laws that are still in force and that have a serious negative impact on the independence of the judiciary and on the quality and efficiency of the justice system in general. It notes as well the fact that the adopted Codes of Conduct for parliamentarians are insufficient in preventing disregard for judicial independence in the parliamentary process, and raises serious concerns about an established pattern of triggering disciplinary proceedings against judges or public prosecutors that oppose the direction of the judicial reform. At the same time, as the report signals, important challenges remain as to the sustainability and irreversibility of the fight against corruption.

As the following analysis will show, an inquiry into Romania's post-accession public integrity reform, and its legislative practices in general, provides evidence of the country's convergence with European rules and requirements, yet not without divergence, as the member state's progress is inconsistent, unsustainable and thus uncertain. Romania's evolution under the Cooperation and Verification Mechanism presents a mixed picture of significant improvement and abrupt reversal of reform; the country appears to be responding to external pressure without genuine commitment, thereby undermining the relevance and credibility of reform. Its post-accession instances of regress make the case of Romania particularly interesting for studies on Europeanization and its potential to trigger genuine reform and sustainable change, above all due to the fact that such instances of reversal are much more subtle, hidden behind legislative and procedural cosmetics. Putting all

[23] European Commission (2012a).

[24] European Commission (2012a).

[25] European Commission (2017b).

[26] European Commission (2021a).

things in balance, it can be established that after January 2007 Romania experienced a backslide of its public integrity reform, executed through well-concealed attempts to subvert the legislation by means of procedural manoeuvres and through a non-linear approach to reform reversal. The state's development in terms of justice and anti-corruption during the post-accession period was marked by an alternation of progress and regress, understood here as a methodical persistence to offset uncomfortable Europeanizing change. Starting from observed instances of this kind of reform reversal, the following pages will uncover the factors that can account for these post-accession setbacks.

Romania is definitely not an isolated example of de-Europeanization: declining trends can be observed in Bulgaria, which is similarly subject to post-accession conditionality, as well as in other new, Central and East- and Southeast-European member states, all of which reveal mixed reform records at best.[27] Recent studies and reports[28] document in fact a deterioration over the last decade of the democracy scores of almost all countries that joined the European Union in 2004 and 2007. The Romanian case, as presented here, is relevant in this context not for the fact that it adds yet another example of post-accession backsliding, but rather that it exposes more elusive forms of reversal observable only through a detailed inspection of the reforms as adopted and amended at the domestic level. While it is not specifically a study on de-democratization, this research does also contribute to the current debate on democratic backslide,[29] by revealing patterns of defective behaviour where free elections are held and where the appearance of democratic checks and balances is fully maintained.

1.2 The Eastern European Paradox

How surprising is it after all that countries with relatively high levels of corruption fail to successfully implement EU-led democratic reforms? Why would one expect corrupt political leaders to acknowledge the negative impact of corruption and genuinely commit to combating the issue by making real efforts to meet strict EU requirements and high rule of law standards? Studies on Europeanization claim that the European Union can successfully trigger and stabilize anti-corruption reforms in Central, Eastern and South-Eastern Europe using its pre- and post-accession leverage. They rely on both the idea of broader and stronger compliance-inducing mechanisms, with an extended conditionality for Romania and Bulgaria, and on the idea of a path-dependency inherent in the European policy-making process.

[27] Lacatus and Sedelmeier (2020), Anghel (2020), and Börzel and Fagan (2017).

[28] Rich sources of data are the reports published by the Bertelsmann Foundation, the Economist Intelligence Unit, the Freedom House Nations in Transit, or the V-Dem Democracy Reports.

[29] Bogaards (2018).

Much of the early literature on enlargement-led Europeanization pays close attention to EU-level factors that explain the adoption of wide-ranging reforms being undertaken by states in Central and Eastern-Europe while bidding for membership; domestic change is thought to be generated at the EU level as a top-down process and triggered through the policy of conditionality.[30] Relying on this assumption and building their argument on a rational-choice perspective, most approaches to Europeanization East emphasize the existence of an identified level of misalignment between the Union and the candidate states, which evokes adaptational pressure from the EU, which further translates into reform achievements at the domestic level in each respective state. This external adaptational pressure is assumed to be an important factor setting in motion domestic reform processes. Following such a strategy of *reinforcement by reward*,[31] the EU offers candidates the opportunity for membership in exchange for compliance with its conditions. As a response, candidate-states, being utility-maximizers, seek to secure the benefits of EU membership, and consequently bear the costs of adapting and implementing reforms, even when they pose challenges as difficult as implementing anti-corruption reforms in a corrupt context.

What happens, however, after a state's accession to the Union, when EU membership can no longer be used as a conditional incentive for compliance with European requirements? Following largely the same logic, the scholarship assessing the dynamic of states after they gained full EU membership continues to overemphasize the importance of external incentives in triggering and maintaining reform. Researchers are hopeful with regard to the ongoing monitoring and benchmarking through the Cooperation and Verification Mechanism (CVM) for Romania and Bulgaria, which is thought to be successful in preventing a shift from compliant pre-accession behaviour towards an abrupt post-accession divergence.[32] Moreover, it is often assumed that the changes adopted before accession remain in place after it. Existing reforms (as opposed to the reforms not yet adopted by a candidate- or a member-state) are thought to be locked in,[33] their dismantlement inevitably incurring additional costs states are unwilling to pay. Such an assumption leads scholars to anticipate a slow-down or even a halt in the adoption of new reforms at the domestic level after a state's accession to the EU, but generally to exclude the possibility of reform reversal. Research in the field retains a remarkable optimism with regard to the success of already undertaken reforms, as long as the EU rewards or sanctions outweigh domestic adjustment costs.[34]

[30] Sedelmeier (2011), Gateva (2010), Papadimitriou and Gateva (2009), Sedelmeier (2008), Pridham (2007b), and Steunenberg and Dimitrova (2007).

[31] Schimmelfennig and Sedelmeier (2005).

[32] Schimmelfennig and Sedelmeier (2020), Lacatus and Sedelmeier (2020), Vachudova (2016), and Spendzharova and Vachudova (2012).

[33] Sedelmeier (2012).

[34] Schimmelfennig and Sedelmeier (2020).

This optimism is, however, not always mirrored by reality. By discussing domestic costs-benefits calculations in broad general terms, much of the existing literature remains blind to the fact that dismantling reforms might incur high societal costs, while at the same time producing benefits for the members of the political elite. The costs-benefits calculations of the political elite do not always take account of the benefits or costs at a societal level. Particularly in states affected by high-level corruption, claims of successful Europeanization in the area of justice and public integrity remain highly counter-intuitive. The priority attached by the EU to the rule of law and judicial reform, and its pressure for change exerted through the CVM, can hardly eliminate the fundamental incentive of self-interested lawmakers to exploit the political process in pursuit of personal benefits. A self-serving political elite would obviously be unwilling to genuinely commit to the implementation of substantial anti-corruption reforms, regardless of the fact that this is to the benefit of the wider society and in line with European requirements.

This book seeks to challenge the assumption that changes made pre-accession remain in place, being too difficult or costly to reverse.[35] In line with more recent approaches to Europeanization,[36] it proposes instead a theoretical model that contends that the course of Europeanizing reform depends on political will and on the interests pursued by legislators at the domestic level. It demonstrates how political elites, on the basis of their personal preferences alone, can easily reduce legal compliance and reverse formally adopted laws. Unsuccessful policies are not necessarily a consequence of limited institutional capacities, unclear or obtuse drafting or inefficient implementation of law. They may just as well result from legislators' instrumental use of policies and of the democratic framework to extract personal benefits that go beyond holding power or gaining electoral returns. Based on an interests-centred theoretical framework and supported by detailed empirical evidence as to the preferences of political elites as opposed to those of the broader society, this book helps us to understand why a lock-in of Europeanizing reforms is not always successful. Such an analysis becomes even more relevant in the present context, when the EU prioritizes a shift from *promoting* to *preserving* Europeanization in Central and Eastern Europe.

This approach puts the effectiveness of conditionality in a new light, drawing attention to the possibility for domestic change to be carried out reluctantly by political actors interested in seizing other opportunities than those derived from convergence with the EU. Change might conveniently be pursued for as long as it serves the interests of the elite, with positive reforms being reversed when they no longer produce such benefits. A state where an already adopted reform is later gradually and subtly reversed, as in the case of Romania, can hardly be regarded as involuntarily non-compliant. Such a departure from European norms or standards

[35] Sedelmeier (2012).

[36] Innes (2014), Sedelmeier (2014), Noutcheva and Aydin-Düzgit (2012), and Spendzharova and Vachudova (2012).

can hardly be blamed on the lack of institutional and administrative capacity[37] since any such lack of capacity to adapt to European conditions would have prevented Romania from adopting reforms in the first place. It is much more likely that the observed post-accession defection is intentional, which in turn casts a different light on the state's pre-accession commitments to compliance. Members of the political elite might have pushed for reform during the state's accession phase, knowing that they can dismantle these reforms after achieving full membership. In this context, it seems reasonable to distinguish between delivering sound and substantial reform and implementing numerous reform steps that are intentionally superficial, designed to gain certain rewards and aimed at being reversed or diluted after the benefits have been reaped. The following fine-grained analysis of two areas of reform, with an in-depth inquiry into the interests pursued at the domestic level during reform processes, yields valuable insights into Romania's compliance performance and explains the co-existence of substantial reforms in certain areas with subtle de-Europeanization in others.

However, assuming that the interests of political actors alone can determine the course of reform and the success of Europeanization would be unreasonable. Therefore, in studying Romania's de-Europeanization, the following pages will draw on early Europeanization literature[38] and go on to develop a theoretical framework which moves beyond existing research by linking Europeanization studies with elite theories. It demonstrates a causal link between the pursuit of personal interests by the domestic political elite and the more structural result of de-Europeanization, and accommodates the interplay between actors and structures. It stresses the crucial role played by domestic political elites in bringing the social and legal reality in line with EU requirements, and identifies a range of structural factors that trigger a self-interested behaviour of the elite, their abuse of power and their readiness to sacrifice societal well-being for narrow personal benefits. The book is an inquiry into the motivations that drive legislators to make particular decisions on the one hand, and into the structural characteristics and dynamics of the elite that invite a selfish rather than responsible and responsive behaviour on the other. Such an approach provides a more accurate conceptualization of Europeanization, by drawing on factors not usually considered in the literature, primarily that of elite interests, but also factors such as fragmentation, elite permeability, inter-institutional frictions, value-consensus and the linkages between elites and nonelites. The combined effect of these factors is uniquely able to explain Romania's shift from Europeanization to de-Europeanization in certain areas of reform (i.e. the public integrity and anti-corruption reform) and not in others (i.e. the nature conservation reform). Thereby it directs attention to the evident fact that in states plagued by high level corruption, a genuine anti-corruption reform cannot be carried out by the allegedly corrupt political elite.

[37] Buzogány (2021) and Börzel et al. (2010).

[38] Börzel and Risse (2000).

Romania's persistently disappointing corruption scores and record of democratic rule[39] provide reasons to believe that the domestic political elite might not be genuinely committed to adopting sound integrity reforms, despite the EU's pre- and post-accession conditionality. If we acknowledge the fact that corruption on a grand scale was and still remains a daunting challenge in Romania 15 years after the state's EU accession, it seems pertinent to question the extent to which a problem can be expected to be solved by those who are themselves embroiled in the problem. It is on these grounds that the interests of the political elite in Romania are here assumed likely to run counter to societal expectations, especially in the fields of public integrity and anti-corruption reform. Despite its positive pre-accession trend, Romania has since remained vulnerable to reversals of its reforms, which casts doubt on whether the Romanian political elite was ever committed to the EU-driven justice reform, to tackling the problem of corruption and the lack of public integrity, to showing respect for the rule of law and to governing according to the interests of Romanian society.

1.3 The Structure of the Book

This book undertakes to find an empirically convincing explanation for Romania's post-accession selective backtracking. It reconsiders the state's compliance record in two areas of reform through the careful scrutiny of the legislative amendments adopted during the last 15 years, and the various motivations that drove them. It outlines the high emphasis placed by the EU on the incorporation of its rules and standards into domestic legislation, and contrasts this with Romania's questionable and inconsistent legislative performance. Finally, it shows that the European Union's policy of conditionality, however assertive or extensive, cannot guarantee compliance with its rules unless domestic political elites are committed to reform.[40]

The link between the EU's use of external incentives and the individual interests of domestic decision-makers in pursuing change is here developed into an overall theoretical model, where EU-driven reforms thrive under supportive domestic institutional frameworks with few veto players and a strong political will for domestic change; they are in turn reversed as soon as domestic political elites favour short-term individual gains over European norms and objectives, as well as over the interests of the society at large. The conceptual core of this model is founded on the idea of personal interests pursued by the political elite. Inquiring into the personal interests of the elite follows from the assumption that representatives, when adopting

[39] A V-Dem country analysis with the *control of corruption* and the *Liberal Democracy Index* as indicators (https://www.v-dem.net/en/analysis/CountryGraph/) as well as the World Bank's Worldwide Governance Indicators for Romania (https://info.worldbank.org/governance/wgi/Home/Reports) show a low and slightly fluctuating governance score for Romania since 2007.

[40] Innes (2014), Sedelmeier (2014), and Spendzharova and Vachudova (2012).

Europeanizing reforms, do not always act in the interests of the represented. The theoretical argument in fact builds on the contradiction between the interests of the domestic political elite and those of society. This is not to claim that the decisions adopted by the elite necessarily contradict or ignore societal interests, or that the decisions serving the common good cannot be motivated by self-interest. The argument singles out those instances when political decisions run counter to both European norms and the preferences of the electorate, thus hindering Europeanization and distorting political representation.

This argument, its theoretical anchoring and its empirical substantiation on the case of Romania, are developed in this book in four consecutive steps. First, after a brief terminological introduction to the concept of de-Europeanization, Chap. 2 offers a critical analysis of the existing scholarship, focusing in particular on the studies covering Eastern Europe and locating them in the wider context of Europeanization research. Two major gaps are identified in the literature: one is the lack of a theoretically grounded model of de-Europeanization substantiated through fine-grained analyses of domestic transposition; the other is the lack of sufficient empirical research on the relevance of domestic political elites for the success and stability of EU-led reforms. The chapter illustrates how this study bridges these gaps, proposing a theoretical framework that explains selective backsliding and links reform reversal (the dependent variable) with the elite's pursuit of individual interests (the independent variable). This theoretical framework builds on the classical rational-choice model of top-down Europeanization proposed by Börzel and Risse,[41] which has been echoed—though not always explicitly—by numerous scholars focusing on Eastern Europe; it reconstructs this model to accommodate an explanation for reform reversal under the impact of the individual preferences of the domestic political elite.

This revised model of Europeanization stresses the crucial role played by domestic political elites in bringing the social and legal reality into line with EU requirements. It identifies a range of structural factors that makes the self-interested behaviour of the elite more likely, abetting their abuse of power and their readiness to sacrifice societal well-being for narrow personal benefits. Three factors in particular, subsumed under the concept of elite fragmentation, are identified as relevant conditions that invite the pursuit of personal interests: first, the circulation of the political elite, with a profound influence on the composition of the ruling stratum and indirectly affecting the conduct of its members; second, the institutional context in which elites are situated, which—if marked by conflicts of interests instead of cross institutional synergies—may affect the group-dynamics causing the elite to disintegrate and engage in self-serving behaviour; and third, the linkages between the elite members with a particular emphasis on their respective levels of solidarity and value consensus influencing the stability and predictability of their choices. This detailed study of the composition and dynamics of political elites allows for a nuanced understanding of elite fragmentation and invites reflection on the intuitive

[41] Börzel and Risse (2000).

assumption that corrupt elites are united. The uniform behaviour of elites in their corrupt practices (i.e. cross-party efforts to undermine anti-corruption legislation and democratic institutions) is in itself a sign of enhanced elite fragmentation rather than cohesion, as the ties between elite members rely solely on volatile short-term interests. The analysis goes beyond the level of fragmentation within the ruling stratum however, being complemented by an inquiry into the nature of the relationship between representatives and represented, between elite and nonelite, taking into account the extent to which elites and nonelites are congruent in their values and interests, as well as the role played by the nonelite (e.g. civil society) as a control factor that secures the responsiveness of the elites to societal needs and wishes. In a nutshell, the theoretical Chap. 2 invites a careful observation of the relationship among elite members and between elite and nonelite. It postulates that the pursuit of personal interests is more likely to occur in an over-fragmented ruling stratum and is only possible when there are no constraints put in place by civil society.

Chapter 3 starts the empirical analysis by examining the structural factors that influence the composition and conduct of the Romanian political elite. Its high level of fragmentation during the pre- and post-accession years results from a narrow and shallow circulation pattern, from conflicting institutional or organizational interests and from a lack of value consensus among elite members. All these factors culminate in the pursuit of narrow particular interests at the highest levels of decision-making, leading to the failure of democracy even where democratic institutions are in place. This second part of the book shows the political environment in which EU-driven reforms are carried out to be one that is characterized by intra-party and inter-institutional dissension, as well as ideological inconsistencies. The concept of fragmentation offers an interpretative frame for the observation and evaluation of these intra- and inter-organizational dynamics. Romania provides a revealing example of over-fragmentation: a political climate of distrust, uncertainty and unpredictability that favours self-interested behaviour, and in which elected elites can be bound neither to take account of the preferences of their own party, nor to take into account the concerns of their electorate. Intra-party dynamics show a remarkably centralized selection and removal of leaders, and a reduced members' involvement in party affairs in almost all major political parties. As a consequence, a wide power disparity between the various party strata results in a weak intra-party cohesion and organizational loyalty. Moreover, a detailed analysis of the patterns of interaction between or among political parties, discloses how in the last decades the major Romanian political parties experienced numerous splits and mergers, how several opportunistic coalitions were forged on the eve of, or midway between, parliamentary elections, and how at an individual level, numerous party members abruptly changed their affiliation in order to obtain secure political positions. Placing this analysis of fragmentation on a timeline reveals the rather surprising fact that the Romanian political elite is able to overcome structural factors and find political compromise and scope for cooperation, although it still lacks the will to commit indefinitely to the rules of democratic pluralism. The years preceding the state's EU accession were marked by a period of calm and apparent consensus, which ended abruptly in 2007. This post-accession disintegration of the Romanian political elite

still conditions the behaviour of the elite-members and the stability of EU-driven reforms.

In Chap. 4, the focus shifts away from the analysis of the elite to an analysis of their legislative conduct in the area of public integrity and anti-corruption. Romania's integrity and anti-corruption reform presents a most likely case for de-Europeanization, in a context with prevalent high-level corruption. That an allegedly corrupt political elite who act out of personal interest would be in favour of blocking justice reforms is self-evident. The focus here is on the details of how this plays out in the transposition of specific European policies. The analysis follows the legislative path of Romania's integrity law, which clearly demonstrates a pattern of diluting already existing provisions, with repeated subtle attempts to reverse those positive reform steps that have already been undertaken. With de-Europeanization defined in strictly legislative terms (i.e. narrowed down to the transposition of European laws and requirements), any reform reversal is measured, for each article of law, against the level of positive change it has already achieved. The in-depth empirical evidence confirms de-Europeanization, it illustrates how the use of inadequate and hasty procedures and the inconsistent adoption of amendments that are ill-fitted to the scope of the law in question had dire consequences for the quality of legislation, as well as affecting the quality of institutional interactions, the level of public trust, and the engagement of the nonelite. As the analysis shows, the goals of the legislators clearly pointed towards a pursuit of personal interests that extended beyond winning elections. They proposed amendments that frustrated the regulative purpose and generated legislative ambiguity and confusion which was far from accidental. They allowed the use of sloppy legislative techniques, which made any meaningful reform impossible. Yet more importantly, they opted for a self-centred rather than a social-centred approach when justifying and voting on legislative amendments. This case singles out the crucial role played by elite preferences in shaping reforms and reform processes laying bare the subtle patterns of abusive behaviour in legislatures generally considered to be rule-governed and transparent. It also helps to explain the limits of post-accession conditionality, and the challenges to reduce the abuse of power in settings known to be already corrupt, particularly in those fields where civil society is still weak and unable to hold the elites accountable.

A second case study is provided in Chap. 5: an inquiry into Romania's nature conservation reform. This case provides a valuable example of a policy field in which the same political elite lacks strong personal incentives to reverse change and thus allows Europeanizing reforms to unfold. The evaluation of the legislative performance again shows a questionable use of legislative procedures, but this time coupled with a higher level of responsibility and responsivity to societal concerns. The in-depth analysis of the manner in which EU requirements in this field were transposed and amended shows the degree to which the legislation underwent significant improvements over time. Subsequent revisions of the law not only intended to address people's need for a clean environment and the community's need for sustainable development; they also articulated the need of the administrators of protected areas to work on a clear legal basis. More importantly still, this case provides an example of a policy field in which the very same political

elite is motivated to cooperate with civil society in developing and implementing effective and sound legislation in accordance with European standards. The expansion of protected areas in preparation for EU membership generated an increased need for an effective management of these areas, which translated into a legislative solution allowing civil society organizations and the scientific community to assume responsibility on an equal footing with the government. The case study shows that the Europeanizing trend of nature conservation legislation, and the positive development of the reform during Romania's post-accession period, is inextricably linked to the emergence of a strong environmental civil society. This empowerment of civil society contributed to an increase in the level of public engagement in support of environmental causes, and resulted in less scope for the pursuit of personal interests by the political elite in this sector in the long term. In this case, European impulses for change were able to translate into successful reforms.

Both of these cases are highly relevant for assessing Romania's post-accession compliance record, as the European Commission attaches equally high salience to both areas of reform and is very active in detecting and sanctioning instances of non-compliance.[42] Very similar in terms of the degree of external adaptational pressure for domestic change, the two reforms have very different Europeanization outcomes: repeated successful attempts at reversal in one field but not in the other. Through a *most-different cases* design, this book explains Romania's selective backtracking by exposing the manner in which domestic political elites instrumentalize both the EU and the domestic democratic framework in pursuit of personal gains. Too heavily focused on institutional factors and on compliance-inducing instruments, Europeanization literature fails to account for the role played by individual decision-makers in upholding domestic reforms. It is blind to the dangers posed by fragmented self-serving political elites, who are able to alter the course of reform by deviating from both the public interest and European requirements. This study reconfigures the idea of domestic interests; shifting the focus away from group, party or societal interests, and towards the private interests of the elite, whose pursuit of which is revealed to lead to unpredictable legislative outcomes. This approach also alerts Europeanization scholars to the possibility of a shift from overt to more discreet forms of abuse, and stresses the importance of identifying (ideally at an early stage) the subtle ways in which political elites reverse legislation and weaken the democratic framework. A careful observation of all the steps undertaken in the process of transposing European norms and of revising legislation can go a long way towards identifying instances of reversal and in using them to reveal systemic infringements[43] before it is too late.

While this understanding of Europeanization, modelled as a reversible process, may seem to offer a somewhat pessimistic prospect for reform, this book nonetheless suggests, in its concluding Chap. 6, a cure to these problems, found in the empowerment of civil society to partake, in one manner or another, in the law-making

[42] This initial justification of the case selection will be more extensively developed in Chap. 2.

[43] Scheppele (2016).

process. Improving the capacities of civil society to participate more effectively in policy formulation and implementation makes democratic consolidation more feasible and allows for genuine Europeanizing reform. Romanian civil society organizations face increasingly difficult access to funding and increasingly burdensome registration and reporting requirements, while the police forces enjoy more and more latitude to disperse public protests. These challenges notwithstanding, the Romanian civil society manages to capitalize on its strength gained in the environmental sector and triggers a broader public engagement that spills over from the domain of environmental protection to the area of anti-corruption and good democratic governance. Along these lines, the present book serves as a cautionary tale and as an invitation for the EU to fully support civil society in its Central-, East- and Southeast-European member states.

Chapter 2
Towards a Theory of De-Europeanization, an Elite-Based Approach

Concepts without percepts are empty; percepts without concepts are blind. (Kant)

Article 76 of the Romanian law regarding prisoners' rights, Law 275 of 2006,[1] states that a prison sentence be reduced by 3 days for every 2 days of work if prisoners were involved in scientific research, inventions or patented innovations. This article, which clearly reflected the rehabilitative focus of imprisonment, was later amended by Law 254 of 2013.[2] The new law shifted the emphasis from the amount of time that prisoners invested in scientific research to the number of scientific works they produced during detention.[3] This minor amendment to the 2006 law is emblematic in that it shows how a provision in line with European standards that emphasized the rehabilitation of prisoners has been remade into one that offers a particular group of detainees a clear prospect of early release. Following this legislative amendment, Romania saw an abrupt increase in prisoners' scientific publications between 2014 and 2015, with over 337 works published in 2015 alone; more than 103 scientific projects by 63 detainees were under way in January 2016, which means that some inmates were working simultaneously on more than one publication.[4] A large number of these scientific works were authored by former members of parliament or former members of national or regional governments who had been sentenced to prison on charges of corruption. This is but one of many examples of *legal corruption*[5] demonstrating a clever drafting technique through which legislators instrumentalize policies and the democratic framework for their own personal benefit. This case, seemingly insignificant in its scale, highlights the role of

[1] Parliament of Romania (2006). Law 275/2006.

[2] Parliament of Romania (2013). Law 254/2013.

[3] Article 96 of Law 254 of 2013 provides for a shortening with 30 days of the sentence for every published work or patented invention.

[4] Data provided by the Romanian National Administration for Penitentiaries and published by the Romanian Ministry of Justice in a proposal to amend the respective law: Romanian Ministry of Justice (2016).

[5] Kaufmann and Vicente (2011).

L. Martin-Russu, *Deforming the Reform*, Contributions to Political Science,
https://doi.org/10.1007/978-3-031-11081-8_2

legislatures and of individual legislators in actively encouraging abusive and corrupt behaviour, at the expense of any chance for genuine reforms.

Outside of anti-corruption reforms, the success of any policy and the proper functioning of the entire political system depends on the choices made by political representatives. Assessing the degree to which a given system is corrupt involves identifying the extent to which the rules defining the proper functioning of that system are violated; thus, any understanding of corrupt legislative decision-making relies on what is defined as appropriate legislative decision-making.[6] This requires that political representatives are defined as agents entrusted with the broad delegated authority to engage in policy-making under a public-interest mandate.[7] In this case, any parliamentarian's use of entrusted legislative powers that puts their private gains before the interests of their voters would represent a loss of integrity and thus a form of engagement in corrupt practices. This perspective draws on the work of Kaufmann and Vicente,[8] who understand an act to be corrupt once public officials use their position for purposes that deviate from the public interest. Building on this broad understanding of corruption as "the use of entrusted power for private gain",[9] we will define as *legal corruption* all cases in which public officials use their legitimately entrusted power in order to pursue personal goals and gain private benefits at the expense of public ones *without* breaching existing legislation.[10] Without constituting a study of corrupt practices per se, the present research utilizes the notion of corruption (understood as "subversion of the public interest"[11]) in order to highlight the significant role that such intentional misconduct might play in the adoption of legislative reforms. Employed in this way, the concept of legal corruption will allow us to lay bare more subtle patterns of abusive behaviour in settings that are generally considered to be rule-governed and transparent, such as national parliaments.

As legislatures are agents entrusted with establishing legality, the quality of the adopted legal framework will depend largely on the interests pursued by lawmakers and the extent to which they can be held accountable by those delegating their power, i.e. the voters. It is therefore not surprising that officials who enjoy broad powers of discretion in systems that are already corrupt and lack adequate and efficient mechanisms of legislative control are rather likely to prefer a corruption-prone legal framework, being inclined to adopt laws that primarily serve their

[6] Hellman (2013), Burke (1997), and Strauss (1995).

[7] The Romanian Constitution in Art. 61 (1) defines the Parliament as "the supreme representative body of the Romanian people and the sole legislative authority of the country", whereas Art. 69 (1) reiterates that "in the exercise of their mandate Deputies and Senators shall be in the service of the people." Parliament of Romania (2003). Constitution of Romania.

[8] Kaufmann and Vicente (2011).

[9] Kaufmann and Vicente (2011: 195).

[10] Teachout (2009: 377) aptly points out that such a broad meaning of corruption, while being rather close to the popular use of the term, is nevertheless very distant from most of the academic approaches to corruption.

[11] Underkuffler (2005: 27).

particular interests and only secondarily the interests of the society at large. Corrupt self-serving practices can thus undermine the legislative process per se, encouraging rather than suppressing such undesirable, yet legal, behaviour. In such contexts, political decision-makers are unlikely to curb corruption through meaningful legal and administrative action. The legal and administrative action undertaken at present by the Romanian political elite is indeed far from meaningful. Anti-corruption efforts need to be both a matter of establishing institutions and formal democratic or judicial mechanisms, but also a matter of political accountability. However, Romanian legislators tend to focus on the former while completely disregarding the latter. This leads to an overly zealous development of institutions that lack the means and resources for effective action. Chapter 4 will provide an excellent example of this; an anti-corruption agency created without the appropriate legislative basis or the technical capacity for effective action. As we will see, as long as the public accountability of political decision-makers and existing oversight mechanisms are weak, the efforts to curb established patterns of corruption will remain equally weak.

Understanding corrupt behaviour in terms of political will and an actor's attitude towards public service, and not only as a violation (committed for private gain) of the existing laws, draws attention to more elusive forms of abuse. It highlights the important role of in-depth analyses of both the legislative output and of the representatives' preferences, which in this context are considered crucial in shaping expectations regarding the success of anti-corruption reforms, and of reforms in general. This approach provides a new perspective on Europeanization and EU-triggered legislative reform: it brings into sharper focus the intentions of the domestic legislator in passing or amending a law, and provides a more comprehensive picture of the quality and character of the legislative output. The intention of the political leaders to serve the public interest is here taken to be key for the success of anti-corruption and other Europeanizing reforms (while the pursuit of private rather than societal goals at the expense of the common good constitutes an act of corrupting those reforms). Throughout this book, the discussion of Romania's EU-driven reforms will focus on the interests pursued by the legislators in drafting and adopting legislative acts, providing a comprehensive analysis not of corruption itself, but of the corruptive potential of legislatures in the context of domestic Europeanization-driven change.

The lack of support for sustained anti-corruption efforts at the domestic level among political decision-makers was compensated for by increased pressure at the EU level. The European Union considers corruption a severe threat to its core democratic values, to the effective implementation of the *acquis communautaire* and to the proper functioning of the single market. Therefore, since the adoption of the Copenhagen criteria in the context of eastern enlargement, the EU has attached a high priority to fighting corruption; its policy of conditionality specifically addresses this issue. Most studies of Europeanization assume that the European Union has sufficient power to trigger reform in member states subject to post-accession conditionality. The EU's mechanism of continuous monitoring and benchmarking is thought to contribute to combating corruption and thus, to establishing the rule of

law. But is pressure from the EU enough to ensure sustainable change? Are genuine anti-corruption reforms triggered this easily even in states with high levels of corruption? Can we expect unstable democracies to reform their justice systems, and can we expect the rule of law to be adopted in the interest of the general good? And most importantly, can corrupt public officials really be expected to punish themselves? As discussed in the introductory chapter, the European Union's policy of conditionality, despite its ambitious democratic and acquis-related criteria, fails at times to deliver on its promise to spark deep and sustainable reforms that succeed in ensuring the rule of law, restrict corruption and increase good governance. This was the case in several southern and Central European accession states, which have in recent years experienced a decrease in their capacity to control corruption, and it was also the case in Romania when it dismantled parts of its already adopted reforms, with law-making being used as an instrument to serve the particular interests of a corrupt political elite.

Research on Europeanization often fails to acknowledge and explain why states might de-Europeanize after joining the EU and after successfully adopting EU-driven reforms. Scholarly approaches implicitly assume that actors have sincere motifs in embracing or rejecting reforms, ruling out the possibility that reforms are adopted reluctantly, and by representatives who are well aware of their reversible nature. The following sections will provide a summary of the literature in the field, and take into view the extent to which existing approaches account for the reversibility of change and pay regard to entrenched domestic interests when studying Europeanization. The first part of this chapter will look at how successful EU-driven reform is understood to stem from both EU-induced adaptational pressures and national-level preferences, without distinguishing at this stage between the pursuit of public and private interests in policy-making. Following this, a discussion of the clashes and overlaps between public interests and the interests pursued by the political representatives in the exercise of their duties will make up the second part of this chapter. It will highlight the crucial role played by domestic political elites in bringing the social and legal reality in line with EU requirements, and in maintaining a high level of democratic and legislative stability and the rule of law.

Assuming that political representatives might use and abuse their legislative powers in ways that are detrimental to societies at large, this chapter ultimately argues that a more accurate model of Europeanization needs to accommodate the goals pursued by reformers in the process of reform. The approach to *de--Europeanization* taken here encapsulates this disjunction between the self-interest of the elite and the interests of the broader society.

2.1 Modelling De-Europeanization

2.1.1 Defining De-Europeanization

In order to define de-Europeanization, it is important to first clarify the essential qualities of the process that actors are seeking to reverse. As a concept, Europeanization evolved on the basis of a large body of literature on the subsequent widening and deepening of European integration. Broadly articulated, the motivation of this research is to understand "how European integration and European policy-making affect the very states responsible for integration in the first place".[12] Conceptually, Europeanization has evolved since the 1990s into a notion bringing together theoretical reasoning and empirical studies in various fields: it was used to address the process of aligning domestic policies and institutions with their European counterparts, of aligning national executive branches with the EU's negotiation and bargaining processes, and of seeing state and non-state actors adapt to the emergence of new opportunity structures. The concept is used to describe the adaptation of domestic policies, polities and politics whenever the impact of this process extends beyond the borders of EU.[13] Indeed, as research on Europeanization proliferated, the concept itself was defined in increasingly subtle, complex and often contradictory terms.

The most frequently cited definition is Radaelli's.[14] It is an all-encompassing definition, which captures the multifaceted character of Europeanization, and extends well beyond an understanding of the process as the mere impact of the EU on domestic systems; it presents Europeanization instead as a process of:

> (a) construction, (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and sub-national) discourse, identities, political structures and public policies.

Radaelli proposes an understanding of Europeanization that extends beyond the vertical notion of domestic adaptation; in his view, it is an interactive process rather than a one-dimensional reaction to the EU. While preserving a clear focus on the domestic level, the definition of Europeanization as proposed by Radaelli assigns significant importance to the *construction* of norms at EU level; it employs a "bottom-up-down"[15] approach suggesting that studies of Europeanization start at the domestic level to inquire into how supranational policies and institutions are affected by domestic preferences or "ways of doing things" and only subsequently determine the impact generated by EU policy-making at the domestic level. At the

[12] Caporaso (2008: 27).

[13] Vink and Graziano (2008: 8).

[14] Radaelli (2003a: 30).

[15] Vink and Graziano (2008: 10).

DOMAINS OF EUROPEANIZATION	DIRECTION OF IMPACT	LEVEL OF DECISION-MAKING	STAGES OF EUROPEANIZATION	DIRECTION OF CHANGE
DOMESTIC STRUCTURES	BOTTOM-UP	EUROPEAN LEVEL	SHAPING OF NORMS	RETRENCHMENT INERTIA
PUBLIC POLICY	TOP-DOWN	DOMESTIC LEVEL	TRANSPOSITION	ABSORPTION
COGNITIVE AND NORMATIVE STRUCTURES	HORIZONTAL		IMPLEMENTATION INSTITUTIONALIZATION	TRANSFORMATION

Fig. 2.1 A taxonomy of Europeanization

same time, this perspective subtly allows for an understanding of Europeanization as a horizontal mechanism of change in which socialization and learning processes might lead to an in-depth change, to a "consolidation" and "institutionalization" of norms. Finally, it identifies several domains of impact, from political structures and actors to discursive and cognitive structures. This highly nuanced definition of Europeanization provides an appropriate background understanding of the concept and of the general scope of research in the field. Yet a narrower, more explicitly formulated "systematized concept"[16] will better serve the aim of the present endeavour. To this end, the present section will draw on Radaelli[17] in order to provide a taxonomy of Europeanization (Fig. 2.1[18]), which will then be used to narrow down the disciplinary focus and define the concept for the scope of this research.

As noted above, Europeanization processes include both hard and soft mechanisms that produce effects at the domestic level; the pressure exerted by the EU on member states or acceding candidates is neither a sufficient nor a necessary condition for domestic change. Transformation can happen by virtue of socialization and learning, in the absence of any pressure from the Union. While fully acknowledging this fact, the present approach self-consciously limits itself to a top-down understanding of Europeanization, in which reform is triggered by the EU's compliance mechanisms and its policy of conditionality. Top-down mechanisms of inducing domestic change are the main catalysts of reform, at least in as far as the newest member-states are concerned.[19] Consequently, for the particular context that this

[16] Adcock and Collier (2001) cited in Radaelli (2003a: 31).

[17] Radaelli (2003a: 34–40).

[18] Inspired by, yet distinct form, Radaelli (2003a: 35).

[19] Schimmelfennig and Sedelmeier (2020).

book addresses—in which the role and impact of the EU on domestic policies and structures is considered to be especially strong, and the influence of the domestic level on EU policy-output is still fairly limited—Ladrech's[20] definition of Europeanization proves most suitable:

> Europeanization is then understood as the change within a member state whose motivating logic is tied to a EU policy or decision-making process.

Using Ladrech's definition as a point of departure, the concept of Europeanization is further narrowed down to encompass only (1) top-down mechanisms that induce policy change at the level of member or accession states, which (2) result first and foremost in a legal transposition of norms, and (3) do not necessarily imply a deep change in the core and logic of policy-making.

1. Given the major impact the European Union has on domestic policies and the large bulk of literature devoted to the theoretical and empirical evaluation of this impact, the present conceptualization will place a special focus on Europeanization as a mechanism of policy change. This understanding of Europeanization is also tailored to the particular context to which the concept will be applied, characterized by a low capacity to influence European-level policy-making (low capacity for policy-upload) and a very high pressure to adopt, enforce and institutionalize EU-triggered reforms (high degree of policy-download). Europeanizing processes are then viewed as dependent mostly on the nature and intensity of adaptational pressures emanating from the EU on the one hand, and domestic intervening factors on the other hand.
2. The Union's impact on member or accession states is primarily driven by legislative requirements and the legal adoption of norms. The EU itself attaches high importance to the development of formal institutions and the rule of law, placing at its very core the development, the interpretation and application of legal rules.[21] Therefore, bearing in mind the importance of legislation and legislative institutions for the entire European construction, it is here adopted a predominantly legal perspective in the study of Europeanization. A state is considered to be Europeanized as soon as it has successfully transposed into national legislation the content of European norms. While the broad literature on implementation pays regard to the processes through which EU norms are not only domestically transposed, but also adhered to and enforced,[22] the present approach makes a useful distinction between legal transposition on the one hand and the application, enforcement or institutionalization of norms on the other. It questions the extent to which the EU can generate profound institutionalized change in its member states without an ex ante legal transposition of norms. Transposition, the transfer of EU legislation into national legislation, is here regarded as the essential step in the implementation of EU norms, on which the

[20] Ladrech (2010: 2).
[21] Sverdrup (2008: 199).
[22] Sverdrup (2008).

subsequent application and enforcement of laws depends. Even though a study limited to transposed legislation can yield little information on the actual enforcement and institutionalization of norms, it can be very insightful when addressing the corruption or reversal of reforms; it can provide essential insights into the non-enforcement and non-institutionalization of norms. Legal transposition is thus here regarded as a critical aspect of Europeanization, without which adaptational pressures from the EU remain fruitless.

3. Concerning the direction of domestic policy change, despite the fact that EU policy-making rests on the ideal of harmonization of national policies with European standards, empirical studies have long demonstrated the EU's "differential" impact.[23] Europeanization processes can result in transformation, but also in absorption, inertia or even retrenchment.[24] Differences in the degree and direction of change allow us to distinguish these possible outcomes of Europeanization: "transformation", which stands for a deep paradigmatic change of policy; "adaptation", which indicates a selective adoption of reforms without a real modification of the core and the logic of policy-making; "inertia", which signals a lack of change resulting from delayed or obstructed transposition; and "retrenchment", which implies a hostile reaction to European policies, the effect of which is a domestic reform that is less European than it initially was.[25] Arguably, in the context of enlargement, accession states' responses to the EU's requirements are largely positive. Due to their eagerness to finally acquire full membership, aspiring states most often respond to Europeanization by "adapting" or "transforming". However, recent evidence on post-accession development in some Central Eastern and South-Eastern European member states renders at least questionable the idea of EU inducing deep domestic change.

In sum, Europeanization is here defined as a top-down mechanism through which the EU exerts an influence on its states; an influence which is reflected at the domestic level in the quality and stability of transposed legislation. This conceptual restriction offers a refined account of the EU's domestic impact, which is appropriate for explaining non-linear developments in domestic reform processes such as those identified in the case of Romania. This strict limitation of the concept of Europeanization to comprise only legislative changes will therefore exclude wider issues such as a state's capacity to enforce or institutionalize respective legislation. The main focus is on domestic legislative output, which makes it easier to isolate the EU's adaptational pressure for reform, to identify instances of reform reversal and to identify the factors determining such a U-turn. A state's accession to the EU significantly affects its domestic legislative framework, which inevitably results in successful Europeanization, at least in certain policy areas. However, that a reform is adopted does not necessarily guarantee that it will remain in place. The newly

[23] Héritier et al. (2001).

[24] Héritier et al. (2001), Radaelli (2003a: 37–8), Radaelli and Pasquier (2008: 39–40).

[25] Radaelli (2003a: 37–8).

acquired *status quo* may be easily reconsidered by legislators in light of a changing balance between costs and benefits, leaving the respective member state likely to undermine pre-accession measures and de-Europeanize.

De-Europeanization as understood here marks not only a deficit in the institutionalization of change, it represents a formal reversal of reform. This definition of de-Europeanization comes very close to the notion of "retrenchment" mentioned above. While both imply a process of "negative" Europeanization, the notion used here indicates an ex post rejection of reform only after the respective change has been adopted and produced effects at the domestic level. The thing that significantly sets de-Europeanization apart from "retrenchment" is the standard against which the respective reversal of reform is judged: while "retrenchment" refers to a first-instance response to EU policy-making, de-Europeanization instead concentrates on the long-term effects of Europe. It goes beyond the initial impact created by the EU and addresses the U-turns of already Europeanized policies by using the level of already achieved "positive" reforms as benchmarks in assessing "negative" changes. This means that such a process of de-Europeanization is only possible where the initial Europeanizing pressures triggered the "absorption" of norms and not a deep, long-lasting "transformation", "inertia" or "retrenchment". In sum, de-Europeanization denotes a setback of domestic reform following an initial adoption of EU norms and standards.

It is also important to distinguish between de-Europeanization and de-Democratization. Recent scholarship on CEE rightly regards the two phenomena as two sides of the same coin, assuming that the level of Europeanization depends inevitably on the quality of democracy.[26] While this perspective holds true for broad analyses (ones that encompass economic, social and political motivations, factors and transition outcomes, as well as formal and informal practices), for the scope of the present research the two concepts are better separated than fused. Indeed, when assessed against the broad spectrum of democratic reforms that entail fundamental social and behavioural changes, Europeanization is still incomplete in Romania, which renders the notion of reversal void. However, in the narrower understanding of Europeanization proposed here, Europeanization is complete once the required rules and norms are transposed. In this case de-Europeanization is a reversal of formally adopted legislation. A de-Europeanizing state may still maintain its democratic standards, and conversely a de-Democratizing state may pursue Europeanizing reforms. The abuse of the democratic framework may not always result in complete state capture, political elites may act in a self-serving manner in certain policy domains and not in others, civil societies may be stronger in certain fields than in others. In order to produce a fine-grained analysis of formal de-Europeanization, the intention here is not to juxtapose de-Europeanization and de-Democratization. Rather, the intention is to develop a frame of reference that incorporates the essential requirements for democratic conduct when assessing de-Europeanization without performing a *de facto* measurement of any democratic

[26] Rupnik and Zielonka (2013), Ágh (2015), and Bogaards (2018).

backslide. Unfortunately, the EU does not as yet have an effective mechanism for defending liberal democratic institutions. It remains largely unable to prevent a democratic backslide, in the way that it can use its leverage in tackling faulty transposition of EU law or norms.[27] Given the aim of the present research to assess the long-term effectiveness of EU post-accession conditionality, the approach to reversal must be narrowed down to those aspects in which some form of compliance mechanisms are in place.

2.1.2 Overview of Europeanization Research

The above-mentioned conceptual confusion surrounding the notion of Europeanization extends beyond semantics, and in fact reflects a wide variety of proposals for modelling and measuring Europeanization.[28] The present overview does not aim to review these in detail and cannot do justice to the wealth of literature on Europeanization; rather, it aims to glean from them those analytical elements which are useful in explaining de-Europeanization processes.

Ups and Downs

There is an inherent optimism prevailing in the literature on Europeanization with respect to the harmonizing role of Europe. Indeed, despite the fact that it is largely claimed that Europeanization is not to be equated with convergence or policy harmonization, and despite the emphasis on the differential impact on member states, an incremental and transformative reasoning nevertheless remains at the core of the proposed models.

A significant part of the literature embraces a constructivist perspective on the impact of European integration on member states and assumes that to a notable degree, developments at the domestic level would have occurred with or without the existence of the European Union. By placing greater emphasis on the voluntary character of compliance and on the non-coercive mechanisms of domestic change—persuasion, learning, socialization—these approaches to Europeanization draw attention to horizontal processes of ideational convergence and policy transfer, which unfold independently from any formal compliance with European legislation or even from membership in the EU.[29] Early studies of horizontal Europeanization viewed the EU as a policy transfer platform rather than a law-making body.[30]

[27] Vachudova (2016).

[28] Graziano and Vink (2008), Radaelli and Pasquier (2008), Exadaktylos and Radaelli (2009), Ladrech (2010: 13–4).

[29] Flockhart (2010), Mau and Mewes (2013).

[30] Radaelli (2003a: 43).

Processes of emulation, they argue, take place even in the absence of European directives or regulations, and in support of this claim empirical research focused largely on the open method of coordination.[31] This mechanism was seen as a promising tool for the transfer of knowledge and best practices, which stimulates convergence towards EU goals by using a logic of benchmarking, networking, socialization and learning facilitated by European institutions.[32]

Learning-based Europeanization is the outcome of indirect and invisible mechanisms constituting the driving force for profound and stable reform. Such soft and deep Europeanization is triggered by socialization—which raises policy-makers' awareness of their interdependence, and thus, their level of commitment; monitoring—which makes EU institutions more aware of the progress achieved by member states, and thus more capable of providing suitable solutions; and by arguing and persuasion—which makes all European decision-makers aware of each other's preferences and common goals.[33] It is worth noting in this respect that the source of initiative for domestic change is diffuse. A transition towards Europeanization, if there is any transition at all, takes place in the absence of adaptational pressure; the adoption of domestic reforms in this case is a consequence of increased competition and cooperation between member states and of an increased exchange of information and mutual learning.[34] These mechanisms of adaptation therefore have a profound voluntary character, with states enjoying broad discretion in deciding on the timing and the appropriate solutions to be adopted domestically. As a result, adoption of the rules that are transferred through horizontal Europeanization is most likely to require significantly more time, but develop a stable character. Where present, such Europeanization processes most likely lead to continuous and consistent compliance. Domestic reform tends to be more profoundly institutionalized, much slower, yet less contested at the domestic level.[35]

Viewed in this light, Europeanization is fairly linear in its trajectory. Such a conceptualization leaves very little scope for a reversal of reforms. The underlying assumption is that horizontal mechanisms can successfully trigger policy, behavioural and ideational convergence in the pursuit of common European goals in the absence of any pressure to conform.[36] Studies focusing on socialization and learning thus account for voluntary and therefore solid processes of Europeanization; they trace gradual and subtle developments which unfold over long periods of time, but lead to lasting reform. The horizontal model of Europeanization is thus fairly limited in explaining de-Europeanization. While being particularly appropriate for

[31] For comprehensive critical reviews of the literature on the open method of coordination see Kröger (2009b), De la Porte (2010) and Borrás and Radaelli (2010).

[32] Radaelli (2003a: 43–4, 2003b), De la Porte and Pochet (2002), Borrás and Jacobsson (2004), Jacobsson et al. (2004), Radaelli and Pasquier (2008: 37–8).

[33] Radaelli (2008: 240).

[34] Vink and Graziano (2008: 10).

[35] Epstein and Sedelmeier (2008), Epstein (2008).

[36] Borrás and Jacobsson (2004), Jacobsson et al. (2004).

identifying instances of deep domestic change, the horizontal approach is of little help in explaining the reversal of reforms as witnessed in the Romanian context.

Numerous scholars agree that the process of open coordination failed to realize its promise, with the effects it produced being mixed at best.[37] Moreover, this kind of open coordination proved to be less applicable to new member states whose participation in the process was much more top-down in character, resulting more from the transposition of social directives than from involvement in the open method of coordination.[38] This confirms the thesis put forward in the literature that domestic change in the EU's Central and Eastern and South-Eastern European member states was foremost a result of a "hierarchical and vertical processes of command, control and steering"[39] and less an effect of the horizontal socialization and lesson-drawing.

By addressing processes far lengthier than legislative convergence, such a horizontal approach would be more suitable for a long-term analysis of the impact of Europe. The EU's new members are still young members of the Union, and their post-accession experience is still too limited to gauge the full impact of socialization, including "unexpected, unintended, or failed socialization".[40] A horizontal conceptual design would be most appropriate for a complementary study focused on enduring instead of ephemeral reforms. At the same time, horizontal Europeanization as described above implies a policy transfer which occurs independently from EU directives and regulations and the member state's compliance in the formal sense; socialization, learning, ideas and attitudes play a far greater role than formal convergence. However, to ignore Romania's formal compliance and the EU's adaptational pressure as factors triggering change would most probably distort the insights produced by this thesis. One only needs to bear in mind the undeniable progress made by Romania in its pre-accession phase, which was a clear consequence of the EU's conditionality and the country's strong desire for membership.

No less optimistic in terms of the EU's potential to generate domestic transformation, yet focusing on less subtle and significantly more formal mechanisms of change are the studies of Europeanization which propose a vertical understanding of impact (with either an ascending or descending direction of influence). Both bottom-up as well as top-down approaches place their main focus on the EU level, which is viewed either as a locus of policy-making at the top or as a stimulus for policy-taking at the bottom. While top-down Europeanization emphasizes the importance of an existing European standard, and substantial adaptational pressure on states to converge with this standard, bottom-up models begin and end at the domestic level, grounded on the assumption that member states themselves have a say in shaping many of the EU policies and standards which subsequently impact them at the domestic level. Bottom-up Europeanization thus accounts for domestic change by starting from the member states and putting first the crystallization of domestic

[37] Buchs (2007), Radaelli (2008), Hartlapp (2009), Kröger (2009a), Borrás and Radaelli (2010).

[38] De La Rossa (2005: 633).

[39] Schimmelfennig and Sedelmeier (2004: 674, 2020) and Mendelski (2012: 26).

[40] Epstein and Sedelmeier (2008: 803).

preferences, it proceeds to inquire into how rules shaped at the EU level are a reflection of these preferences, and only then questioning their potential to produce effects back at the domestic level. By stressing the role of member states and domestic actors in *uploading* their preferences to the EU level along with the role of the EU in generating domestic change through adaptational pressures, bottom-up conceptual designs transcend the uni-directional model of conceptualizing the domestic impact of Europe.[41] Their approach to Europeanization "captures the whole life-cycle of public policy, with possible feedback effects between the national level and the EU",[42] by relying on both processes of policy *upload* and policy *download*. Causality in this case runs both ways; nevertheless, the initiative and the stimulus for engaging in policy *upload* remains at the domestic level, with domestic actors able to firstly shape rules which they will then subsequently have to adapt to domestically.

The relevance of this approach, and of the bottom-up perspective in general, for the present argument lies in the fact that it acknowledges the weight of domestic preferences in European-level policy-making. It opens the black box of interests pursued at the domestic level by public administrators and economic and societal actors, and it argues that political representatives compete at the EU level in pushing for policies that align with the preferences of their constituencies.[43] Successful Europeanization is in this light not a matter of incorporating European rules into domestic structures, but rather the other way around: EU-level policy-making is understood as an integral part of domestic political action. Studies of bottom-up Europeanization assess the domestic usages of Europe instead of the domestic adaptation to European pressures.[44] The present research, even though concerned with the top-down dimensions of the policy process and isolating the "downward flow of effects"[45] from the EU-level onto the domestic policy-making level, stays focused on domestic interests. The active role of domestic players in their pursuit of domestic preferences and their potential *use* of Europe is here judged to be important for explaining problems that are specific to top-down Europeanization. Assessing the top-down impact of Europe in this way, the present argument reinterprets policy download in terms of how domestic actors make use of European policies in pursuit of particular interests, and what meaning they attach to the reforms triggered by the EU. Inspired by the bottom-up logic, the following analysis will show how EU policy-making is instrumentally used by domestic actors, not at the EU level, but rather at the domestic level, during the transposition of norms.

But there is more to the bottom-up understanding of Europeanization than the idea of usage of Europe. Bottom-uppers also address processes of reorientation of

[41] Dyson (2000), Börzel (2002), Radaelli (2003a), Pasquier (2005), Dyson (2008), and Stolfi (2008).

[42] Saurugger and Radaelli (2008: 213).

[43] Börzel (2002: 196).

[44] Radaelli and Franchino (2004), Woll and Jacquot (2010).

[45] Bache (2008: 11–2).

national groups towards supranational fora (proaction) and the emergence of pro- and anti-EU movements responding in a positive or negative manner to an increasing level of integration (rejection/promotion).[46] Such studies emphasize the role played by local actors in embracing and interpreting European rules and opportunities, the importance of collective action and transnational networks and the implications of an emerging European identity.[47] The common ground of bottom-up Europeanization studies lies in recognizing the major role played by domestic contexts or by domestic actors and their respective preferences, which can feed back into the process of policy- or decision-making at the EU level. By considering the domestic political dynamics in the first place, bottom-up research designs can avoid prejudging or over-emphasizing the role of the EU in generating domestic change. Indeed, change may "draw on domestic channels"[48] and this is an aspect which top-down Europeanization models often fail to acknowledge.

By starting out from an analysis of an ex-ante domestic situation and an ex-ante assessment of domestic preferences, bottom-up Europeanization research postulates that the process of European policy-(re)formulation depends to a large extent on existing domestic interests that are pursued in EU-level decision-making processes which only subsequently affect domestic policies and structures. Even though the model is cyclical, the descending stage of Europeanization—the transposition and enforcement of norms—is marginal in the bottom-up understanding of Europeanization. Perhaps contra to expectations, this bottom-up approach actually places a very high emphasis on the EU level, where policy is defined, and on the extent to which domestic preferences affect EU policy-making. Such a view leaves very little scope for exploring instances of de-Europeanization, as domestic preferences and the action capacities of those representing such preferences at the EU level remain, in general, largely stable over time. The possibility of reversal is even less likely if one takes into account the fact that bottom-up models of Europeanization rely heavily on the assumption of a plurality of interests pursued in supranational fora, which would make a reversal of an already established status quo very difficult to achieve.

Thus, in the present context, the bottom-up model is rather limited in its explanatory value. It is not only unable to properly account for processes of de-Europeanization, but its application is limited by the requirement that states must have a reasonable impact on policy-making at the European level. Most Central Eastern and South-Eastern European member states, even though eager, are generally still weak in their capacity to upload preferences to the European level. Being still at an early stage of membership, their domestic political dynamics are seldom able to feed back into European-level policy-making. Without neglecting the relevance of policy upload in the context of Europeanization, the present theoretical framework draws mostly on the top-down approach in which change, if any, is

[46] McCauley (2011: 1021–3).

[47] Woll and Jacquot (2010: 113).

[48] Radaelli and Pasquier (2008: 44).

thought to be generated at the EU level and trickle downwards through adaptational pressures. The focus is here deliberately placed on the download of legal norms, as Romania is still particularly reserved in its upload of domestic preferences to the EU level. Bearing in mind that policy download depends largely on policy upload and interactions at the EU level, and recognizing the various opportunities that domestic governmental or non-governmental actors have to influence EU policy developments, this approach nevertheless narrows down the meaning of Europeanization to the legal conformity with EU policies, requirements and standards at the domestic level. The ex-ante development of the respective policies at the EU level remains beyond the scope of this restricted conceptualization of Europeanization.

There are three main reasons why a top-down analytical framework is the most appropriate conceptual approach for the present argument. The first takes into account the sources of the imperative for domestic change: while to some extent, domestic reform might be pushed by bottom-up or horizontal forces, the major trigger of reform in Romania, as in other member states in the region, remains the EU's adaptational pressure and its stimulating policy of conditionality. The second point concerns the upload capacity of new members or accession states: there needs to be a clear distinction between policy formulation at the EU level and its domestic implementation. Placing higher importance on the former renders bottom-up approaches unsuitable to research on states with limited or no capacities to influence supranational policy-making. Longer membership is required for states to substantially increase their upload potential and have a real impact on EU-level policy-making. Closely related to this, the final point reflects on the time frame of the produced or expected change: the adjustment to Europe of Central Eastern and South-Eastern European states has been rather rapid and abrupt, leaving little scope for strong horizontal effects; a wider time horizon is required for socialization and learning processes to take effect and become visible at the domestic level of the EU's still newest member states.

Top-Down Europeanization: The Misfit-Driven Reform

Over the last two decades, top-down Europeanization literature has grown particularly rich, with approaches varying significantly in terms of the variables defined, the methodologies adopted, the policy areas under study, and the geographical areas addressed. Emerging from a comparative politics perspective, top-down Europeanization research largely regarded the EU and its policy-making as an independent variable in explaining changes in domestic political activity, structures and policies.[49] Numerous studies touch upon the EU's impact on domestic institutions, focusing either on the adaptation of executives to membership[50] or prospective

[49] Vink and Graziano (2008) and Ladrech (2010).

[50] Hanf and Soetendorp (1998), Harmsen (1999), Goetz (2000), Wessels et al. (2003), Kassim (2013).

membership,[51] or the adaptation of parliaments[52] or courts.[53] Other scholars address the manner in which the EU affects political actors—be they parties and party-systems[54] or interest groups and social movements.[55] However, the major share of top-down Europeanization literature is dedicated to policies, concentrating on policy domains as diverse as environmental policy, transport policies, telecommunications policy, labour policy or asylum policy.[56]

These numerous studies addressing Europeanization and policy change give rise to a cautious optimism with regard to the EU's potential to generate reform in its member states or candidates. There is indeed strong agreement among scholars on the impact of the EU at the domestic level. However, approaches vary in their assessments of the degree of impact, the factors enabling or inhibiting change, and the states or clusters of states across Europe that are most prone to sustainable reform. There are three questions that lie at the heart of top-down Europeanization research: (1) What triggers change at the domestic level? (2) What are the domestic factors that could hinder or enable such change? (3) What are the domestic responses to Europeanization pressures? Against this background, the intense debates that fuelled the development of Europeanization research moved beyond the study of supranational triggers for domestic reform, and descended to the domestic level to identify facilitators or inhibitors of change, the resulting degree of policy adjustment, and the success or failure of implementation.

Theoretically, top-down Europeanization research draws on new institutionalism, building on the discussion that institutions matter and asking how institutional configurations at the EU level have an impact on policy outcomes at the domestic level. The underlying logic is that European institutions and policies shape the behaviour of domestic political actors, who consequently adopt and implement reforms at the domestic level. In this light, Europeanization is mainly concerned with the manner in which "one set of institutions—the European rules, regulations, and collective understandings—interact with another set of institutions—the given domestic structures in the member states".[57] Grounded in a hierarchical understanding of the EU, domestic conformity to supranational institutions is mainly framed in terms of a three-step model, stating that the Union—through its norms, rules, regulations, procedures and practices—gives rise to adjustment pressures, which,

[51] Goetz (2001), Lippert et al. (2001), Zubek (2008).

[52] Maurer and Wessels (2001), Auel and Benz (2006), Raunio (2005), Ágh (2007), Auel and Raunio (2012b), Kassim (2013).

[53] Conant (2001), Nyikos (2008), Ladrech (2010).

[54] Marks and Steenbergen (2004), Pridham (2005), Mair (2008a) with further reference; Ladrech (2010).

[55] Eising (2008), Ladrech (2010).

[56] Knill (2001), Börzel (2008), Héritier et al. (2001), Schneider and Werle (2008), Berglund (2009), Falkner et al. (2005), Lavenex (2001, 2008). This selection of literature is far from being exhaustive, the aim being less to provide a comprehensive overview of the considerable research in the field, but rather to illustrate the wide variety of top-down approaches to Europeanization.

[57] Olsen 1995, cited in Risse et al. (2001: 7).

by means of domestic-level mediation, can produce domestic outcomes.[58] This three steps model incorporates the three questions noted above, with different scholars emphasizing different aspects of the model.

1. What is it that triggers Europeanization in the first place? The response most widely discussed in the literature revolves around the notion of misfit: an identified level of misalignment between European and domestic structures. It is this incongruence between the supranational and the national levels that generates adaptational pressures: a higher level of misfit will most likely increase the pressure to adapt. The implicit guiding logic of this argument is that change is to be expected only wherever there is a necessity for it, i.e. wherever the domestic policies or institutions do not fit with developments at the European level and where the respective misalignment leads to adaptational pressures on domestic structures.[59] This degree of misfit is considered necessary but not sufficient for domestic change.[60] It is merely the trigger and not *per se* the source of adaptational pressures. The misfit can only lead to compliance when there is significant adaptational pressure exercised domestically by committed domestic political actors or structures that favour change (pull) and when there is substantial adaptational pressure from above via infringement or conditionality mechanisms at the disposal of the European Commission (push).[61]

   Pressure for adaptation, emanating either from push or pull mechanisms, differs across states and across policy areas; the impact of Europe on domestic policies and structures is differential.[62] The asymmetrical impact of Europe has long been a commonplace in the literature, suggesting that there is no automatic response to the build-up of adaptational pressures among European states. Most scholars agree that Europeanization has neither led to a convergence of administrative structures nor to a harmonized use of policy instruments across EU member states.[63]
2. What are, in this case, the factors that account for this variation? Europeanization scholarship[64] highlights the importance of veto players in explaining differences in transposition and implementation across member states, along with other intervening factors that may inhibit or foster domestic change: domestic institutions, political and organizational cultures, the differential empowerment of actors at the domestic level, the readiness for learning, or the existing preferences and beliefs of the domestic political actors.

[58] Börzel and Risse (2000), Cowles et al. (2001), Risse et al. (2001), Börzel and Risse (2007), Caporaso (2008), Ladrech (2010).

[59] Risse et al. (2001), Börzel and Risse (2007: 490–2).

[60] Haverland (2000), Héritier et al. (2001).

[61] Börzel (2000).

[62] Héritier et al. (2001).

[63] Falkner et al. (2005), Ladrech (2010: 33–5).

[64] Haverland (2000), Risse et al. (2001: 9–12), Mastenbroek and Kaeding (2006).

The most prominent approach in this respect remains the one proposed by Börzel and Risse,[65] who fit the factors that mediate change at the domestic level into an institutionalist framework that incorporates both rational and sociological explanations. They take as their point of departure an assumed level of misfit that generates adaptational pressures directly proportional to the level of misalignment and add to it a further condition for change: the existence of domestic facilitating factors, actors or institutions that respond domestically to the misfit. They identify two manners of conceptualizing the domestic response to adaptational pressure, which they combine in a comprehensive model of top-down Europeanization, that accounts for the domestic response through both a rationalist institutionalist *logic of consequentialism* and a sociological institutionalist *logic of appropriateness*.[66] The *logic of consequentialism* assumes that the misfit between the European and the domestic level leads to changes in the political opportunity structure. The domestic political actors—rational, intentional, goal-oriented, and with strategies formed in their respective institutional contexts—might seize new opportunities or face new constraints in pursuing their goals, and thus facilitate or impede change. Their capacity to act is highly influenced by mediating factors such as the number of veto points, or the domestic formal institutions. On the other hand, the sociological institutionalist perspective draws on the *logic of appropriateness*, arguing that domestic change is determined by a collectively shared understanding of what constitutes proper behaviour. The domestic political actors, while exposed to new rules, norms, practices and structures of meaning, are thereby influenced in how they define their interests and identities. Here, mediating factors are also identified as determinants of the degree to which the misfit generates change: norm- and idea-promoting agents, or domestic political culture and other informal institutions being highlighted as impactful. Börzel and Risse's model of Europeanization makes a distinctive contribution to the literature, as it provides a synthesis of rational choice institutionalism and sociological institutionalism. They thereby provide two distinct explanations for domestic change that are not mutually exclusive, but rather complement each other; either one or the other pattern for change prevails—more or less distinctly—at different times and in different phases of domestic adaptation.[67]

As already argued above, the present theoretical approach does not deny the importance of socialization and learning processes to inducing deep, substantial change. However, they are considered to be long-term processes, able to induce convergence only in the long run, after several decades of membership experience. The EU's newest member states in general, and Romania in particular, did not reach just yet the phase in which adaptation and convergence result primarily

[65] Börzel and Risse (2000), Börzel and Risse (2007).

[66] March and Olsen (1998) cited in Börzel and Risse (2000: 6–10) and in Börzel and Risse (2007: 492–4).

[67] Börzel and Risse (2000: 10).

from socialization and learning processes. Indeed, studies covering a wide variety of Central Eastern and South-Eastern European states[68] found that socialization- and learning-related factors were largely irrelevant for Europeanization East and did not account for a significant variation in norm adoption. The incentives offered by the Union and a candidate's cost-benefit calculation were factors considered to be more adequate to explain rule transfer in Central Eastern and South-Eastern Europe. The EU's approach to eastern enlargement, they argue,[69] primarily evokes patterns of "old governance" associated with highly asymmetrical top-down processes, triggered from above by means of high external conditional benefits which often exceed the domestic costs of reform. In line with these approaches and drawing on countless other scholars who have underscored the relevance of cost-benefit calculations for change processes in Central and Eastern Europe, the present book will explain Romania's de-Europeanization using a rational choice framework, inspired by Börzel and Risse's logic of consequentialism.

3. What are the domestic responses to Europeanization pressures? At the member-state level, distinct forms of adaptive behaviour can be identified that differ both in the degree and direction of domestic change.[70] The effects of Europeanization are expected to vary depending on domestic mediation, ranging from absorption to transformation, with little scope for processes of de-Europeanization. Indeed, while grounding their models on both rational choice and sociological institutionalism scholars of Europeanization show a subtle inclination towards the historical institutionalist idea of path dependency. In most top-down Europeanization models, there is an implicit affinity with the thesis of the "stickiness" of institutions and policy arrangements.[71] On the one hand, it is often assumed that a high level of misfit between European and domestically established practices and structures may lead to difficulties in the implementation of EU norms,[72] as many domestic institutions "have been around much longer than the EU."[73] Still, a significant part of the literature agrees—though not always explicitly—that once change has occurred, it becomes established. In a rationalist vein, scholars then go on to argue that domestic change is likely to be lasting as member states may either benefit from new rules or be reluctant to face the costs of reversing the newly acquired status quo.[74] The majority of social constructivist arguments lead to the same claim that political actors mutually influence each other's behaviour, relationships and expectations, relying on the principle of

[68] Schimmelfennig and Sedelmeier (2004), Mendelski (2012), Schimmelfennig and Sedelmeier (2020).

[69] Schimmelfennig and Sedelmeier (2004: 674–5).

[70] Börzel and Risse (2000: 10–2), Héritier (2001: 4–5), Radaelli (2003a: 37–40).

[71] Bulmer and Burch (1998), Bulmer (2008: 50–1).

[72] Knill (2001), Cowles et al. (2001), Sverdrup (2008: 205).

[73] Risse et al. (2001: 18).

[74] Sedelmeier (2012).

pacta sunt servanda,[75] with socializing effects then being just as likely to lead to sustained domestic change.

Taking as its starting point an observed formal reversal of reforms, the present study thus rejects the thesis of the persistence of domestic change. It also dismisses the premise that compliance and non-compliance depend solely on structural factors, highlighting instead the important role played by domestic political will. The institutional focus of top-down Europeanization research has already drawn criticisms from several authors who oppose the reduction of policy actors to mere facilitating factors and who consider such approaches to be excessively structural.[76] By the same token, we will support here the idea of an instrumental use of European rules by domestic political actors, and search for an explanation of de-Europeanization at the level of the political elite. Institutions are here viewed more as instruments for political leaders to realize their goals, with political structures depending heavily on decision-makers' interests, their will and capacity to act. This is not to deny the importance of institutional structures, but to add to its actors-centred approach an observation of how structural factors may affect the conduct and preference formation of political actors. In a nutshell, it will be argued that Europeanization and reforms in Romania are driven by the rationalist *logic of consequentialism*; they are not however so much the result of EU's adaptational pressure coupled with facilitating domestic factors, but follow from the preferences and strategies pursued by domestic political elites, who are able to overcome institutional and structural barriers in order to realize their goals. Persistence of reform would in this case reflect the stability in the preferences of the domestic actors, while conversely, de-Europeanization would mark a shift in the interests pursued at the domestic level by the members of the political elite. As we will see, a high level of misfit, a strong pressure for adaptation and the presence of domestic facilitating factors can account for sustainable domestic change, but only as long as the preferences of domestic political actors remain constant.

Europeanization East: The Conditionality-Driven Reform

Studies assessing the implementation of EU rules and policies have made valuable contributions to our understanding of the degree of reform stability and the level of domestic institutionalization of EU norms across European member states. As emphasized above, a recurring theme in the literature is the fact that Europeanization generates different adaptational pressures and different responses to them. A wide and still evolving literature addresses the implementation of EU norms (how they are transposed, enforced and applied in member states); it indicates the leaders and laggards in implementation and provides multi-country groupings

[75] Sverdrup (2008: 204–5).

[76] Radaelli (2003a), Featherstone and Radaelli (2003), Jacquot and Woll (2004), Radaelli (2004), Woll and Jacquot (2010).

based on shared Europeanization experiences and similar compliance records.[77] Oriented towards a territorial logic of Europeanization, studies of implementation have reviewed the impact of the EU on member states and groups of member states, attempting to stake out different regional clusters: northern,[78] southern Europe,[79] or Central Eastern and South-Eastern Europe.[80] Broad studies group European states according to their administrative capacity and their power to resist pressures to comply exerted on them by enforcement authorities,[81] or according to their so-called culture of compliance.[82]

What characterizes the Central and Eastern European (CEE) cluster is the significant gap between the transposition and the institutionalization of norms. Adopted legislation often fails to become effective in practice largely due to weak bureaucracies, court systems or civil society.[83] Already at the level of transposing legislation, the pattern that dominates in CEE is one of domestic political considerations, in which compliance depends largely on the constellations of actors and interests at the domestic level.

There is however a broad consensus, particularly among scholars of pre-accession Europeanization, that in terms of compliance the regional commonality of CEE derives less from a shared "culture of compliance" and the constellation of interests at the domestic level, and more from the fact that the Union's newest member states faced a particular form of adaptational pressure that was determined by the EU's conditionality mechanism.[84] It is broadly assumed in the early Europeanization East literature[85] and more recently in the literature on the Western Balkans[86] that domestic change, if any, is enlargement-led. Reform is triggered top-down through a mechanism of "reinforcement by reward", through which a candidate is offered the opportunity for membership if it complies with the EU's conditions and standards. Treaty-based sanctions are replaced by strong instruments of persuasion, and the Union denies assistance, association or membership and withholds conditional rewards for those candidates failing to meet the established criteria. Relying mostly on a rational choice perspective, Europeanization East scholars almost unanimously employ a top-down framework for their analyses, in

[77] Falkner et al. (2007), Goetz (2008), Sverdrup (2008) including further reference.

[78] Jacobsson et al. (2004), Dosenrode and Halkier (2004), Egeberg (2005), Grøn et al. (2015).

[79] Featherstone and Kazamias (2001), Pinto and Teixeira (2002), Royo and Manuel (2003).

[80] Dimitrova (2004), Schimmelfennig and Sedelmeier (2005, 2020), Vachudova (2005), Ágh (2010, 2015), Vachudova (2016), Bogaards (2018), Lacatus and Sedelmeier (2020).

[81] Börzel et al. (2010, 2012).

[82] Falkner et al. (2005), Goetz (2008: 74).

[83] Falkner and Treib (2008: 308–9).

[84] Schimmelfennig and Sedelmeier (2005, 2020), Steunenberg and Dimitrova (2007), Sedelmeier (2008, 2012), Papadimitriou and Gateva (2009), Gateva (2010).

[85] Schimmelfennig and Sedelmeier (2004).

[86] Džankić et al. (2018).

which domestic change is brought about by a significantly high level of misfit between the Union and a candidate state, which sets in motion reforms. Being utility maximizers, the candidate states bear the costs of adaptation in their pursuit to secure EU membership, thereby diminishing the misfit.

There are two types of conditionality identified in the literature: the democratic conditionality and the acquis conditionality.[87] The former is an expression of the states' requirement to adopt the general rules of liberal democracy, while the latter concerns the specific rules of the EU *acquis communautaire* explicitly formulated as prerequisites for EU membership. The former was intended as a precondition which would bind the respective states to a democratic course of future action, and was linked to the reward of opening accession negotiations with the EU. The latter implied a formal transposition of EU laws, which was linked to a much greater reward: the promise of acquiring membership.[88] Upon entering accession negotiations, domestic change in CEE became mainly driven by the acquis conditionality, with democratic conditionality usually playing only a background role. The European Commission continued, however, to monitor the democratic performance of states throughout their accession, and candidates faced the possibility of a breakdown or delay in negotiations.[89]

Over time, the EU leverage translated into domestic change in Central and Easter Europe, yet mostly in those areas where the Union had a well-developed *acquis.*[90] At least since the establishment of the Copenhagen criteria and the mechanism for democratic conditionality, the EU sought to build and consolidate democracies in CEE, yet with a questionable success. The external incentives for reform played a major role in initiating democratic change, yet other domestic factors must have had a significant effect on the stability of such democratic reforms. The changes in Hungary and Poland referred to in the introductory chapter stand out as a proof of an inefficient democratic conditionality. Without any post-accession monitoring and sanctioning tools, the EU lacked, and still lacks, adequate mechanisms to prevent member states' potential assaults on the rule of law and the democratic values.[91]

While the use of conditionality by the European Union during its Eastern enlargement has increased greatly in comparison with previous enlargement rounds, the literature singles out Romania and Bulgaria as the only candidate states in the region on which the Union was able to exert active leverage during their pre- and post-accession period.[92] For Bulgaria and Romania the accession conditions were rendered more severe: in addition to the unilateral suspension clause, which allows cooperation to be terminated if either party does not comply, was added an

[87] Schimmelfennig and Sedelmeier (2004).

[88] Schimmelfennig and Sedelmeier (2004: 668–73).

[89] Schimmelfennig and Sedelmeier (2004: 669).

[90] Jacoby (2004) and Epstein and Jacoby (2014).

[91] Closa and Kochenov (2016).

[92] Papadimitriou and Gateva (2009), Spendzharova and Vachudova (2012), Vachudova (2016), Lacatus and Sedelmeier (2020).

	2004									2007	
EUROPE AGREEMENT	HU	PO	CSFR	CZ	SLK	LAT	LIT	EST	SLO	BU	RO
HUMAN RIGHTS CLAUSE	-	-	-	√	√	√	√	√	√	√	√
UNILATERAL SUSPENSION CLAUSE	-	-	-	√	√	√	√	√	√	√	√
GENERAL ECONOMIC SAFEGUARD CLAUSE	√	√	√	√	√	√	√	√	√	√	√
SECTOR-SPECIFIC SAFEGUARD CLAUSE	-	-	-	√	√	√	√	√	-	√	√
TREATY OF ACCESSION											
GENERAL ECONOMIC SAFEGUARD CLAUSE	√	√	N/A	√	√	√	√	√	√	√	√
INTERNAL MARKET SAFEGUARD CLAUSE	√	√	N/A	√	√	√	√	√	√	√	√
THIRD PILLAR SAFEGUARD CLAUSE	√	√	N/A	√	√	√	√	√	√	√	√
POSTPONEMENT CLAUSE (UNANIMITY)	-	-	N/A	-	-	-	-	-	-	√	√
POSTPONEMENT CLAUSE (QMV)	-	-	N/A	-	-	-	-	-	-	-	√
POST-ACCESSION											
BENCHMARKING	-	-	N/A	-	-	-	-	-	-	√	√

Fig. 2.2 EU's policy of conditionality for Central and Eastern Europe

unprecedented postponement clause, which allowed accession to be delayed in case the candidate proved to be unprepared. More relevant still, they were not only expected to meet tighter integrity standards before gaining EU membership, but their justice and anti-corruption reforms continued to be monitored long after their accession. The still ongoing Cooperation and Verification Mechanism (CVM) that the two new member states have been subject to since 2006 is aimed at ensuring progress in reform areas closely related to good governance and the rule of law: judicial reform, the control of corruption and, in the case of Bulgaria alone, organized crime.

As displayed in Fig. 2.2,[93] the EU's policy of conditionality towards the states in CEE preserved a high degree of flexibility, allowing the Union to better regulate the range and timing for delivering its rewards to each candidate individually while taking into account the merits and performance of each accession state.[94] Anticipating the bigger challenges posed by Bulgaria and Romania, the EU tightened its pre-accession democratic requirements in order to prevent "the short term effectiveness of rule transposition in the context of conditionality (to) be compromised by medium-term ineffectiveness of implementation".[95] Also bearing in mind the fact that Bulgaria and Romania had to go through significant institutional, administrative and political adjustments in a relatively short period of time and under strong adaptational pressure from above, a post-accession slowdown or even halt of reforms was to be expected and thus counterbalanced by an extended conditionality.[96]

[93] Source: Papadimitriou and Gateva (2009: 158).

[94] Papadimitriou and Gateva (2009: 155–60).

[95] Schimmelfennig and Sedelmeier (2004: 676).

[96] Vachudova (2009).

Can enhanced conditionality secure sustainable reforms? Scholars of Europeanization East do question the effectiveness of conditionality and rule adoption and implementation in the new member states once they acquired full membership.[97] They firmly maintain that the EU's conditionality has an expiration date. Enlargement is viewed as a bargaining game with accession as the last and least surprising round and with conditionality unequally efficient throughout the game,[98] the EU's bargaining power drastically diminishing once the accession date is set and even more so once the accession is complete. Consequently, it is in the phases before accession that the Union can successfully use its leverage to lay down and enforce conditions. Once accession is set and done, compliance and progress with further reforms have to be based on other mechanisms than those used in the pre-accession phase. Arguably, post-accession conditionality for Romania and Bulgaria was therefore established to counterbalance the diminished effectiveness of conditionality once the reward of full membership was delivered. The regular biannual reports issued by the European Commission and its monitoring under the Cooperation and Verification Mechanism aim at upholding the threat of withdrawal of benefits and subsidies for the two member states and ensure they act in compliance.

But were these tighter accession and post-accession criteria enough to secure long-term compliance? Empirical studies of Europeanization East paint a mixed picture of the institutionalization of change and the enforcement of the norms adopted before accession. In certain policy areas, the EU appears to have played a major role in triggering compliance, yet in other areas it has not.[99] All in all, however, despite the EU's diminished leverage to ensure compliance in the post-enlargement phase, it still appears to have a rather strong influence in Central and Eastern Europe after having delivered the highly desired membership reward.[100] Assessing post-accession infringement of European legislation among Central and Eastern member states, research[101] reveals that the success of pre-accession conditionality proved to be largely sustainable even after these states had acquired full membership. Quantitative data on compliance gathered in the countries that joined the Union in 2004 show that post-accession compliance in the EU8 proved to be "surprisingly good" and in fact at the moment of inquiry outperformed the old member states in terms of alignment with EU law.[102] It is persuasively argued that domestic institutional obstacles or costs arising from an eventual reversal of change might have a positive impact on post-accession compliance. A "lock-in" of pre-accession-institutional change contributes to sustainable reforms after a state's

[97] Moravcsik and Vachudova (2003), Schimmelfennig and Sedelmeier (2004), Börzel (2006), Dimitrova (2006), Ladrech (2010).

[98] Steunenberg and Dimitrova (2007).

[99] Epstein and Sedelmeier (2008), Pridham (2008a), Vachudova (2014).

[100] Pridham (2006), Sedelmeier (2008), Levitz and Pop-Eleches (2010), Sedelmeier (2012).

[101] Sedelmeier (2008, 2012), Buzogány (2021).

[102] Sedelmeier (2008: 807), Buzogány (2021: 193–6).

accession to the EU.[103] With a focus on the domestic costs of reform reversal and the potential domestic veto players that might oppose an eventual setback, such studies provide good reasons to expect post-accession Europeanization to be consistent with pre-accession developments. Relying on both the idea of enhanced and widened EU conditionality—extended in the case of Romania and Bulgaria to the post-accession period—and on the idea of a path-dependent trajectory pursued by new members after their joining the Union, much of the research assumes and provides reasons to believe that produced change is sticky. New member states are expected and seen to slow down or even halt reforms after their accession, yet the results already achieved are reasonably believed to persist during the post-accession period. One recent study on the EU's ability to foster member states' compliance in the areas subject to post-accession conditionality covered all CVM reports published by the Commission between 2007 and 2018; the developments in Romania in particular are regarded as fairly positive, with an optimistic outlook on the success of the EU's "mechanism of monitoring without enforcement".[104]

Yet, a more fine-grained analysis conducted at the level of legislative drafting in Romania after January 2007 shows clearly that the mechanism of conditionality, even though extended through the post-accession period, lacked strength. Romania's post-accession developments offer a puzzling picture: it successfully Europeanized in fields where less adaptational pressure was posed from above, and at the same time, it de-Europeanized its integrity and anti-corruption reform which was subject to intense monitoring both before as well as after accession. The EU proved much more successful in promoting positive economic effects and in enhancing Romania's institutional capacity,[105] without however actually improving either the anti-corruption legislative framework, or the control of corruption on the ground. As counter-intuitive as it may seem, a high level of corruption and a highly developed social order are not at all mutually exclusive.[106]

By making a clear distinction between the opportunity structure and the incentives pursued at the EU level on the one hand, and at the domestic level on the other, studies of post-accession Europeanization[107] rightly claim that the European Union's leverage translates into domestic change only if the EU incentives are echoed by the interests pursued at the domestic level. As soon as the preferences of the domestic actors diverge from those of the EU, states are likely to halt reforms or even reverse them. Indeed, measures promoting justice and anti-corruption reforms, while serving the interests of a society at large become inconvenient for corrupt ruling elites, since the latter are tempted to compromise on the quality of adopted reforms and reverse the positive legislative changes that have been undertaken. Romania—and likewise, the Czech Republic, Slovakia, Bulgaria and Latvia—display high levels of

[103] Sedelmeier (2012).

[104] Lacatus and Sedelmeier (2020: 1252).

[105] Mendelski (2012), Lacatus and Sedelmeier (2020).

[106] Innes (2014: 89).

[107] Spendzharova and Vachudova (2012), Mendelski (2012), Ganev (2013), Vachudova (2014).

"corporate state capture" throughout their post-accession period, with the domestic political elites instrumentally using public power to achieve private benefits.[108] In a valuable contribution to the body of Europeanization East literature, Innes stresses this aspect:

> The stable party competitions and Weberian states of post-war western Europe were founded on strong elite commitments to democracy and socially embedded through sustained productivity growth and universally rising living standards. But those conditions have never existed in central Europe.[109]

She gives a compelling account of how the evolution of political parties into "brokerage firms" in states like the Czech Republic or Romania reveal a pragmatic approach to politics, in which ruling elites use and abuse the existing democratic framework in pursuit of personal gains.[110] Seen in this light, fighting corruption is very unlikely to be done by the very political elite which profits from the embeddedness of corrupt practices in state institutions. Implementing sound anti-corruption reforms would cause the already corrupt political elites to suffer more losses than gains.[111]

Quantitative research[112] into the EU's potential to influence corruption levels in Central and Eastern European states provides strong support for the argument that these countries' control of corruption increased prior to their membership and significantly weakened in its aftermath. The candidates joining the Union in 2004 and 2007 generally experienced significant setbacks in comparison to their own anti-corruption efforts undertaken before accession. Such a shift was experienced not only by "the usual suspects, Romania and Bulgaria",[113] but also by Hungary, Lithuania, Poland, Slovakia and Slovenia. The observed U-turn can be explained by a change in the EU's political leverage after enlargement. In the post-accession period, in contrast to pre-accession, the Union seems to have lost its ability to motivate and mobilize domestic opposition parties to pressure their governments to seriously fight corruption. The failure of Central and East-European opposition parties to challenge the corruption-prone practices of governments is not at all surprising in states in which "corrupt behaviour is the only game in town."[114] In contexts where corruption is endemic and where neither governments nor opposition parties are genuinely committed to achieving rule of law, the EU's conditionality cannot generate substantial anti-corruption reforms. The present theoretical approach builds on this line of argument, stressing the crucial role played by domestic political elites in bringing the legal and social reality in line with EU requirements.

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[108] Innes (2014), Vachudova (2016).

[109] Innes (2014: 88).

[110] Innes (2014: 97–102).

[111] Mungiu-Pippidi (2015: 195–203).

[112] Kartal (2014).

[113] Kartal (2014: 945).

[114] Papakostas (2013: 56).

Following this logic, we can explain Romania's reform reversal since January 2007 by focusing in particular on evidence of *legal corruption*, which occurs when legislators use their entrusted power in order to extract personal benefits, despite their declared commitments to integrity and good governance and despite the EU's continuous monitoring and benchmarking. This argument is grounded in the assumption that the EU's democratic and post-accession conditionality alone is insufficient to curb corruption and ensure the rule of law, and that the interests of the domestic political elite play a key role in the success of EU-driven reforms. As already mentioned above, the European Commission set high standards and ambitious requirements for Central and Eastern European states, and even more so for Romania, by means of post-accession conditionality. Yet, as a result, instead of implementing genuine integrity and justice reforms, Romania developed novel methods of abuse. Despite being the subject of intense monitoring through the Cooperation and Verification Mechanism, the member state not only failed to specifically and adequately outlaw corrupt behaviour, but it adopted instead legislative measures that show a shift from overt to more discreet forms of abuse. We cannot understate the importance of identifying (ideally at an early stage) the subtle ways in which political elites reverse legislation and weaken the mechanisms for curbing corruption.

By situating extensive empirical research within a revised framework for assessing (non-)compliance, this study is able to address a number of gaps in the literature on Europeanization. It contributes to existing top-down Europeanization literature in general by adopting a less institutionalist perspective and investigating the relevance of the elite's interests for the effective transposition and application of EU norms, and contributes to Europeanization East literature by providing a more rigorous explanation of post-accession setbacks by placing the emphasis on domestic, rather than European, catalysts for change. This is not to suggest that the Union's policy of conditionality is irrelevant for Europeanization and sustainable domestic change, but rather that the adaptational pressure posed by the EU both before and after a state's accession is not the primary driving force shaping reforms. Successful Europeanization is highly dependent on the personal preferences of domestic political elites. In contrast to the literature that emphasizes the inherent stickiness of domestic reforms, the current research will build instead on the idea of the resilience and flexibility that is inherent in law-making, and thus bring into sharper focus the legislator's ability to amend legislation on the one hand, and the rational motivation that informs policy change on the other. This approach allows us to assess Europeanization with a focus on preferences to be pursued, rather than institutions to be strengthened and capacities to be built. The domestic political elite is thought to be capable of overcoming any institutional and structural barriers to realizing its goals, especially in the context of (de)Europeanization; by acting in compliance before achieving full EU membership, the elite demonstrated that institutional capacities exist when there is adequate political will. In fact, this marks a phenomenon that still persists in most of the Central Eastern and South-Eastern European

states, in which political institutions can only be as strong as their actors allow them to be.[115]

Europeanizing reforms aim to serve a broad European public, their design being detached from the narrow personal interests of individuals or particular groups. It would, however, be naïve to expect that all reformers always commit to such reforms. Domestic reformers, particularly in allegedly corrupt contexts, might advance, or on the contrary even frustrate, change in pursuit of interests other than those serving the society at large. As a result, they may reverse reform as soon as the newly acquired *status quo* becomes inconvenient. The aim here is to embark on an in-depth assessment of Romania's legislative reforms shaped by EU conditionality with a careful view to laying bare the intentions and interests of the legislators in passing and amending the respective acts. The model put forward here offers a pertinent explanation of Romania's post-accession de-Europeanization, its questionable political governance and its rather weak respect for the rule of law. An elite-based approach is needed for understanding what drives and constrains reforms in Central Eastern and South-Eastern Europe, and potentially in other EU member or candidate states, with a focus on the behavioural patterns of the political elites and the factors that trigger a self-interested conduct of these elites, their abuse of power and their readiness to sacrifice societal well-being for narrow personal benefits.

2.2 An Elite-Based Approach

The entire European construction, the commitments made and the numerous steps taken towards integration would not have been possible without the efforts undertaken by political elites. The contractual and legislative nature of ongoing European integration and Europeanization accords a key role to the members of the national political elites, who are guiding and driving these processes.[116] Therefore, if one takes for granted the importance of treaties for the European integration, one cannot deny the pivotal role played by the political decision-makers in reaching those agreements and signing those treaties. Similarly, if one takes for granted the importance of law-making in the process of Europeanization, one cannot deny the relevance of national lawmakers in such a process of domestic legislative reform. It is the political elite in a state which is pre-eminent in deciding on the nature, form and content of any EU-driven law and, more importantly, on the extent to which the rule of law is *de facto* realized at the domestic level. An overwhelming amount of Europeanization literature, however, largely disregards these aspects, "attributing to elites, perhaps with the exception of initiating the process, the subsidiary role of merely following a predetermined course of history."[117]

[115] Gallina (2008: 64).

[116] Best et al. (2012b).

[117] Best et al. (2012a: 2).

The present research departs from such deterministic narratives by questioning the stickiness of institutions and of adopted norms, and by disputing the fact that Europeanizing change is mostly the result of a path-dependent process of adaptation or inadaptation. It stresses instead the flexibility and reversibility of reforms and the direct and immediate impact that legislators have upon the legislative output, and thus on Europeanization itself. While acknowledging the importance of formally established institutions, the present theoretical model postulates that the political elites play a crucial role in shaping and changing institutional designs, and in controlling and managing a state's political architecture.[118] Drawing on elite theory, this model moves beyond existing research and links Europeanization literature with studies on democratic leadership.

The domestic political elite is crucial in bringing social and legal reality in line with EU requirements on the one hand, and the desires of the society at large on the other hand. The members of the political elite are the actors who, in pursuit of societal goals and honouring their European commitments, set the agenda for decision-making, and draft and adopt legislation which leads to successful Europeanization. Their behaviour and actions therefore play a highly significant role in both meeting European requirements and satisfying societal preferences. By assessing the behaviour and the interests pursued by the political elite, the present approach not only provides a more comprehensive analysis of compliance and non-compliance with European norms, it also gives a valuable account of the quality of political representation, by showing the extent to which political representatives respond to the preferences and concerns of those they represent.

The present argument is based on an understanding of Europeanization as primarily driven by the pursuit of societal interests and the satisfaction of societal needs. De-Europeanization, conversely, is associated with a divergence from societal needs and preferences. This does not mean that every society in Europe is here understood to be characterized by homogeneous preferences across its various population groups. The concern here is not with the plurality or homogeneity of societal interests, but rather with those instances in which political decision-making does not accommodate any societal preferences, and is reduced to a mere pursuit of personal goals by the members of the political elite. Assuming that private and societal interests tend to conflict in corrupt contexts, this book consequently seeks to locate the areas in which the preferences of the elected representatives and the preferences of the electors diverge. It does not claim that the decisions adopted by the elite necessarily contradict or ignore societal interests, but that when they do, it distorts political representation and hinders reform. Theorists of representative government, such as John Stuart Mill, have long voiced such concerns:

> One of the greatest dangers . . . of democracy, as of all other forms of government, lies in the sinister interest of the holders of power: it is the danger of class legislation; of government intended for (whether really effecting it or not) the immediate benefit of the dominant class, to the lasting detriment of the whole. And one of the most important questions demanding

[118] Higley and Lengyel (2000a).

> consideration, in determining the best constitution of a representative government, is how to provide efficacious securities against this evil.[119]

The elite's behaviour, its attitudes and preferences take on significance here only in terms of this relationship between rulers and ruled, between representatives and the represented. Turning the focus to the domestic political elite in studying the process of Europeanization does not imply that the preferences of the society at large are of lesser explanatory relevance. On the contrary, nonelite preferences in fact provide the metric against which to measure the appropriateness of elite actions, for the interests of the society at large are the ones that orient—or should orient—the decisions of the political elite. The model of de-Europeanization proposed here thus assesses the impact of the political elite on the process of domestic reform, by inquiring into the extent to which the members of the elite put their own personal interests before the interests of their constituents.

Highly relevant in this respect is not only the degree to which the elite allows personal—and not societal—preferences to shape domestic legislative decisions, but also the degree to which the nonelites are vocal in defending their own interests. The underlying logic in this respect is that in order for elites to adequately respond to nonelites' desires and needs, they must know what these desires and needs are, and more importantly, they must have incentives to respond to them.[120] If the elected representatives are to consider the interests of the electors, a mobilization of societal action needs to occur. Indeed, the success of reforms and of Europeanization is a result of the preferences of domestic representatives, but also of the involvement and behaviour of those represented. An active participation in policy processes and a vigorous overseeing of the elite's performance and conduct by civil society and the broader public (e.g. by taking part in advisory or governing panels, by filing petitions that invite policy-makers to consider specific measures, or by attending public consultations and contributing with expert opinions) enhances the quality of representation, and encourages decision-makers in legislative fora to pursue sound and stable reforms. Without such an involvement of the nonelite, the elite would remain "likely, when faced with a discrepancy between their own interests and those of their followers, to favour the former."[121] On these grounds, the inquiry into the interests of political elites in promoting or inhibiting legislative reforms that embrace Europeanization will be complemented by an assessment of societal engagement and public scrutiny over legislative action. This will be a recurring theme throughout the subsequent analysis.

At heart, this book explains reform reversal in European domestic contexts by proposing an elite-based theoretical model observing (1) the structural factors that influence the behaviour of the elite, (2) the preferences pursued by the members of the ruling stratum in their legislative capacity, and (3) the linkages or divides between elites and nonelites in what regards the content of adopted legislation. It

[119] Mill (1861/2008: 299).

[120] Putnam (1976: 140–64).

[121] Putnam (1976: 162).

thus examines the extent to which Europeanization, and de-Europeanization, respectively, are elite-driven and elite-interest-based process. In this section we will first refine our definition of an elite, conceptualizing it for the present purpose as a centre of legislative power. Secondly, we will reflect on structural factors and the extent to which they might impact the behaviour of elite members, their preference formation and their use of power. In line with more conventional theories on political elites, we will delve into the study of elite permeability, the circulation patterns and dynamics of the political elite, the institutional context in which elites are situated and the linkages between the elite members with a particular emphasis on their respective level of solidarity and value consensus. Finally, we will examine the nature of the relationship between representatives and the represented, between elites and non-elites. This will involve questioning the extent to which leaders and the governed are congruent in their values and interests, and examining the role played by nonelites (civil society, among others) as a control factor that secures the responsiveness of elites to societal needs and wishes. This discussion of political elites serves as an ideal preface for the next section, which will propose a model of de-Europeanization.

2.2.1 The Political Elite: A Site of Legislative Power

Classical elite theorists—Mosca, Pareto and Michels[122]—recognize the existence in every society of a narrow ruling minority that monopolizes power and fulfils all the political functions: the political elite. They build their argument on the premise that power is distributed asymmetrically in society and that, for practical reasons, societies neither could nor should function otherwise. These early elite theorists advanced the argument that an elite of some kind is unavoidable in any stable society, as only a small minority has superior organizing capacities. Elites are crucial for any democratic system, which is propelled by masses but driven by political leaders.[123] Building on this premise of a functional imperative that every society needs to be led by a political elite, the present study will broadly subsume under the notion of political elite the group of politically effective actors in a society. The elites are, in brief, the holders of direct power over political decision-making.

The focus on the elite as a group of directly powerful actors requires first and foremost a clarification of the understanding of power employed here. Drawing on Putnam,[124] the present approach will distinguish in the first place between power as the ability to influence others and power as the ability to influence collective decision-making. The two are not mutually exclusive; it may be expected from a political elite to use its power over people in order to achieve power over decision-making. At the same time, having power over decision-making often results in

[122] Mosca (1939), Pareto (1966), Michels (1968).

[123] Best and Higley (2010: 3).

[124] Putnam (1976: 5–8).

influencing the behaviour of those people affected by the respective decisions, that is, in exercising power over people. However, in studying political elites, as Putnam argued, what alone counts is the elite's ability to influence political outcomes.[125] Indeed, power over people is only politically relevant when used to produce political outcomes. Political elites have power over people as long as they "devise and deploy political formulas tailored to independently existing nonelite interests and sentiments."[126]

Accordingly, the notion of power employed in this book, even though of a pluralist nature, does not lend itself to the kind of relational zero-sum interpretation proposed by Dahl in his early studies. In broad terms, Dahl conceptualized power as a relation between people in which one actor exploits a set of resources in order to alter the behaviour of another;[127] any increase of one's power can only come, in his understanding, at the expense of someone else's power. For the present study, it is more appropriate to single out the non-relational and non-coercive dimension of power, and thereby adopt a positive-sum pluralist view. Political power here indicates an ability rather than a relationship between actors, excluding altogether the idea that power is exercised over people; it is "power to" rather than "power over".[128] Sharp's definition of power best captures the mechanisms under study here, and is well tailored to the theoretical point which drives this study. Power, he argues, "means the capacity of people to act in order to achieve objectives even in the face of opposition".[129]

At the core of this definition is the belief that power is not necessarily held by those few occupying pivotal positions, but rather that it rises from many parts of society.[130] The power of the elite depends, for instance, upon the consent of the society it rules and is not necessarily generated by the ruling few. Such a pluralistic perspective has a particular merit, in that it allows for the possibility that the power of the governing elite is either challenged or supported through the actions of various social groups, mass mobilization and civil engagement. What distinguishes elite from societal power, however, is the manner in which it is exercised, and the actual decisional involvement among the respective holders of power. If we take for granted the fact that plenty of individuals may have the power to affect collective decisions, yet few decide upon public policy, we can identify three degrees of power that shape political outcomes: direct influence, indirect influence and spurious influence.[131] As Fig. 2.3[132] illustrates, an actor or a group of actors can exert *direct*

[125] Putnam (1976: 6).

[126] Higley and Burton (2006: 4).

[127] Dahl (1957).

[128] This conceptualization of power is inspired by the definitions proposed by Arendt (1970) and Parsons (1963) and informed by Lukes's (2005, 2015) theory of power.

[129] Sharp (1980: 312).

[130] Sharp (1973: 8).

[131] Putnam (1976: 6–7).

[132] Inspired by, yet slightly distinct form, Putnam (1976: 7).

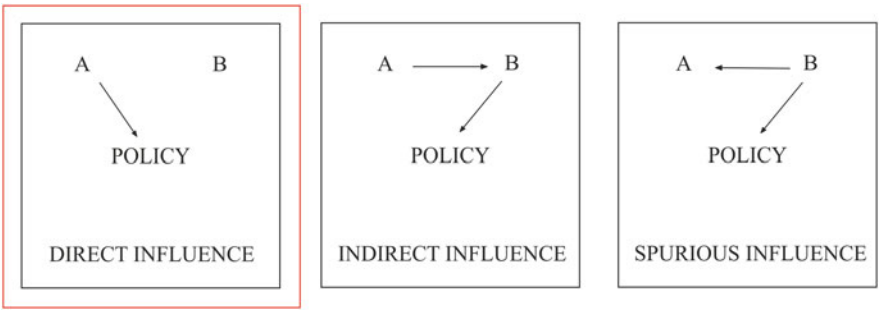

Fig. 2.3 Three types of political influence

influence over political outcomes through participation in final decision-making, *indirect influence* by swaying the decisions of other actors involved directly in decision-making, or *spurious influence* by affecting policy-making directly while at the same time determining the stand taken by other actors with no capacity to influence the political outcomes directly themselves.

The political elite as conceptualized here is distinguished by the fact that it is granted exclusive possession of direct power over political decision-making. Each society is formed of various groups of power holders, yet most of this power is an expression of indirect influence over political output; societal groups—forming the nonelite—depend upon the elite to implement decisions leading to the achievement of their goals. Building on this premise, the definition of political elite employed here resonates well, albeit not entirely, with Burton, Gunther and Higley's[133] understanding of the term as a group of persons who are able, by virtue of their strategic positions, to affect national political outcomes regularly (their points of view and actions are important factors for any continuities and changes in regimes and policies) and substantially (without their support or opposition a political outcome would be noticeably different).

This rather broad definition applies to a number of functionally differentiated groups, including political, administrative, economic, military, religious or social elites, among which there are members of the legislature, members of the government, party officials as well as senior public servants; owners and CEOs of important business corporations or companies; leaders of large labour unions and pressure groups; top military officers; key religious figures; as well as prominent lawyers, economists or journalists.[134] Although used in recent studies evaluating democratic performance in CEE,[135] such a far-reaching definition would fall short of accurately reflecting how the behaviour of the political elite impacts on the legislative output and in particular on the transposition of European norms. Moreover, employing such

[133] Burton et al. (1992: 8).

[134] Best and Higley (2010: 6).

[135] Rupnik and Zielonka (2013).

an extensive definition would make it difficult to establish the boundaries of the elite group, and thus render the analysis ineffective. A much narrower use of the term will better serve the purpose of the present book.

As noted above, the notion of the political elite will here be essentially linked to the idea of direct influence on political and legislative outcomes and confined to those political actors who are directly involved in policy-making by initiating, drafting and adopting legislation (i.e. the parliament, the government in its capacity to initiate legislation and to legislate by decree, and the president as the promulgator of law). In restricting the analysis to those legislative bodies at the very top of the chain of representation, who exercise direct power over policy-making, and thus play a pivotal role in the process of Europeanization we will be able to focus more closely on the impact of their behaviour and interests in the process of adopting EU-driven reforms.

Narrowing down the understanding of domestic political elites to the legislative bodies is not to claim that legislatures govern and drive the entire process of Europeanization. Given, however, the definition of Europeanization as employed here, which is restricted to the transposition of norms generated at the EU level, it is critical to assess the interests and behaviour of legislators, who formulate, amend, adopt and promulgate European norms. They transpose European legislation, but also limit, check and balance governmental powers, and more importantly, they play a crucial role in linking governments with the represented, opening avenues for public participation and formalizing nonelite interests into law.[136] Therefore, an inquiry into the behaviour of the legislative bodies is relevant to understanding the progress of Europeanizing reforms, but also the level of attainment of societal goals. At the same time, employing such a highly restrictive notion of the political elite helps to identify and measure the occurrence of *legal corruption* and its impact on reform development, issues and nuances that may otherwise be overlooked or downplayed in the study of Europeanization.

Obviously, such an approach leads to a clear differentiation between the domestic elite and the nonelite. The political elite is made up of those actors whose role is to translate nonelite interests into specific legislative acts. This definition is close to Plamenatz's[137] view of democracy: it is a government by consent of the governed, where the elected are entrusted by the electors to represent their interests, enjoying a free mandate and a high degree of autonomy in their actions. At the same time, Plamenatz claims that voters "must understand the significance of what they are

[136] Mosca (1939) cited by Kim and Patterson (1983: 220–1).

[137] In line with Körösényi (2010) it is here considered that Plamenatz (1973) and his model democratic control strikes a fine balance between Dahl and Schumpeter. Dahl understands democratic representation in terms of a delegation with a clear mandate from the voters—assumed to be well informed and competent—this approach disregarding thereby the idea of elite autonomy. At the opposite pole, Schumpeter (1942/1976) argues that voters rule only through their elected representatives, the latter enjoying an unbounded mandate and complete decision-making autonomy once they are elected; voters are in this case political consumers who are merely in charge of producing a government.

doing"; they must grasp the relevance of their choice and be able to hold—*ex ante* or *ex post*—their rulers to account.[138] An essential point underlying the present conceptualization of the political elite is that elites and nonelites are equally but differently powerful. This rather bold statement follows from the fact that while political elites shape political outcomes, adopt collective decisions, define policies and activities of the state, and enjoy a high degree of independence in order to act in the name of nonelites; the nonelites still play a pivotal role in investing the elite with power and legitimizing their authority. Direct power is institutionally designed to lie in the hands of the political representatives, but the legitimacy and authority of the political elite ultimately rests upon how embedded the respective legislature is in society as a whole.[139] Accepting this claim is not to deny the importance of the rule of law, of due process or of institutional checks and balances, but rather to maintain that formal constitutional and institutional arrangements alone are insufficient to guarantee the pursuit of societal interests and prevent abuses of direct power. A constitution and a set of norms outlining the structure and the proper functioning of a democracy do not suffice to limit the power of the ruling few whenever they have the tendency to abuse this power. A counter-tendency is required; a need for societal forces with the capacity to constrain and control rulers' abuse of influence and ensure their pursuit of societal goals.[140] In a weak society unable to exert indirect power over its political elite, the latter may extend its powers beyond its legitimate limits. It is on these grounds that the present study inquires primarily into the preferences and behaviour of the Romanian legislatures in the process of Europeanization, but assesses at the same time the societal interests, the civic responses to Europeanizing reforms and the level of engagement among those represented.

In sum, building on the premises of democratic elitism, the term political elite refers here to the political actors who hold direct power over legislative decision-making and thus, over Europeanizing reforms, and who are expected to act in compliance with their legal obligations under EU law and in a responsive and responsible manner towards the nonelites they represent. As has already been noted, the notion of the political elite gains much of its substance when used to examine the relationship between elites and nonelites. Consequently, in line with mainstream Europeanization studies, the present book determines how capable the domestic political elite is to comply with its European obligations, but at the same time it explores the extent to which representatives' legislative choices reflect the preferences and needs of those they represent. In contrast to neo-institutionalist theorizing—which builds on the assumption that institutional design itself limits elite choices and prevents abuses—the present argument places a much higher emphasis on agency rather than structure, taking for granted the elite's autonomy and its freedom of action vis-à-vis European and domestic institutional constraints. Institutional rationality recedes here to the background, the focus being placed on the

[138] Plamenatz (1973) cited by Körösényi (2010: 48–51).

[139] Mosca (1939: 121).

[140] Sharp (1980: 47–9).

elite's behaviour, their level of commitment towards their European obligations on the one hand, and their level of responsibility towards societal needs on the other hand. Nonelite participation and public contestation are here regarded as effective instruments to influence the behaviour of political elites. If they are absent, European pressures for reform and EU conditionality cannot lead to successful and sustainable Europeanization.

Finally, it is important to highlight the fact that the notion of the elite is here not conceptually linked to the idea of a cohesive group, as it is by C. Wright Mills in his model of the "power elite".[141] While all members of the political elite, as political representatives, are presumably equally powerful to influence law- and policy-making, with an equal and effective opportunity to affect political decisions, the actual exercise of power and the ability to impact on decisions and policies is still a result of interaction among these members of the political elite, who compete in order to represent and protect the interests of their respective constituents. Different constellations of actors may adopt distinct positions and support different decisions at different points in time, which will affect legislative output to varying degrees. As employed here, the concept thus follows a pluralist logic: the elite consists not of a unitary group, but rather of a multitude of groups with a power structure that varies from issue to issue, such as Dahl has described.

> There exist many different sets of leaders, each set has somewhat different objectives from the others, each has access to its own political resources, each is relatively independent of the others. There does not exist a single set of all powerful leaders who are wholly agreed on their major goals. Ordinarily, the making of government policies requires a coalition of different sets of leaders who have divergent goals.[142]

The elite rarely represents a single general will, but fairly often a plurality of varying and conflicting wills.[143] The members of any political elite are seldom homogeneous in terms of their preferences and their control over decision-making, just as the members of any society are seldom homogeneous in terms of their interests and needs. Romania is no exception. Following this logic, the competitiveness rather than the cohesion of Romania's political elite is here taken for granted. However, the extent to which this political elite is internally united or disunited is a detail worth considering, not least because the lack of an underlying consensus of the ruling class (with regard to the democratic rules of the game and the values to be observed while legislating) may contribute to political destabilization and reform reversal. Understanding how the structure of the elite, its integration or the lack thereof affects its members' patterns of behaviour, and thus its impact on reforms, lies at the core of this argument and will be discussed in greater detail in the following section and substantiated empirically in the following chapter.

[141] Mills (1956).
[142] Dahl (1967: 188–9).
[143] Newton (1994: 18).

2.2.2 *Elite Fragmentation*

The structure of the political elite, and in particular the extent to which this elite is integrated, has important implications for the functioning of a democratic system, for the efficiency of policy-making, and for the quantity and quality of legislative output. As noted above, the present argument holds the pluralism of elite structures as axiomatic, the elite consisting of various narrowly based groups whose influence is confined to those issues that are relevant for their respective constituencies. A certain degree of fragmentation of the elite is in this case crucial for preserving the democratic balance. However, neither a too weak nor a too intense fragmentation of the ruling class in terms of power, views and pursued preferences is desirable in a democratic society. Best and Higley clearly formulate this concern in their pertinent claim that "neither a deeply disunited nor a tightly united political elite is compatible with representative democracy."[144] A strongly united political elite may be hostile and intolerant towards preferences or positions diverging from their pursued ideology or goals; a very high level of cohesion and integration of the political elite is very likely to reduce its accountability, limiting its flexibility and sensitivity towards opposing viewpoints and interests. Conversely, a profoundly disunited political elite may be unable to reach a consensus either on issue-specific questions or on the rules of the political game in general. A very low integration of the elite may be equally harmful for a functioning democracy; a highly fragmented political elite only allows for a limited flow of information and impedes the creation of mutual trust among its members, which delays political reforms and eventually leads to stagnation.[145] The degree of integration or disintegration of the elite thus conditions the nature and stability of reforms, and more broadly, of the democratic governance.

Drawing on the work of Putnam[146] the following analysis will emphasize those structural characteristics of the elite that may significantly influence its level of integration or disintegration: the dynamics of the ruling stratum (the recruitment patterns and the permeability of the political elite), the institutional context (the existing cross-institutional synergies or conflicts of interest) and the linkages between elite members (their level of value consensus and their degree of group solidarity).[147] Conventional theories on elites consider the manner in which the elite renews itself over time—its circulation patterns—to have a profound influence on its level of integration, and thus indirectly affect the conduct of its members. Additionally, the institutional context—the division of roles and duties, the defined strategies and the adopted organizational loyalties characteristic of each law-making body—

[144] Best and Higley (2010: 7).

[145] Edling et al. (2015: 50).

[146] Putnam (1976: 107–23).

[147] Two other factors identified by Putnam (1976) in his extensive study were with due consideration excluded from the present analysis: the social homogeneity, and the personal interaction. Social homogeneity and a high level of personal and family ties among the members of the political elite are less common and less relevant in a study of elected representatives.

might either discourage the integration of the actors within it, if institutional preferences diverge, or on the contrary, might lead to complementary actions in the case of an overlap of institutional interests.[148] Yet the most central dimension of elite integration is the extent to which the members of the ruling stratum agree on policy procedures on the one hand, and on policy choices on the other.[149] The degree to which political elites are coherent with respect to the rules of the game, their agreement on political procedures and their commitment towards democratic principles and the rule of law, their readiness for cooperation as well as their level of mutual confidence are all crucial factors that contribute to elite integration.

The first factor assumed to be relevant for the degree of integration within the ruling stratum is the circulation of the elites. As noted above, the element most stressed by classical elite theory in determining the degree of elite integration or disintegration is the manner in which elites seize and preserve power, their permeability and renewal patterns. Both Mosca[150] and Pareto[151] emphasize the tension inherent in every society between the elite group, formed by old members willing to preserve power, and new nonelite forces contesting this established ruling order. Such a conflict can only be avoided by a gradual elite change and a high degree of openness of the governing elite towards recruiting and incorporating nonelite members. Conversely, a lack of willingness on behalf of the old elite to recruit new members forces the ruling stratum into a more dramatic change: revolutions and radical replacements. Elite change patterns thus significantly affect the stability of the political system, while they at the same time influence the level of unity and consensus among political representatives.[152]

Drawing on Mosca and Pareto, Higley and Lengyel[153] construct a model of elite circulation, proceeding on the same assumption that elites are the ones responsible for elite change.[154] Their model (Fig. 2.4[155]) is parameterized in terms of the *scope* and *mode* of elite change, with the former addressing the horizontal range of affected positions and the vertical depth from which the new recruits come, while the latter refers to the speed and manner in which elite circulation occurs. With respect to the *scope* of elite circulation, the extent to which it has a wide or narrow range of affected positions co-varies with the vertical depth from which the newcomers enter the elite: either from second-echelon positions (shallow circulation) or from lower

[148] Putnam (1976: 122).

[149] Putnam (1976: 115).

[150] Mosca (1939).

[151] Pareto (1966).

[152] Gallina (2008: 25–6).

[153] Higley and Lengyel (2000b: 2–7).

[154] Even for a narrow definition of the elite as employed in this book—referring only to elected representatives in legislative bodies—the elite are still the ones responsible for elite change by presenting the electorate with the choice of electors; the recruitment processes and the permeability of these elites affect the composition of the legislatures, notwithstanding voters' choices in elections.

[155] Figure 2.4 is taken from Higley and Lengyel (2000b).

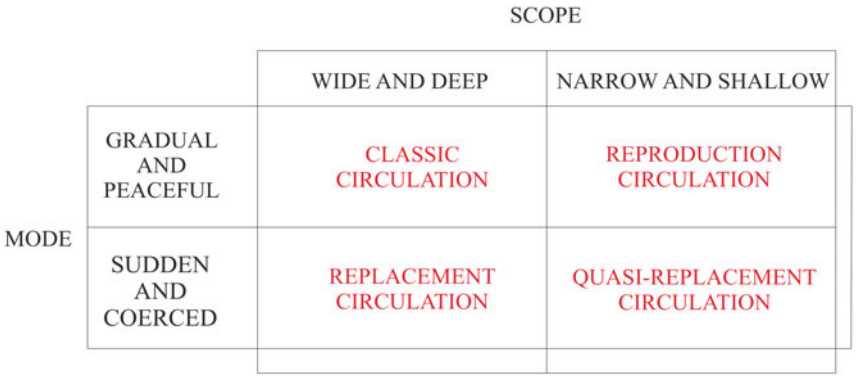

Fig. 2.4 The circulation of political elite: patterns of change

positions in the political hierarchy (deep circulation). Regarding the second dimension, the *mode* in which elite change occurs, the model distinguishes between sudden and coerced elite change (as in violent overthrows, coups or revolutions) and a gradual and peaceful incremental replacement of the elite.[156]

Arguably, radical and coercive elite change is an exception rather than the norm. *Replacement circulation* involves the deposition of the old elite by violent revolution and the imposition of a completely new set of elites; this most likely leads to the establishment of an ideocratic regime and to the silencing of all opposing forces as a tactical repression. In terms of unity or disunity of the ruling class, this type of elite circulation is associated with the emergence of a totalitarian or post-totalitarian regime, led by a new, strongly unified elite with a single belief system, homogeneous values among its members and with networks running through highly centralized structures.[157] At the opposite pole with respect to elite integration is *quasi-replacement circulation*, which, equally sudden and coerced, occurs within an already divided ruling stratum and leads to the continuation of disunity and conflict. It is a rapid and violent displacement of the governing group by an ascendant clique from the uppermost political positions, which adds to the climate of distrust and suspicion while amounting to "no basic change in the character of politics, which remain poisonous and violent."[158]

Elite change, however, generally occurs in a slow, gradual manner, upon the retirement of old elite members, upon their voluntary resignation or upon their individual transfer. A *classical elite circulation*, gradual and peaceful in manner and wide and deep in scope, promotes the crystallization and persistence of a consensual elite drawn from different political and social roles, and that is thus not bound by a single ideological commitment. This consensual elite engages freely in

[156] Higley and Lengyel (2000b: 5).
[157] Higley and Lengyel (2000b: 6).
[158] Higley and Lengyel (2000b: 6).

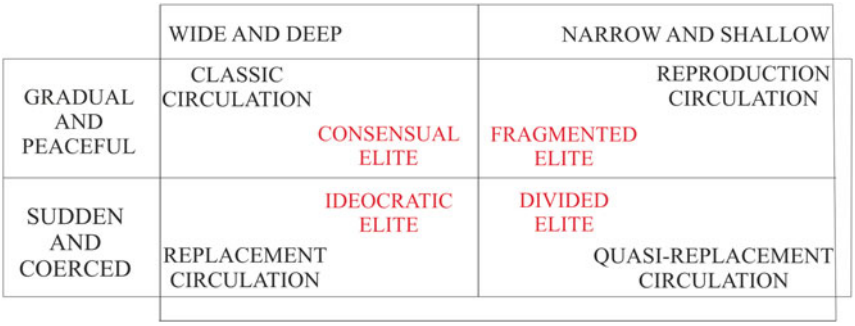

Fig. 2.5 Relating circulation patterns to elite unity

disagreements and at the same time agrees on clearly defined rules and procedures. Such a process of elite renewal requires a high degree of permeability and openness on behalf of the ruling group, and is widespread among fully consolidated democracies. In sharp contrast, in non-consolidated democracies, *reproduction circulation* of the elite is likely to endure, being gradual and peaceful in manner but horizontally narrow and vertically shallow in scope. This pattern of elite change is associated by Higley and Lengyel with a "musical chairs exchange of positions",[159] in which political leaders cling to power by whatever means necessary, thus contributing greatly to the fragmentation of the elite group.

> Tentative and partial elite pacts and armistices aimed at staving off open political warfare may be fashioned, but no elite ethos of unity in diversity develops. Instead, conflicts remain heated and a 'party of power' is likely to emerge and throw its weight around. But whereas strategies and tactics in a divided elite involve sharp polarizations and exclusions, with opponents typically regarding each other as mortal enemies in unchecked struggles, those in a fragmented elite involve more complex manoeuvres across multiple and cross-cutting cleavages that skew the outcomes of, but do not prevent, democratic competitions.[160]

In sum, Higley and Lengyel develop a meaningful and comprehensive typology of political elites based on the extent of their integration or disintegration and their circulation patterns, linking these aspects to different types of political regimes (Fig. 2.5[161]). It is this model that will guide the empirical assessment of the permeability and dynamics of Romania's political elite; the less permeable the Romanian ruling stratum, the more intense its fragmentation, and consequently, the more shallow and unsustainable its reforms. In this case, the state is more likely to resemble a non-consolidated democracy.

The permeability of political elites, the manner in which new members are recruited and interact with one another are, however, not free from the influence of the broader institutional context. In addition to the aforementioned elite circulation

[159] Higley and Lengyel (2000b: 6).

[160] Higley and Lengyel (2000b: 4).

[161] Figure 2.5 is adapted from Higley and Lengyel (2000b).

patterns, the interaction of institutions in a particular constitutional context is highly relevant to the study of elite unity or disunity. Institutions themselves may encourage elite integration by building on organizational interdependence and a coincidence of pursued interests; leaders in institutions with overlapping interests will take complementary actions, whatever their personal affinities or linkages. Similarly, institutional contexts may inhibit elite integration through the pursuit of conflicting interests, functional specialization and organizational loyalties, which might force leaders to pursue different goals, adopt different perspectives or take divergent actions.[162]

Generally speaking, even the constitutional provisions that limit government through the separation of powers in a system of democratic checks and balances are thought to "set ambition against ambition in a manner expressly intended to reduce elite integration."[163] Even more so, in a European context of multi-level governance, national parliaments could be regarded as primarily assuming the role of scrutinizing agents and co-legislating bodies in their relation to their executive counterparts engaged in decision-making in European fora. Indeed, the polycentric structure of the EU requires national parliaments to be willing to engage more in European matters and exercise a control function; from this point of view, plenary debates may be seen as primarily a form of government scrutiny.[164] Viewed from a rational-institutionalist perspective, the institutional context and the relationship between national legislatures and their governments—acting both domestically and at the European level—has a principal-agent nature in which the act of delegation by national parliaments to their executives is at times obstructed by conflicts of interests or by structural information asymmetries. The sectoralization of Council decision-making at the European level may render more likely the possibility for ministers to use the Council to pursue preferences divergent from those of their legislatures and disregard parliament's mandate or even the effects a proposal may have on various societal groups or other policy fields.[165] At the same time, the two-level game framework for interaction and decision-making within the EU widens the information asymmetries between ministers at the European level and domestic representatives.[166] Arguably, participation in the EU and the new role assumed by executives within the European decisional framework influences the behaviour of both governmental and parliamentary elites, which increases conflict and friction between institutions.

National parliaments across the EU have at their disposal various control mechanisms—such as no-confidence votes or parliamentary questions—through which they reduce the information advantage of their respective executives and oversee the decisions taken in EU affairs. To this end, national parliaments gradually improved

[162] Putnam (1976: 122–3).

[163] Putnam (1976: 123).

[164] Auel and Raunio (2012a).

[165] Miklin (2012: 135).

[166] Moravcsik (1994) and Putnam (1988) cited in Miklin (2012: 136).

their rules of procedure and committee systems, demanding more regular reporting from governments on their activities at the European level.[167] The executives at the same time generally act domestically in their role as the primary agenda setters and interact, within the format of parliamentary procedure, on the one hand with the government majority—having an interest in supporting the incumbents—and on the other hand with the parliamentary opposition, enjoying both an institutionally prescribed right and a strong interest to scrutinize the executive's actions.[168] All things considered, it is plausible to argue that institutional factors may increase the level of elite fragmentation, particularly in a European multi-level governance structure.

The last factor affecting elite integration and coherence is the linkages among elite members, their shared values and mutual confidence. Political institutions are incentive-based structures, shaping the motivations of leaders, and therefore, their policy choices.[169] Yet, institutions depend heavily on the meaning they are given. The institutional framework can set limits and direct elite conduct, but it cannot reliably guarantee democratic and responsible behaviour, especially when elites are driven by self-interest, shaping political processes according to their own needs.[170] Elite commitment to due process to values and principles and to the rule of law is in fact an equally important dimension of elite fragmentation, having a strong impact on the stability of adopted norms and of the system itself. Stable pluralist democracies are typically characterized by a high level of elite consensus with regard to codes of conduct, displaying a high degree of predictability, commitment to a politics of bargaining and compromise, and a strong willingness to abide by the rules of democratic procedure.[171]

Political consensus on democratic procedural matters does not, however, preclude fundamental substantive disagreements. In line with the pluralist perspective adopted in this analysis, elites are considered competitive rather than consensual, and their behaviour is considered as rather adversarial in terms of their political and ideological choices. Leaders take often divergent positions on public matters, their preferences being generally closely tied to their party and ideological identification. Both parliaments and governments are party-political institutions. Political parties decide on the agenda, on the balance of power in the committees and the plenary and on the rights of individual members or party groups.[172] From this point of view, the degree of value consensus among members of different political parties forming the elite is highly relevant for reforms and the legislative output. A sharply divided elite

[167] Auel and Raunio (2012a: 19–20).
[168] Wendler (2016: 41).
[169] Geddes (1994: 13).
[170] Gallina (2008: 67).
[171] Putnam (1976: 116).
[172] Auel and Raunio (2012a: 14).

with a high number of veto players and a marked ideological incoherence will be constrained in its ability to produce significant legislation.[173]

The existence of a shared normative basis and a certain degree of value consensus among the elites is closely connected to their sense of mutual trust and solidarity. As Putnam has noted, "[t]he mark of a unified elite, therefore, is not the absence of disagreement, but rather sufficient mutual trust, so that its members will, if necessary, forego short-run personal or partisan advantage in order to ensure stable rule."[174] In contrast, an intense fragmentation of the political elite—resulting either from narrow and shallow circulation patterns, from conflicting institutional or organizational interests or from a lack of value consensus—makes instability of reform more likely, enabling the pursuit of narrow particular interests and contributing to the failure of democracy even if democratic institutions are in place.

2.2.3 Overlapping Interests Linking Elites and Nonelites

Legislative bodies serve the purposes of a democracy in a particular manner: "They are the only ones who combine a close attachment to the citizens of a polity with explicit legal rights to participate in policy-making. They are the locus in which the sovereignty of a people is institutionalized and the most prominent place where the people formulate their preferences and ideas in a politically effective way."[175] The members of the political elite have then, by definition, not only the ability to influence policy-making significantly, regularly and directly, but they also play a key role as representatives by reflecting in their political actions the needs and interests of those they represent. Lawmakers will then largely mirror in their decisions the preferences of their constituents, while at the same time ensuring that the implementation of the respective decisions matches the desires of the electorate as far as possible. In this light, it is reasonable to argue that societal interests maintain and secure the linkage between the political elite and the mass public.

The thesis that political representatives favour the interests of those they represent is fairly widely shared in European studies, often taken for granted and seldom carefully scrutinized. Yet it remains quite unclear whose interests the political elite actually represents, what motivates political leaders, what their incentives are and what links they establish with their electorates. Arguably, both parliaments and governments are institutions whose members pursue party-political purposes while supporting the circular relationship between representatives and the represented: they offer citizens the chance to indirectly affect policy-making by selecting policy proposals made by political parties that compete for parliamentary and governmental

[173] Tsebelis (1999).
[174] Putnam (1976: 122).
[175] Neyer (2012b: 38).

mandates.[176] Democratic representation relies heavily on political parties publicly assuming different positions on various issues, opening up matters to debate and thereby providing their voters with policy choices. Political parties serve as a linkage mechanism in five respects: campaign linkage (they are in charge of the electoral process and the recruitment of political personnel), participatory linkage (they mobilize the electorate), ideological linkage (they provide voters with policy choices and alternatives), representative linkage (they ensure congruence between voters' policy preferences and the ideological composition of parliament and government), and policy linkage (they translate their programmatic promises into policies while in office).[177] Political parties are then, at least in theory, essential instruments for representation, which serve as vehicles for the recruitment of political elites, but also as a medium through which citizens can indirectly participate in the political system.

It is true that nowadays, political competition is drifting more and more towards a battle focussed on form rather than content, with re-election and policy influence being by and large the main goals pursued by political representatives.[178] This political opportunism most likely leads to a failure of political parties to meet societal expectations, with political parties turning more and more into mere electoral organizations, losing their socially integrative function.[179] Regardless of this trend, the general claim remains valid that political parties pursue interests largely overlapping with the preferences of their respective constituencies; they orient their decision-making towards public interests and receive the approval of their voters. Even when elected representatives are primarily concerned with electoral or financial rewards, and with political power and career advancement, as long as getting into and remaining part of the elite depends, at least to some extent, on the support of the electorate, each member of the elite has strong incentives to pay regard to the views of those voting. Electoral competition is expected to push competitors to produce policies appropriate to the needs and desires of the voters.

The interests of the public are, at least in theory, the parameters that orient policy- and law-making. Note, though, that these parameters are often wide, living elites with significant leeway regarding their choices and actions. At the same time, more often than not, the voters have little in-depth knowledge of the legislative performance and the decisions taken by those representing them. Legislative activities of the representatives are seldom taken into account by the represented in their electoral choice, which gives elite members a high degree of flexibility in their policy-making. Indeed, legislative entrepreneurship does not affect in any significant manner the re-election of a representative.[180] This is not to claim that law-making is generally detached from the interests of the voters, but rather to suggest that political elites

[176] Auel and Benz (2005: 375).

[177] Dalton et al. (2011).

[178] Mair (2008b), Auel and Raunio (2012a: 13–4).

[179] Przeworski (2006: 328–9).

[180] Wawro (2000).

have opportunities to pursue policies and reforms not necessarily in the best interest of their constituencies, as they are generally unconstrained by the pressure of elections. While in office, the members of the political elite can set legislative priorities and make decisions based on considerations other than the interests of their electorate; they can invest time and energy in legislation or legislative amendments on matters they care about, disregarding the effects such acts might have on their constituents.[181]

In this context, an important consideration concerns what constitutes appropriate elite behaviour across a public-private divide. Recent political practices tend to obscure the boundary between public and private interests.[182] While law- and policy-making are meant to serve the public good, being isolated from private narrow interests, all our current law and policy-makers are private individuals with their own preferences, ambitions and networks.

> Politicians will be more successful if they can raise money from friends outside politics, make friendships with other politicians, draw on knowledge gained outside politics to evaluate the bills before them, and rely on their family members to facilitate their constituency duties (if only to serve as gracious hosts and/or hostesses).[183]

Political decision-making is thus not only grounded on representatives' evaluations of how a certain outcome would affect their respective constituency; the individual backgrounds, previous careers and personal experiences of elite members inform political decisions and lead representatives to allocate more legislative time and resources to certain issues on the agenda.[184] Scholarship demonstrated decades ago that representatives belonging to a minority group—based on race, gender, age or sexual orientation—are more likely to use their legislative involvement to pursue the interests of that respective group;[185] at the same time, scholarly work sheds light on how engagement in policy-making is influenced by the representatives' prior occupations and backgrounds.[186] This is what Barry C. Burden persuasively calls *the personal roots of representation*. He refers to instances in which the legislative preferences of political representatives cannot be correlated to partisanship or to constituent interests.[187] Given these patterns of behaviour, it can be argued that the members of the political elite are primarily representatives of the groups they feel affiliated with descriptively, occupationally or experientially, and only secondarily of the people who voted for them.[188]

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[181] McCollum Gooch (2004).

[182] Allen and Birch (2012: 97–8).

[183] Allen and Birch (2012: 98).

[184] McCollum Gooch (2004), Burden (2007).

[185] Hall (1996), Rosenthal (1998), McCollum Gooch (2004), Broockman (2013).

[186] Fenno (1973), Bullock (1976), Krehbiel (1991), Deering and Smith (1997), McCollum Gooch (2004), Burden (2007).

[187] Burden (2007).

[188] McCollum Gooch (2004: 8).

Following this reasoning, the present argument is premised on the assumption that political elites may pursue interests that at times do not coincide with the preferences of their constituencies or of the society at large. If policy-making can be open to the pursuit of personal interests detached from the constituency's preferences, it is reasonable to believe that it may just as well be detached from the pursuit of *any* societal interest. Political action may be driven solely by the narrow self-serving purposes of the elite, particularly in contexts plagued by high-level corruption.

It may be useful at this point to incorporate into the analysis another element that defines the difference between a low degree of elite representation and responsiveness in policy-making and no representation and no responsiveness at all: the notion of self-interest. When members of the political elite are motivated in their legislative decisions and policy formulations by societal interests—even though these might differ from those of their respective constituencies—their representative role is still fulfilled to some extent. The book at hand is concerned instead with those instances when policy- and law-making lack genuine representation and have devolved into a mere pursuit of individual interests and a self-serving instrumental use and abuse of the democratic framework. In the following, the pursuit of personal interests will therefore be described as inherently opposed to the pursuit of *any* societal interests. The personal interests of the political elite are here understood solely as narrowly defined individual incentives that are pursued regardless of the harm done to society at large, to the reforms that promote Europeanization or to the democratic rules of the game.

In an endeavour to identify the extent to which individual interests may impact on policy-making, the present book does not dismiss the possibility that political elites act on behalf of their constituencies or of society at large. The goals pursued by the political elite may not diverge from the needs and desires of the electorate.[189] Yet, as seldom as the case may be, whenever a state is ruled by self-interested actors aiming at using policy-making to extract individual benefits that go far beyond holding power or gaining electoral returns, its legislative output and its reforms are likely to be heavily compromised. Especially in corrupt contexts, it can be expected that political elites will fail to reconcile their individual interests with those of the citizens. Frequently, members of these political elites subtly abuse the democratic framework and the spirit of the law, while in fact they largely conform to the letter of the law. Behind the appearance of democratic institutions, self-serving elites might not genuinely adhere to the norms of solid democracy, political reliability and representation, and may deviate from these norms in action. This type of behaviour

[189] It is as well true that the electorate may not always be right about what is appropriate political action and that a complete congruence between public preferences and political output may not necessarily be desirable, the experience and specialized knowledge of the representatives justifying to large extent the autonomy they enjoy in policy-formulation. However, the present argument is solidly grounded on the assumption that elite's primary commitment is towards bringing societal interests to bear on policy-making, legislative authorities remaining at all time committed to societal causes and concerns.

approximates *legal corruption*, when political representatives act in the belief that what is not specifically prohibited is acceptable.[190] They make legislative decisions with a view only to their own interests while failing to take into account any societal concerns. As Lengyel and Ilonszki rightly point out, such patterns of political behaviour are a characteristic of "simulated democracies",[191] in which elites merely imitate the acceptance of democratic norms and the rule of law. While being severely unrepresentative, in breach of the spirit and at times even of the letter of the law, the behaviour of political elites in simulated democracies does not, however, destroy the democratic framework; the democratic institutions in place continue to operate, with the actions of the political elite making their work relatively ineffective and precarious. Therefore, a fine-grained assessment of the relationship between legislative practice and the boundaries between public and private interests is thus necessary in order to account for instances of reform reversal in which no major institutional changes were involved. Paying greater attention to the behavioural patterns of the political elite and the goals pursued by political representatives while legislating could help make analyses of Europeanization more accurate and explain de-Europeanization processes.

2.2.4 Civil Society Bridging the Elite-Nonelite Gap

The present approach singles out the legislative bodies at the top of the representation chain as those actors capable of influencing political and legislative outcomes directly and whose actions and interests have a decisive impact on reforms in general and on Europeanization in particular. The political elite, so defined, fulfils a pivotal role in the process of Europeanization, being ultimately responsible for transforming both societal preferences and EU requirements into domestic law.

The cornerstone of the entire argument is that while legislative bodies are representatives of and responsible to the public that elects them, political practice shows that elite actions do not always meet nonelite desires. Legislative elites at times fail to refer back to the interests of their constituents while proposing and adopting reforms. Political elites may well be representatives only in a formal sense, and in fact be detached from the preferences of those they represent, failing to be faithful in their actions to the voters who elected them. Elite selection by means of elections does not all by itself guarantee responsible and responsive political leadership that pursues societal interests. Active participation in the process of ruling and being ruled is also a key responsibility of the nonelite, which needs to be vocal in expressing its preferences, needs to be aware of how these preferences translate into policies and needs to understand the significance of its political choices.

[190] Allen and Birch (2012: 99).

[191] Lengyel and Ilonszki (2010).

By and large, and without overgeneralizing, it is safe to say that in Romania, the mass public's levels of political engagement, attentiveness and preparedness to respond to policy change were for a long time rather disappointing. The detachment and disenchantment of the general public with political action may be explained by a deficient downward flow of information from the political elites to their voters and upwards from the electorate to their representatives; the represented know too little about the decisions taken by their representatives in domestic or European fora, while leaders remain unaware of the preferences of their electorate. What is even more likely is that the disenchantment of the electorate with Romania's political elite has been caused by endemic high-level corruption and the lack of responsiveness of the latter towards societal concerns; citizens may be inclined to engage politically only as long as their engagement produces changes, yet when the prospect of success is perceived as dire, they are very likely to abstain from political participation. In either case, as the empirical analysis will subsequently show, things change as civil society gains strength in filling this uncomfortable gap between the representatives and their represented. In some fields much more than in others, civil society gradually grows in its ability to fill the information gap and efficiently mobilize the nonelite in order to protect its interests through active participation and political and civic engagement.

As mentioned above, the understanding of democracy proposed here diverges from Schumpeter's elitist model,[192] in which political competition only allows the electorate to make a choice among representatives, but not among policies. The present approach departs from this view that the involvement of the electorate in a democratic government is limited to accepting or withholding its acceptance of political elites. Instead, it postulates that, in addition to producing political representatives, the active engagement of the general public is also necessary between elections in order for policies to be framed in accordance with a broad societal interest. Citizens need be politically informed and remain in touch with their political and legal reality, their participation being a means to influence the agenda and reach specific policy goals, even in contexts where high-level corruption is endemic. Elections do give the general public the opportunity to express its preferences directly and to elect leaders who represent its interests. However, electing political representatives is not a sufficient mechanism in order to ensure responsive and responsible elite behaviour and maximize societal welfare.[193] A retrospectively voting electorate may indeed hold elite members accountable, but only as long as it can discern whether and to what extent elites represent its interests, and can sanction or reward them with re-election accordingly. Yet, as voters often have insufficient information to evaluate incumbent governments, elections fall short of adequately inducing representation.[194] Similarly, prospective voting—in which electors evaluate candidates' programs and promises for the future—leaves a great

[192] Schumpeter (2003 (1943)).
[193] Manin et al. (1999: 50).
[194] Manin et al. (1999: 30).

number of specific societal or group interests unrepresented; numerous issues remain unaddressed and latent until they are brought into the spotlight and included in a candidate's political offering. There is, however, an alternative to the ballot box, or as noted above, a complementary to it: an active partaking in political life through civic engagement provides the possibility to pursue common interests, and to influence and control policy-making at all times. Civil society—broadly understood here as the space between individuals and political institutions where groups organize formally or informally to act in the public sphere—makes possible the aggregation and communication of specific group interests which may potentially produce policy change during the much longer periods between electoral contests; it also fulfils a very important control function, exposing and denouncing representatives' misuse of office without depending on a fixed electoral calendar.[195] Moreover, unlike elections in which all actors and actions are evaluated at once, the exercise of control through civil society and civic engagement is sectorial and selective, and therefore more efficient, as it takes into view specific goals and focuses on particular policies or particular interests and wants; "citizens do not need to use one instrument to achieve many purposes simultaneously".[196]

The concept of civil society is used here to refer to a form of political participation based on self-constitution and self-mobilization, and focuses primarily on the pursuit of common societal interests as opposed to private, narrowly-defined ones, such as economic interests. The nuances in the meaning given here to civil society can be easily grasped with reference to what civil society is not: it is here distinguished from both a political society of parties, political groups and political elites, and from an economic society of firms, cooperatives or partnerships, corporations, privately owned media or other for-profit organizations.[197] In very broad terms, civil and political society differ from an economic society in that they constitute the domain of common societal interests as opposed to a domain governed by the pursuit of profit, which characterizes the latter. In this respect, the concept of civil society as used in the following distinguishes clearly between civil and economic society by suggesting that the actions of the former are not—at least not directly—oriented towards the satisfaction of material self-interest.[198] Equally relevant, it distinguishes also between civil and political society, isolating civic activism from a type of mobilization aimed strictly for political ends. This careful consideration of the nature and goals of the various organization and movements considered here as civil society is inspired by the warning example of Hungary, where the emergence of state-supported and state-directed forms of civic engagement amounted to the creation of a "fake civil society".[199] In assessing here the strength of civil society, the letter will be regarded as a locus for social interaction between the economy and the state,

[195] Peruzzotti and Smulovitz (2006b).

[196] Peruzzotti and Smulovitz (2006b: 11).

[197] Cohen and Arato (1994: ix).

[198] Peruzzotti and Smulovitz (2006b).

[199] Ágh (2015: 19), Bogaards (2018: 1491), Greskovits (2020).

with a logic of action distinct from both. It is constructed through self-constitution and self-mobilization, and it includes the sphere of association, public interest organizations, social movements and other organized forms of public action and communication. This book will intentionally place emphasis on civil society's essential function to serve public well-being.[200] More specifically, the focus is placed on organizations, associations, and movements whose primary aim is the construction of social bonds in order to communicate and protect public interest,[201] unsubordinated to any direct economic or political ambitions.

Civil society, as understood here, reflects societal concerns, distils and aggregates public preferences, thus forming a locus for communicating grievances and developing proposals for change. It not only plays a key role in the construction of public interest, but it is, at the same time, involved in protecting it. It holds public officials accountable, acting as a body of oversight and political control and exposing and redressing eventual elite abuses of public power.[202] The understanding of civil society proposed here thus combines these two views which are, in fact, two faces of the same coin: the neo-Tocquevillian idea of *social capital*, which presumes that civil society works by creating an associative texture of society,[203] and the idea of *social accountability,*[204] which is based on the model of oversight and refers to the different mechanisms employed for holding political elites accountable. In this light, the practices of civil society are on the one hand used as an indicator of what societal interest are, while on the other hand, they hint at the extent to which political and legislative decision-making responds to those interests and reacts to changes in societal preferences.

Civil society is thus pivotal with respect to its capacity to foster citizens' engagement in public and political life and to enable the articulation of societal needs. It fulfils an important mediation function, reducing the information gap and the tension between representatives and the represented; it not only informs the represented and prepares them for retrospective judgement during elections, but it also monitors the state of mind of the electorate for the representatives, which in fact allows voters to gain influence over policy-making prior to elections.[205] Civil society is not only an important facilitator of a broad policy dialogue, but it also serves as an important linkage between nonelites and the political elite by creating the space for citizens to organize and take action in order to protect and promote their interests.

[200] These conceptual contours of civil society are inspired by the four different definitions proposed by Kohler-Koch and Quittkat (2011).

[201] It is relevant to point out again that the pursuit of public interest is here regarded not as the realization of a single common good, but rather as a pursuit of interests separate from narrow private ones.

[202] Peruzzotti and Smulovitz (2006a), Grimes (2013).

[203] Putnam (1993), Mungiu-Pippidi (2005).

[204] Peruzzotti and Smulovitz (2006a).

[205] Arato (2006: 317).

A strong and dense civil society is the most important interface between representatives and the represented and completes the triad comprising citizens (with their raw interests), civil society (that aggregates and communicates those interests) and the political elite (through which public interests are reflected in policy choices). Civil society constitutes an alternative forum for rights to be advocated and protected and for interests to be voiced, which completes and complements the accountability of political representation.[206] Its actions thus have significant impact on reforms in general and on Europeanization in particular.

In the context of Europeanization, civil society plays a critical role in identifying and voicing societal concerns and expectations expressed in relation to EU integration or EU membership. It acts as a conduit between citizens and decision-makers at both the national and the European level, assessing on the one hand whether European demands receive appropriate policy responses at the domestic level, and on the other hand, whether EU-driven reforms match societal needs and wants. The EU offers a broader context for civil society actors to voice and articulate social and political concerns. As early as 2007, Della Porta detected a trend towards the externalization of protests at the EU level, in which domestic non-governmental actors who feel weak at home use the supranational level in order to produce change in national politics.[207] However, despite empirical evidence pointing towards an emerging transnational civil society within the EU's borders, there is still a clear inclination towards using domestic sites in order to voice concerns, even when those concerns regard the EU's policy output.[208] This *domesticated*[209] reaction to Europeanization does not necessarily imply diminished pressure or weaker impact, but rather reflects a sense of inertia across civil society to search for protection or relief at a national rather than supranational level.[210]

The importance of civil society assumes a different emphasis in the context of Eastern enlargement, the EU's accession or post-accession conditionality and the demand for a transposition of laws and norms. In the context of a challenging accession process in which states face great difficulties in meeting the conditions for EU membership, often lacking funding, expertise or administrative capacity, involvement of civil society and non-state actors in public policy-making was expected to be stronger, and such cooperation with civil society was thought to be capable of significantly strengthening the capacity of state actors to cope with EU-led reforms.[211] However, research finds only limited evidence of sustained cooperation between political elites and civil society in Central and Eastern Europe,[212] despite the high incentives of the former to seek the expertise and support

[206] Arato (2006: 317).
[207] Della Porta (2007: 196).
[208] Kutay (2015: 810).
[209] Imig and Tarrow (2001).
[210] Ladrech (2010: 146–64).
[211] Börzel and Buzogány (2010a), Börzel and Fagan (2017).
[212] Börzel and Buzogány (2010a), Carmin (2010).

of the latter; the non-governmental sector assumes an opposing rather than a cooperative role.[213] The second case study below will reveal instances of successful cooperation which led to a higher degree of stability and irreversibility of reforms. Romania's nature conservation reform, associated with an improved capacity of civil society to participate in policy formulation and implementation, offers an example for sustainable Europeanization.

The engagement of civil society—active at the domestic level as an alternative form of political control—is all the more necessary as a crucial component in the broader European effort to curb corruption and enhance the quality of government in the Union's member and accession states. Still, the EU's accession and post-accession conditionality for Central Eastern and South-Eastern Europe makes scarce reference to civil society as an essential factor in the process of judicial reform and the fight against corruption. While stating clearly its commitment to integrity and the rule of law, the EU seemed to rely solely on the response of formal political institutions in curbing corruption at the domestic level. The practice, and until very recently, also the literature of enlargement-led Europeanization, disregarded domestic civil society as an important centre for action. Yet allegedly corrupt political elites are less likely to commit to pursuing sound anti-corruption reforms in the absence of societal pressure, and EU conditionality is not enough to ensure such a commitment. Therefore, in line with the most recent approaches to democratic consolidation in Central and Eastern Europe,[214] the present book will draw attention in its first case study to the yet-unfulfilled potential of non-state actors to restrict the abuse of public office and the reversal of anti-corruption reforms.

Civil society certainly cannot act as a substitute for formal checks and balances and cannot be regarded as a stand-alone trigger for meaningful Europeanization reforms and good governance. It cannot be a guarantee for sustainable reform, as policy-making at the European and domestic levels still depends, in fact, on political will.[215] And yet, it is reasonable to presume that in order for European policy-making to reflect societal needs and concerns, and thus for domestic reforms to be genuine and just, the self-organization of citizens in pursuit of common interests remains a very important condition.[216]

2.3 Theorizing De-Europeanization

As discussed above, studies on Europeanization and the EU's impact on member and accession states are inspired by a disproportionate optimism with regard to the success and irreversibility of EU-driven reforms. For more than two decades, a

[213] Parau (2008), Börzel and Buzogány (2010a), Dimitrova and Buzogány (2014).

[214] Dimitrova and Buzogány (2014), Mungiu-Pippidi (2015).

[215] Beichelt et al. (2014).

[216] Arato (2006: 322).

consistent body of literature has pointed out the importance of adaptational pressure from above which, if combined with supporting facilitating factors at the domestic level, can produce significant and lasting change towards Europeanization. This view held true particularly in Central Eastern and South-Eastern Europe, where states' eagerness to acquire full EU membership was thought to induce compliance and to push domestic actors into adjusting to their European commitments. Most Europeanization East scholars view reforms adopted by acceding states as a direct consequence of the EU's policy of conditionality, while any post-accession slow-down or halt of reforms is explained by conditionality's diminished effectiveness. While cautiously anticipating that once membership is granted, the EU's capacity to trigger domestic reforms would diminish and Europeanization would therefore stop or advance at a much slower pace, most studies are in fact hesitant to bring to the forefront the reversal of already produced change. Like the studies discussing the Europeanization of old member states, Europeanization East approaches design their models to accommodate the idea of sticky reforms and account for the reasons why states are unable and unwilling to pay for dismantling already adopted domestic changes.[217] They assume too easily that reform is incremental. Such a view underestimates the role of reform reversal, as Europeanization is seen rather in terms of a linear reform trajectory pursued by states, most likely at a faster pace before their accession and at a slower pace after joining the EU. The present approach, by contrast, rejects the thesis of the persistence of reforms. It acknowledges the effectiveness of EU conditionality in setting in motion domestic change in Romania, yet it questions its effectiveness in bringing about *stable* reform. It claims that Europeanization can be reversed, and aims to uncover the causes of such a reversal. In response to this research desideratum, this chapter proposes a theoretical model that accommodates the idea of reform instability and the potential for setback by drawing attention to the flexibility of law and to elites' sovereign capacity to reshape their legislative responses to EU demands. The emphasis is thus self-consciously placed on those members of the ruling stratum who adopt legislation at the domestic level, who are viewed as key players in the process of Europeanization and are able to advance or frustrate change.

This model draws a fine line not only between instances of compliance and non-compliance, but also between reform steps that are inconsistent and those that are *intentionally inconsistent* with European requirements. In this manner, it highlights the direct and contradictory impact that self-serving legislators have on the legislative output and on Europeanization itself. Such a position is at odds with most studies of Europeanization, where scholars regard the preferences of the political actors as given: domestic elites pursuing Europeanizing reforms are treated as European-minded decision-makers seizing opportunities derived from their state's convergence with the EU. This almost unanimously accepted perspective is here considered to be legitimate and fruitful, but not necessarily universally valid. When seeking to explain why a reform and its reversal are orchestrated by the very same

[217] Sedelmeier (2012).

domestic political actors, it becomes relevant to explore the motivations behind reform adoption or reform reversal, and the interests pursued by reformers; then, it also matters whether political elites are European-minded or not, and if their political and legislative choices are based on ideology, party loyalty, strategies to satisfy voters, or simply on self-interest.

Taking a closer look at Romania's reform record after January 2007 gives rise to the question: What could explain the state's post-accession selective backtracking? This chapter sets out to answer this research question by proposing an explanatory model of de-Europeanization that finds inspiration in the field of elite studies, and combines an assessment of a state's EU-driven reforms with an inquiry into the patterns of behaviour and interests pursued by political elites responsible for adopting the respective reforms. This will provide the conceptual framework for the empirical investigation which will then follow in Chaps. 3, 4 and 5.

2.3.1 *The Proposed Theoretical Model*

Börzel and Risse's[218] seminal model, and in particular their *logic of consequentialism* (Fig. 2.6[219]), emerged as one of the major conceptual and theoretical tools for understanding the Europeanization of Central and Eastern European states.

This rational choice explanation of the domestic impact of Europe has been echoed—even though not always explicitly—by numerous scholars focusing on CEE, who consistently argue in favour of a unidirectional causal relationship between (1) the EU's adaptational pressure (triggered from the top down through the Union's policy of conditionality), (2) the facilitators or inhibitors of reform at the domestic level, and (3) the resulting changes to domestic policies and institutions. While early studies of Europeanization East placed emphasis on the external incentives for reforms,[220] more recent approaches have moved to stressing the relevance of domestic factors in promoting or inhibiting change.[221] But neither external incentives nor the identified domestic factors can adequately explain why a state may reverse its formally adopted EU-driven reforms.

A weaker leverage position for the EU means that it can exert less adaptational pressure on its member states, which may be reluctant to implement new reforms. This, however, cannot lead them to dismantle the cost-intensive reforms already adopted. Existing reforms (as opposed to the reforms not yet adopted) are thought to

[218] Börzel and Risse (2000).

[219] Figure 2.6 is adapted from Börzel and Risse (2000) and their proposed logic of consequentialism.

[220] Schimmelfennig and Sedelmeier (2005, 2020), Steunenberg and Dimitrova (2007), Pridham (2007a, 2008b), Papadimitriou and Gateva (2009), Vachudova (2009), Tomini (2014).

[221] Steunenberg and Toshkov (2009), Gateva (2010), Spendzharova and Vachudova (2012), Vachudova (2014), Börzel and Fagan (2017).

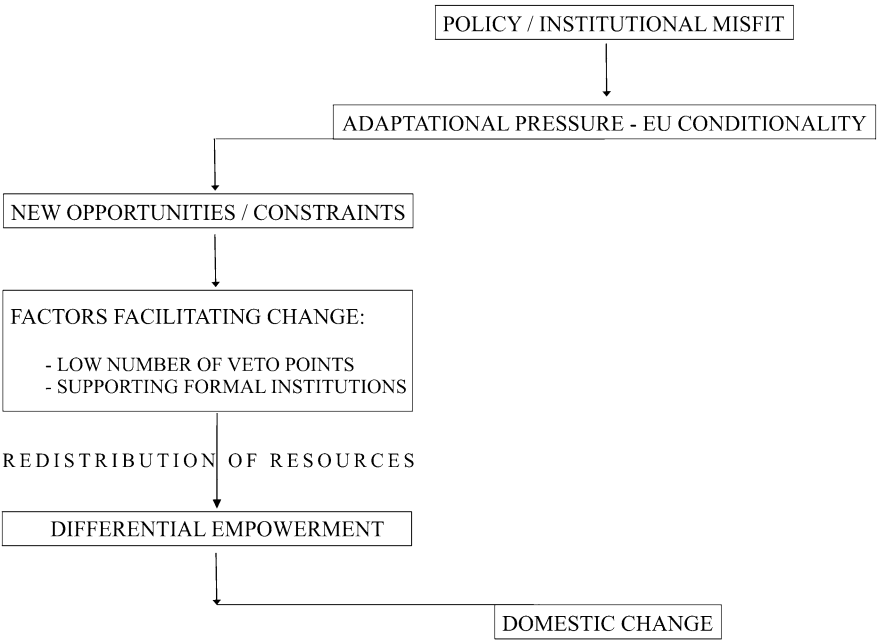

Fig. 2.6 The classical rational choice approach to Europeanization

be *locked in* by the fact that their dismantlement would incur additional costs states may be unwilling to pay. Similarly, the identified domestic factors most often considered in the literature[222] to account for non-compliance (high costs of reform coupled with weak capacities for implementation, or the mobilization of veto players at the domestic level against the application and enforcement of reforms) cannot explain legal backsliding. They may inhibit the transposition of new laws or prevent the transposed legislation from being adequately enforced, yet they are not an adequate explanation for a reversal of formally adopted laws. The fact that EU law was already transposed successfully at the domestic level shows that the number of veto points was low enough and the domestic institutions were supportive enough in order to permit legislative adaptation to EU requirements.

Building on this literature, the following pages propose a theoretical model which explains the formal reversal of Europeanizing reforms by paying close regard to the manner in which the expected change also aligns with the goals pursued at the domestic level by the political elite (Fig. 2.7[223]).

[222] Börzel and Buzogány (2010a), Dimitrova (2010), Sedelmeier (2012), Spendzharova and Vachudova (2012), Börzel and Fagan (2017).

[223] Figure 2.7 is adapted from Börzel and Risse (2000) and their proposed logic of consequentialism.

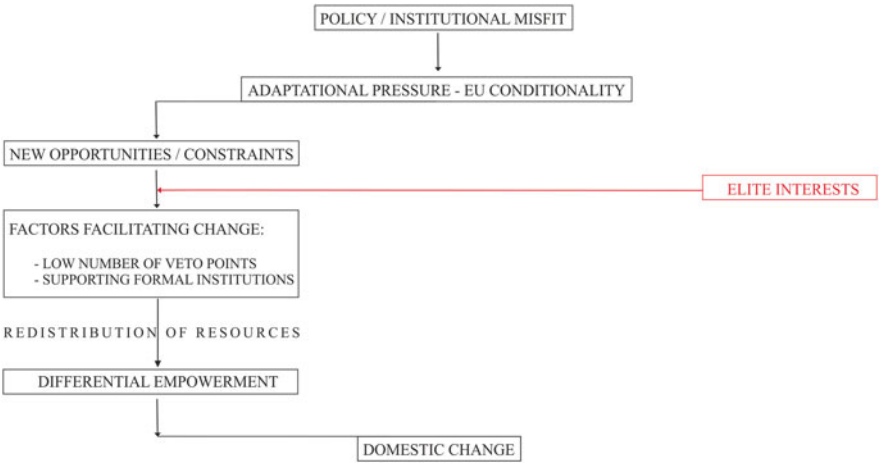

Fig. 2.7 An interest-based approach to Europeanization

This model contends that the legislator's preferences and the extent to which they correspond with the interests of society at large may have a significant impact on the course of reform. Persistence of domestic change (Europeanization) in this case can be attributed to the stability of the preferences of the domestic actors, while policy and legislative setbacks (de-Europeanization) are the result of a shift in the interests pursued at the domestic level by the members of the political elite. Under the assumption that the domestic political elite always acts in the interests of its electorate, the claim above would not differ substantially from other rational choice accounts of domestic policy change. Thus, it is here anticipated that representatives do not always act in the interests of the represented. The logic behind this prediction is straightforward: in contexts with high-level corruption, political elites are likely to seek the highest concentration of gains for themselves, even though this may incur significant social costs. The cost-benefit calculations of the political elite do not always take account of the benefits or costs at a societal level. It is on these grounds that the above rather unspecific independent variable (elite interests) will be further specified and contextualized (elite personal interests) in order to explain de-Europeanization. This model proposes that instability of reform be attributed to the pursuit of personal rather than societal interests by the domestic political elite.

Yet, assessing the preferences driving the adoption of certain legislative measures and the rejection of others poses methodological problems. In the law-making process, although representatives may pursue narrow individual interests that differ completely from those of their electorate, the legislative output may nevertheless meet constituents' expectations. In other words, a pursuit of personal preferences by the members of the domestic political elite may just as well lead to promoting Europeanization as to inhibiting it. This obfuscates the causal relationship between elite preferences on the one hand, and Europeanization *or* de-Europeanization on the other. In order to escape this difficulty, the independent variable (the personal

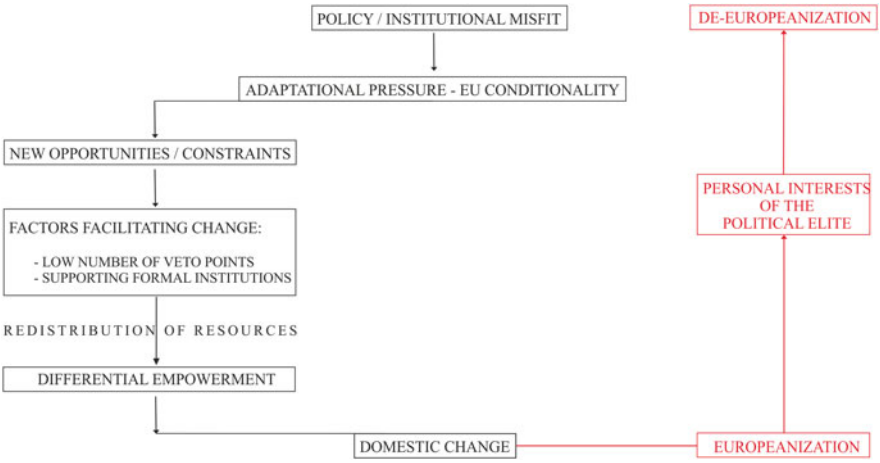

Fig. 2.8 The proposed model of de-Europeanization

interests of the political elite) will be limited to those elite preferences that clearly diverge from *any* societal concerns. This conceptual choice and the specific understanding of personal interests is motivated by methodological considerations. Isolating the causal impact of the elite's self-interested behaviour requires a definition of interests that clearly distinguishes between a pursuit of policy goals that correspond with societal preferences, and policy-making that responds *only* to the individual concerns of decision-makers. The nature of the interests pursued by political elites is therefore considered against the background of societal preferences and needs. The elite's pursuit of personal interests as understood above is here explored for its impact on Europeanization and its potential for triggering reform reversal. Advancing such an interest-based model by focusing on the elite's pursuit of personal as opposed to societal interests is uniquely able to provide an account of Romania's post-accession de-Europeanization, while it at the same time correlates this development with the quality of political representation in the member state (Fig. 2.8[224]).

The model opens the black box of how EU requirements and standards are incorporated into domestic legislation. The focus is on the relationship between personal preferences that motivate specific policy choices (the independent variable), legislative output and reform stability, or more specifically, reform reversal (the dependent variable). The relevant actors in this relationship are (1) the political representatives who enjoy exclusive power to adopt and amend legislation and (2) the represented, who by means of engaging in civil society, ensure the responsiveness of the elite to their needs and interests. As regards the political representatives, their patterns of legislative behaviour are influenced less by European compliance mechanisms and more by internal elite structural characteristics and

[224]Figure 2.8 was developed by the author based on Börzel and Risse (2000) *logic of consequentialism.*

dynamics. Elite configurations and circulation patterns cause their integration or disintegration as a group and their linkage or estrangement from those they represent. Unlike previous studies in the field of Europeanization, this account does not take for granted elite permeability, the robustness of party competition, the role of ideology and values in policy-making or the legislators' respect for the letter and the spirit of the law. Political elites may be impermeable, ideologically non-committed, lacking in mutual trust and value consensus, and lacking in respect for both policy procedures and already made policy choices. Such symptoms are indicators of a high level of elite fragmentation, which itself is associated with a tendency on behalf of the political leaders to engage in *legal corruption*. As regards the represented, only a strong civil society that is able to aggregate, voice and defend public interests can prevent such a short-term self-interested behaviour of the domestic political elite. The lower the engagement and the fewer the constraints posed by civil society in a particular field, the stronger the pursuit of personal preferences by an intensely fragmented elite.

Consequently, postulating that the pursuit of personal (as opposed to societal or group) interests is more likely to occur in a fragmented political elite and is only possible when there are no constraints put in place by civil society, the present model proposes the assessment of the values of two antecedent conditions: the level of fragmentation within the ruling stratum and the strength of civil society. These antecedent conditions are considered to significantly enhance the impact of the independent variable mentioned above (Fig. 2.9).

This model supports the idea of an instrumental self-serving use of Europe and of European policies, which is particularly likely to occur in states not yet immune to high-level corruption. By focusing on the motivations behind representatives' legislative choices in different fields of reform and their respective convergence or divergence from the public interest, this approach discloses more elusive forms of abuse and draws attention to the fine variations across policy domains. It refrains from painting a broad picture of an overall backslide, but instead uses a fine-grained analysis in order to derive lessons from one field and apply them to others, thereby drawing attention to a new range of factors to be taken into account when shaping expectations with regard to the success or failure of Europeanization.

2.3.2 Research Design

Despite all hopes that states would at least preserve the level of Europeanization they have reached before joining the EU, some areas of reform have proven more stable than others. Conditionality occasionally leads to thorough and lasting policy change, while at other times it fails to bring about genuine reform. As noted above, this book will focus on de-Europeanization, i.e. on instances where the Union's pressure for reform did produce domestic change, yet this was not sustainable enough to have had a lasting impact.

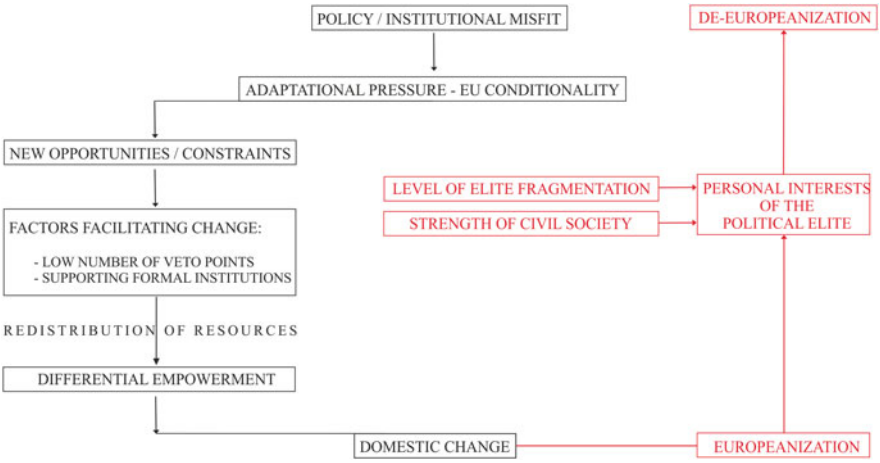

Fig. 2.9 The proposed model of de-Europeanization (including the antecedent conditions)

Romania is in this regard an illustrative case, as it went through a fairly irregular process of Europeanization despite being subject to constant high adaptational pressure from the EU. Romania has been one of the two countries considered less stable, less prosperous and less dynamic than the East-Central European candidates, therefore having its entry into the EU postponed from 2004 to 2007. This postponement was intended to provide the state with additional time to adjust and implement reforms. During its candidacy, Romania was thus exposed for a longer time to the EU's adaptational pressure and its streamlined conditionality. Moreover, EU conditionality was considerably broadened in scope during the 2007 enlargement, with an unprecedented post-accession mechanism of cooperation and verification being put in place to compensate for the diminished effectiveness of the Union to trigger compliance once the reward of full membership was delivered.[225] This exceptional extension of the EU's conditionality beyond the post-accession period means that Romania is to this day subjected to a monitoring regime that aims to ensure compliance through the threat of denial or withdrawal of benefits. In this light, Romania is an obvious choice for a study on (de)Europeanization, as it is one of the EU states with the highest overall conditionality burden, which in turn raises expectations with regard to the stability of its reforms.

Indeed, regular monitoring and benchmarking—specifically targeting the field of justice and anti-corruption—allow the Commission to continue to evaluate Romania's level of performance and provide guidance in this sensitive area of reform, but also to single out the conditions under which further rewards will be delivered. It is not surprising in this context that Romania was denied Schengen Area membership, which was originally scheduled for March 2011, arguably less on grounds of non-compliance with the *acquis frontalier*, than on account of a declining

[225] Papadimitriou and Gateva (2009).

trend in democratic governance and respect for the rule of law.[226] The EU's policy of conditionality, characterized by a high degree of flexibility, allows the Union to constantly adjust the range and timing for delivering rewards. Reconciliation of its conditions and requests with the goals and limitations of each individual state certainly adds to the strength of EU post-accession conditionality. Yet, as mentioned above, even *personalized conditionality* may not be enough to guarantee enduring domestic change.

Even though it did not undertake any major constitutional changes that would have significantly affected its already fragile democratic checks and balances, concerns were raised that Romania embarked on a de-Democratizing path similar to the one taken by Poland and Hungary affecting its overall level of Europeanization. The repeated attempts by the political elite to dilute the already adopted integrity legislation and to abuse the limits of their power in pursuit of personal interests may have, but in the end did not lead to a complete state and constitutional capture. The explanation given in the following pages as to what keeps Romania from sliding towards authoritarianism is more nuanced than that provided in the literature to date. The intense fragmentation of its political elite prevents them from acting in concert and forming a "quasi-monopolistic power centre"[227] that could capture democracy, although at the same time it does make self-serving corrupt behaviour more likely. Also, the feeble but well-directed efforts of Romanian civil society proved to some extent successful in sanctioning severe abuses and in preventing any complete dismantlement of democratic checks and balances. These very efforts of civil society, coupled with a high level of public trust in European institutions, have in fact been the principal means through which not only democracy, but also certain Europeanizing reforms were kept in place, by giving traction to the EU compliance inducing mechanisms. However, the lack of an abrupt reversal of democracy does not mean the lack of an abrupt reversal of Europeanization.

Prior to the state's accession to the EU in January 2007, legislative bodies at the domestic level showed a high degree of support for the conditions laid down by the Union, undertaking major changes in numerous reform areas. They have, however, attempted to reverse some of these changes since. This study, designed as a within-case comparison, attempts to provide a plausible explanation for these post-accession developments, accounting for what makes certain areas of reform in Romania more prone to de-Europeanization than others. It is the state's post-accession compliance record that makes Romania a highly interesting setting for observing legislative behaviour and formal de-Europeanization. Romania offers a particularly puzzling example: it tends to Europeanize in fields where the EU poses limited adaptational pressure, while it de-Europeanizes in areas where it is subject to intense monitoring and benchmarking; it shows an abuse of the democratic framework in settings assumed to be rule-governed and transparent, yet without a

[226] European Commission (2013).

[227] Ágh (2015: 8).

complete democracy capture; it shows instances of reversal, but not of a complete reversal. This indicates that there is no linear correlation between external incentives and constraints on the one hand and domestic legislative performance on the other. It also indicates that there are other factors that keep reforms stable and prevent Romania from entering a deep democratic backslide, such as the strength of civil society.

Case Selection

The following empirical research will firstly engage in an analysis of Romania's compliance record in the area of public integrity and the fight against corruption. This focus on integrity and anti-corruption reform is justified on the one hand by the increased priority placed by the EU itself on fighting corruption in Romania, and on the other by an expected self-interested behaviour of the largely corrupt political elite, which was likely to be reluctant to genuinely engage in curbing corruption. Corrupt practices have a strong potential impact on the implementation of the *acquis communautaire*, on the proper functioning of the single market, and on the quality of institutions and core democratic values that the Union seeks to represent. As mentioned above, the EU made significant efforts to trigger substantial domestic change in this particular area by introducing a post-accession system of benchmarks and sanctions for Romania, in order to regularly assess the state's performance in this field. In essence, what makes this area of particular interest is precisely the fact that although it is under the Commission's permanent supervision and monitoring, reform developments nevertheless remain uneven, unpredictable and inconsistent. At the same time, in no other area of reform is the contrast between elite and societal interests more pronounced, with numerous corrupt representatives being least inclined to act in the interests of the represented. Therefore, studying anti-corruption reforms in a political context already known to be affected by high-level corruption renders easier the discussion and identification of the personal interests of the political elite. While this will be discussed in Sect. 4.1 in greater detail, suffice it to say here that in a state where grand corruption remains high and notorious offenders are part of legislature, the adoption of sound anti-corruption reform is fairly unlikely, at least as long as political elites may face trial, mandatory prison sentences or seizure of their assets and as long as self-interested considerations take priority in forming political judgements. This area of reform was thus selected for observation on the basis of the very high value of the independent variable (the pursuit of personal interests by the political elite), which might explain the changes in the observed dependent variable (de-Europeanization).

The account of justice reform is complemented by a comparison with Romania's environmental reform, which helps to render the impact of the independent variable more plausible. For Romania, environmental reform marked an equally high transposition challenge, given the quantity and quality of its existing laws and the high pressure from the EU on accession states to adapt and adopt an ambitious green

acquis.[228] Environmental policy is indeed one of the most developed policy fields in the European Union, which places accession states and EU members under considerable adaptational pressure.[229] Countries aspiring to EU membership, Romania included, were required to adopt no less than 450 pieces of environmental legislation before their accession.[230] This brings the two case studies on par in terms of the policy-load demanded. Yet, despite the massive policy transfer that Romania was expected to undergo during its accession period, its environmental reform was not subject to any post-accession monitoring mechanism. The adaptational pressure exerted by the European requirements in this area of reform is from this point of view high, yet lower than the adaptational pressure faced by Romania in its anti-corruption reform. On these grounds, and also due to the fact that this policy field requires significant financial and administrative resources, Romania's reform would be expected to stagnate, or at least to advance at a slower rate in the post-accession period. Indeed, if taking these aspects into account, the state would be likely to respond to the EU's adaptational pressure by Europeanizing at a comparatively slower pace or even by halting environmental reform after becoming a full member of the EU, when its compliance record is presumably inspected less often. However, decision-making in this field leaves considerably less scope for a pursuit of personal interests by the domestic political elite. Environmental policy is in general not only relevant for the citizens of Romania or of Europe, but for the entire planet. In adopting legislation for protecting the environment and natural resources, the Romanian political elite is surely less influenced by selfish considerations of personal gain. This second case study would hence display lower values on the dependent variable, which might predict either a linear or a stagnant reform (depending on the degree of EU adaptational pressure), but no reform reversal.

These two case studies will render plausible rather than test and prove the correlation between the pursuit of personal interests by the political elite and a state's reversal of reforms. They offer a point of departure from which to better understand the process of Europeanization and to explain why the assumption held so widely in the literature—that a high level of conditionality brings about successful domestic reform—holds true only for certain reforms. However, in examining the success and stability of Romania's Europeanization in two specific policy-making areas, both characterized by high and very high adaptational pressure posed by the Union, the focus here is more on the extent to which the self-serving behaviour of the political elite may interfere with the course of reform regardless of the EU's adaptational pressure. A comparison is then drawn between the two cases, with the high variation in the explanatory variable (the personal interests of the domestic political elite) being expected to account for the divergent results in the degree of Europeanization in the two policy domains (Fig. 2.10).

[228] Börzel and Buzogány (2010a).

[229] Börzel (2008), Börzel and Buzogány (2010a), and Braun (2014).

[230] Börzel and Fagan (2017: 885).

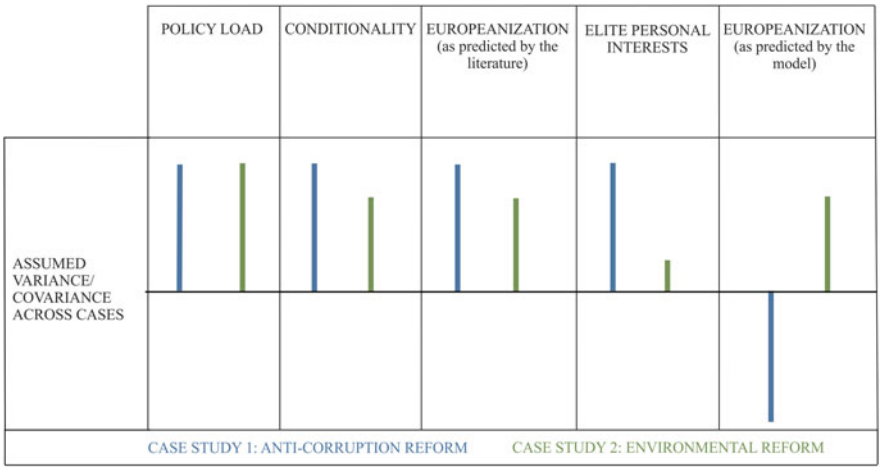

Fig. 2.10 Case selection

The analysis of the concrete developments and subsequent amendments of two legislative proposals in these domains will illuminate the relations between the elite's pursuit of personal interests and an eventual post-accession reversal of reform. Looking into the different provisions of each law and its development over more than a decade will help to overcome the difficulties of the small sample size:[231] such a fine-grained approach generates detailed observations at the levels of law production and amendment across the different law-making bodies and across the selected period of time. The two legislative proposals from which the analysis starts are Law 144/2007, establishing the National Integrity Agency (ANI Law), and Ordinance 57/2007 regarding the legal regime used to protect environmentally significant habitats and species (Nature Conservation Law), both adopted in 2007 and subsequently complemented by further acts on the same subject matter. These two legislative proposals, which constitute the main *units of analysis,*[232] were selected because (1) their adoption is highly relevant for both the European Union and the member state, and for the respective reform in general, and (2) they are very different regarding the extent to which they allow a pursuit of narrow personal interests by the political elite. Furthermore, the choice of the two laws is particularly suitable for a top-down analysis, given their legislative origin, emanating from the EU.

Law 144/2007 establishing the National Integrity Agency (ANI Law) responds precisely to one of the benchmarks laid out by the European Commission for measuring Romania's progress in its justice and anti-corruption reforms after January 2007. One of the four benchmarks set by the Commission as part of its post-accession conditionality concerns the establishment of an Integrity Agency, the

[231] King et al. (1994).

[232] Yin (2009: 29–33).

purpose of which is to ensure the integrity of high public and elected officials. It has "responsibilities for verifying assets, incompatibilities, and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken".[233] This benchmark is particularly relevant here, since it is the only parameter against which the Commission measures Romania's legislative actions, rather than the state's implementation and institutionalization of norms or its efficiency and administrative capacity. It places Romania's legislative performance under a magnifying glass, and targets directly the conduct of the state's political elite. A smooth adoption of the ANI Law—granting a newly established Integrity Agency a robust mandate to detect and sanction conflicts of interests and unaccountable income—would indeed prove the country's commitment to pursuing the fight against high-level corruption. It would significantly raise the stakes on grand corruption, and corrupt officials would face a much higher risk of being exposed.

At the opposite pole in terms of the potential pursuit of personal interests by the domestic political elite is Ordinance 57/2007 (Nature Conservation Law) aimed at the conservation of Romania's wildlife. It derives from two EU directives: the 1992 Habitats Directive (92/43/EEC) and the 1979 Birds Directive (79/409/EEC). These two directives are the cornerstone of the EU's nature-conservation policy, being highly important for the environmental agenda of the Union, ensuring "the long-term protection, conservation and survival of Europe's most valuable and threatened species and habitats and the ecosystems they underpin."[234] Compared to other environmental sectors (such as waste management, air and water quality, or industrial pollution), Romania was granted no derogations or transition periods in this field. Concerned about the potential economic costs incurred by the implementation of stringent environmental standards, domestic governments often made efforts to obtain derogations prior to their state's accession to the EU. Romania itself succeeded in negotiating eleven environmental derogations,[235] but the Nature Conservation Law was not one of them, and Romania was expected to implement the respective *acquis* by the time of accession. This placed high pre-accession pressure on the member state to re-align its legislation so as to accurately reflect the environmental requirements agreed upon at the EU level.

Romania's nature conservation reform ran in parallel to the state's anti-corruption reform, with legislative amendments adopted by the same political elite, applying the same procedural standards, but resulting in very different Europeanization outcomes: an improved compliance. Both laws were amended through new legislation over time, with numerous new measures introduced that significantly affected their substance and core aims and their level of convergence with European norms or standards. Seen in comparison, they reveal how the Romanian political elite can be at times self-interested adopting legislative amendments to reverse uncomfortable

[233] Commission of the European Communities (2006).

[234] European Commission (2017c).

[235] Braun (2014: 47).

reforms, and other times responsive to societal concerns allowing Europeanization to unfold.

Operationalization and Methodology

As discussed above, so far no model of Europeanization has provided a convincing explanation of post-accession reform reversal. This can be addressed by demonstrating that the interests pursued by the domestic political elite, largely neglected in the literature, can plausibly explain instances of de-Europeanization. Accordingly, the proposition on which this argument is founded is that a setback of EU-driven reforms is likely when political representatives striving for narrow individual gains find such a U-turn beneficial.

The stability of legislation at the domestic level, it is argued here, depends on the EU's policy of conditionality, but more importantly on the interests pursued by the elite in the process of law-making or law-amending; if political representatives pursue narrow self-serving preferences, legislative reforms are likely to be reversed, regardless of EU conditionality. Two antecedent conditions were singled out as significant to the functioning of a self-serving political elite: the level of fragmentation within the ruling stratum, and the strength of civil society. These two indicators illustrate, on the one hand, the linkage among elite members, their integration or disintegration as a group, which heavily impacts the conduct of its members; while on the other hand, they illustrate the linkage between the elite and the nonelite and the extent to which the represented can communicate and protect their interests and maintain political control over representatives.

The research goal will be met by employing a *backward-looking approach,*[236] starting from the *explanandum,* in this case de-Europeanization, and subsequently tracing back the factors that led to it, focusing in particular on the interests pursued by the members of the political elite, but also on the level of elite fragmentation and the strength of civil society. The point of departure is Romania's puzzling de-Europeanization in the field of anti-corruption; the research is designed not to provide an empirical confirmation or refutation of a single-factor hypothesis, but rather to seek a detailed explanation for this surprising post-accession development. It seems highly plausible to use the pursuit of personal interests by the political elite in the process of adopting ANI legislation as a causal factor that brings about the reversal of Europeanization. The plausibility of this approach is further supported by the selection of a second case study, Romania's nature conservation legislation, that is significantly less favourable to self-serving behaviour of the political elite. This case also has a backward-looking orientation, starting from representatives' legislative choices in this new field of reform, coupling these choices with the elite's pursuit of personal or societal interests. In sum, using process tracing, an identified level of (de)Europeanization will be correlated, on a case-by-case basis, with the extent to

[236] Scharpf (1997: 25), Börzel and Buzogány (2010a).

which the members of the elite pursue personal rather than societal interests, paying close regard also to the antecedent conditions that enabled the elite to behave in such a self-interested manner. In order to achieve construct validity[237] and predictive reliability, the operational measures of the important variables will be detailed in the following.

The Level of De-Europeanization

As detailed in Sect. 2.1.1, Europeanization is defined in strictly legislative terms (as the transposition of European laws and requirements) and modelled as a reversible process. De-Europeanization is then an ex post formal repeal of certain provisions after they have been adopted and produced effects at the domestic level. The standard of comparison for assessing reform reversal is in this case Europeanization in so far as it has already been achieved.

As noted above, the empirical study captures Romania's post-accession period, during which the two selected legislative proposals (both first formulated in 2007 and running in parallel) were repeatedly amended and revised. Each step in the formal process of law-making and law-changing is observed and assessed in relation to all previous steps, but also in relation to the benchmarks and requirements set by the European Union. The variance in the level of (de)Europeanization is thus extracted on the one hand by tracing the developments of each of the two legislative proposals and their linearity, and on the other hand, by the extent to which they respond, on a constant and permanent basis, to the EU's adaptational pressures.

The narrow conceptualization of the dependent variable proposed here allows for it to be observed and measured directly, through document analysis. The law-making process, being a sequence of proposals, amendments and voting stages involving different institutions, is accessible to the public either in the form of live or recorded media (video recordings of the debates in parliament or the committees) or as published official documents. These will provide the basis of the empirical assessment of de-Europeanization.

In order to account for Romania's reform progress or reform reversal a number of sources will be analysed in great detail: all the documents and media relating to the initiating of legislative proceedings, formal statements of motifs, the positions issued by parliamentary committees, the amendments adopted or rejected in plenary sessions in the two chambers of parliament, any constitutionality checks, and any changes proposed during the law's promulgation. At the same time, this study will pay close attention to the reports, letters of formal notice, reasoned opinions or any other documents drawn up for infringement proceedings by the European Commission. These documents will clearly illustrate the expected European standards and the domestic developments to be achieved, specifying which provisions of the laws remain intact and which are added, modified or removed.

[237] Yin (2009: 41–2).

Since the formal process of law-making affects the content of legislation, this analysis is equally concerned with not only the substantial but also the procedural aspects of the law-making process. On the substantive side, it will scrutinize all the provisions within the two pieces of legislation and all the amendments brought thereto, keeping in view the level of coherence and stability in law-making, the legislative intent and the convergence with or divergence from European requirements. On the procedural side, it will consider the legislative performance, the efficacy and appropriateness in the law-making process and the extent to which the legislative procedures serve the same aim as their form does, i.e. whether they are in harmony with the spirit of the law. In short, de-Europeanization is reflected in the adoption of formal legislative changes, but also in any procedural issues that may unjustifiably delay or hinder the enforcement of the respective laws.

The Elite's Pursuit of Personal Interests

As detailed above, the concept of personal interests was for the scope of the present argument insulated from societal interests. A pursuit of personal interests by the political elite approximates in this case *legal corruption,* a self-serving use and abuse of the legislative framework for individual gain at the expense of the public interest. This conceptualization in fact rules out those instances in which a pursuit of personal interests by the political elite brings about legislative outcomes that are at the same time responsive to public needs (as, for instance, vote-maximizing and office-seeking goals). Only that behaviour that takes into account individual *rather than* public concerns is here believed to significantly affect the process of Europeanization.

However, this independent variable, the pursuit of personal interests by the political elite, poses some difficulties for empirical research. Individual interests orienting legislative decision-making cannot be directly observed. The present analysis will therefore infer the preferences that orient political decisions from (1) the chosen courses of action, (2) the justifications provided by the representatives and (3) the extent to which the adopted measures are aligned with the needs and wants of the represented. Let us take each of these points in turn.

1. The nature of the preferences pursued by the political elite will be determined empirically first and foremost by relying on the representatives' choices among alternative courses of action. The preferred legislative solution, reflected in the voting record of each member of the elite, will be assessed in terms of its implications and the benefits to be derived from it. To this end, each legislative amendment proposed and voted upon in plenary sessions or in committees will be analysed, with particular attention being given to what consequences they produce and for whom.
2. In contrast to most rational choice approaches, the present analytical framework does not assume that political elites are inevitably self-interested actors. They may pursue various goals, and be compelled to explain what motivates their

legislative choices, to justify their decisions. These justifications serve as important indicators of the interests pursued by political decision-makers, and are a way of legitimizing one's preferences by proving their compatibility with shared societal goals.[238]

> Actors who in truth seek to maximize their own interests or those of their clients, and who care not for the common good, nevertheless are forced to use the mode of justification in political discourse.[239]

3. The failure to adequately justify their choice of legislative action may point to the elite's disengagement from public interest, as well as to poor legislative representation and responsiveness to societal concerns. On that account, the chosen courses of action and the justifications provided for them by the members of the elite will be evaluated in relation to societal preferences on the matter. Public opinion polls, participation in political movements and demonstrations, or any other collections of public sentiment will provide relevant evidence with respect to the needs and wants of the represented, and the degree to which elites respond through law-making to these needs and wants.

   No in-depth interviews were conducted with members of the political elite, as such interviews would fall short of accurately revealing the interests pursued by elite members in their legislative action; interviews were believed to be—for this study—rather unlikely to generate new insights into what motivates political leaders and potentially lead to false conclusions. As a result, in order to account for the pursuit of personal interests by the political elite, the present book relies merely on clues gathered from legislative practice itself (choices for action, justificatory practices and responsive law-making).

   Specific attention is also paid to two antecedent conditions that are able to foster or hinder the elite's pursuit of personal interests: the fragmentation of the elite, and the strength of civil society. A high value of these two antecedent conditions is considered to significantly enhance the impact of the independent variable described above.

The Fragmentation of the Political Elite

The extent to which political elites are integrated or disintegrated has important implications for the quality of legislative output, and thus, for the quality of representation. While a strongly integrated political elite may be hostile and intolerant towards opposing views and interests, thereby harming the functioning of a democratic system, a highly disintegrated political elite may be equally detrimental to democracy, allowing for a very limited flow of information among its members, impeding the creation of mutual trust, and thus inhibiting reforms and leading to

[238] Neyer (2012a: 90).

[239] Neyer (2012a: 93).

stagnation or even to reform reversal. The higher the level of elite fragmentation, the more likely it is for the members of that elite to adopt a self-serving behaviour and instrumentally use the democratic framework for private gain. Guided by the scholarly literature on elites, this study will posit that an excessive fragmentation within the ruling stratum occurs when the following conditions are reached: (1) a narrow and shallow circulation of the elite and a lack of permeability, (2) an institutional context marked by cross-institutional conflicts and (3) a lack of solidarity and value consensus among elite members. Let us look at these conditions in more detail.

1. Elite dynamics, their renewal patterns and the manner in which they seize and preserve power significantly affect the level of unity and consensus among political representatives. Whenever elite circulation is horizontally narrow and vertically shallow in scope, political leaders tend to cling to power by any means possible, perpetuating a climate of distrust and political tension. In order to adequately grasp the patterns of elite renewal in Romania, they will be measured over a period much longer than the time after the state's accession to the EU. The empirical analysis will focus on the highest levels of political leadership in Romania, and inquire into how many of the prominent leaders of the 1990s are still active in the highest political echelons. At the same time, the permeability of the ruling stratum will also be measured with reference to the changes in the personal composition of the elite and the degree to which subsequent election results led to broader or narrower political renewal at the national level. While numerous changes may occur in the positions held, the composition of the elite may remain largely unmodified, with traditional elite members merely rotating through positions of power. For this reason, the circulation of the elite will be assessed both by examining the dynamics with regard to key leadership positions and by reviewing the overall fluctuation rate, the rate of newcomers to the elite group.
2. Regardless of its circulation patterns, intense fragmentation of the elite may be explained by institutional divergence, conflicts of interests and a lack of synergetic efforts. Such a lack of overlapping interests and divergent organizational loyalties are not at all new if explored against European multi-level governance. Members of government may, and often do, use supranational decision-making to pursue preferences that are sometimes at odds with those of their legislatures, this compelling the national parliament to assume an oversight role and control its government's EU policies. Such a positioning, on both sides, may significantly alter the relationship between elite members and increase the level of fragmentation within the ruling stratum. The impact of the institutional environment on elite behaviour and cohesion will be addressed by an analysis of the legal and constitutional roles of different state powers in Romania, particularly after January 2007, when the state gained EU membership. The manner in which EU accession altered the terrain and ways of policy-making will also be explored, as will the level of convergence or divergence in governmental and parliamentary preferences and the extent to which the two institutions act in a complementary,

or rather competitive, manner. The text of the Constitution itself will serve here as the basis for discussion. Data from secondary sources will be used to identify the trends in the elite's use of its constitutional powers. These data will be supplemented by recent studies and reports or by official declarations sanctioning an eventual lack of cooperation between the government and the Romanian parliament.

3. The third factor determining the level of elite fragmentation is the achieved degree of solidarity and value consensus. Representatives' commitment—or lack of commitment—to the rule of law and due process has a strong impact on their functioning as a group, on the stability of adopted norms and eventually, on the democratic system itself. While assessing the level of solidarity and value consensus, the present study will be less concerned with the ideological distance between elite members, but rather with their respect for procedural matters, political predictability and stability. It is not implied that achieving solidarity and value consensus results in a lack of substantive disagreements, but rather that it leads to a sustained willingness on behalf of the political leaders to abide by the rules and act in a predictable and responsible manner, with preferences remaining tied to their party and ideological identifications. A constant forming and breaking of coalitions, a grounding and dismantling of political parties, and a constantly shifting party membership of individual representatives account for an unpredictable and antagonistic elite behaviour, and are most probably not balanced by any ideological commitments. An analysis of the alternation of Romanian political parties in power, the lifespan of coalitions and the percentage of representatives shifting their party membership will thus provide relevant evidence on the level of solidarity and value consensus, and reveal a more or less fragmented political elite.

   It is important to note that no variation on a case-by-case basis is expected in terms of elite fragmentation. Romania's ruling stratum is likely to remain equally fragmented throughout the entire period of analysis, regardless of the reforms debated. Fragmentation requires fulfilment as an antecedent condition, without which political elites would be more inclined to pursue group or societal interests, but as a factor, it does not refer to substantial aspects of reform; therefore, it does not co-vary in relation to the laws under consideration. On these grounds, the fragmentation of Romania's political elite will be discussed in a separate chapter—Chap. 3—before proceeding with the analysis of the two selected case studies.

The Strength of Civil Society

Relying on the assumption that elected representatives would tend to act differently if they were constantly made aware of the preferences of their electorate, and would refrain from self-serving decision-making if they were under close societal scrutiny, the present study focuses on the strength of civil society as an essential condition affecting the behaviour of the political elite and thus, the stability of reform. Civil

society as understood here includes two aspects: one relates to its role as an interface between representatives and the represented (distilling, aggregating and communicating public interests); while the second relates to its role as a body of oversight and political control (holding public officials to account, exposing and redressing abuses of power and corruption). Under the notion of civil society are subsumed both the idea of social capital and the idea of social accountability. Accordingly, the strength of civil society will refer here to both the associative texture of society, its capacity to communicate public grievances and develop proposals for change, and also to its control function and its capacity to restrict the abuse of public offices by the members of the elite. The indicators used to assess the strength of civil society will relate to both these roles; thus, on the one hand it is measured in terms of the number of organizations set up to formally articulate shared interests in the two fields, the extent to which these organizations prioritize the discussed issues in their work, the impact they have on policy-making and their level of collaboration with the government or with legislative bodies; while on the other hand it is measured in terms of their public reach and the number of participants they involve in social movement activities, as well as their potential to influence legislative decision-making through their public reactions to abusive elite behaviour. In order to map civil society organizations and the environment in which they operate, and in order to measure their strength, the empirical analysis will rely in the first instance on global indexes such as USAID's *Civil Society Organizations Sustainability Index*, the CIVICUS *Civil Society Index*, Charities Aid Foundation's *World Giving Index*, the Hudson Institute's *Philanthropic Freedom Index*, and Freedom House's annual *Freedom in the World and Nations in Transit Reports*. This broad analysis will be complemented with evidence gathered from published research that addresses directly the development and practices of civil society in particular fields of activity. Additionally, a detailed account of the activities in several major organizations and movements in the two fields will provide a clear understanding of their potential to aggregate public interests, and the challenges and limitations they face in successfully protecting these interests against legislative abuse.

2.4 Conclusion

This chapter proposed a model to explain de-Europeanization. Instead of trying to identify factors that lead to successful reform, it focuses instead on reversal and disruption; instead of trying to assess whether, and to which extent, joining the European Union has an impact on policies at the domestic level, it points out the factors that can cause legislative setbacks. The aim is to find a plausible explanation for Romania's selective backtracking and puzzling de-Europeanization in the area of justice and anti-corruption.

The formal reversal of reforms is explained with reference to the elite's pursuit of personal interests. Having developed the theoretical model in its conceptual, methodological and operational details, the challenge now is evident: how can the

legislative preferences of the political elite and the nature of these preferences be unpacked? It seems as if this book sets out to measure the unmeasurable. Engaging in an analysis of private interests of the domestic political elite gives rise to serious methodological problems, as individual preferences are almost impossible to identify and measure. It is particularly difficult to assess whether the political elite is really self-serving in its legislative decision-making when almost every policy or legislative reform is framed in terms of public needs or public interests. However, the author strongly believes that it is precisely this variable that merits close attention, as it is most likely to provide an accurate account of Romania's process of de-Europeanization.

Only in a fragmented political elite would representatives be inclined to shape legislative reforms in accordance with narrow personal—as opposed to group or social—preferences. It is a high degree of elite fragmentation that conditions de-Europeanization by making *legal corruption* more likely. On these grounds, Chap. 3 will examine the level of fragmentation within Romania's ruling stratum before we move on to engage in an extensive discussion of the two case studies. The picture that emerges as a result seems at first glance to suggest that any opportunistic political elite in a democratic system could change the course of legislative reform in an effort to extract personal profit. However, this relationship holds firm only when there are no constraints in place to prevent such an instrumental use of the democratic framework by political decision-makers. As the two case studies below will make clear, the existence of a strong sectoral civil society with capacities to communicate the needs and interests of the represented in a particular field, and with the power to hold elites accountable, is an essential condition framing the adoption of sound and stable reform.

Chapter 3
Fragmentation: A Trait of the Romanian Political Elite

He who dreads hostility too much is unfit to rule.
(Lucius Annaeus Seneca)

On 21 June 2017, a censure motion passed in the Romanian parliament called on the Prime Minister, Sorin Grindeanu, and his cabinet to resign.[1] The motion was preceded by a highly critical evaluation of governmental performance and a report issued by the Social Democratic Party accusing all members of government of failure to uphold the duties linked to their positions as set forth by the party's electoral programme.[2] Consequently, after holding office for only 6 months, Sorin Grindeanu and his entire cabinet were forced to resign when the parliament withdrew its confidence from the government. This premature dismissal appeared to be less an expression of discontent with the existing governmental team and its achievements than a successful attempt to oust the Prime Minister; many of the members of the former government were reinstated under a new prime minister, despite their unfavourable evaluation. Votes of no confidence are frequently used in Romania. Since 2007, no less than 20 censure motions were presented in parliament, the large majority of which were defeated.[3] It is a matter of everyday Romanian politics for the opposition parties to attempt to oust the government by means of censure motions. Such attempts have so far had little success, since the current government usually enjoys the support of the parliamentary majority. This removal from office of Sorin Grindeanu, however, is an exception. What enabled this censure motion to be successful was the unusual fact that this motion was not opposition-sponsored; in an unprecedented manner, this no-confidence motion was tabled by the Social Democratic Party (PSD), which called on its own government to resign. Instead of enjoying their legislative period, PSD allowed inner-party differences to erupt into a general political crisis. There had been two further prime ministers after Sorin

[1] Parliament of Romania (2017a).

[2] Partidul Social Democrat (2017).

[3] Only the censure motions initiated on 6 October 2009, 18 April 2012 and 21 June 2017 were adopted, leading to a cabinet overthrow (Source: http://www.cdep.ro/pls/parlam/motiuni.home).

L. Martin-Russu, *Deforming the Reform*, Contributions to Political Science,
https://doi.org/10.1007/978-3-031-11081-8_3

Grindeanu, before a new successful censure motion was passed within the same legislative period against the PSD government. This new motion of no confidence, from 10 October 2019, was no longer tabled by the Social Democratic Party against its own government; it was introduced by the opposition, yet it couldn't have succeeded without the support of PSD representatives who still had the parliamentary majority, but voted to dismiss Viorica Dăncilă, the prime minister they had appointed 20 months before. To complete the absurd picture, at the moment of writing one of the candidates proposed by PSD to be prime minister in the new Parliamentary cycle 2020–2024 is none other than Sorin Grindeanu, who appears to have regained the confidence of his party.

This snapshot of the Romanian national political landscape is illustrative of how competition, power relationships, elite behaviour and elite interaction may affect legislative stability. Political elites are in a unique position to influence the institutional settings in which they operate, to set the climate for policy debate, to shape the agenda and ultimately the legislative output. The advance of any reform hinges on the state of a country's political elite. Therefore, the structure and dynamics of the ruling stratum, the patterns of interaction among its members and their capacity for cooperation and consensus must be taken into account in order to determine a state's democratic performance and the strength of its reforms. The level of elite integration, or disintegration, is a crucial factor that adversely affects the behaviour of the political elite and thereby the stability of reforms.

As already stressed in Sect. 2.2, this study assumes a pluralist perspective, according to which political differences are inevitable. The interactions between the members of the political elite are essentially competitive in character: different constellations of actors represent different and conflicting interests and, accordingly, adopt distinct positions that affect legislative output in various ways and to various degrees. A certain level of fragmentation, a plurality in terms of views, approaches and pursued preferences is desirable for a healthy democratic debate. A moderately, pluralistically fragmented elite is uniquely able to support democratic decision-making; it shows mutual recognition of differences in ideas and political programs. Tipping the balance in one direction or the other has however dire consequences for a state's democratic order: the complete absence of fragmentation amounts to a slide towards coherent but authoritarian decision-making in which the strongly united political elite is likely to turn hostile towards opposing viewpoints and interests; poles apart, an over-fragmentation of the elite is grounded on internal conflicts, inconsistencies, tensions and an unwillingness to cooperate.[4] Hence, what is here believed to stimulate a pursuit of personal rather than societal or group interests, and thus destabilize reforms, is an excessively high level of fragmentation. Over-fragmentation is reflected in the absence of value consensus and interaction ties among different political factions,[5] and reaches deeper than ideological differences do. It occurs within particular ideologically homogeneous groups as much as it

[4] Best and Higley (2010).

[5] Higley and Moore (1981: 582).

occurs between them. It points to a "serious split between different political elite groups, characterized by mistrust and non-cooperation or worse, a 'trench-mentality'."[6]

Central and Eastern European states in particular have been found to have a tendency toward intense fragmentation;[7] the relations between elite members in the region having long been dominated by confrontation and individualism.

> Political concessions in [CEE] are severely contested, and better made only if the victory of one's own party is secured and the political adversary defeated; otherwise the compromise-inclined may be compromised by his own (party) allies. Elites that are ready to compromise and cooperate discredit themselves because they are regarded as weak and incompetent in enforcing their own stances.[8]

However, recent developments in Central Eastern and South-Eastern Europe point towards diverging trends in what regards the level of elite fragmentation: while states like Hungary and Poland experienced a slide towards an increasingly stable partisan landscape with a high degree of party-level consensus, in Romania the lack of consensus among the elites increased gradually, both between and within political parties. At one extreme, since 2010 Hungary saw a continuous enforcement of intra-party ideological unity coupled with a domination of group over societal preferences; this led to institutional changes that favoured the preferences of the incumbents alone and were therefore prejudicial to the functioning of democracy. This transformation was essentially a reorientation of the elites towards an illiberal democracy and later towards an electoral authoritarianism.[9] At the other extreme, Romania's political elite grew increasingly fragmented. The apparent consensus among the elites before January 2007 disguised a lack of mutual confidence and consensus on all but the general statements supporting the state's membership in the EU. After accession, there has been a growing sense of distrust and a continuous battle over spheres of influence among the members of the Romanian political elite. They grew increasingly isolated from societal values and ideological preferences, engaging in self-serving political competition within a democratic framework that is preserved, but used for the pursuit of individual goals.[10] As the following pages will show, the current appropriation of democracy for personal ends, even when they diverge from the interests of the constituency or the party, is interlinked with the intense elite fragmentation in Romania.

The present chapter expands on this argument that only a moderate level of fragmentation can foster reform stability, while over-fragmentation in turn harms the functioning of democracy, impedes legislative action and allows the pursuit of personal gain to steer the course of reform. The difference between a pluralistically

[6] Gallina (2008: 9).

[7] Seleny (2007), Gallina (2008: 47–55), Ladrech (2009: 11), Ganev (2013: 34–6), Ionaşcu (2013: 251), and Enyedi (2016: 211–2).

[8] Gallina (2008: 53).

[9] Ilonszki and Lengyel (2019: 190–1).

[10] Soare (2014: 174).

fragmented political elite and an excessively-fragmented one lies in the manner in which the members of the elite remain bound by their electoral promises, respectful towards due process and the democratic rules of the political game, and true to the values and principles that have guided them in the past.

In order to provide a comprehensive overview of its tendencies towards over-fragmentation, we will focus on three structural dimensions affecting the behaviour of the political elite in Romania: (1) its composition, (2) the institutional context in which the elite operates and (3) the existing value-based ties among its members. Firstly, the following section will elaborate on the renewal patterns of the elite, its permeability and continuity. It will reveal how a narrow and shallow circulation of the elite has as a consequence a continuous rotation of key elite members from one leadership position to another. At the same time, the coexistence of elite members with long political careers alongside political newcomers intensifies the struggle over positions of power and fuels a sentiment of mutual mistrust. Secondly, the insights into the composition and recruitment patterns of Romania's political elite are complemented by an analysis of the elite's institutional status and roles. A long and still open debate over Romania's political regime (whether the country has a parliamentary or a presidential system of government) and the constant frictions between the legislative and executive branch are here regarded as another source of fragmentation, stemming this time from Romania's institutional architecture. The third line of argument discusses the relationship between political elites and political parties, i.e., the expressed level of solidarity and value consensus among party members. Romania's maintenance of fragile coalitions and ideologically fluid political parties leads to the same conclusion: the country has an excessively divided political elite. This detailed study of the composition and dynamics of the elite, drawing on a body of literature on elite structures, allows for a more nuanced understanding of fragmentation and invites reflection on the intuitive assumption that corrupt elites are united. The uniform behaviour of elites in their abusive practices is in itself a sign of fragmentation, cooperation in this regard being driven by short-term volatile interests.

The last part of this chapter discusses the level of fragmentation within the Romanian political elite in relation to the state's accession to the EU; it describes the years preceding the accession, which were marked by a period of calm and apparent consensus, and which contrast sharply with the domestic political landscape after January 2007. This analysis draws attention to the fact that the level of elite fragmentation varies widely from legislative term to legislative term, and that an inclination of the balance towards either extreme (under-fragmentation or over-fragmentation) fits accurately to the deterioration of the democratic order. Observing the patterns of elite interaction in the post-accession period gives a better image of the environment in which Europeanizing reforms are adopted and amended. The increasing level of elite fragmentation in Romania did not cause, but conditioned de-Europeanization, just as the decreasing level of elite fragmentation in Hungary did not cause, but conditioned the state's slide towards electoral authoritarianism. Romania's example provides valuable insights into how changes in the level of elite

fragmentation may upset the development of reforms and the democratic order in other CEE states as well.

3.1 Recruitment Practices Maintaining an Impermeable and Disunited Elite

The Romanian revolution of 1989 was a sudden and violent elite change which created a power vacuum that both sympathisers of the former communist system as well as oppositional forces intended to fill. Whether the one or the other managed to form a new government, whether the revolution enabled the imposition of a completely new set of elites, or whether it only allowed the second communist echelon to maintain a near-exclusive hold on positions of power, is a question that falls beyond the scope of this research.[11] The present analysis will confine itself to exploring the regenerative pattern followed by the Romanian political elite after the violent revolution of 1989: decades during which elite circulation continued to be gradual and peaceful in manner, but—as the following pages will show—narrow and shallow in scope.

Romania's democratic transformation began with the establishment of the Council of the National Salvation Front (FSN), a new structure of power which took over government responsibility immediately after the regime change until the first democratic elections were held in May 1990. This organization emerged on an *ad hoc* basis and its 145 members included opportunistic communists as well as dissident activists, critics of the regime, well-educated technocrats and liberal intellectuals, engineers, workers, students and professors.[12] It was a broad alliance, with a wide ideological spectrum, yet with a narrow and centralized leadership. While the Council exercised important legislative functions, the actual power was vested in the smaller Executive Bureau[13] at the top of the structure (see Fig. 3.1[14]). The Executive Bureau was responsible for determining the composition of the Council, it was authorized to act on behalf of the latter between full sessions, and more importantly, it retained control over policy-making, since nine of its eleven members headed the most important FSN Commissions.[15]

[11] For a comprehensive discussion on elite continuity in Central and Eastern Europe after the fall of communist regimes see Kitschelt (1992), Gallina (2008), Pop-Eleches (1999, 2008) and Anghel (2012). Without dismissing this claim, the present study consciously leaves unexplored—and thus refrains from giving any opinion on—whether the Romanian revolution marked a substantial elite change and a complete break from the authoritarian past.

[12] Siani-Davies (2007: 192–3).

[13] *DECRET-LEGE nr. 2 din 27 decembrie* 1989 *(Decree No. 2 of December 27th 1989)* [1989].

[14] Source: Siani-Davies (2007: 192).

[15] Siani-Davies (2007: 193–4).

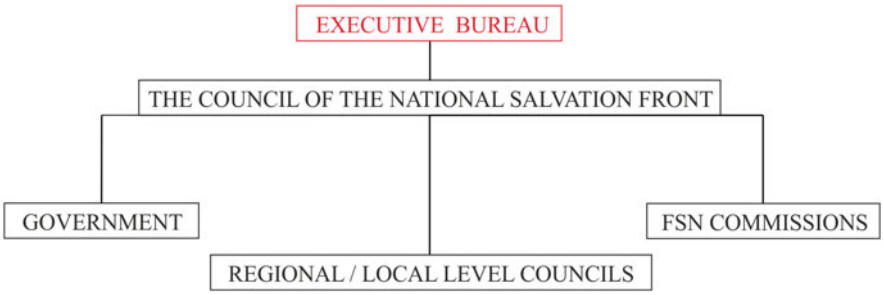

Fig. 3.1 The hierarchical structure of the National Salvation Front

This highly hierarchical structure of the National Salvation Front was to be replicated in almost all the major political parties in post-communist Romania, whose leaders continued to exercise significant influence over every aspect of party and parliamentary decision-making. In fact, as will be detailed further below, more than three decades after the democratic turn, Romanian political parties continue to lack reforms with respect to their decision-making processes; they are still characterized by remarkably centralized leadership selection and removal mechanisms and reduced members' involvement in party affairs. Arguably, the first years after the revolution were decisive in establishing this trend: the absence of deep social cleavages resulted in the emergence of political parties with no social roots but with strong institutional anchors, likely to follow a top-down approach to party-revitalization.[16] As a matter of course, Romania's major political parties still display an "uninterrupted oligarchic inertia"[17] which sustains a wide power disparity between the various party strata, thereby weakening intra-party cohesion and organizational loyalty.

In its early days, the Council of the National Salvation Front took the idea of consensus as its logical basis: it defined itself as an umbrella organization playing a permanent role in Romanian politics as a representative for a wide range of interests and a large section of society. It was not intended to be or to become a political party, but to participate in the upcoming elections as an all-encompassing political organization that included various different political movements or factions. Its expressed aim was to allow dissenting voices to exist, "but these were clearly expected to subscribe to the basic tenets of the Front's program and to operate within a restricted limit."[18]

No later than January 1990, however, this political project of consensus was abandoned. The Council became a mere temporary body, soon to be replaced by a parliament legitimized through popular elections.[19] Accordingly, it voted on its

[16] Chiru and Gherghina (2012: 514).
[17] Chiru and Gherghina (2012: 511).
[18] Siani-Davies (2007: 210).
[19] Siani-Davies (2007: 250).

dissolution and announced that the National Salvation Front was coming forward as a fully fledged political party. As a competitor during the elections in May 1990, the FSN was challenged by various opposition groups and newly formed political parties, most of which proved still too weak, without a significant membership base and resources, to stand a chance. The National Salvation Front won easily. It obtained an overwhelming majority in parliament—245 seats—while the National Liberal Party (PNL) and the Democratic Alliance of Hungarians in Romania (UDMR) came in second and third, both winning 29 seats respectively.[20] These elections were one of the first steps towards democracy, and played a major role in the state's return to political pluralism and the emergence of a competitive political environment in Romania. A retrospective analysis shows that these elections went much beyond political pluralism in that they marked a complete departure from consensus; they plotted the course for the democratic years to come, defined by conflict and power struggle.

After its victory in the 1990 parliamentary elections, the FSN split into two groups in 1992: the FDSN, which won the subsequent national elections and grew to become Romania's largest and most influential left-wing political party;[21] and the FSN, which emerged as the more liberal faction after the split.[22] The FDSN changed its name to PDSR and subsequently to PSD and reasserted its social-democratic credentials; the FSN merged with another political group and renamed itself the Democratic Party (PD), continuing to campaign on a centre-left platform despite its centre-right bent.[23] In 1995, the PD formed an alliance with the small social-democratic party PSDR, though this was only a temporary alliance; 4 years later, the PSDR withdrew from it in order to merge with the PDSR[24] and secure its political future as Romania's Social Democratic Party (PSD), on the left side of the political spectrum. Splinter groups from PSD broke away in 2010 (in order to form the National Union for the Progress of Romania (UNPR) together with a break-away group of the National Liberal Party), and again in 2017 (joining former members of the Alliance of Liberals and Democrats (ALDE) to establish PRO Romania).

On the centre-right stage, the PD fused in 2007 with a splinter group from the National Liberal Party (PNL) to form the centre-right Democratic Liberal Party (PDL). A splinter group from the PDL formed its own centre-right party, the

[20] Source: Parliament of Romania, URL: http://www.cdep.ro/pls/parlam/structura2015.gp?leg=1990 (accessed 25 Jul 2017).

[21] Pop-Eleches (2008: 468).

[22] Pop-Eleches (1999: 118).

[23] In fact the PD remained for more than a decade affiliated with the Socialist International, just until 2005 when it shifted its ideological orientation becoming a member of the European People's Party (Chiru & Gherghina, 2012: 516).

[24] Despite the fact that the PDSR (the Romanian Party for Social Democracy) and the PSDR (the Romanian Social Democratic Party) share the same designation and the same ideology, they were registered as two separate political parties until they merged to form the Social Democratic Party (PSD).

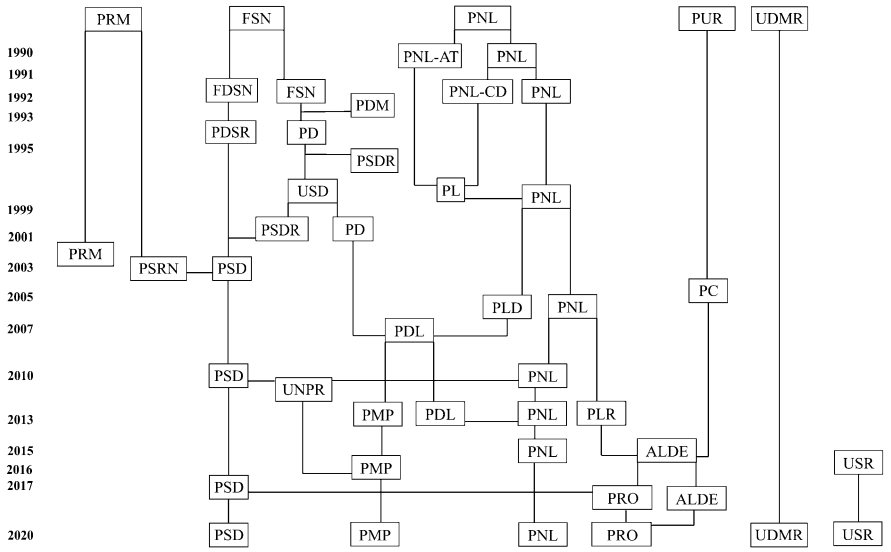

Fig. 3.2 The emergence and development of political parties in post-communist Romania

People's Movement Party (PMP), in 2013, while the remaining members were absorbed by the PNL in 2014. The above-mentioned National Union for the Progress of Romania (UNPR) was itself absorbed into PMP in 2016.

The National Liberal Party (PNL) was itself torn by factionalism, witnessing numerous splits and mergers throughout the post-communist period.[25] During the early 1990s, two groups seceded from the party to form the young wing of the party (PNL-AT) in 1990 and the Democratic Convention of the National Liberal Party (PNL-CD) in 1992; the two factions merged later on and were subsequently reabsorbed into the National Liberal Party. Later, in 2013, a splinter group from the National Liberal Party founded the Liberal Reformist Party, which in 2015 merged with the Conservative Party, the PC (formerly the Romanian Humanist Party, PUR) to become the Alliance of Liberals and Democrats (ALDE). In 2020 ALDE merged into PRO Romania, a political party that joined together members from ALDE and PSD.

Such name changes, splits and fusions of major political parties (as displayed in Fig. 3.2[26]) were certainly not rare occurrences; in fact, they were—and surprisingly still are after decades of democratic development—a rather common phenomenon in Romania, and reflect frequent intra-party tensions and contradictions and a general lack of ideological and organizational identity.

[25] Chiru and Gherghina (2012: 521).

[26] Figure 3.2 was developed by the author using the official websites of the respective political parties and Muller et al. (2012).

Irrespective of this chronic fighting between factions inside political parties, the Romanian political system was often rightfully associated in the literature with a *cartel-party system*.[27] Indeed, it proves to be exceptionally stable, with largely the same political parties represented in parliament in nearly all legislatures. Political competition broadly resembles a closed game of incumbents, as very few of the parties that were formed after 1990 were genuinely new.[28] In their overwhelming majority, they are only formally speaking new parties: splinters emerged as successors of established organizations, with important political figures among their most prominent members,[29] and often, they re-affiliate with established political groups on the eve of elections. What may seem to be an increasingly diversified political landscape, with a higher number of newly formed political parties is, in fact, a mere change of denominations, while the basic structures, leadership styles and often the leaders themselves remain unchanged. As a matter of fact, since 1996, the elections brought almost no new parties into Romanian parliament (with the exception of the PP-DD, which entered parliament in 2008 and was absorbed into UNPR in 2015; and the USR, which won seats in 2016). At the same time, almost all established political parties have succeeded in preserving their parliamentary positions (with the exception of the PRM in 2008 and ALDE and PMP in 2020). Even when genuinely new political movements have enjoyed a significant degree of popular support, they rarely gained representation, and this was not least due to the strict requirements guiding the establishment of a new political party.[30] The high legal thresholds imposed until recently[31] played a crucial role in maintaining the *status quo*, enabling incumbents to preserve their positions of power and preventing any non-parliamentary parties from challenging them. The absence of consistent bottom-up pressures from new political parties undeniably contributed to the cartelization of the party system. This cartel party system distorts electoral competition and narrows significantly the voters' choice, increasing even further the gap between representatives and represented. However, it does not in itself create stability and coherence among representatives. Instead, it creates a political environment in which short-term strategizing is intended only to outwit political opponents and retain power at all costs. In the absence of deep institutional or ideological ties, the cartelization of the party system in Romania did not reduce fragmentation, quite on the contrary, it allowed intra-party dissent to surface and settle as a norm of the political game.

[27] Katz and Mair (1995) and Sikk (2005: 397–8).

[28] Sikk (2005).

[29] Sikk (2005: 399).

[30] Chiru and Gherghina (2012: 529).

[31] Law 114/2015 on Political Parties, which came into force in May 2015 and which amended the more exigent Law 14/2003, substantially relaxed the requirements for registering new political parties, reducing the minimum number of founding members from 25,000 to 3. Nevertheless, other legal, institutional and administrative constraints limit the access of new parties to the party system: the lengthy registration procedures, the high number of signatures required in order to participate in election, or the long reimbursement periods for campaign investments (Dumitru & Voicu, 2016).

During the last decades, the continual presence of the same political parties that dominate Romanian politics was matched by an equally strong continuity at the level of leadership coupled with a high level of dissent among these leaders. As stated above, most of the newly emerging parties in Romania originated from long-established and already influential political circles. Largely, they were splinter groups formed by a number of high-profile political figures or party leaders who remained at the helm of these *new* organizations for several years. More often than not, these parties did not survive long, and were eventually re-absorbed into one of the major political parties. This reveals the tactical nature of political factionalism in Romania; the realignments, mergers or breakups of political parties by prominent politicians have been strategic rather than substantial in intent.

The recurrent fusing and splitting of Romania's major political parties since 1990 was fuelled by personal power ambitions and dissentions at the highest levels of these organizations, which did not result in an accelerated change of elite due to bottom-up pressures, but rather helped consolidate power positions for those that were already key political actors. For instance, in 1992, when the FSN broke up into two competing factions, it was presided by Petre Roman, who remained the head of the party long after the split and after the organization's name changed to the Democratic Party (PD). Petre Roman was re-elected three times as president of the PD and was followed by Traian Băsescu (a prominent FSN member and minister in Petre Roman's cabinet), who took over the presidency in 2001. Traian Băsescu remained influential in the Democratic Party (which was renamed the Democratic Liberal Party, PDL, in 2007), despite the fact that his membership was suspended during his terms as president of Romania. During this time, the PDL was headed by one of Băsescu's protégés, Emil Boc. Only later, in 2015, did Traian Băsescu grow dissatisfied with the leadership of the PDL and distance himself from the party, forming a new organization, the PMP, which he led until June 2018. In a similar vein, the splinter group which broke away from the FSN in 1992 (the FDSN)—and which became the largest social-democratic party in Romania (the PSD) after subsequent name changes and mergers—over decades remained faithful to its initial president, Ion Iliescu. Iliescu himself had to resign as leader of the party during his terms as president of Romania, and placed his protégé Adrian Năstase, a former Minister of Foreign Affairs, in the position of executive president and then president of the party. After his second term as president of Romania, Ion Iliescu did not return to the leadership of the party, but he has been the honorary president of the PSD since 2006 retaining an influence over intra-party decision-making. Călin Popescu-Tăriceanu provides an equally good example. He was one of the important figures in the youth faction which separated from the PNL in 1990. Later, in 2004, after the splinter group merged again with the Liberal Party, Călin Popescu-Tăriceanu became the president of the PNL, maintaining this position until 2009. Subsequently, in 2014, he left the PNL in order to launch the Liberal Reformist Party, in which he was elected president. He remained at the head of the organization even after it merged with the Conservative Party in 2015 to form the Alliance of Liberals and Democrats in Romania (ALDE). The most recent example is PRO Romania, a

party founded and led by Victor Ponta, a former member of the Social Democratic Party (PSD) and its president from 2010 to 2015.

The examples could be multiplied; but these should suffice to indicate the persistence of leadership in a context of intense regrouping of parties and party members. The remarkable continuity at the level of party leadership is not intuitively obvious, yet it could be justified by the fact that due to their popularity, electoral capital and status, these political figures are very likely to be re-elected, irrespective of the party for which they compete. It is, then, less surprising that they preserve their leading role when switching to or founding new parties.[32]

> Sometimes voters might not even be clearly aware that they are supporting a different entity to the one they supported in the previous election given the relatively candidate-centred nature of electoral politics in Eastern Europe[33]

Romania falls exactly into this category. The political landscape is highly personalized: the parties function mostly as vehicles for leaders with personal ambitions, while member and voter involvement in decision-making remains marginal at best.[34] Power is most often concentrated at the very top of the organizations. Almost all political parties share a leader-driven approach to politics in which a few prominent politicians make most of the inner-party and national decisions.

To prove this point, it is sufficient to look into the requirements guiding leadership selection and the rules governing how and on what basis decisions are made in this regard within political parties. An analysis of the official statutes and regulations, as published by the major parties, indicates an institutionalized centralization and a low level of competitiveness when it comes to party leadership selection (only the newest parties, such as USR or Demos, provide in their statutes and practices for more inclusive and deliberative leadership selection processes[35]). New leaders are usually chosen at party conventions, and the formal selectorate (i.e. the party members who select candidates for leadership positions) is composed of top members of central organization plus territorial delegates, whose representation quotas are decided on by the central leadership.[36] While the participation of territorial delegates in elections would give party supporters from across the country a chance to consider their leadership choice together, the vague character of party regulations and the loose criteria used to establish the algorithms of representation allow the central leadership to influence the course of developments during party conventions by manipulating the number of territorial delegates.[37] The resulting leadership selection process is then far from inclusive.

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[32] Gherghina (2014: 492).

[33] Sikk (2005: 393).

[34] Chiru and Gherghina (2012).

[35] A very pertinent analysis of an extensive use of deliberation within Demos, one of Romania's newest political parties, is provided by Gherghina and Stoiciu (2020).

[36] Chiru and Gherghina (2012: 516).

[37] Chiru and Gherghina (2012: 516–9).

ELECTIONS IN CONVENTIONS	PSD	PDL	PNL	PRM	UDMR	USR
I	1 CANDIDATE	1 CANDIDATE	2 CANDIDATES	1 CANDIDATE	1 CANDIDATE	43.5
II	1 CANDIDATE	1 CANDIDATE	N/A	1 CANDIDATE	2.38	34.24
III	1 CANDIDATE	1 CANDIDATE	27.89	1 CANDIDATE	79.36	
IV	1 CANDIDATE	1 CANDIDATE	66.04	1 CANDIDATE	50.6	
V	28.48	22.78	1 CANDIDATE	1 CANDIDATE	27.14	
VI	42.04	1 CANDIDATE	23.04	1 CANDIDATE	1 CANDIDATE	
VII	4.58		46.82		1 CANDIDATE	
VIII	1 CANDIDATE		80.51		49	
IX	53.25		57.4			
X	87					

Fig. 3.3 The level of competitiveness in party leadership selection

The Conservative Party (PC) is a notable example in this regard: it held no elections for the party leader, the founding president Dan Voiculescu, continuing to be the president during the party's first decade of existence. In the year 2000 a first change of the statute allowed for the president to be elected by the Party Council, while in 2003 a second change of the statute brought the party in line with the dominant model in which the president is elected by the party congress.[38] However, the founding president Dan Voiculescu remained honorific president of the party and an influential decision-maker concerning party leadership selection. He sponsored the election of his follower, Daniel Constantin, as leader of the party, the latter remaining unchallenged in this position until the party's absorption into ALDE, when he became co-president together with Călin Popescu-Tăriceanu.

Party organizations not only lack commitment towards decentralized and inclusive selection methods and a systematic participation of party members, but they also fail to create a competitive environment for the selection of their leaders. Having drafted or changed their statute in order to allow for a more inclusive leadership selection, in practice parties still deny their members the possibility of electing their president by not offering any real choice.[39] This has been the norm rather than an exception throughout the last decades, with most Romanian political parties refraining most of the time from organizing real leadership contests. The evidence from the last decades is highly illustrative of the way in which party leaders are selected in Romania. For more than 30 years after the state's democratic turn, intra-party elections remained moderately competitive at best (Fig. 3.3[40]).

[38] Chiru and Gherghina (2015: 145).

[39] Chiru and Gherghina (2015: 145).

[40] Figure 3.3 is inspired by Chiru and Gherghina (2012: 525), but adapted to include most recent data.

Party leadership contests often had only one candidate, who was in many instances also an incumbent. Adrian Năstase was unanimously reconfirmed as president of the PSD in 2001 while being the single candidate for the post; in the PDL, Petre Roman ran alone and was re-elected three times, in 1994, 1997 and in 2000; whereas in the PRM the leadership of Corneliu Vadim Tudor was uncontested for a long time, which allowed him to run as the single candidate and win the presidency in 1993, 1997, 2001, 2005 and 2010.[41] More recently, in 2015, Liviu Dragnea replaced Victor Ponta after his resignation; he was elected president of the PSD without a competing candidate for the position.

Even elections with more than one candidate can largely be regarded as non-competitive if measured on the basis of the net difference in percentage of votes received by the first two candidates (according to Chiru and Gherghina,[42] any difference higher than 30% indicates low competitiveness in leadership selection). It seems as though the races for party leadership posts were decided well ahead of the elections themselves. Most of them had only one contender, or—often enough—the incumbent presidents hand-picked their successors, thus maintaining the *status quo*. Indeed, "in Romanian parties it is more common for a president who steps down to ensure the election of a favourite (two cases in PSD and PNL, and one each in PC, PDL, UDMR, and PRM) than for leaders to resign because they know that they will be defeated in the next elections."[43] Among the established parties in the current Romanian political landscape, a different pattern of leadership selection is found in USR. The party's current president was elected in 2019 after a 5 days internal scrutiny in which 9314 members voted: 6097 for the incumbent (65.75%), and 2907 (31.35%) for his main competitor, Cosette Chichirău. This result, even though right at the limit of the competitive threshold, was subsequently validated in a party convention itself marked by adversarial attitudes.[44] It is, however, too early to know whether the practices of leadership selection are indeed more decentralized, inclusive and open in USR than in their older counterparts.

This analysis at the level of political parties is highly relevant here, due to the important role that parties play in the recruitment of new elite members. Leadership selection in particular is an important and consequential function of Romanian political parties. Leaders not only oversee a party's recruitment of new candidates to occupy positions at the helm of the party, but also influence their nomination for positions in the legislature and ultimately control the party's parliamentary agendas; also, cabinets are largely formed of members of the coalition parties. For as long as parties function as central vehicles of recruitment and representation, and for as long as party leaders maintain a strong hold on their organizations and the choices they

[41] Chiru and Gherghina (2012: 522–4).

[42] Chiru and Gherghina (2012: 526).

[43] Chiru and Gherghina (2012: 525).

[44] Data retrieved from the official website of the party <https://www.usr.ro/2019/09/06/dan-barna-fost-ales-presedintele-usr-pentru-un-nou-mandat/>, accessed 15 Dec 2020.

present to voters, it is the party leadership, and not the electorate, who chooses representatives.

Until 2008, members of parliament were elected in Romania through a closed list proportional representation (PR) system. This provided party leaders with a great amount of control, and made legislators' political careers and re-election dependent on their ties with the political party. Taking into account only the formal regulations as published in their statutes, all parties except the UDMR exhibited moderately to highly centralized recruitment of candidates for the legislative seats.[45] However, no matter how decentralized decision-making appeared in the statutes, the parties' formal rules for the selection of candidates played only a marginal role in the *de facto* nomination. Regardless of the formal provisions, informal practices often allowed central leaderships to dominate the candidate selection process by placing non-resident politicians with national careers on the parties' district lists, leaving no room for genuine representatives of the respective constituencies.[46] In 1992, 13.2% of parliamentarians had no local background and thus little knowledge about local realities; between 1996 and 2004, the rate remained high, at about 20%, followed by a sharp decrease to 13.1% in 2008.[47]

The closed list PR system was replaced briefly, in the 2008 and 2012 elections, by a candidate-centred system that combined elections in single-member districts with a proportional redistribution of seats (a direct allocation of seats for those gaining an absolute majority of votes, combined with a proportional redistribution of seats at the county and national levels for the rest of the candidates).[48] However, this change of the electoral system failed to regenerate politics, trigger a major renewal of Romania's political elite or narrow the gap between representatives and the represented. In fact, no major transformation took place. There was hardly any change in the parties' statutes regarding the selection of candidates for parliament,[49] which underlined once more the widespread use of informal practices to select candidates for parliamentary elections. The reform of the electoral system in 2008 was not complemented by any significant improvement with regard to the parties' selection of candidates; as a consequence, these reforms have enhanced clientelistic and populist practices rather than set a new basis for the relationship between elected legislatures and the electorate.[50] In any case, the electoral law was modified again before the 2016 elections. Law 208/2015 was adopted in parliament by a broad majority and marked the return to the previous PR system with closed party lists and a 5% threshold for parties to obtain representation, and accordingly, the return of the preeminent role played by parties and party leadership in forming the lists for the legislature.

[45] Ciobanu (2007) and Chiru and Ciobanu (2009: 197–203).

[46] Chiru and Ciobanu (2009: 203).

[47] Ștefan and Grecu (2014: 206).

[48] Chiru and Ciobanu (2009).

[49] Chiru and Ciobanu (2009: 203).

[50] Ciobanu (2007: 70).

MEMBERS ELECTED	LEGISLATURE 2012-2016 (L7)	LEGISLATURE 2016 - 2020 (L8)
ONCE	295	279
TWICE	140	87
THREE TIMES	73	53
FOUR TIMES	31	32
FIVE TIMES	16	9
SIX TIMES	12	4
SEVEN TIMES	3	5
EIGHT TIMES		1
	570	470

Fig. 3.4 Overview of parliamentary careers in the Romanian parliament

Looking broadly at the entire period after the democratic turn, it could be argued that the promotion of party members in the parliamentary game primarily depends on the member's rank within the organization, with intra-party selection of candidates relying mainly on clientelism and personal loyalties.[51] This deprives the electorate of its choice, and heightens the disconnection between voters and elected officials. It also generates a fracture between those continuing in positions of power and those newly accepted into the political game. Such fractures within political parties and between parties and their constituencies create a legitimacy gap that increases the level of mistrust both among political representatives and also between representatives and represented.

Surprisingly enough, the long-term trends of parliamentary recruitment in Romania display a consistently high turnover rate, with the percentage of first-mandate elected representatives remaining high throughout the years: 75.58% in 1996, 33.88% in 2000, 49.63% in 2004, and 54.12% in 2008.[52] As Fig. 3.4[53] shows, the last two elections reflect the same tendency, with newcomers securing over 50% in both the 2012 and the 2016 legislatures.

Consequently, as these data show, the limited democratization of parliamentary and party recruitment—with selection processes that continue to be centralized rather than inclusive—is in Romania complemented by a limited professionalization of the legislature. Since 1990, only 135 members of the Romanian Parliament have built an extensive parliamentary career (being re-elected at least four times and remaining in office for more than 15 years). Almost all of these *career parliamentarians* held important leadership roles (either at the central or the regional level) within their political parties, an aspect which indicates their political seniority and

[51] Ionașcu (2013: 240), Bertelsmann Stiftung (2014), Bertelsmann Stiftung (2016).

[52] Chiru and Ciobanu (2009: 222).

[53] Figure 3.4 was developed by the author using data from the official websites of the Romanian Parliament (www.cdep.ro and www.senat.ro respectively).

their ability to hold on to power. Most of them also occupied—prior to or after their time in parliament—positions either as members of the central government, as representatives at the local or regional levels, as higher civil servants, or as top leaders in state agencies or other public institutions. This observation is entirely consistent with Ștefan and Grecu's claim that Romanian representatives are motivated by an interest in a political career, yet not necessarily in a legislative one:

> For a critical mass of MPs, running for parliament is nothing more than a tactical candidacy. Local or national politicians decide to enter the competition for parliament, not because they genuinely want to assume legislative roles, but because they want to remain in the pool of eligible candidates for other public offices.[54]

More than one-quarter of Romania's *career parliamentarians* occupied positions in the central government, often serving as ministers in more than one cabinet.

As Fig. 3.5[55] shows, the eight legislative terms saw no less than 22 governments come and go. The relatively high number of governments formed in each legislative term provided a broad basis for the renewal of ministerial personnel. Oddly though, this cabinet instability, however, did little to limit the time spent in office by numerous members of government.[56] Over 40% of all ministers survived the frequent cabinet reshuffles, being appointed in more than one cabinet. While it is not at all surprising for politicians to have long parliamentary careers, it is much rarer for members of cabinets to be *career ministers,* "to be called to serve again in a new political configuration, under the auspices of another governing coalition.[57]" Fig. 3.6[58] provides an overview of ministerial appointments and re-appointments since 1990.

Often, such reappointments are accompanied by a change in portfolio: from minister of justice to minister of the interior and subsequently to minister of defence; from minister of culture to minister of foreign affairs; or from a portfolio in environmental protection to one in tourism and subsequently in defence.[59] Like *career parliamentarians*, *career ministers* largely held key positions in the party hierarchy, being members of top executive bodies within the political parties, or being appointed after having served in the government.[60]

Before concluding this section, it is worth citing an example—certainly not an isolated case—which captures all that has been said above. This case illustrates all

[54] Ștefan and Grecu (2014: 210).

[55] Figure 15 is inspired by Ștefan (2009: 9), whose analysis was updated with the most recent data. The overview does not include the period between December 1989 and June 1990, when Romania had no elected Parliament; it does not include state secretaries when measuring the size of the cabinets; and extends over the entire period from 1990 until 2020.

[56] Ștefan (2009: 13).

[57] Ștefan (2009: 13).

[58] Figure 3.6 is inspired by the analysis and argument in Ștefan (2009), the data being updated to reference 1990–2020 figures.

[59] Ștefan (2009: 15).

[60] Ștefan (2009: 32–4).

CABINET	TERM	LEGISLATURE	MAIN PARTIES IN CABINET	PRIME MINISTER	CABINET SIZE
C1	06/1990 – 10/1991	L1	FSN	PETRE ROMAN	30
C2	10/1991 – 11/1992		FSN, PNL	THEODOR STOLOJAN	20
C3	11/1992 – 12/1996	L2	PSD	NICOLAE VĂCĂROIU	43
C4	12/1996 – 04/1998	L3	PNTCD, PNL, PD, UDMR	VICTOR CIORBEA	39
C5	04/1998 – 12/1999			RADU VASILE	28
C6	12/1999 – 12/2000			MUGUR ISĂRESCU	22
C7	12/2000 – 12/2004	L4	PSD, PC	ADRIAN NĂSTASE	49
C8	12/2004 – 04/2007	L5	PNL, PD, PC, UDMR	CĂLIN POPESCU-TĂRICEANU	38
C9	04/2007 – 12/2008		PNL, UDMR	CĂLIN POPESCU-TĂRICEANU	25
C10	12/2008 – 12/2009	L6	PDL, PSD, PC	EMIL BOC	24
C11	12/2009 – 02/2012		PDL, UDMR, UNPR	EMIL BOC	29
C12	02/2012 – 05/2012			MIHAI-RĂZVAN UNGUREANU	19
C13	05/2012 – 12/2012		PSD, PNL, PC	VICTOR PONTA	30
C14	12/2012 – 03/2014	L7	PSD, PNL, PC, UNPR	VICTOR PONTA	31
C15	03/2014 – 12/2014		PSD, UNPR, UDMR, PC	VICTOR PONTA	31
C16	12/2014 – 11/2015		PSD, ALDE, UNPR	VICTOR PONTA	26
C17	11/2015 – 01/2017		Technocratic gov.	DACIAN CIOLOȘ	32
C18	01/2017 – 06/2017	L8	PSD, ALDE	SORIN GRINDEANU	33
C19	06/2017 – 01/2018			MIHAI TUDOSE	30
C20	01/2018 – 10/2019			VIORICA DĂNCILĂ	28
C21	11/2019 – 03/2020		PNL	VICTOR ORBAN	18
C22	03/2020 – 12/2020		PNL	VICTOR ORBAN	18
					643

Fig. 3.5 The Romanian cabinets between 1990 and 2020

the essential points relating to the dynamics and circulation of Romania's political elite:

> Sorin Frunzaverde had a very rich political career. He started as a county councillor (1992–1996) and continued as president of the county council (1996–1997) before being called for the first time to serve in cabinet: as a minister of environment (1997–1998), of tourism (1998) and of defense (2000). He ran for parliament in 2000 and worked for almost 4 years as a deputy. His legislative mandate was however interrupted by the local elections of 2004, when he was elected president of the county council. In 2006, he was called again in the government as minister of defense and he served until the April 2007 reshuffle. In November 2007 he was the first on the PD list for the European Parliament, but his MEP term ended when he was again elected president of the county council in June 2008. Frunzaverde is for many years vice president of his party, and most importantly the initiator

MEMBERS APPOINTED IN DIFFERENT CABINETS	NUMBER	PERCENTAGE
ONCE	223	59.95
TWICE	80	21.50
THREE TIMES	44	11.82
FOUR TIMES	15	4.03
FIVE TIMES	5	1.34
SIX TIMES	3	0.81
SEVEN TIMES	2	0.55
	372	100

Fig. 3.6 Overview of cabinet dynamics and ministerial careers

> of the drive towards a new ideological identity of the PD that led the party in 2005 to adopt the 'popular' ideology [and be accepted in the European People's Party].[61]

The dynamics and circulation of the Romanian political elite reveal a narrow and shallow renewal of its political personnel, with a nucleus of irremovable leaders, who retain full control over the way in which power is distributed among the other members of the ruling stratum. This core is formed by elite members who serve in important positions of power over long periods of time. It is no coincidence that these members of the nucleus are at the same time *career parliamentarians*, members of cabinet and leaders in their political parties. In their highly centralized way, Romanian political parties are often controlled by such leaders seeking to remain at the helm of the organization and primarily interested in maintaining their positions. This model of elite change is what Higley and Lengyel[62] would describe as a *musical chairs game,* in which elite members exchange positions in order to survive.

These patterns of political recruitment produce a deeply fragmented ruling stratum whose members are motivated only by the desire to seize and hold on to power, ignoring their representative role. As shown above, since 1990 Romania has gone through a process of recirculating only parts of its elite. It allowed its topmost leaders to occupy legislative and governmental positions for decades (shifting from the legislative to the executive branch and back, and switching between the local and the national levels) and to control the selection of new elite members (using

[61] Ştefan (2009: 33). In 2011 Sorin Frunzaverde was elected first vice-president of the National Permanent Bureau of the Democratic Liberal Party (PDL), a position he held until March 2012 when he left the party joining the National Liberal Party (PNL). No later than April 2012 he was elected vice-president of PNL, position reconfirmed in 2014.

[62] Higley and Lengyel (2000b: 6).

candidate selection processes as both a *disciplinary* and a *screening device*[63]). Parties and their strong leaders dominate the political arena, claiming to be the guardians of democracy while in fact, they are wardens of the *status quo* who, detached from the lower echelons of their organizations, disregard the needs and interests of their party and even more of their electorate. As competition among these leaders remains high and unstable, political formulas remain fluid, and since electoral surprises and protest voters cannot be eliminated, the general political climate continues to be marked by mistrust, internal conflicts and inconsistencies. The fragmentation of the ruling stratum, resulting from the narrow and shallow circulation of the elite, is exacerbated in Romania by the institutional context (the unbalanced relationship between the executive and the legislative branch) and the lack of ideological ties among elite members. This over-fragmented legislative environment sets Romania apart from other states like Poland or Hungary, a relevant detail that calls for caution when analysing reform reversal in Central Eastern and South-Eastern Europe.

3.2 Institutional Predispositions Towards Dissent

The Romanian Constitution, inspired by the French model, establishes a softer, parliamentarized, semi-presidential regime.[64] It sets the parliament at the centre of the democratic state, with a head of government chosen by and accountable to the parliament, and confirmed by the president. It also provides for the president to be elected through popular vote, and act as "the representative of the state, the guardian of its independence and integrity, watching over the observance of the Constitution and the proper functioning of public authorities, and ensuring the balance between legislative, executive and judicial powers, as well as between state and society" (Article 80 of the Romanian Constitution). With such a bicephalous executive branch, Romania stands midway between a parliamentary and a presidential system, closer to the one or the other depending on the relationship between the president and the Prime Minister: when the two heads of the executive come from the same political camp, the republic is more likely to resemble a presidential system, while conversely, when the two come from opposing camps, the system resembles a parliamentary one.[65] The division of power between the elected president and the parliament-selected Prime Minister carries a high potential for intra-executive tensions, particularly in situations of cohabitation or in those areas in which their competencies are not well-defined.[66] In 2012, for instance, the rather ambiguous wording of article 80 of the Romanian Constitution led to a conflict between the two

[63] Kam (2014: 408).
[64] Carp (2013: 424).
[65] Naumescu (2014: 51).
[66] Perju (2015).

heads of the executive over their right to represent Romania in the European Council. This conflict culminated in the suspension from office of the President, the holding of a referendum which eventually invalidated his suspension and a judgement of the Constitutional Court which, almost unanimously, embraced the semi-presidential nature of the regime and acknowledged (with a tight majority of votes) the president's authority to represent Romania in the European Council.

Such instances are not really an exception. Conflicts frequently emerged between the two heads of the executive, even at times when both belonged to the same party. There were tensions between Ion Iliescu and Petre Roman (1989–1991), Emil Constantinescu and Victor Ciorbea (1996–1998), Emil Constantinescu and Radu Vasile (1998–1999), Ion Iliescu and Adrian Năstase (2000–2004), Traian Băsescu and Călin Popescu Tăriceanu (2005–2008), as well as the abovementioned conflict between Traian Băsescu and Victor Ponta (2012–2014).[67] The rivalry between the president and the head of government often resulted in political paralysis (when presidents refused to appoint prime ministers or their candidates for certain positions); in legislative delays (when presidents withheld promulgation of certain laws proposed by the government and adopted by Parliament); in an overload of the Constitutional Court (when both sides used constitutional judges as arbitrators of personal disputes); or in lengthy and costly political crises[68] (during the impeachment of the president or when the prime minister was unilaterally dismissed[69] by the president). Such tensions between the two heads of the executive in Romania still continue today, leading to political instability and greater levels of fragmentation,[70] reducing significantly the state's effectiveness in undertaking reforms and weakening its democratic performance.

More common than this kind of explicit rivalry, however, are more subtle conflicts of duty that arise between the government and Parliament. Although according to Article 61 of the Constitution, the Parliament is the "sole legislative authority of the state", the government regularly takes the lead in law production. Its systematic institutional advantage in law-making stems primarily from its right to launch legislative initiatives. The government shares its constitutional right of legislative initiative with the Parliament and the public, and yet an overwhelming majority of legislative proposals are drafted in governmental offices. No less than 87.95% of all legislation passed between 1989 and 2011 came from the executive;[71]

[67] Naumescu (2014: 59).

[68] Naumescu (2014: 59–60).

[69] It is important to note here that currently the president no longer holds the power to revoke the Prime Minister.

[70] Fragmentation in this context reveals a high degree of conflict and friction between institutions. The institutional environment favors conflict over collaboration, it encourages functional specialization, it allows for a lack of congruence in role perceptions, and motivates organizational dissent, thereby forcing leaders to pursue different goals, adopt different perspectives on issues or take divergent actions.

[71] Ionașcu (2013: 246).

between 2007 and 2019,[72] during Romania's post-accession period, the figure slightly decreased to 73.2%, but this is still exceptionally high. The major role played by the government in shaping the legislative agenda is not necessarily a result of parliamentary idleness. Members of Parliament themselves initiated numerous legislative proposals, most of which, however, either pend indefinitely or are rejected (97% of the rejected proposals were drafted by Members of Parliament).[73]

> The high number of proposals rejected by the Assembly is dependent on the way in which the MP's activity is defined in the Standing orders of the two Chambers. The lack of a well-trained parliamentary administration and the civil servants' direct subordination to the Committee's presidents and vice-presidents or to the party group leaders deprive the MPs of the well needed political and legal expertise required when drafting new legislation.[74]

The government thus enjoys an advantage in promoting legislative change, even though it has little control over the final outcome. This forces the Parliament into assuming a veto player role, in charge of refining, adjusting and correcting off the rails governmental proposals.[75]

The prospect and then the actual integration into the European Union had a profound impact on the relationship between Parliament and the government in office. It further magnified the institutional divergence between the two, contributing to the fragility of the former, coupled with a gain in policy-making responsibility of the latter. The transfer of decision-making powers from the national to the supranational level shifted the locus of policy-making to the executive branch, yet in an odd manner. Members of government did not use supranational decision-making to pursue preferences different from those of their legislature, but rather used EU-driven reforms in order to establish themselves domestically as *de facto* legislators. The adoption of the *acquis communautaire* was by and large claimed to be a matter of immediate urgency, while the fulfilment of the pre- and post-accession requirements was a necessary proof of governmental efficiency. This provided enough grounds for the government to repeatedly legislate by decree.

Under Article 115 (4) of the Romanian Constitution, the government is accorded the power to adopt emergency ordinances and thus to promote legislative change with immediate (though temporary) effect. In this manner, the government's will can be directly enforced, in *exceptional cases* and under the condition that the respective provisions are subsequently submitted for debate in Parliament. Romanian governments were not shy in making use of this right to autonomous law-making, passing legislation by emergency ordinance (OUG) even when there was no emergency that justified such a measure. The adoption of emergency ordinances was an exceptional measure only until 1996 (16 emergency ordinances were issued between 1992 and 1996). Ever since, their number increased, reaching approximately 296 per year in

[72] The year 2020 was intentionally excluded from the analysis here, as the COVID-19 pandemic created an exceptional situation for both the legislative and the executive.

[73] Ionașcu (2013: 247).

[74] Ionașcu (2013: 247).

[75] Ionașcu (2013: 248).

1999.[76] The average remained high in the run-up to and the aftermath of EU accession, with the various cabinets formulating approximately 185 ordinances annually between 2005 and 2008, and approximately 100 per year between 2009 and 2020, with two notable exceptions in 2015 when only 66 emergency ordinances were issued and 2020 when due to the COVID-19 pandemic the number increased to 211.[77]

This trend is confirmed also by the examination of the legislative background for reform in the two cases under inquiry below, which reveals a constant abuse of emergency procedures. Compliance with EU requirements often serves as a basis for justifying the urgency with which measures are adopted without the necessary debate in Parliament:

> Following the commitments made by Romania in the areas of judicial reform and the fight against corruption as part of the Cooperation and Verification Mechanism (CVM) [. . .], taking into account the second benchmark referring to the establishment of an Integrity Agency [. . .], given the delays which prevented the Agency from being fully operational [. . .], taking note of the necessity to implement in due term the measures provided for in the Action Plan for meeting the CVM objectives [. . .], the Romanian Government adopts the present emergency ordinance. (Emergency Ordinance OUG 138/2007[78])

The following chapters will elaborate on this point by providing further insights into how law-making by decree and other emergency procedures were misused and prevented Parliament from holding informed and vigorous debates on the respective matters. It is enough here to highlight the essential issue: through the institutional arrangement that emerged after 1989, the Romanian government is given considerable room to legislate under a plea of necessity, which places the Parliament *ex ante* in a position of inferiority[79] that is countered by a tendency of the latter to strengthen its oversight role. The incidence of no-confidence motions reflects this tendency. During the 2016–2020 legislature, nine motions have been introduced, of which one initiated by the Social Democratic Party (PSD) against its own government and two supported by PSD led to a cabinet overthrow. In 2012–2016, only four motions were tabled, yet in the previous term, there were eleven; six proposals for no-confidence voting were presented in front of the parliamentary plenum in the period 2004–2008, two during the 2000–2004 legislature, four between 1996 and 2000, and five in the 1992–1996 term.[80] The use of this procedure illustrates quite clearly the readiness of the Parliament to exercise "its *veto power* against the executive by expressing its lack of confidence in the governmental team".[81] There is an even more relevant measure

[76] Ionașcu (2013: 249).

[77] According to the data published by the Legislative Council at http://www.clr.ro, accessed 7 Nov 2017.

[78] Government of Romania (2007).

[79] Ionașcu (2013: 249).

[80] According to the data published on the official website of the Romanian Parliament (http://www.cdep.ro/pls/parlam/motiuni2015.lista), accessed 16 Dec 2020.

[81] Ionașcu (2013: 252).

at the Parliament's disposition to control the government through strong formulas of oversight: the incidence of parliamentary questions and interpellations. There were no less than 11,597 questions and 6331 interpellations formulated during the 2008–2012 parliamentary term (approximately three times more than during the 2000–2004 mandate) and 16,657 formulated during the 2016–2020 parliamentary term.[82]

All things considered, the Constitution and the rules and procedures governing the political process provide for a tension-laden institutional context: an overlap and competition between the two heads of the executive branch, and an uneven balance of power between legislative and executive bodies. The lack of cooperation within and among the three branches of government, their competitive tactics and the misuse of procedures reveal an institutional environment characterized by the failure to engage in complementary action. This significantly increases the overall level of elite fragmentation in Romania.

3.3 The Lack of Solidarity and Value Consensus

Perhaps the most important factor leading towards elite disintegration—probably more important than the circulation patterns or the institutional context—is the lack of mutual trust among elite members. Mutual trust derives from a sense of community that is cultivated among elite members working together to promote policies and legislation that benefits the Romanian and the European society, strengthens democracy and ensures respect for the rule of law. No democratic institution or political party can effectively pursue its goals without a set of fundamental normative commitments, ends, values and principles shared by all members. Common expectations about appropriate political behaviour are crucial for institutions and organizations to acquire stability, for their members to acquire confidence in each other, and eventually to win the trust of the electorate. Value consensus translates here into a willingness of elite members to challenge one another on policies, views and priorities, but at the same time be reluctant to resort to action that would threaten the stability of their parties, institutions or the stability of the democratic system.

A helpful starting point for assessing the degree of value consensus and solidarity among elite members is the observation of their ideological orientations and partisan identifications. In a party system such as the one in Romania, with only a few political competitors (largely the same ones in every electoral cycle), parties would be expected to have clear programmatic preferences and to exploit ideological cleavages in order to maximize their votes.[83] Romanian political parties have largely

[82] The data were retrieved from the Institutul pentru Politici Publice București (2012: 24–8) and the official website of the Romanian Parliament <http://www.cdep.ro/pls/parlam/interpelari.home>, accessed 16 Dec 2020.

[83] Gherghina and Jiglău (2011: 72).

disappointed this expectation during the last few decades. Their political identities and ideologies were renegotiated and remoulded with each change of government or legislature.

Probably the most radical change of direction was adopted in 2005 by the Democratic Party (PD), which after more than a decade of affiliation with the Socialist International shifted from social democracy to liberal-conservatism.[84] With this shift, the Democratic Party (later renamed the Democratic Liberal Party, PDL) emerged as the main conservative group, taking over government in 2008 while forming a coalition with the PSD-PC alliance. In this manner, the PDL established itself as an important force in Romanian politics, but only until 2014, when it ceased to exist and merged with the National Liberal Party. Before the PDL's ideological shift in 2005, conservatism was weakly represented: one conservative party, the PNTCD, was dissolved in 2000, while the other, the PC, was able to gain seats only as part of an alliance with the Social Democratic Party (PSD).[85] While it is true that parties such as PSD prove conservative in their action, in their statute they claim to be modern and progressive,[86] which adds to the ideological confusion characterizing the Romanian political landscape. The Conservative Party (PC) itself had an ambiguous ideological agenda, reflected not only in its long-standing alliance with the PSD, but also in its international affiliation; after unsuccessfully trying to become a member of the European People's Party, the PC reoriented itself towards the European liberal democrats.[87]

The evolution of the social democratic parties was in this respect very similar. Prior to 2005, social democracy was largely represented by the PDSR (later renamed the PSD) and the PD, both of which formed after the split of the National Salvation Front (FSN) in 1991. The two constantly disputed their supremacy over the social democratic left, a competition which was resolved when the PD shifted from social democracy to liberal-conservatism, leaving the PSD as the only representative of social-democratic constituencies.[88] As a party concerned (*de jure* but not always *de facto*) with general principles of progressive social democracy, PSD was surprisingly open towards governing in coalition with liberal conservatives.

Similarly, the party most closely aligned with liberal values, the PNL, itself went through numerous splits and fusions, often forming alliances with parties that were hardly its close ideological neighbours. It is true that ideological cleavages are not always very pronounced. The three ideological families in Romania (social democracy, liberalism and conservatism) form a triangle in which each family has a particular feature in common with the other two: social democrats and liberals share an enthusiasm for social freedom; liberals and conservatives have a common

[84] Gherghina and Jiglău (2011: 72) and Chiru and Gherghina (2012: 516).

[85] Gherghina and Jiglău (2011: 84).

[86] Article 8(1) in the Statute of the Social Democratic Party, <https://www.psd.ro/structura-si-organizatii/statut/>, accessed 16 Dec 2020.

[87] Gherghina and Jiglău (2011: 78).

[88] Gherghina and Jiglău (2011: 85).

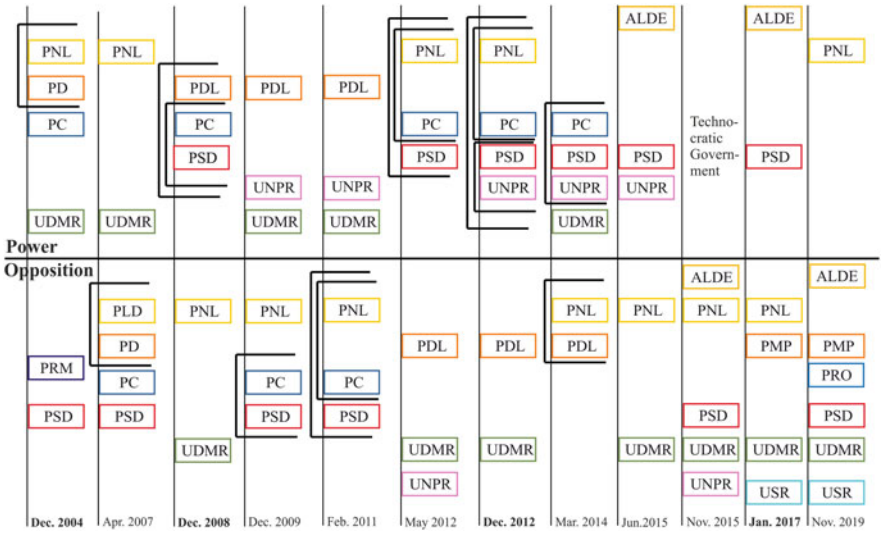

Fig. 3.7 Alternation of major Romanian political parties in power

position with regard to the necessity of limiting state intervention in economic affairs; while conservatives and social democrats consider the community, and not the individual, to be the primordial structure of society.[89] However, more often than not the legislative measures adopted by such cross-ideological coalitions are in sharp contradiction to the fundamental principles and values of the respective parties, principles and values on the basis of which they were in fact elected. As a result, electoral support remains fairly fluid for all parties, making it "impossible to claim that the ideological families have strong roots in the society", or that they are ideologically institutionalized.[90] Romanian political parties largely lack a programmatic character and fail to create strong links with their voters, substituting ideology for clientelism, political patronage or personal charisma.[91] Nearly all political parties have the same or similar policy objectives, disputing each other's ability to reach those aims.

Throughout the entire period of 1990–2020, the major political parties in Romania behaved in an ideologically incoherent way. They formed unusual political alliances (or alliances within alliances) not only on the eve of elections, but also during parliamentary terms, which caused ideological borders to be crossed and policy making to become unpredictable (Fig. 3.7[92]).

[89] For a very pertinent discussion of the ideological landscape in Romania see Gherghina and Jiglău (2011: 77).

[90] Gherghina and Jiglău (2011: 87).

[91] Chiru (2016).

[92] Figure 3.7 was developed by the author based on data available at https://parlament.openpolitics.ro/partide/ accessed 16 Dec 2020.

Romania entered the European Union in January 2007, with the centre-right Truth and Justice Alliance formed by the National Liberal Party (PNL) and the Democratic Party (PD) in government, and with the left-wing Social Democratic Party (PSD) in opposition. Soon after the accession, in April 2007, the PNL—PD coalition collapsed, and the latter joined the opposition. The government was subsequently formed by the remaining National Liberal Party (PNL) together with a smaller ally, the Democratic Union of Hungarians in Romania (UDMR)—an ethnic party uniting different ideological streams. A group that had splintered from the National Liberal Party (PNL), which was in power at that time, merged with the Democratic Party and joined the opposition, forming the Democratic Liberal Party (PDL). The parliamentary elections in December 2008 were to offer a novel solution: a coalition government formed by the former opposing social democratic party (the PSD), its smaller conservative ally (the PC), and the newly formed conservative PDL. However, this coalition was to last only until 2009, when the Social Democratic Party (PSD) and the Conservative Party (PC) joined the opposition once again. Later, in February 2011, the social democratic PSD, along with the other opposition parties, forged an alliance with the National Liberal Party (PNL) and the Conservative Party (PC) called the Social-Liberal Union, which defeated the government on a censure motion and came to power in May 2012. At this stage, the Conservative Party (PC), a former ally of the Social Democratic Party (PSD), had in turn already joined the Centre-Right Alliance with the National Liberal Party. This Centre-Right Alliance was part of the Social-Liberal Union, which, among others, comprised the Social Democratic Party (PSD), and from September 2012 onwards, the National Union for the Progress of Romania (UNPR[93]). These latter two themselves formed the Centre-Left Alliance. In December 2012, the parliamentary elections brought the Social-Liberal Union (including both the Centre-Left and the Centre-Right Alliance) to power. The Centre-Right Alliance broke apart in 2013. The National Liberal Party (PNL) joined the opposition soon after, in March 2014, and formed a new alliance, the Christian-Liberal Alliance, this time together with the Democratic Liberal Party (PDL). This alliance was dissolved in November 2014 when the two parties merged, with the PDL being absorbed by the PNL. The parties that remained in power in March 2014 (the PSD, the UNPR and the PC) themselves then formed an alliance, which lasted until June 2015, when the Conservative Party (PC) merged with a splinter group from the National Liberal Party, the Liberal Reformist Party, to form the current Alliance of Liberals and Democrats (ALDE).

Most recently, the government formed following the 2016 elections (a coalition government formed by the PSD and the ALDE) was dismissed after a motion of no confidence that was tabled by the PSD itself. The new cabinet of the same PSD-ALDE coalition assumed office in June 2017 and was dismissed by the PSD parliamentary majority 6 months later on the grounds of inefficiency. The third

[93] UNPR is a party formed by members who formerly belonged to the Social Democratic Party (PSD) and to the National Liberal Party (PNL); it is therefore ideologically heterogeneous (Gherghina & Chiru, 2016).

PSD-ALDE cabinet lasted about 21 months in office, until November 2019 when it was dissolved through a no-confidence vote tabled by the opposition but sponsored by members of the PSD. The newly formed government brought the PNL to power, sending the PSD and ALDE in opposition. But only 3 months later, the PSD initiated yet another no-confidence vote in Parliament which led to the dismissal of the newly installed PNL cabinet. The last act in this absurd political theatre was the reappointment, in March 2020, of the very same PNL cabinet by the very same PSD parliamentary majority. This detailed and rather confusing account of how coalitions and cabinets have been formed in Romania since 2004 shows the ease with which Romanian political parties change their ideological preferences over fairly short periods of time. This continuous oscillation of parties or splinter groups between power and opposition is in fact a subtle indicator of the non-ideological character of Romania's political leadership. Such partisan realignments and sudden reshuffling of party positioning is clearly tactical and not substantive in nature.

Furthermore, the manner in which political parties abandon a coalition by forming an alliance with another political group mirrors the behaviour of individual party members relative to the party to which they belong: numerous members of Romanian Parliament repeatedly changed their partisan affiliation, either becoming independent representatives or joining a different political party. This proves once again the lack of cooperation and solidarity among party members, who are driven by self-serving strategic calculations.

In general, the members of the Romanian political elite, although highly interested in accessing power and pursuing a political career, are far from excessively competitive. Instead of preserving their party positions and competing with each other for electoral gains, many Romanian representatives prefer to migrate from one political party to another right before the elections, joining the political party most likely to win the majority of seats in Parliament. The great number of elite members who have migrated from one political party to another while holding office is remarkable.[94] In total, more than 35% of the representatives in the former legislature (2012–2016) have shifted political parties or have become independent during their term in Romanian Parliament: of the 263 deputies 154 (37%) shifted their party affiliation at least once during their mandate, while in the Senate, 69 out of 110 senators (39%) migrated at least once from one party to another between 2012 and 2016.[95] The record in this regard was held by three members of Parliament who changed their affiliation no less than three times during the previous legislative term. An illustrative example is that of Ion Șcheau, who entered the Chamber of Deputies in 2012 as a member of the PP-DD; in May 2013, he left the party and became an independent Member of Parliament; in October that year, he joined the PSD, and

[94] It is important here to note that the incidence of party-switching is in general not related to the experienced splits or mergers of political parties. The number of party-switchers adds to the number of elite-members who changed their affiliation as a result of the emergence of a new political organization or the disappearance of an old one.

[95] Institutul pentru Politici Publice București (2016: 18–20).

then the PDL in November 2014, only to become a member of the PNL in February 2015. A similar path was chosen by Diana Tușa, a member of the PNL who was elected in 2012 as a representative in the Chamber of Deputies: she became independent in June 2013, and joined the PDL one year later, subsequently returned to the PNL in February 2015, but resigned and became independent once more in September 2016. Senator Ciprian Rogojan entered Romanian Parliament on the PDL's lists, became independent in February 2014, but joined the UNPR in November that same year; however, he left the group and became independent again in May 2016.[96] Party-switching was frequent in previous legislatures as well: 20% of all Members of Parliament changed their affiliation during the 2008–2012 legislature, 10% in 2000–2004 and 17% in 1996–2000.[97] It remained a common practice also during the current legislature, with more than 40% of the representatives migrating to other parties or becoming independent between 2016 and 2020.[98]

Such practices suggest an absence of strong organizational ties that could bind party members together and create a political elite that is divided along ideological lines. The rather abrupt manner of building and breaking coalitions and the irregular fluctuation of the major political parties between power and opposition illustrate well enough the nature and degree of elite fragmentation in Romania. In addition, political representatives' migration from one party to another in the hope of winning office does not only serve as another argument supporting the claim that the Romanian political elite is highly fragmented, but more significantly, it highlights a particular self-interest on the part of the members of the Romanian ruling stratum.

3.4 Elite Fragmentation and Romania's EU Accession

Observing closely the last three decades to note the variations in the level of integration or disintegration of the political elite in Romania, it becomes evident that the frictions between the members of the ruling stratum were not constant throughout the entire period. For some years, between 2000 and 2007, there was a brief moment of calm and consensus, which in retrospect strikingly contrasts with the intense fragmentation that has characterized the Romanian political elite ever since.

This inconsistency in the level of elite fragmentation can be explained with reference to Romania's progress towards integration into the EU, its position as outlier in the 2004 enlargement and its delayed accession in 2007. As mentioned in

[96] Institutul pentru Politici Publice București (2016: 20).

[97] Ionașcu (2013: 241).

[98] The data supporting this claim were retrieved from <https://parlament.openpolitics.ro/export/>, accessed 16 Dec 2020.

Chap. 2,[99] the European Union had a flexible approach as regards its Eastern enlargement: it balanced the requirements of a single policy framework open to all candidate states, with a differentiated allocation of rewards (contractual or financial), delivered pursuant to an assessment of the reform progress in each individual state.[100] This flexible differentiated approach allowed the EU to evaluate constantly Romania's merits and performance and act in accordance.

As a consequence, Romania signed its Europe Agreement in 1993 together with Bulgaria, Slovakia and the Czech Republic, 2 years later than Hungary and Poland, but a couple of years before the Baltic states and Slovenia. All Europe Agreements signed in 1993 or later (Romania's included) provided for a unilateral suspension clause allowing either party to suspend cooperation if the obligation prescribed in the agreement were not fulfilled.[101] This clause was never activated for Romania however, the state advancing slowly on its path towards accession. Though, in another important integration step, pursuant to the Luxembourg European Council of December 1997, the opening of accession negotiations was delayed for Romania, just as it was for Bulgaria, Latvia, Lithuania and Slovakia. Negotiations were first launched for all these states in the year 2000, following the European Council in Helsinki in December 1999, when the prospect of accession became real due to EU's commitment to an all-inclusive integration of the states in Central and Eastern Europe.[102]

This integration dynamic, characterized by a *two steps forward one step back* advance alongside other CEE accession states, kept Romania cautiously optimistic about its chances of acquiring EU membership together with the other eight candidates from Central and Eastern Europe. It strived to make progress and bring its legislation into compliance with the *democratic* and *accession acquis*. Yet, in 2004, not only was Romania's and Bulgaria's accession delayed, but their accession treaties included a safeguard clause allowing for the accession to be further postponed if the states proved unprepared to meet the membership requirements.[103] Even more, Romania was the only candidate for which the postponement clause could be activated by a qualified majority voting in the Council.[104]

Arguably, these accession conditions (tighter than the ones applicable to the other states in the region) coupled with its delayed accession date and an intense monitoring of its progress placed Romania under an unprecedented pressure. This raised the stakes of integration to an even higher level. The members of the Romanian political elite consequently bound themselves even more to direct all their efforts to acquiring EU membership in 2007 without any further postponement. Indeed, in this period political decision-makers got along surprisingly well, despite the heavy

[99] Chapter 2, Sect. 2.1.2, Europeanization East: The conditionality-driven reform.

[100] Papadimitriou and Gateva (2009: 155–6).

[101] Papadimitriou and Gateva (2009: 155–8).

[102] Papadimitriou and Gateva (2009: 156–7).

[103] Steunenberg and Dimitrova (2007: 9).

[104] Papadimitriou and Gateva (2009: 159).

legislative burden.[105] As the analysis above shows (see also Figs. 3.2, 3.5 and 3.7), throughout these years the major political parties experienced less splits and mergers, fewer coalitions were forged and re-forged midway between parliamentary elections, and fewer government changes and executive adjustments were made.

At the level of political parties, as the accession to the European Union drew nearer, they adopted an EU-compatible agenda, a shift visible even in the rhetoric of the Great Romanian Party (PRM), known for its traditional, authoritarian and nationalist outlook.[106] The integration into the EU triggered a programmatic shift of Romanian major political parties, which turned in the eve of accession to be either neutral (PRM), in favour (PSD and PUR) or strongly in favour (PD, PNL, and UDMR) of EU membership,[107] and which channelled all their political ambitions into meeting the requirements and joining the Union. Political leaders legitimized their policy choices with a discourse referring to Romania's commitment and belonging to Europe, a point of view largely mirrored by public opinion.[108]

In 2000 PDSR won the elections on a pro-European campaign promising political stability, which it delivered by governing in a fairly stable minority coalition until the next regularly scheduled parliamentary elections. A new coalition cabinet was formed in 2004 by the Justice and Truth Alliance of PNL and PD together with UDMR and PC, which governed until 2007 under a pro-European anti-corruption program.[109] This drive to curb corruption was very much aligned with the requirements and expectations of the EU, while the consistent manner in which political elites seemed to pursue a pro-European and anti-corruption agenda raised hopes for a successful continuation of reforms after Romania's accession.

However, the post-accession period not only saw a reversal of the anti-corruption reforms, but also a return of the political elite to its old fragmented pattern of interaction, dominated by party leaders and their personal ambitions. After having gained full membership in the EU Romania entered a period of consolidated political instability, with sudden changes of governments and policy, and a low degree of predictability and consistency in decision-making. As the analysis above shows, after 2008 several measures have been adopted that hindered political competition. The repeated changes to the electoral law have generated lasting negative effects on the permeability of the ruling stratum, leading to a post-accession disintegration of the political elite and its detachment from the needs and interests of the public. The

[105] In the pre-accession period, between 2001 and 2006, the Romanian Parliament adopted yearly a number of laws two or sometimes three times higher than in the post-accession period.

[106] Vachudova (2008: 874).

[107] Vachudova (2008: 873).

[108] According to the Eurobarometer 64.2 of autumn 2005 for Romania, the country's citizens displayed the highest level of trust in EU institutions among all members and accession states. The trust level remained equally high in the years just prior to Romania's EU accession (see also the Eurobarometer 66 of 2007b, page 108). The level of trust in EU institutions among Romanians decreased slightly in the post-accession period, but remained at all times above the EU average, with more than 45% (Chiciudean & Corbu, 2016).

[109] Anghel (2017: 21–2).

political parties with shallow societal roots and a vague ideological orientation have failed, and are still failing, to adequately channel social interests and to provide a strong linkage between representatives and the represented. Moreover, the highly centralized control of party leaders over the limits of political power has inhibited, and continues to inhibit, any bottom-up participation; it excludes from decision-making both the electorate and the lower political echelons. In this respect, the democratic game after the accession to the EU turned out to be no more than a *game of musical chairs*[110] played by the topmost political leaders who appear to be interested only in retaining their seats in office.

Also the pre-accession programmatic promise to curb high-level corruption was rendered void by the unreliable and inconsistent manner in which political parties and party members behaved after January 2007. As shown above, closer scrutiny of inter- and intra-party dynamics lends considerable weight to the argument that the Romanian party system lacks ideological coherence. The numerous party splits and fusions and the forming and breaking of grand coalitions have rendered it almost impossible to distinguish the two sides: who are the high-level corrupt officials, and who are those that fight them on a justice-reform platform. In truth, a close observation at the level of individual party members shows almost no difference between the two sides. An overwhelmingly great number of party members have abruptly changed their affiliation on the eve of elections in order to obtain secure political positions, regardless of the inevitable shift from an anti-corruption to a non-anti-corruption agenda. This unreliable behaviour proves once more that elected elites in Romania are neither bound to rely on the substance of their party program nor to take into account the preferences and concerns of their electorate. They "understand political representation as a form of personal strategic action (hence their political defections)."[111]

The institutional arrangements exacerbate these struggles for power. Members of the Romanian elite continue to dispute their institutional roles, contesting how decisional power is shared between the two heads of government, and how law-making power is divided between the legislative and the executive. The blurred constitutional division of authority among the three branches of government (legislative, executive and judiciary) leads to imbalances which adversely affect exchange, dialogue and consensus building among political leaders; they provide a wider scope for the abuse and manipulation of democratic procedures, while at the same time they narrow down the scope for parliamentary debate and political representation.

The image that emerges after Romania's accession to the EU in 2007 is one of increased elite fragmentation, affecting the extent to which elite members are able to act on the basis of their personal preferences, as opposed to pursuing party or societal interests. This disintegration of the Romanian political elite could itself be regarded as a post-accession reversal, or on the contrary it could be seen as the end of a *simulated* democratic consensus. Whether the period of calm that preceded

[110] Higley and Lengyel (2000b: 6).

[111] Ionașcu (2013: 245).

Romania's accession to the EU was a mere pretence is, however, less relevant here; more important are the effects the elite integration produced before January 2007, and the effects its disintegration has produced ever since.

As the above analysis demonstrated, the composition, the institutional embodiment, and the lack of value consensus among the members of the ruling stratum, allowed for a post-accession return to an over-fragmentation of the elite, which itself conditioned the elite members' pursuit of individual over group or societal interests. Once Romania joined the EU, the struggle became less about establishing solid institutions and the rule of law, less about achieving consensus and societal well-being, and became more an individualistic competition for office, influence and, as the following pages will show, for personal gains that went much beyond electoral returns.

However, in this same context of intense fragmentation certain Europeanizing reforms advanced smoothly, while others went through an abrupt reversal. An in-depth analysis of the adopted legislation that led to this differential result of Europeanization across policy fields will reveal the degree and triggers of de-Europeanization. The following chapters will engage therefore in an extensive discussion of the manner in which self-interested political elites abuse their law-making function and frustrate genuine Europeanizing reform in some domains, while being perfectly capable of acting in the public interest and in compliance with EU requirements in others. The two following case studies trace the legislative path of two reforms, both of which are relevant in the context of Romania's Europeanization: the anti-corruption reform and the laws establishing the National Integrity Agency; and the nature-conservation reform and the laws regulating the protection of environmentally significant habitats and species. The two cases show a high variation in the explanatory variable: the personal interests of the political elite, which accounts for divergent results of Europeanization in the two policy areas and renders proof of the fact that the success of Europeanizing reforms does not depend primarily on the adaptational pressure emanating from the EU, but rather on the interests pursued at the domestic level by the political elite.

Chapter 4
Romania's Justice and Anti-Corruption Reform: A Stubborn Divergence from European Norms in Pursuit of Personal Gains

He who does not prevent a crime when he can, encourages it.
(Lucius Annaeus Seneca)

The previous chapter highlighted fragmentation as a conditioning factor that exacerbates the tendency of the political elite to pursue narrow individual interests instead of party, group or societal concerns. The level of fragmentation is thus closely tied to both legislative practices and legislative outcomes, and serves as a baseline for assessing the dynamic of Europeanization. In highly fragmented law-making environments such as Romania's, political decision-makers, having no strong ideological or institutional ties, are more tempted to instrumentalize democratic mechanisms in pursuit of private benefits, thereby destabilizing the state's already adopted reforms. Grounded on this hypothesis and using Romania's justice and anti-corruption reform as a case study, in this chapter we will critically evaluate the drivers of legislative change in this particular policy field. The analysis follows (1) the legislative developments (in both procedural and substantial terms), (2) the consequences implied for the overall level of Europeanization, (3) the nature of the interests pursued by the representatives when proposing and adopting amendments to the relevant laws, and (4) the role of civil society in communicating public interests and holding representatives to account when their legislative preferences diverge from those of the public.

Since January 2007, the European Commission has been using a number of benchmarks to measure Romania's progress in the area of justice and anti-corruption, with public integrity being a key dimension of these reforms. One of the four benchmarks set in the Cooperation and Verification Mechanism (CVM) concerns the legal framework for integrity, i.e. the establishment of a National Integrity Agency (ANI) with "responsibilities for verifying [public officials'] assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken".[1] The Commission's approach underlines the fact that the fight against corruption in Romania is

[1] Commission of the European Communities (2006).

L. Martin-Russu, *Deforming the Reform*, Contributions to Political Science,
https://doi.org/10.1007/978-3-031-11081-8_4

tightly linked to the state's ability to ensure public integrity through formal requirements. Therefore, the CVM monitoring reports regularly evaluate the robustness of the legislation on the basis of which the ANI operates, as well as the performance and efficiency of the agency in detecting and sanctioning Romanian public officials' conflicts of interest, or unjustified increases in assets. Given the progress achieved in establishing the ANI's legal framework in the first months after having joined the EU,[2] Romania was expected to become increasingly compliant with the requirements set by this benchmark; the agency was counted upon to strengthen its capabilities and become more and more efficient under the EU's continued CVM monitoring, enhancing public integrity and thus diminishing the scope for corruption. However, judging by the legislative changes affecting the ANI's legal mandate since 2008, Romania shows anything but steady and predictable progress. The ANI's legal status was repeatedly weakened, which rendered the proper implementation of the laws basically impossible and prevented the agency from performing effectively. This chapter will explore this post-accession legislative setback, indicating on the one hand the considerable extent to which lawmakers acted in their own personal interests when re-designing policies, and on the other hand the limited power of civil society to intervene. As we will see, political representatives use and abuse the democratic framework in pursuit of narrow personal interests, deforming the reforms designed to serve the public good. Understanding this reality is essential to understanding de-Europeanization and to explaining why the widespread assumption that EU accession and conditionality bring about successful domestic change does not hold true for Romania's anti-corruption reform.

4.1 The Development of Integrity Laws and the Corresponding Level of de-Europeanization

Over the last 15 years, the European Commission has been closely monitoring Romania's progress in the area of public integrity as part of its post-accession conditionality. Judging by the benchmark established by the Commission in 2006, Romania's development does show some progress, yet this progress is far from consistent or irreversible. An in-depth analysis of the legislative framework for integrity reveals that numerous amendments passed in the years following Romania's accession were intended to significantly dilute the existing legislation by repealing or limiting those provisions that were inconvenient for public officials. This section will cite the most illustrative and relevant examples, showing the manner in which the Romanian political elite subverted the progress made through the adoption of the law establishing the ANI in 2007.

Before considering examples of how it was diluted, it makes sense to identify and discuss the procedural steps that led to the adoption and modification of Romania's

[2] Commission of the European Communities (2008).

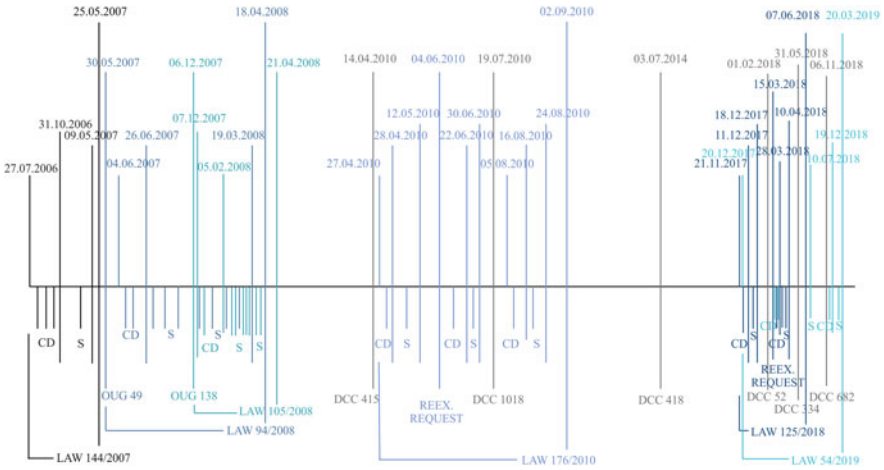

Fig. 4.1 The development of integrity laws—technical procedural aspects

legislative framework for public integrity in the first place (see Fig. 4.1[3]). If analysed in technical procedural terms, the integrity legislation has gone through a very long and complicated development, with numerous refinements being made through both amendments to existing laws and through newly adopted laws over a period of 15 years.

After being drafted in July 2006 and adopted in May 2007, the law establishing the ANI was quickly amended and supplemented by two Government Emergency Ordinances: OUG 49 and OUG 138 of 2007. Amending a law through a Government Emergency Ordinance (OUG)—a very common practice in Romania even when no emergency requires it—allows for the legislative changes to take immediate but temporary effect; the changes that become effective with the adoption of an OUG are only subsequently submitted for debate in Parliament, to be rejected or adopted as separate laws. Accordingly, in 2008, one year after its initial adoption, the ANI Law was supplemented by two additional laws approving the two OUGs already in force: Law 94 and Law 105 of 2008.

Later, in April 2010, a decision issued by the Romanian Constitutional Court, Decision 415, declared unconstitutional several provisions of the initial ANI Law (144/2007) and requested that the parliament re-evaluate and amend them accordingly. Within one month, a draft law was introduced to the parliament, adopted by both chambers and submitted to the president for promulgation. In June 2010,

[3]Figure 4.1 was developed by the author based on data gleaned from the official websites of the Romanian Parliament (www.cdep.ro and www.senat.ro). The entries highlighted in different shades of blue represent adopted and promulgated legislative acts that run in parallel to the initial ANI Law, Law 144/2007 (displayed in black). The binding decisions of the Romanian Constitutional Court (DCC) are displayed in grey. Figure 4.1 also indicates (in the respective colours for each law) all the intermediary drafts adopted and amendments proposed and discussed in the Chamber of Deputies (CD) or in the Senate (S) before the final vote and the promulgation.

however, the President of Romania refused promulgation requesting the parliament to re-examine the legislation and calling into question the compatibility of certain provisions with the very purpose of the law. The draft's second passing through parliament was concluded in July 2010, when promulgation was delayed again due to a request filed by the president for a preventive constitutionality check of the draft proposal. The Decision 1018 of the Constitutional Court set the draft on its course through parliament a third time. Eventually, all concerns and the proposed changes were dealt with and included in a new law (176/2010) promulgated in September 2010. The refinement of this draft in accordance with the recommendations of the Constitutional Court and the presidential request took in total five months, during which the agency was practically unable to act. Moreover, the newly adopted law amended, but did not consolidate or repeal preceding legislation; consequently, in 2010 the functioning of the ANI came to be regulated not by one, but by four different laws.

The constitutionality of the legal framework for guaranteeing integrity was challenged again in 2014, when the Constitutional Court urged the Parliament to amend Art. 25 (2) of Law 176/2010. The article, establishing the sanctioning regime for elected officials found guilty of incompatibility or conflict of interest, was declared imprecise and unpredictable. On these grounds the Constitutional Court proposed, in its Decision 418 of 2014, a reinterpretation of the text. As a consequence, not one, but two legislative proposals were presented in Parliament. They both addressed exactly the same situation, proposed similar modifications to Article 25 (2), both were introduced to the Parliament around the same period (in June and October 2014), both at the initiative of MPs, and in both cases a decision by the Senate was pending until February 2021 when the proposals were finally rejected by the higher chamber.

As Fig. 4.2[4] shows, the two draft proposals followed almost the same legislative path. Both were first submitted to the Senate, even though such pieces of legislation must be previously submitted to the Chamber of Deputies, since the Senate has a decision-making authority on issues of this kind. On 25 March 2015, both draft laws reached the lower parliamentary chamber, where—without any consideration of the implications of the proposed measures, without any debate and without even being put on the voting agenda—they were tacitly adopted eight months later and sent back to the higher chamber in their initial form. The two proposals had been pending before the Senate for more than five years before being rejected in February 2021. It is also worth mentioning that no less than ten opinions were issued by various parliamentary committees on each of the two draft laws. At least three different advisory committees published negative recommendations concerning the appropriateness of the two proposed laws, while the government, through the Ministry of Justice—when consulted—firmly opposed these amendments, voicing its concerns about their constitutionality.

[4]Figure 4.2 was developed by the author based on data gleaned from the official websites of the Romanian Parliament (www.cdep.ro and www.senat.ro).

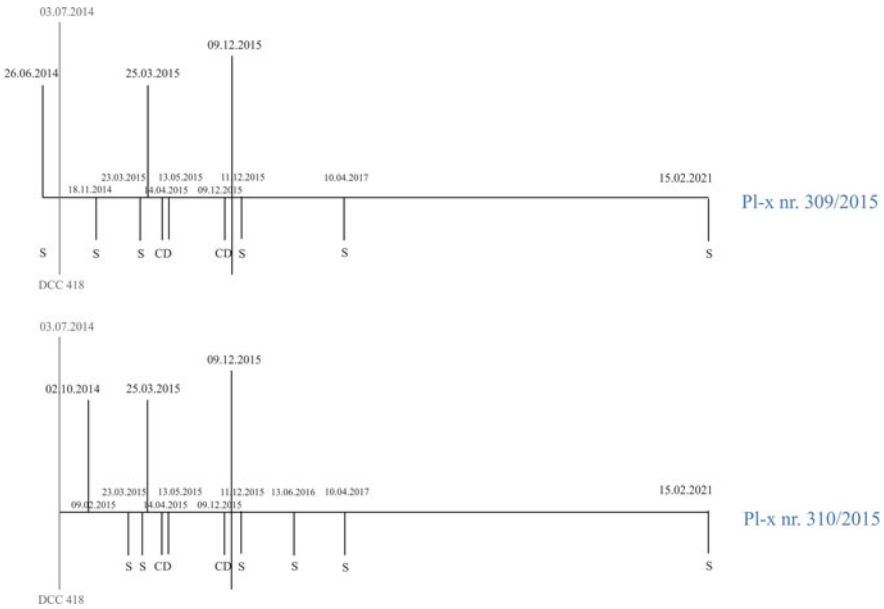

Fig. 4.2 The development of the Draft-laws Amending Art. 25(2) of Law 176/2010

A further draft-law presented in Parliament in 2017 added to the legislative confusion on the subject of sanctioning elected officials embroiled in conflicts of interest: a third proposal concerning the amendment of the same Art. 25 of Law 176/2010 was submitted to Parliament for deliberation while the other two proposals were still pending before the Senate. This proposal differed in the subject of legislation from the other two: it introduced an exception for the imposition of sanctions under Art. 25. It also differed significantly in the pace with which it was dealt with in Parliament. Unlike the other two proposals, which had a lengthy and tiresome procedural journey that occupied lawmakers for more than five years, this more recent proposal was rushed through both parliamentary chambers in less than a month (between 21 November and 18 December 2017). However, the speedy adoption of this law was delayed for six months at the promulgation stage, when the draft-law went through two constitutionality checks and a presidential review. As this proposed revision of Article 25 was likely to suspend the application of sanctions in hundreds of cases dealt with by the ANI, the president filed a request in March 2018 for its re-examination in Parliament, questioning the reasonableness of the law in relation to the social interest it serves and to Romania's commitments under the CVM. The President interpreted the draft proposal as "an act of clemency aimed only to cut short the sentences of several Members of Parliament found in

conflict of interest",[5] an opinion not shared however by the Parliament, who rejected the re-examination request and proceeded to the final adoption of the draft that became Law 125/2018 in June.

At about the same time, in December 2017, yet another proposal aimed at revising Art. 25 of Law 176/2010 was presented to Parliament. It discussed the introduction, under Art. 25 (5), of a prescription period applicable to claims of incompatibility or conflict of interest. The proposal's passage through Parliament was no smoother than in the other cases: the government firmly opposed the proposal in its official opinion; the lower parliamentary chamber rejected the proposal, being unable to gather the minimum of favourable votes required for its acceptance; while the Constitutional Court declared the proposal unconstitutional emphasizing the inadequate legislative technique used. A revised version was reintroduced and adopted in the lower chamber in December 2018, followed by an adoption in the Senate and the promulgation of Law 54/2019 in March 2019. It supplemented the law (125/2018) adopted just few months before to amend Art. 25 of Law 176/2010, while the other two amendment proposals on the same article were still pending in Parliament. Currently, the functioning of the ANI is regulated by no less than six different laws, two of which only clarify the details of Art. 25 of one of them.

As the above analysis shows, the procedural path reformers took in establishing the legislative framework for integrity in Romania reveals practices that undermine the very purpose of the legislation. On procedural grounds alone, the numerous changes to the legislation establishing the ANI not only repeatedly disrupted the functioning of the agency, but also established an undesirable legislative parallelism by maintaining in force several legal provisions concerning the same object of legislation. This generated uncertainty about how the legislation was to be applied and made it possible for the courts to apply these provisions however they saw fit.

As regards the substance of the ANI legislation, the changes adopted over time followed a pattern of diluting already existing provisions. This calls into question the intentions of the legislators who not only failed to outlaw corrupt behaviour, but instead opened up new opportunities for abuse. The two 2014 proposals to amend Article 25 (2) of Law 176/2010 offer a clear illustration of this tendency. Although neither of these two proposals has been passed into law, they still provide evidence of the reluctance of the Romanian political elite to enact stringent integrity legislation.

Under Article 25 of Law 176/2010, an elected representative with a proven incompatibility or conflict of interest will be debarred from occupying *the same office* for a period of three years after termination of the mandate.[6] In its Decision 418 of 2014, the Romanian Constitutional Court urged the Parliament to clarify this provision, suggesting it be rephrased to make it plain that elected officials were debarred from occupying *any* office for a period of three years. The Constitutional

[5] Source: The Re-evaluation Request, available at http://www.cdep.ro/proiecte/2017/400/80/2/cerererx482.pdf, accessed 15 March 2018.

[6] Parliament of Romania (2010: 16).

Court found that only such a phrasing would be in accord with the spirit of a law aimed at enhancing the integrity of public officials, and at effectively sanctioning their failure or refusal to comply.[7] It was in response to this that Romanian lawmakers introduced to Parliament the two legislative proposals (Pl-x nr. 309/2015 and Pl-x nr. 310/2015)[8] in a clear attempt to override the decision of the Constitutional Court. By virtue of Article 25 (2), as amended by proposal 309/2015, elected representatives found to be involved in a proven incompatibility or conflict of interest are to be debarred from occupying *the specific office* held at the moment when the transgression was established. The other proposal, 310/2015, resolves the issue in a slightly different manner: it provides for mayors, deputy mayors and local counsellors to be debarred from occupying *any of these three positions*, for regional counsellors to be debarred from occupying *a similar office*, and for members of the Senate or the Chamber of Deputies not to stand for election *as parliamentarians* for a period of three years. Any of these amendments of Article 25 (2), had they been adopted in the form proposed, would have removed altogether the restriction to occupy an elected office for all representatives found incompatible or in conflict of interest. At best, they would have increased the number of local or regional politicians aiming for a seat in national Parliament and conversely, the number of parliamentarians who entered the competition for local or regional elections. Undeniably, the two draft proposals clarified the effects and application of Article 25 (2) of Law 176/2010, yet not in the sense advised by the Constitutional Court, and certainly not in compliance with the EU's requirements under the Cooperation and Verification Mechanism.

This attempt at de-Europeanization is not a singular incident. Various de-Europeanizing provisions proposed after Romania's accession to the EU were not eventually rejected; they were adopted and produced significant effects, not least of which was an increasing tolerance to violations of public integrity. As the following analysis shows, most of the amendments passed into law after January 2007 to regulate the functioning of the National Integrity Agency significantly reduced the power of the agency to issue mandatory decisions, the time frame within which the ANI could conduct verifications of assets was diminished, and sanctions, already far from being dissuasive, were lowered even further. When analysed in terms of the standards set by the European Commission, the repeated attempts to amend the ANI legal framework clearly reveals a post-accession setback in terms of controlling corruption.

The initial legislative framework setting up the National Integrity Agency was drafted by the Ministry of Justice in July 2006 and adopted, albeit in a modified form, in May 2007, becoming Law 144/2007. This law provided in its Art. 4 (3)[9] for

[7] Romanian Constitutional Court (2014).

[8] Available on the website of the Chamber of Deputies (www.cdep.ro) under http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=14829 and http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=14827, accessed 15 November 2021.

[9] Parliament of Romania (2007). Law 144/2007, Art. 4 (3).

integrity inspectors to notify the court on the basis of available evidence whenever they filed a notable discrepancy (that cannot be reasonably justified) between the actual and the declared wealth of a Romanian public official. According to the same article, the court would in this case be requested to order the confiscation of these unaccounted-for assets. In April 2010, the Romanian Constitutional Court declared the article unconstitutional, quite reasonably arguing that the autonomous National Integrity Agency exercised quasi-judicial powers and its integrity inspectors carried out certain activities which were jurisdictional in nature. Consequently, following this ruling, a new law amending Law 144/2007 was to be passed that would substantially limit ANI's ability to control and seek the confiscation of unjustified assets and reduce its role to the analysis of assets and wealth statements and the issuing and publishing of reports.[10]

More interesting is the fact that the new law, 176/2010, also included a series of unnecessary amendments regarding issues unrelated to the abovementioned Constitutional Court decision, measures which significantly reduced the effectiveness of the ANI's legal framework. To take just one example, the new law established a rather short prescription period for the completion of the ANI's verifications, laying down that the agency's investigations be completed within three years after the end of a public official's mandate. By comparison, in the government's initial 2006 proposal, the period in which the ANI was allowed to investigate public officials' wealth was five years after the termination of their mandate. This provision, as proposed by the government, was completely repealed in 2007, then reintroduced later by Law 176/2010 with the period of prescription reduced to only one year. Eventually, the prescription period was extended again to three years, an amendment adopted[11] at the specific request of the President of Romania. Notwithstanding this later extension of the prescription period to three years, a significant number of cases eligible under the old law—containing no provision in this respect—had to be closed as a result of the amendment introduced by Law 176/2010. As the European Commission justly remarked, the amendment of Article 11 "has created a de facto amnesty in certain cases for unjustified wealth and other integrity violations."[12]

The adoption of Law 176/2010 not only diminished the investigative powers of the Agency, but also significantly reduced the sanctions applied for public officials who failed to respect the obligations imposed on them by the integrity legislation. Such a development is not justified in a context of widespread high-level corruption, and even less justified in a context in which most sanctions were already under the previous law too low for effective deterrence.

The submission of knowingly false wealth statements by Romanian public officials was initially regarded in Law 144/2007 as a criminal offence to be punished in accordance with criminal law.[13] Through the amendment introduced by the

[10] Parliament of Romania (2010). Law 176/2010.

[11] Parliament of Romania (2010). Law 176/2010, Art. 11 (1).

[12] European Commission (2011c: 10).

[13] Parliament of Romania (2007). Law 144/2007, Art. 50 (1) as adopted by the Senate of Romania.

Parliament in 2010, the submission of knowingly false wealth statements turned from being considered a criminal offence to being considered no offence at all: the new provision allowed the dignitaries to revise their wealth statements at any time before the agency takes action against them. As a matter of course, any modifications made to wealth statements even after their submission would have been recognized as lawful.[14] In effect, such an amendment would have rendered void the submission of wealth statements and undermined its effectiveness as an instrument for improving transparency, and would have severely interfered with the activity of the agency altogether. This provision, however, did not take effect due to the requested re-evaluation filed by the President of Romania.

While the submission of knowingly false wealth statements was eventually reintroduced as a violation sanctioned in accordance with the criminal code, the overall sanctioning regime under the reformed integrity framework has been weakened considerably, with reduced fines against officials who fail to make public their wealth and interests, or who submit their statements at a later time. Under Law 144/2007, the failure to submit wealth and interest statements would attract sanctions between 100 and 500 Lei (between approx. 20 and 100 Euro); these sanction limits, already far from dissuasive, were lowered in 2010 by the Parliament to a minimum of 50 Lei (approx.10 Euro) and a maximum of 10,000 Lei (approx. 2020 Euro) and subsequently reduced to between 50 and 2000 Lei (approx. 10 to 404 Euro). Even though the maximum sanctions were eventually increased to a 400 Euro fine, it is far more relevant that minimum sanctions were lowered. In fact, it is the minimum sanction that counts, as practice shows that it is the minimum sanctions that are usually applied in such cases.

Moreover, by virtue of the more recently adopted Law 125/2018 an exception has been introduced, rendering void all the sanctions imposed against Members of Parliament found in conflict of interest during their mandates in the period between 2007 and 2013. The justification for introducing this exception was that the legal framework regulating the Statute of Deputies and Senators did not provide until 2013 for sanctions applicable for Members of Parliament in cases of administrative conflicts of interest. However, this justification falls short of explaining why the Parliament, while regulating public integrity and the sanctioning regime applied to its own members, failed to harmonize the Statute of Deputies and Senators with Law 144/2007, through which sanctions were introduced for all dignitaries (including Members of Parliament) found in conflict of interest.

It is worth noting that the failure to apply disciplinary sanctions by a public institution, should a case of incompatibility arise, is currently subject to a fine even lower than that initially provided under Law 144/2007 (between approx. 20 and 100 Euro) and much lower than the fine suggested by the government in its 2010 legislative proposal (between approx. 202 and 2020 Euro). After Law 144/2007 was declared unconstitutional in April 2010, the draft proposed by the government

[14] Parliament of Romania, Senate of Romania (2010) Draft bill adopted by the Senate of Romania on 12 May 2010, Art. 28 (2).

included a fine between 1000 and 10,000 Lei (between approx. 202 and 2020 Euro), which was first completely eliminated, and then subsequently reintroduced with fines ranging from 50 to 2000 Lei (from approx. 10 to 404 Euro). The level of sanctioning in this particular case is a highly relevant indicator for the extent to which a certain abusive practice is regarded as customary or less severe in nature. Integrity-related sanctions in Romania, far from dissuasive under the current legislation, indicate a high degree of tolerance with regard to such offences. Providing for such low fines against the violation of integrity laws sends out a very feeble message of normative disapproval of this type of abusive behaviour, damaging the credibility of the entire legislative framework and its ambition to improve public integrity while curbing corruption.

Also of particular interest in the present context is the clause proposing the re-establishment of the so-called Wealth Investigation Commissions. Such Wealth Investigation Commissions, created at the level of appeal courts, previously served the purpose of investigating cases of unjustified wealth. In 2007, with the establishment of the National Integrity Agency, this responsibility was subsequently transferred to the agency, as stipulated by Law 144/2007. After Law 144/2007 was declared unconstitutional in 2010, the lower chamber of the Parliament decided to re-establish the Commissions, regardless of the fact that this was neither a request advanced by the Constitutional Court nor a recommendation included in the government's initial draft proposal for Law 176/2010. Contrary to this decision of the lower parliamentary chamber, the higher chamber rejected the amendment and eliminated the article reinstituting the Commissions. Shortly afterwards, however, following an explicit request of the President of Romania, the Wealth Investigation Commissions were reintroduced in Law 176/2010, acting today as an extra layer of jurisdiction between the ANI and the actual courts.[15] The CVM Monitoring Reports for Romania pointed out in 2011 that these Wealth Investigation Commissions serve as an unnecessary intermediary body between the ANI and the trial courts, since they rule on cases transmitted by the ANI on the basis of the same evidential standards as the courts themselves.[16] Still, the provision remained in force, and the Wealth Investigation Commissions remained active at the level of the appeal courts, uselessly delaying the judicial decision-making process by duplicating the activities of the trial courts.

Assessed against the CVM criteria, all the above examples demonstrate a clear post-accession legislative setback. While these articles cover only a small area of the integrity legislative framework, they form part of the *hard core* of provisions which are of fundamental importance to the state's Europeanization and post-accession compliance in the field of integrity and anti-corruption reform. Note that "Benchmark two" of the Commission's Mechanism for Cooperation and Verification recommends that Romania should establish an integrity agency "with

[15] Parliament of Romania, Senate of Romania (2010) Draft bill adopted by the Senate of Romania on 12 May 2010, Art. 35–2.

[16] European Commission (2011b: 6).

responsibilities for *verifying* assets, incompatibilities and potential conflicts of interest, and for *issuing mandatory decisions* on the basis of which *dissuasive sanctions* can be taken"[17] (emphasis added). As the above accounts have shown, instead of bringing Romania more in line with these criteria, repeated attempts were made after January 2007 to severely interfere with the activity of the agency, diminishing its responsibilities and weakening its tools for control. More often than not, the measures taken disregarded the recommendations expressed by the European Commission in its regular reports. Since January 2007, the European Commission has published no less than 20 reports taking stock of the progress made, addressing the remaining shortcomings and underlining the steps to be taken by Romania in refining and improving its integrity legislation. Without exception, all of these reports raised concerns with regard to the responsibility and accountability of Romania's political elite, and its capacity to ensure a transparent, predictable and irreversible legislative process. Regardless, in what concerns Romania's legal framework for public integrity, legislative changes were adopted that prevented the ANI from proceeding against members of the political elite (Art. 8, Art. 11 and Art. 17 of Law 176/2010), delayed judicial decision-making (Art. 35 of Law 176/2010) and diminished or suspended altogether the sanctions against officials who fail to comply with the provisions of the law (Art. 25, Art. 28 and Art. 29 of Law 176/2010, as well as Law 125/2018). Introducing amendments to these key articles necessarily led to changes in numerous other provisions in force. The examples detailed above are, however, enough to prove the instability and reversibility of Romania's anti-corruption legislation. What seem like simple changes in the wording of a small number of provisions in a small number of laws actually goes to the heart of this area of reform; the amendments described above are crucial for Romania's framework for public integrity, and overall for the state's approach to combatting corruption. It is no coincidence that these very articles of law are the most extensively debated, repeatedly amended and curtailed.[18]

Casting an overall glance at Romania's public integrity legislation, we find a long sequence of attempts to suppress or dilute key provisions. Some of these attempts at weakening the legislative framework were successful, making it through the law-making process; others were either stalled, tempered or rejected by the intervention of one or another decision-making body. A long-term analysis shows however that it is only a matter of time until such failed attempts at reform reversal make their way back into the Parliament and eventually into the legislation.

[17] Commission of the European Communities (2006).

[18] The numbering of the articles making up ANI Law was completely revised with every amendment of the law. This chapter makes reference to the same articles of law: Art. 2 of 144/2007 (now Art. 8 (1) of 176/2010); Art. 20 (2) of 144/2007 (now Art. 11 (1) of 176/2010); Art. 44 (1) of 144/2007 (now Art. 17 (1) of 176/2010); Art. 47 (2) of 144/2007 (now Art. 25 (2) of 176/2010); Art. 50 of 144/2007 (now Art. 28 of 176/2010); Art. 52 of 144/2007 (now Art. 29 (1) of 176/2010); Art. 53 (1) of 144/2007 (now Art. 29 (3) of 176/2010); and Art. 61 (4) of 144/2007 (now Art. 35 of 176/2010).

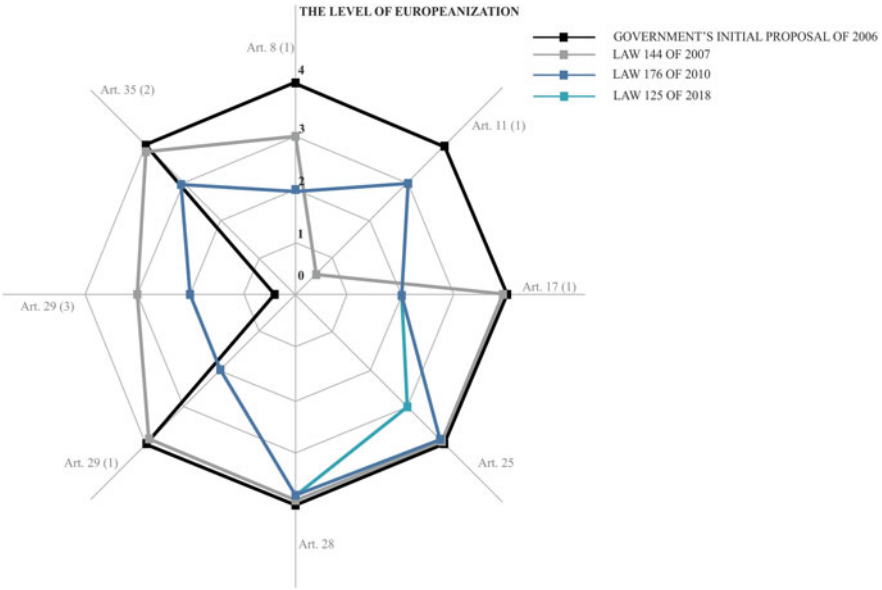

Fig. 4.3 The de-Europeanization of integrity legislation

In sum, and weighing up all the key legislative developments that produced detrimental effects for the state's ability to control corruption, it can be concluded that Romania reversed the positive steps taken towards Europeanization in the field of public integrity. In Fig. 4.3[19] reform reversal is measured for each of the articles of law against their previously achieved level of Europeanization. In the government's initial proposal of 2006, these provisions were mostly in line with EU requirements, while the subsequent modifications of the law (through the adoption of Law 144/2007, Law 176/2010 and Law 125 of 2018) marked a "negative" development. Articles were either deprived of their initial legal significance, or eliminated altogether, which severely affected the agency's ability to achieve its goals and rendered Romania's public integrity legislation largely ineffective. Instances of de-Europeanization can be observed not only by comparing the final (promulgated and binding) versions of the laws (as in Fig. 4.3), but also by studying the different draft versions as amended and adopted by the two parliamentary chambers in the process of creating and revising the legal texts. Law 176/2010 alone went through at least seven formally adopted versions, with notable differences in the degree and direction of change with every draft that was voted upon. Tracing de-Europeanization in such detail, however revealing, falls beyond the scope of this book.

[19] Figure 4.3 was developed by the author based on the developments of the most relevant provisions of ANI legislation.

On the whole—considering both substantial and procedural aspects—Romania's legal framework for public integrity qualifies as a case of doubtful legislative performance, with its lack of compliance to, and deviation from, the standards set forth for the member state by the EU through its post-accession conditionality. The various provisions debated by the two parliamentary chambers, their apparent Europeanization followed by its reversal (sometimes with total disregard for the Commission's recommendations), cast serious doubt on the willingness of Romania's political elite to carry out sound reforms in the area of public integrity and overall in the field of justice and anti-corruption. The post-accession developments described here not only represent a corruption of law in its ideal essence, but are also highly illustrative of the way in which members of the political elite abuse public power in their pursuit of personal interests.

4.2 The Elite's Pursuit of Personal Interests

The numerous changes brought to the integrity legislation to diminish the power of the ANI were initiated by various political decision-makers: the Senate had almost reached unanimity in adopting the clause allowing public officials to correct their wealth statements at any time after their submission[20]; likewise, the lower chamber of Parliament proposed and voted in favour of reducing the prescription period and the sanctions available under ANI laws[21]; the President of Romania delayed the promulgation of Law 176/2010, returning it to Parliament with the specific request to re-establish the abovementioned Wealth Investigation Commissions, which are a futile additional level of jurisdiction between the agency and the courts; while at the same time, the government amended the legislation through several Government Emergency Ordinances in an attempt to avoid the long cycle of law-adoption, while in fact it only increased the burden on the legislative process. This approach to law-making leads to the conclusion that the members of the Romanian political elite, irrespective of the forum of decision-making in which they are active, lack a commitment to genuine reform. They not only fail to observe the due procedures, but also transcend the limits of their legislative power by behaving opportunistically; they often introduce measures that disregard both European requests and societal needs. In this section, we will pause to examine the reasons behind the elite's failure to foster a solid integrity legislation. The purpose here is to identify the interests that the members of the political elite pursued in supporting one legislative amendment or another by analysing in detail the mechanism of law-making, both the procedures

[20]The proposed amendment received 72 votes in favour, 9 votes against and 8 abstentions in Senate's plenary session of 12.05.2010.

[21]For the vote in the Chamber of Deputies, the video-recording of the plenary session provides no detailed information with regard to the votes cast for each individual provision. However, it is worth noting that the draft-law, with all its amendments, was adopted on 28.04.2010 in the plenary session of the Chamber of Deputies with 183 votes in favour, no votes against and 27 abstentions.

employed as well as the debates and the voting patterns surrounding the adoption of Romania's legislative framework for integrity.

After the state's accession to the EU, the early enthusiasm of the Romanian political elite to establish a solid legal framework for integrity developed into a lack of interest in getting meaningful reform passed. In 2007, 95% of Romanians considered corruption in their country to be a major problem,[22] a percentage which has remained high until today (93% in 2009 and 2014, 80% in 2017 and 83% in 2020)[23]; in 2009, no less than 72% of the population regarded court sentences in the context of corruption cases to be too light,[24] while just as many agreed that high-level corruption cases are not pursued sufficiently (with percentages ranging from 73% in 2014 to 77% in 2017, and 71% in 2020).[25] In 2019 a consultative referendum as to whether to prohibit amnesty and pardons for corruption offences passed by a wide margin (more than 80% of the votes), a reflection of society's low tolerance for corrupt behaviour. In 2020, across all EU member states in Romania was observed the highest percentage (64%) of people declaring themselves to be personally affected by corruption in their daily life.[26] In response to these constant concerns, Romanian political representatives have been displaying a general reluctance to undertake sound and effective anti-corruption reforms since 2007.

The adoption of the two emergency ordinances amending Law 144/2007[27] can serve as a good example in this respect. The way in which the government applied modifications to the existing ANI Law so soon after its promulgation is illustrative of the constant practice of the members of the cabinet to legislate by means of Government Emergency Ordinances, even though there is often no emergency that requires it. As discussed above, the government of Romania enacts laws in this manner too often, which avoids the long and burdensome legislative proceedings in Parliament, but at the same time significantly destabilizes the law-making process. Indeed, an undesirable legislative ambiguity resulted from the adoption of the two Government Emergency Ordinances passed in 2007 that were aimed at amending the recently adopted law (144/2007). These government ordinances required the confirmation of Parliament, which granted its approval by adopting *new* laws (94/2008 and 105/2008), and thus allowed several legislative acts in force to have the same object of legislation. This practice provides a clear example of the misuse of democratic institutions for proceedings that should be extraordinary, and reveals a lack of domestic political will to legislate in a clear and straightforward manner that allows enough time for debates and public consultation.

[22] European Commission (2008: 4).

[23] European Commission (2009: 9, 2014b: 20, 2017d: 17); (2020a: 21).

[24] European Commission (2009: 44).

[25] European Commission (2014b: 65, 2017d: 61); (2020a: 75).

[26] European Commission (2020a: 33).

[27] The Government Emergency Ordinance 49 of 30 May 2007 and the Government Emergency Ordinance 138 of 6 December 2007.

It was not only in the case of these Government Emergency Ordinances that a fast-track procedure was used to adopt and amend the integrity legislation. Almost all integrity laws mentioned above were adopted without careful consideration via a parliamentary expeditious procedure. The initiator of a bill may request a fast-track procedure when advancing the draft proposal to Parliament, which imposes much tighter deadlines for the submission of written amendments by the members of Parliament. Moreover, at the stage of general debate in plenum, each parliamentary group is, by virtue of this procedure, entitled to only one intervention, with the length of each representative's speech severely limited.

As we saw in the previous section, the adoption of ANI Law and its subsequent modifications was a long and cumbersome process, and yet almost all the amendments to this law were adopted under an expeditious procedure, at the specific request of those who initiated the legislative amendments: in the case of Law 176/2010 at the request of the government, and in the case of Law 125/2018 at the request of a single MP. As a consequence, modifying laws through expeditious procedures often led to situations in which the members of one or the other parliamentary chamber did not have sufficient time for debate or to submit amendments. During plenary sessions dedicated to ANI Law 176/2010, concerns were raised regarding the lack of accuracy and relevance of a legislative act passed under such severe time pressure.[28] Nevertheless, despite such concerns, the plenary sessions were held as scheduled, and as a result decisions were taken in a hasty and ill-considered manner. Indeed, the debates took place and the votes were cast irrespective of whether all the members of the parliamentary chamber had even had sufficient time to read the draft proposal and submit amendments.

To demonstrate this point, it is sufficient to mention that the government's proposal of a bill amending Law 144/2007 in accordance with the requirements of the Constitutional Court had been submitted to the lower chamber of Parliament even before the decision of the Constitutional Court was published in the Official Journal. Nevertheless, the legislative proposal prepared by the Ministry of Justice reached the Chamber of Deputies on 27 April 2010, while the deadline for submitting amendments to this draft by members of Parliament was no later than the following morning, on 28 April 2010. In a similar fashion, a newly amended draft

[28] Intervention of a PSD MP in the Chamber of Deputies in: Parliament of Romania, Chamber of Deputies, The Committee for Legal Matters, Discipline, and Immunities (2010a), *Video Recording of the Meeting held on April 28th 2010*., minute 00:02:40; Intervention of a PSD MP in the Chamber of Deputies in: Parliament of Romania, Chamber of Deputies (2010a), 'Plenary Session of the Chamber of Deputies. Minutes of the Meeting held on April 28th 2010' http://www.cdep.ro/pls/steno/steno.stenograma?ids=6821&idm=16, accessed 2 Mar 2018.

Intervention of a PSD MP in the Senate in: Parliament of Romania, Senate of Romania (2010), 'Plenary Session of the Senate. Minutes of the Meeting held on May 12th 2010' https://www.senat.ro/PAGINI/Stenograme/Stenograme2010/10.05.12.PDF, accessed 2 Mar 2018.: 85–91; Intervention of an UDMR MP in the Chamber of Deputies in: Parliament of Romania, Chamber of Deputies (2010b), 'Plenary Session of the Chamber of Deputies. Minutes of the Meeting held on June 22nd 2010' http://www.cdep.ro/pls/steno/steno.stenograma?ids=6860&idl=1, accessed 2 Mar 2018.

of the same law was discussed by the Committee for Legal Matters, Discipline, and Immunities in the Chamber of Deputies on 21 June 2010 and spontaneously added to the agenda of the plenum on 22 June 2010. As a result, the members of the Chamber of Deputies voted on the proposals to alter the law without being able to refer to the report, which included amendments approved by the Committee for Legal Matters, Discipline, and Immunities. The same hasty procedure was followed in 2017 to amend Article 25 of Law 176/2010; votes have been cast without a serious study of the amendments proposed and without any plenary debate.[29]

The conduct of the Romanian political elite demonstrates quite clearly its lack of commitment to passing efficient and unobjectionable anti-corruption legislation. While it may be quite obvious why an allegedly corrupt political elite would adopt measures softening the anti-corruption legal framework, their interest in passing the bills in a surprisingly hasty manner is slightly less obvious. The content analysis of parliamentary debates, however, provides further insights into the reasons behind the extended use of the expeditious procedure in the case of these integrity laws.

A constant subject of concern in the plenary sessions in Parliament was the ongoing EU Cooperation and Verification Mechanism and the European Commission's negative reports on Romania's progress in terms of curbing corruption. Therefore, in response to the Commission's recommendations pertaining to the organization and functioning of the National Integrity Agency, the Romanian political representatives much too often and much too hastily refined the agency's legal framework with the clearly expressed aim of eventually bringing the Mechanism of Cooperation and Verification to an end. Obviously, most of the members of the Romanian political elite place much higher value on promptly ending the Commission's supervision than on implementing a thoroughly reviewed and sound legislation. Such an approach to reform can be understood as an attempt on the behalf of the elite to pretend to be meeting European targets for the sake of their voters, while in fact going in the opposite direction. Indeed, the constant high level of trust in European institutions among Romanian citizens supports the claim that the political elite's attempt to alleviate monitoring pressures is aimed more likely at maximizing their electoral returns than at genuinely meeting EU standards. According to Eurobarometer data,[30] the level of trust in the European Union among Romanian citizens remained consistently high if compared to the EU average. In 2007, 67% of Romanians claimed to trust the EU in comparison to a 45% European average; in 2011, the balance was 62% compared to a 41% on average in EU 27; in 2014, 58% of Romanians affirmed trusting the Union, while the average in Europe was very low, at 31%. More recent data of 2021 show that the majority of Romanians (56%) trust the European Union, with an EU average at 49%, while at the same time, by comparison, only 31% trust the Romanian Government and 29% trust the national Parliament. In light of these numbers, it does not seem at all

[29] Parliament of Romania, Chamber of Deputies (2017b).

[30] Source: European Commission (2007b: 110, 2011a: 44, 2014c: 93–4, 2021b: 10, 2021c: 2).

unreasonable to postulate that the widespread use of the expeditious procedure and the careless amending of the already quite fragile legislative framework for integrity was aimed to end the European monitoring as soon as possible and thereby to silence the criticism of those who trust the EU political bodies more than the national ones. The manner in which elites pursue only the political benefits of legislation has dire consequences for the policy effects; the integrity reform conducted with no real intention of following through was doomed to remain, as these examples show, formal rather than substantive at best.

The goals of the allegedly corrupt political elite, however, extend beyond winning elections; the frustration of the legislative purpose and the ambiguity generated with all the amendments to the integrity laws are far from accidental. Not only did most of the Romanian representatives allow the use of a sloppy legislative technique, which significantly affected the quality of legislation and thus made any meaningful reform impossible, but also—as the following pages will show—they opted for a self-centred rather than a social-centred approach to law-making.

According to an analysis conducted by Bertelsmann Stiftung,[31] between February 2013 and January 2015, an increasing number of top politicians from all parties—ministers, former ministers, members of Parliament or powerful local politicians—were prosecuted and convicted for corruption. "This was done mostly in spite of—rather than because of—the actions of the centre-left government, which most of the time has tried to subtly undermine this trend by replacing the effective heads of investigative agencies or weakening their institutions."[32] According to a more recent study, the beginning of 2017 marked a break from these more subtle ways of hindering the fight against corruption, when "the ruling center-left coalition dropped any pretence of having any other priority than pushing back against the rule of law and anti-corruption institutions".[33] Legislation has been overtly used in order to weaken the instruments to control corruption and even in order to decriminalize the abuse of public office.[34] If taking into account Romania's low control of corruption and low democracy scores,[35] the numerous allegations of grand corruption and the significant number of cases sent to court,[36] then the strong reluctance to foster integrity and transparency in public decision-making is hardly surprising. Thus, the interests in blocking anti-corruption reforms are quite self-evident, while the personal character of these interests is even more so. In fact, the Romanian political

[31] Bertelsmann Stiftung (2016).

[32] Bertelsmann Stiftung (2016: 24).

[33] Bertelsmann Stiftung (2020: 3).

[34] For more details see Bertelsmann Stiftung (2020: 10–2).

[35] The Group of States against Corruption (2016: 8, 2021: 3–4); Freedom House (2021); Transparency International (2021).

[36] Between 2007 and 2020, approximately 157 high public officials (among them 27 members of cabinet, 80 Members of Parliament, 3 Members of the European Parliament, 23 state secretaries and 24 central government officials), 57 regional and local counsellors and 386 mayors were sent to court for corruption, according to the reports published by Romania's anti-corruption prosecution service. Data retrieved online from http://www.pna.ro/results.xhtml, accessed 26 November 2021.

elite aspires to amend the legislation in order to *legalize* acts of corruption if they are undertaken by high-ranking public officials. One of the most extreme examples of this took place on 10 December 2013, when "the Chamber of Deputies adopted two amendments to the Criminal Code (...) through which all appointed or elected officials are no longer criminally liable for corruption".[37] More recently, in January 2017 a Government Emergency Ordinance was adopted to decriminalize corruption offences in which the damage caused was less than 45,000 Euro.[38]

The changes brought to the legal framework for integrity followed the same pattern: they were enacted primarily for the benefit of those who initiated them. The proposal to introduce a shorter prescription period, thus limiting the period in which the National Integrity Agency is allowed to take action against a former dignitary, undeniably benefits those public officials who face or may face charges under the integrity laws. Similarly, the clause allowing for the correction of wealth statements at any time after their submission would have allowed public officials to overlook certain information while publishing their wealth statements, thus rendering void the entire activity of the agency. Such an amendment would certainly serve the interests of those who are committed to an at best opaque kind of political transparency. In the same way, the diminished sanctions against public officials failing to submit their wealth statements inevitably put less pressure on them to comply with the requirements of the law.

In simpler terms, if only taking into account the high level of grand corruption and the lack of integrity among members of the elite in Romania, it seems quite self-evident who would benefit from a softening of integrity legislation. According to the most recent activity report published by the ANI, as of December 2020, 46 national representatives and 945 local representatives were found guilty of incompatibility, 57 national representatives and 369 local representatives were found guilty of an administrative conflict of interest and 21 members of Parliament and 14 local representatives received prison sentences based on ANI reports. In the same period, between September 2010 when Law 176/2010 was adopted and December 2020, 7722 sanctions were applied by the agency, the majority of which (more than 92%) were for failure to submit wealth declarations in due term.[39]

An assessment of the arguments advanced in Parliament to justify the amendments proposed to the integrity legislation provides even further proof of the instrumental use of the democratic framework by the Romanian political elite. While arguing in favour of a certain legislative provision during parliamentary debates, various members of the Romanian Parliament have made clear reference to personal interests. For instance, in May 2010, a senator of the Social Democratic Party (PSD) declared during a plenary session of the Senate to cast a vote in favour for the adoption of Law 176/2010 despite the effects that the implementation of the bill would have on the ANI's effectiveness; the stated reason for this choice was to

[37] Transparency International Romania (2013).

[38] Bertelsmann Stiftung (2020: 11).

[39] Agenția Națională de Integritate (2020: 4–9).

allow the ANI to immediately resume its activity in order to facilitate the agency's investigations in a case regarding the Senator so it would finally reach court and eventually be settled.[40] The following month, in June 2010 a liberal-democratic (PDL) member of the Chamber of Deputies proposed an amendment to delete certain data from wealth statements, justifying this amendment with the argument that the publication of some of the data led to personal inconveniences.[41] Similarly, a member of the Conservative Party (PC), while arguing in favour of granting public officials the possibility to correct their wealth statements at any time before the agency takes action against them, referred to a situation in which he himself forgot to remove from his wealth statement a property he had sold long before.[42] Another argument brought forth by a member of the Liberal Democratic Party (PDL) in favour of diminishing sanctions against public officials who fail to publish their wealth and interests statements was that higher sanctions would discourage local counsellors in his region from further assuming responsibility as they would be unable to pay such fine, and this would certainly cause difficulties for him, as president of the party's regional chapter, in finding suitable candidates for the local council.[43]

While these are by no means singular cases of Members of Parliament who are driven by opportunism in their approach to legislative reform, such anecdotal evidence alone cannot prove the validity of this book's main claim. More relevant in this respect is the legislators' voting pattern, which shows a high degree of tolerance for such rhetoric. Even though most Romanian political representatives would agree, if asked, that personal inconvenience is not a valid reason to support or reject derogations or legislative amendments, nevertheless, when some members of the parliament hindered reform in pursuit of personal interests the majority of members in the same parliament tacitly consented. Indeed, despite the debates surrounding some of the de-Europeanizing measures proposed, during the voting of the bills in plenum, most of the members of the one or the other chamber of parliament were to a large extent inclined to agree with the majority. Therefore, the laws establishing Romania's framework for public integrity (Law 144/2007 and Law 176/2010) were in each of their successive forms adopted with a majority of more than 90% of the votes. An exception in this regard are Law 125/2018, adopted with 65% of the cast votes in favour in the lower chamber and with 67% in the Senate, and Law 54/2019 adopted with 92% of the cast votes in favour in the lower chamber and 76% in the Senate.

[40] Parliament of Romania, Senate of Romania (2010), 'Plenary Session of the Senate. Minutes of the Meeting held on May 12th 2010' https://www.senat.ro/PAGINI/Stenograme/Stenograme2010/10.05.12.PDF, accessed 2 Mar 2018: 90.

[41] Parliament of Romania, Chamber of Deputies, The Committee for Legal Matters, Discipline, and Immunities (2010b), *Video Recording of the Meeting held on June 21st 2010*., minute 00:23:22.

[42] Parliament of Romania, Chamber of Deputies, The Committee for Legal Matters, Discipline, and Immunities (2010a), *Video Recording of the Meeting held on April 28th 2010*., minute 03:18:21.

[43] Parliament of Romania, Chamber of Deputies, The Committee for Legal Matters, Discipline, and Immunities (2010a), *Video Recording of the Meeting held on April 28th 2010*., minute 04:40:42.

Moreover, it is also important to point out here that a positive vote was cast in 2007 by both chambers of Parliament on a bill (144/2007) known already at that time to be in breach of the Romanian Constitution.[44] The unconstitutionality of this law was addressed in plenum, but it did not prevent the Parliament from adopting it with 251 votes in favour and 5 against in the Chamber of Deputies, and 109 votes in favour, and no votes against in the Senate. A few years later, the bill was brought for review before the Constitutional Court, and as a consequence, in April 2010, the law was declared unconstitutional. It was returned to the Parliament for revision, which caused five months of legislative standstill that prevented the agency from performing its responsibilities. Can this legislative behaviour be regarded in any circumstance as a pursuit of the common good? Can the adoption of a law known to fall short of meeting constitutional standards be reasonably justified? Were political decision-makers in their actions representing any interests but their own? As we will see in the next section, democracy-promoting civil society groups and organizations who voiced their disapproval of this legislative behaviour, were however silenced by further legislative amendments aimed at curtailing their freedom to criticize political parties on the one hand and distracting them through overly burdensome reporting requirements on the other.

4.3 The Weak Impact of Civil Society

The above analysis appears to suggest that any opportunistic political elite in a democratic system could change the course of legislative reform in an effort to extract personal profit. By this logic, the more corrupt and self-interested the ruling political elite, the greater the impediments they would pose to genuine anti-corruption reform. The relationship between the elite's self-interest and the course of reform is, however, more complex than such a simple causation. In particular, the strength of civil society plays a very important role, correlating highly with the elite's pursuit of personal interests: societal constraints are most likely to prevent an instrumental use of the democratic framework by political decision-makers. The existence of a strong civil society with adequate control capacities is thus an essential condition for the implementation of a sound and stable reform. Civil society plays a key role as a mediator between representatives and the represented; it informs the latter about the decisions taken by the former, and the former about the interests of the latter, but more importantly, it mobilizes the represented to protect their interests by promoting active participation, political engagement and the building of political pressure. Conversely, in the absence of a strong civil society that would act as an effective watchdog, a powerful self-interested political elite can indeed impede reform and put personal profits before the public good.

[44] Parliament of Romania, Chamber of Deputies, The Committee for Legal Matters, Discipline, and Immunities (2010a), *Video Recording of the Meeting held on April 28th 2010*., minute 00:22:54.

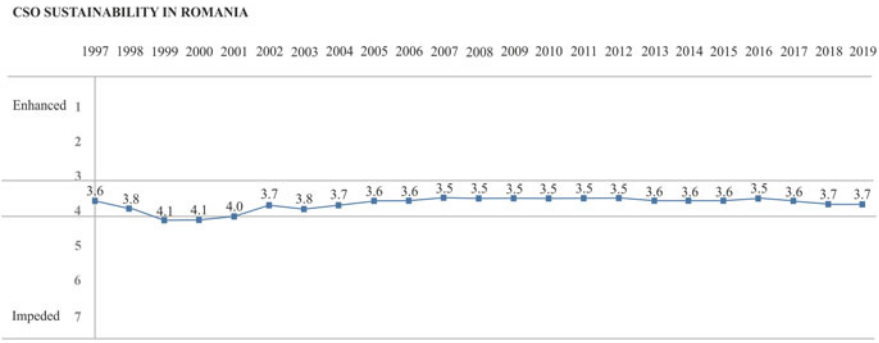

Fig. 4.4 Pre- and post-accession sustainability of Romanian Civil Society Organizations

Civil society is not absent in Romania. As of 2020, 114,548 civil society organizations (CSOs) were registered in Romania and included in the National Non-Governmental Organization Register, marking an increase of 6774 since December 2018.[45] The estimation holds however that only half of these organizations registered are in fact active. Moreover, at least since January 2007, civil society in Romania seems to be rather powerless in terms of its control function and quite vulnerable in its relation to the political elite. Its sustainability has remained an issue in the post-accession period (see Fig. 4.4[46]), primarily due to the weak financial setup of CSOs in Romania, which has declined after the state's accession to the EU. In 2018 and 2019, the financial viability of CSOs reached its lowest scores (4.5) since 2002.[47]

In a comprehensive study on the role played by civil society as an anti-corruption actor in Central and Eastern Europe, Alina Mungiu-Pippidi[48] stresses the fact that in the pre-accession period, EU conditionality combined with the existence of an intense and effective grassroots mobilization contributed to a positive trend of reform. Indeed, as Alina Mungiu-Pippidi rightfully points out, EU conditionality, which is heavily dependent on domestic agents of change, can only be effective when coupled with an active engagement in curbing corruption at the domestic level.[49] After Romania gained full EU membership, not only did the political elite gradually disengage from promoting anti-corruption reforms, reversing the positive measures adopted before accession, but at the same time, civil society became less and less able to act against the reversal of reform. One of the main reasons behind this decline in the strength of civil society in this field was, as mentioned above, its endangered financial situation after January 2007. Following their accession to the

[45] USAID (2020: 176).

[46] The figure was adapted by the author based on the following sources: USAID (2017: 188; 2018: 170; 2019: 178; 2020: 176).

[47] USAID (2015: 181; 2018: 173; 2020: 179).

[48] Mungiu-Pippidi (2010).

[49] Mungiu-Pippidi (2010: 25).

EU, most of the new member states faced a sharp drop in the share of funding for anti-corruption programmes as their main sponsors, American foundations and USAID, withdrew their support.[50] Moreover, pre-accession European Commission funding has been subsequently replaced by Structural Funds managed by national ministries who prove to be, at least in Romania, quite reluctant to distribute funds to watchdog organizations monitoring their activity.[51] The Government Emergency Ordinance (OUG 117/2010) adopted on 30 December 2010 caught most civil society organizations off guard when it provided for them to pay taxes on a monthly basis instead of every semester. Without consistent revenue streams, many CSOs found themselves unable to meet such obligations, and faced bankruptcy, not least because state delays in financial disbursements from EU Structural Funds only exacerbated the situation.[52] Indeed, the recipients of EU Structural Funds faced a continuously changing regulatory environment, creating confusion and administrative difficulties. In addition, in 2011, the Romanian government unilaterally changed the terms and conditions of structural funding, lowering advance funding and extending the terms of payments, severely affecting the financial setup of most civil society organizations.[53] During 2014–2020, the EU Structural Funds remained the main source of foreign funding for CSOs, but the repeated delays and overly-complex and bureaucratic procedures rendered such funding accessible only for the larger and more experienced organizations.[54]

In general, after Romania's accession to the EU, there was a steady deterioration marking the relationship between civil society and the political elite. The communication and cooperation between civil society organizations and political decision-makers started to decline; the mechanisms created for consultation gradually disappeared. The College of Consultation with Civil Society, established by the Prime Minister's Chancellery in 2005, was increasingly inoperative and was dissolved in 2010.[55] In July 2013, through a Government Decision, all structures dedicated to civil society at the level of the General Secretariat of the Prime Minister's Chancellery were eliminated. Beyond the Prime Minister's Chancellery, the few formal structures of consultation with civil society that remained were ineffective, an illustrative case being the Social and Economic Council, which, surprisingly enough, did not have CSO representatives in its structures.[56] An even more blatant example is the establishment of the Ministry of Public Consultation and Civic Dialogue through the Government Emergency Ordinance OUG 1/2017, only to be dissolved one year later. The Government Emergency Ordinance OUG 1/2018, adopted in January 2018, put an end to the existence of the ministry despite its merits

[50] Mungiu-Pippidi (2010: 19).
[51] USAID (2013: 158; 2020: 179–80).
[52] USAID (2011: 157–8, 2013: 158–9).
[53] USAID (2013: 158–9).
[54] USAID (2018: 174; 2019: 182; 2020: 180).
[55] USAID (2011: 160).
[56] USAID (2014: 170).

in consulting with civil society organizations and increasing the transparency of decision-making processes in public authorities.[57]

Particularly when legislating in areas such as justice and anti-corruption, members of the Romanian Parliament regularly ignore their obligation to submit draft laws to public consultation, the overall cooperation with civil society organizations remaining limited at best. It is not at all unusual for Members of Parliament to refuse civil society representatives their right to participate in deliberations and in the law-making process in key areas of judicial and anti-corruption reform.[58] Consequently, the relationship between civil society and the political elite is antagonistic: the former constitutes the main source of pressure on representatives for more transparency and integrity, while the latter accuses CSOs of acting as foreign agents to the detriment of Romanian society (regardless of the fact that no proof has yet been produced in support of such claims[59]).

The Romanian political elite is clearly inclined to perceive civil society active in democracy promotion as a threat rather than a source of support and expertise. This claim can be substantiated through further analysis of the integrity legislation discussed above. In May 2007, an amendment to Law 144/2007 was adopted which placed board members of the trade unions under the obligation to declare their wealth[60]; this measure was passed by an overwhelming majority in the Senate, regardless of the fact that the law specifically addressed dignitaries and public officials, and not board members of the trade unions, who did not fall into this category. This measure, of course, did not go unnoticed, and it was consequently eliminated through a Government Emergency Ordinance later in 2007 (OUG 49/2007). Yet the provision was reintroduced by the Chamber of Deputies in 2010 by Law 176/2010, and has remained in force ever since.[61] A similar proposal tabled in 2010 intended to oblige the members of the press[62] to disclose their financial assets, as a measure to control "media abuses". Even though this amendment received little consideration in the Senate, it equally reveals the attitude of disfavour on behalf of the Romanian political representatives towards independent media and civil society.

Burdened by negative attitudes from political decision-makers and dependent upon local or central government for funding, civil society in Romania is largely inclined to perceive its watchdog role as particularly at risk in terms of future financial security. As a consequence, many non-governmental organizations in the field of justice and anti-corruption focus mostly on legal assistance and raising

[57] USAID (2017: 193).

[58] Institutul pentru Politici Publice București (2014).

[59] USAID (2015: 185); USAID (2017: 196).

[60] Parliament of Romania (2007). Law 144/2007, Art. 39 (1) 35.

[61] Parliament of Romania (2010). Law 176/2010, Art. 1 (1) 37.

[62] A PDL Senator: Parliament of Romania, Senate of Romania (2010), 'Plenary Session of the Senate. Minutes of the Meeting held on May 12th 2010' https://www.senat.ro/PAGINI/Stenograme/Stenograme2010/10.05.12.PDF, accessed 2 Mar 2018.

awareness, putting less time and effort into targeting corruption directly, suggesting legislative changes, or promoting the institutionalization of anti-corruption laws. Some counterexamples do exist, though. The Alliance for Clean Romania has been actively engaged in promoting transparency and integrity in public spending and in monitoring Romania's progress towards good governance since 2004. The Academic Society of Romania (SAR) published a "White Paper of Good Governance"[63] in January 2012, calling for clear measures for good governance, transparency and public integrity to be adopted by all political parties (although while formally voicing their support, none of the political parties actually complied with its recommendations).[64] The Resource Center for Public Participation (CeRe) and the Rațiu Center for Democracy monitored candidates' electoral promises via its online platform Cineceapromis,[65] a platform that was launched on 22 March 2012, but is no longer available. In April 2012, civil society organizations managed to block a proposal by Parliament to change the electoral law just a few months before the elections and without seeking broad agreement with regard to the changes proposed.[66] In October 2013, after two years of effort, Coalition 52 succeeded in convincing the Parliament to amend Law 52/2003 in a manner that would allow for the consultation process on decisions made at the central and local levels to be more transparent, with better standards of consultation, more reasonable time frames, and clearer procedures[67] (although the extent to which these amendments are actually being enforced remains questionable). In 2014, the National Anti-Corruption Strategy was developed with the support of civil society organizations who participated in regular meetings with the Government. The Center for Legal Resources, involved in evaluating the strategy, provided practical recommendations for improvement, while the Open Data Coalition (led by the Open Society Foundation) co-operated with the Government to increase the amount of public data available in user-friendly formats.[68] In 2015, the local Helsinki Committee, APADOR-CH, voiced concerns and formulated alternative policy options in order to diminish the number of emergency ordinances passed in circumstances lacking actual urgency[69] (although bills continue to be passed by the Government through emergency ordinances, thus bypassing the regular legislative process). In 2017 seventeen non-governmental organizations drew public attention to the fact that the bill[70] proposed to modify the Government Ordinance OG 26/2000 regulating the functioning of civil society organizations imposes a de facto censorship on civil

[63] Available at https://www.romaniacurata.ro/pentru-o-romanie-curata-semnati-aici-carta-alba-a-bunei-guvernari/, accessed 30 November 2021.

[64] USAID (2013, 162).

[65] USAID (2013, 162).

[66] USAID (2013, 162).

[67] USAID (2014, 171).

[68] USAID (2015, 182).

[69] USAID (2016, 196–7).

[70] Parliament of Romania, Senate of Romania (2017).

society by limiting its ability to campaign against actions of political parties or candidates to public office.[71] This pressure did lead to the rejection of the draft law in the Chamber of Deputies, but only 4 years later, in October 2021. Valuable additions to the civil society landscape were the founding of the Funky Citizens[72] initiative in 2012 and the launching of The Democracy Fund[73] in 2017, grassroots initiatives that support through voluntary donations civic engagement, promoting projects in the fields of good governance, political education and participation, constitutional checks and balances, and independent journalism. Also worth mentioning are organizations such as Diaspora Civică Berlin,[74] founded by Romanians abroad that help to engage the diaspora in long-distance civic and political activism. By establishing their own independent funding networks such organizations are better positioned to support initiatives and projects that address critically and objectively issues around power and abuse of public office.

Such examples are scarce, however. More often than not, civil society organizations deal with corruption in rather general terms, refraining from directly targeting specific public officials or institutions.[75] The situation has worsened since 2017 when civil society organizations became even more hesitant to publicly condemn the abuses committed by members of the elite as an effect of a legislative proposal brought before Parliament to modify the law on associations and foundations. This proposal,[76] if adopted, would have redefined public utility status for CSOs allowing this status to be revoked if the organizations *opposed* a political party or a candidate running for public office, and would have imposed disproportionate reporting requirements on the non-profit sector under the threat of dissolution. The draft proposal was tacitly adopted by the Senate in November 2017, without any debate and no plenary vote, and it was pending in the Chamber of Deputies for almost four years until it was finally rejected in October 2021 (with 197 votes in favour of the rejection, 1 vote against and 99 abstentions).

A similarly demobilizing effect came from a law transposing the EU Anti-Money Laundering Directive, Law 129/2019, proposed for debate in Parliament in June 2018 and adopted in July 2019. This law deals with non-profit and for-profit organizations in the same manner, requiring them to declare their beneficial ownership to the Ministry of Justice or risk penalties that range from fines to dissolution. The sanctioning regime applied under this law is stricter in comparison to the above-discussed integrity laws: the fines imposed on non-governmental organizations that fail to report on their beneficial owners range from 200 to 2500 Lei (approx. between 40 and 505 Euro) increasing in case of further non-compliance to a range between 500 and 5000 Lei (approx. between 101 and 1010 Euro), whereas the fines imposed

[71] Expert Forum (2017).

[72] https://funky.ong/en/.

[73] https://fondulpentrudemocratie.ro/

[74] https://diasporacivica.berlin/en/home/

[75] Mungiu-Pippidi (2010: 23).

[76] Parliament of Romania, Senate of Romania (2017).

on public dignitaries failing to publish their wealth statements or on public institutions failing to apply administrative sanctions under the integrity legislation range between 50 and 2000 Lei (approx. between 10 and 404 Euro). Moreover, the law fails to clarify the definition of *beneficial owners* as it applies to civil society organizations, but requires the latter to declare their beneficial ownership through notarised statements. Under these provisions, CSOs face excessive bureaucracy and high formalization costs only to file annual reports that reiterate the information available already in their Statutes.[77]

In light of these recent legislative amendments openly and intentionally weakening the capacity and the watchdog role of civil society, it comes as no surprise that CSOs felt pressured to shift their activities even more towards awareness-raising and providing information. Indeed, at the moment, surprisingly high amounts of resources are being spent on awareness-raising campaigns, despite the fact that public awareness in Romania is probably at its highest level. In this respect, the media has been increasingly active in criticizing the manner in which Romanian politicians understand to make use of their positions in order to pursue individual goals. Yet, despite the high level of awareness among the general population, resources are still being spent on communication campaigns. At the same time, puzzlingly enough, despite this high level of public awareness with respect to corrupt practices, there is no corresponding engagement on the part of Romanian society. Support from businesses in promoting good governance is crucial, but at the same time fairly scarce. USAID, acting on the presumption that businesses would be the first to benefit from curbing corruption, made systematic efforts to involve them in the fight against corruption, yet with practically no success.[78]

An equally important factor is the limited amount of engagement at a societal level, with persistent political discontent and disengagement among the general population. A study assessing the dynamics of voter turnout since 1989 conducted by the Institute for Public Policy Romania identified a constant decline in turnout rates, concluding that only 50% of voters in the 1990 elections were still interested in participating in the electoral process, just 20 years after the democratic breakthrough.[79] In the 2016 national parliamentary elections, voter turnout was exceptionally low at 39%, 2 percentage points lower than in 2012,[80] while the 2020 parliamentary elections established a new record of low turnout with only 31.8%.[81] The main factor behind this decline is the rising distrust and disenchantment of the electorate with its political leaders, which results in a lack of political engagement through voting. In recent years, Romanians have felt more inclined to voice their concerns and hold politicians accountable for their actions through protests. Tens of thousands of citizens frequently took to the streets in Bucharest

[77] Freedom House (2021).
[78] Mungiu-Pippidi (2010: 24).
[79] Tătar (2011).
[80] Freedom House (2017).
[81] Freedom House (2021).

and other major cities in 2017, 2018 and less intensively in 2019, triggered by officials' abuse of office, by the legislative changes that weakened the rule of law and by the unbearable chronic exposure to corruption. They demanded with every protest the strengthening of the justice system, which is still yet to happen. The 10th August 2018 protests stood out for having an unprecedented participation of Romanians living abroad, but were also marked by an unprecedented level of violence, which was ended by the brutal intervention of the police. The staging of demonstrations to denounce politicians' abuse of power continued, though on a smaller scale, until 2020 when the imposition of a state of emergency restricted the freedom of assembly to a bare minimum and constrained even more the capacity of civil society to perform its watch-dog role. The Presidential Decree 195 of 16 March 2020 adopted in response to the COVID-19 pandemic, in its Art. 56, provides for the response time to be doubled in cases where petitions and requests are filed under the Free Access to Public Information Act.

In sum, the few CSOs advocating against corruption in public office are underfunded and understaffed, forced to adapt to a continuously changing regulatory framework and in danger of being dissolved if they do not comply with cost-intensive and strict reporting requirements. Some initiatives have achieved their goals, blocking controversial draft legislation, yet in many cases with only partial or unsustainable success.[82] Often the bills blocked are only delayed, being reintroduced by the Parliament at a later point in time. Without any significant and permanent pressure coming from the weakened civil society or from the electorate the members of the Romanian political elite continue to pursue their narrow private interests. They deliberately block anti-corruption reforms, having little or no concern for the overall public or the common good. This form of *legal corruption* practised in the post-accession period has led to legislative instability and the reversal of the positive reform steps undertaken before accession. What this in-depth study of Romania's integrity legislation demonstrates is that unsuccessful reforms are not necessarily a consequence of limited institutional capacities or a lack of legislative vision or know-how, but rather of legislators' unwillingness to formulate an effective anti-corruption policy and to enact genuine integrity measures. The use of inadequate and hasty procedures and the adoption of amendments inconsistent and ill-fitted to the scope of the law in question can hardly be justified as being in the interests of society at large, not to mention the votes cast in favour of provisions motivated purely by short-term individual benefits. This self-serving conduct of the political elite has dire consequences for the quality of legislation, for the quality of institutional interactions, and more importantly, for the level of public trust and the political engagement of the nonelite. Romania's anti-corruption reforms are likely to remain shallow, its democratic processes unstable, and Europeanization reversible as long as the elite pursues agendas that differ from the common good and the nonelite remains unable to sustainably hold the elite accountable.

[82] USAID (2020: 181–2).

Chapter 5
Romania's Nature Conservation Reform: A Surprising Convergence with European Law in Response to Societal Concerns

Nature insists on whatever benefits the whole
(Marcus Aurelius)

In order to grant more plausibility to the theoretical argument, a second case study supplements the empirical analysis: an inquiry into Romania's nature conservation reform, specifically into the legislative framework regulating the protection of environmentally significant habitats and species. This legislation, which stems from two EU directives, the 1992 Habitats Directive (92/43/EEC) and the 1979 Birds Directive (79/409/EEC, later repealed by 2009/147/EC), aims at preventing further loss of biodiversity in Romania.

The two European Nature Directives focus on rare and endangered species and on typical and valuable habitats across the EU, introducing measures to maintain or restore them *to a favourable conservation status.* To this end, they seek to establish a *coherent European ecological network of special areas of conservation* (Natura 2000).[1] In a similar manner in which the Mechanism of Cooperation and Verification for Romania sets the basis for good democratic governance, these directives establish basic principles for the good governance of protected areas. Both directives require member states to designate Special Protection Areas (as provided by the Birds Directive) or Special Areas of Conservation (as provided by the Habitats Directive) in accordance with specific criteria and detailed scientific information. They set out the procedures for designating these areas, as well as the management and controls that need to be set up; they demarcate responsibilities and ensure adequate reporting and answerability. They provide for all activities that might significantly affect protected habitats or species to be carefully assessed, and interventions to be allowed only when no alternative solutions are available and when there are *imperative reasons of overriding public interest.*[2] Under a general conservation obligation, Romania (like all the other member states) is required to

[1] European Council (1992).

[2] European Council (1992). Council Directive 92/43/EEC, Art. 6 (4); European Parliament and the Council of the European Union (2009). Council Directive 2009/147/EC, Art. 9.

L. Martin-Russu, *Deforming the Reform*, Contributions to Political Science,
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implement laws, regulations or administrative provisions, not only to avoid the deterioration or disturbance of habitats and species, but also to take the necessary measures to ensure their health. To this end, it is required to establish management plans, as well as statutory, administrative or contractual agreements that allow for the adequate administration of protected areas.[3]

Expected to harmonize its legislation with the *nature conservation acquis* before joining the EU in January 2007, Romania made the increase in the number and size of protected natural areas a priority. This, however, posed particular challenges due to the weak administrative capacity of the state's environmental agencies and their lack of focus on habitats and species conservation,[4] and required the efforts towards conserving biodiversity to be significantly intensified in the short-term. The surface of protected areas increased rapidly from 7% on the eve of EU accession to 17% of the national territory in 2014.[5] To date, the country's Natura 2000 network includes no less than 606 sites, covering 22.7% of the state's area, with 54,214 square km of land area and 6362 square km of marine area covered by Natura 2000 protected sites.[6] Romania is also the country with the largest area of surviving primaeval and quasi-primaeval forests in the EU, with a total of 61,655 hectares as recorded to date in the state's national inventory.[7]

The swift post-accession expansion of protected areas, which generated an increased need for an effective management of these areas, translated into a novel legislative solution: the Romanian civil society organizations and the scientific community were allowed to assume responsibility for the implementation of the relevant legislation, thereby assisting the state in ensuring compliance with European law. The legislative framework for nature conservation offered civil society the opportunity to closely interact with the government and contribute to law enforcement.[8] As the following pages will show, this manner of transposing European directives—allowing for the shared governance of protected areas and increased societal participation—proves once again that the success of Europeanizing reforms depends on the one hand on the commitment of the political elite towards those reforms, and on the other hand on the strength of civil society to re-establish balance when this commitment fades. As long as they are not influenced by selfish considerations of personal gain and as long as they are held accountable by strong specialist and civil society groups, Romanian representatives play an important role in the process of developing good governance, or, at the very least, good environmental governance.

The present chapter follows the same structure as the previous one: it explores, in sequence, the post-accession development of the country's Nature Conservation

[3] European Council (1992). Council Directive 92/43/EEC, Art. 6 (1).

[4] Manolache et al. (2017: 26).

[5] Antonescu et al. (2015).

[6] European Environment Agency (2021).

[7] Government of Romania and Ministry of Environment, Waters and Forests (2021).

[8] Manolache et al. (2017).

Legislation (in both procedural and substantive terms), the impact of this development upon the achieved level of Europeanization, the extent to which elites acted on the basis of their own personal interests or in the interest of society at large, and finally, the strength of the sectoral civil society in improving accountability and the quality of implementation. This second case study shows how determined the domestic political elite can be to overcome institutional or structural barriers in order to realize European goals, when there is little scope for narrow personal interests to be pursued; it also shows how powerful and persuasive civil society can be, when it establishes itself as an actor to be reckoned with in policy-making. By complementing the analysis with such an example, the present study also accounts for the asymmetric impact of Europe: the differences in the degree and direction of change across policy fields are explained as a result of the pursuit of various interests by the domestic political elite and, more importantly, as a result of the unequal impact of civil society organizations across different policy areas.

5.1 The Development of Nature Conservation Laws and the Corresponding Level of Europeanization

As noted above, Romania was required to comply fully with the *nature conservation acquis* at the time of accession; the state's Accession Treaty did not contain derogations or transition periods in this field. To a significant degree, the provisions of the two directives (Birds Directive and Habitats Directive) were part of the national legislation, beginning from the year 2000, when the government adopted the Emergency Ordinance 236/2000,[9] which was later enacted into Law 462/2001 and Law 345/2006. However, given the incorrect and incomplete transposition of the two directives, immediate and concrete steps were required after January 2007 to ensure that the state would act in full compliance with its obligations. This led to the adoption of the Government Emergency Ordinance OUG 57/2007[10] on 20 June 2007.

OUG 57/2007 repealed the previous nature conservation acts; it produced immediate effects once it came into force, but pursuant to Art. 115 of the Romanian Constitution it had to be approved through a bill adopted by the Parliament. A legislative proposal for adopting OUG 57/2007 was introduced in the Senate of Romania no later than 26 June 2007 and adopted with minor changes and little plenary debates on 22 October 2007, when it was forwarded to the lower chamber (see Fig. 5.1[11]). The Chamber of Deputies was hesitant to adopt the law as proposed

[9] Government of Romania (2000).

[10] Government of Romania (2007).

[11] Figure 5.1 was developed by the author based on data gleaned from the official websites of the Romanian Parliament (www.cdep.ro and www.senat.ro). The entries highlighted in different shades of green represent adopted and promulgated legislative acts that run in parallel to the initial Nature

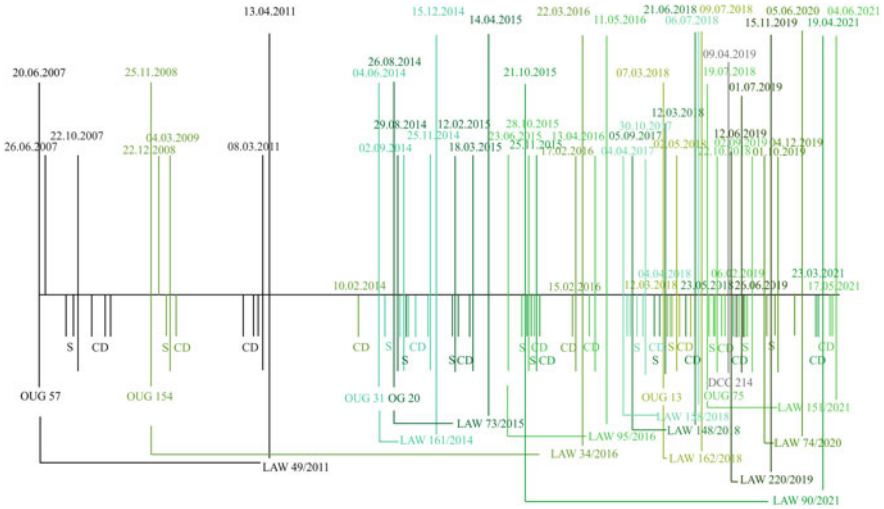

Fig. 5.1 The development of nature conservation laws—technical procedural aspects

by the Senate: the draft was adopted only in April 2011, after pending in the lower chamber for more than three years. The very long delay in adopting this draft law can hardly be justified by the need to improve its provisions; in the almost four years in Parliament, its 56 articles indeed received numerous amendments, but were subject to surprisingly little criticism. All amendments were given only cursory examination, being adopted as proposed, with no debate or justification.

In the time between the introduction of the draft in the Chamber of Deputies and its promulgation as law, the European Commission initiated (on 23 October 2007) an infringement procedure against Romania, which had yet to fulfil its obligations under Art. 4 (1) and (2) of the Birds Directive.[12] In response to the infringement procedure, the Romanian Government adopted a new Emergency Ordinance in November 2008,[13] which refined the previously adopted OUG 57/2007. This later Emergency Ordinance (OUG 154/2008)—adopted promptly to remedy the compliance problems identified by the Commission—was subsequently integrated into the draft law, which at the time was still pending in the lower parliamentary chamber, and it became Law 49/2011 on 13 April 2011.

Regardless of the fact that the provisions of the 2008 Emergency Ordinance (OUG 154/2008)—which itself amended the 2007 Emergency Ordinance (OUG 57/2007)—were to be contained in Law 49/2011, a new draft law to adopt the latest

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Conservation Law, OUG 57/2007 (displayed in black). The binding decision of the Romanian Constitutional Court (DCC) is displayed in grey. Figure 5.1 also indicates (in the respective colours for each law) all the intermediary drafts adopted and amendments proposed and discussed in the Chamber of Deputies (CD) or in the Senate (S) before the final vote and the promulgation.

[12] European Court of Justice (2011).

[13] Government of Romania (2008).

governmental decree was submitted to Parliament on November 2008. If adopted, this draft would have merely been a restatement of the very same measures already included in another act, which would have created an undesirable legislative parallelism. On these grounds, the proposal was eventually rejected by Parliament, yet only after being adopted by the Senate in March 2009 and after pending in the Chamber of Deputies for seven years; in March 2016 Law 34/2016 finally rejected Ordinance 154/2008, which contained provisions already included in the Nature Conservation Law 49/2011.

Two additional governmental decrees further amended the existing legislation in 2014: Emergency Ordinance OUG 31/2014 and Government Ordinance OG 20/2014. Their retrospective approval in Parliament was very swift, as the Parliament introduced few amendments and came to a decision after minimal plenary debates. It was in 2015 that changes to the Nature Conservation legislation were first adopted, not by governmental decree, but following the regular legislative procedure: in June 2015, a draft was introduced in the higher parliamentary chamber that proposed the establishment of a National Agency for Natural Protected Areas (ANANP). The draft was debated upon and adopted by the Parliament on 11 May 2016, when it became Law 95/2016. Two years later, in March 2018—again by means of an Emergency Ordinance (OUG 13/2018)—the structure of the newly established ANANP was modified with a view to strengthening the agency's administrative capacity; this governmental decree approved the creation within the ANANP of regional structures responsible for the management of protected areas. The provisions of OUG 13/2018 were soon thereafter adopted in Parliament (in less than four months), becoming Law 162/2018 in July 2018. In the same year, two further laws were adopted which amended the nature conservation legislation: Law 148/2018, which introduced annual deadlines for granting derogations from the species protection obligations laid down by OUG 57/2007; and Law 158/2018, which introduced new trade-offs between nature conservation and Romania's extractive industry. Both laws were adopted relatively quickly, and without extensive debate; the former passed through Parliament in 9 months, while the latter entered into force in 15 months, after being subject to a constitutionality check.

Also in 2018, a controversial amendment of the nature conservation legislation came into effect even more quickly, transferring the responsibility for managing protected natural areas from the non-profit organizations that were currently holding custody of the protected sites to the ANANP. A Governmental Emergency Ordinance (OUG 75/2018)[14], adopted in July 2018, enacted this significant and abrupt change in the administration of numerous protected natural areas, without any consultation with the civil society and without any transitory provisions that would allow for the bringing of ongoing custody contracts to term. The Emergency Ordinance was submitted to Parliament for approval in the same month and was adopted by both Chambers no later than February 2019. A decision of the Romanian Constitutional Court (DCC 214/2019) eventually led to its repeal, but not until June

[14] Government of Romania (2018).

2021. Following the decision of the Constitutional Court published in April 2019 the draft was reintroduced in Parliament for re-examination, it passed through the Senate in one month, but was pending in the Chamber of Deputies for 20 months before being rejected by Law 151/2021. In the meantime, while the law rejecting the OUG 75/2018 was still in the Higher Chamber for review, another law was passed for the same purpose, to put the legislative framework in accordance with the decision of the Constitutional Court DCC 214/2019 and reinstate the right of non-profit organizations to act as administrators of (or partners in the administration of) protected areas. A first draft of this law was presented before the Senate in June 2019, it was adopted in 15 days, it passed through the Lower Chamber in three days, and became Law 220/2019 already in November 2019.

More recently, the legislative framework for nature conservation was amended again when Law 90/2021 modified the sanctioning regime adopted through Law 49/2011. Triggered by the European Commission's pre-infringement procedures, an initial draft of this law was submitted to the Higher Chamber in October 2015. It was adopted and transferred to the Lower Chamber in November 2015, where it was pending without much debate for more than five years, until April 2021.

If interpreted in strictly procedural terms, nature conservation legislation is no different from the ANI Law analysed above; it provides comparable evidence of a needlessly complicated legislative process. Similarly to the practices described in the previous case study, the emergency procedures and the use of governmental decrees inhibited the consolidation of straightforward legislation by acts of Parliament. The extensive use of emergency procedures was motivated by an urgent need to comply with European requirements and to promptly transpose the Nature Directives. Without questioning here the urgency of the measures proposed, it may be concluded, however, that the overuse of Government Emergency Ordinances (OUG) only resulted in a procedurally patchy reform. Also, the government's tendency to use emergency procedures in order to promptly transpose the European Nature Directives was not always mirrored in the pace with which the Parliament adopted the acts. Some draft laws had been pending for years in Parliament before they were finally promulgated.

The sloppy procedures used by the Romanian legislature proved to be time-consuming: the Chamber of Deputies needed more than three years to adopt the law approving OUG 57/2007.[15] Besides, the slow legislative process was in this case no guarantee of quality: on 4 December 2007, the plenum of the lower chamber voted against the draft proposed by the Senate without any debate or arguments brought forward against the proposed provisions,[16] and this after the Senate itself had invested very little effort in amending the Government Emergency Ordinance

[15] Parliament of Romania (2011). Law 49/2011.

[16] With 84 votes in favour, 103 votes against, 7 abstentions and 3 votes not cast, the proposal failed to pass, remaining to be reconsidered in the subsequent parliamentary session. Parliament of Romania, Chamber of Deputies (2007), 'Plenary Session of the Chamber of Deputies. Minutes of the Meeting held on December 4th 2007' http://www.cdep.ro/pls/steno/steno.stenograma?ids=6413&idm=56,03, accessed 5 Jul 2018.

while approving it. This unjustified rejection of the draft resulted in the law's pending in the lower chamber for months, time during which its provisions were amended by another Emergency Ordinance (OUG 154/2008), which further prolonged and upset the entire legislative process. Arguably, this manifest lack of systematic thinking and planning, the lack of clarity and precision in drafting laws and the seemingly arbitrary and unpredictable style of decision-making resulted in faulty legislation, which subsequently required additional decree-laws to correct the mistakes. In fact, later in 2014, the law was again revised by two further governmental decrees (Government Emergency Ordinance OUG 31/2014 and Government Ordinance OG 20/2014).

In 2018, following the adoption of the controversial Government Emergency Ordinance OUG 75/2018 and its approval in Parliament, the Constitutional Court, in its Decision 214 of 2019, declared unjustified the Government's resort to emergency powers to clarify the management regime of protected areas. As the Constitutional Court held, the emergency governmental decree was not supported by convincing proof of an *unanticipated exceptional situation*, nor by the existence of a public interest which unmistakably required immediate action. On these grounds, the said act was repealed as unconstitutional and returned to Parliament for re-examination. It took another two years for the Parliament to formally reject the OUG 75/2018.[17] This long delay may have also resulted from the fact that the decision of the Constitutional Court was already part of Law 220/2019 presented in parliament and adopted shortly after the publication of the Court ruling. The Parliament had this law passed, without a parliamentary fast-track procedure, but in an incredibly speedy manner and with incredibly little debate. In an attempt to comply as soon as possible with the decision of the Constitutional Court, Law 220/2019 made its way through both parliamentary chambers in less than two months and was adopted—following another constitutional review—within five months of when it was initially proposed before Parliament. Its adoption brought the legislative framework to the status quo of 2018. Again, passing legislation by decree (through OUG 75/2018) was de facto a refusal on the side of the government to engage in dialogue, a practice which was also upheld in Parliament, where amendments were adopted without careful consideration of the matters at stake, without much debate and without any coherent strategy and proper consultation of the stakeholders or the general public. Consequently, it is hardly surprising that the large body of rapidly changing legal norms in the field of nature conservation proved at times to be difficult to comprehend and consistently apply.

What is surprising, however, is that despite the abovementioned procedural errors and questionable legislative performance, in substantive terms, the numerous additions and refinements to nature conservation legislation included changes which in practice allowed the reform to maintain a mostly positive trend towards Europeanization. A notable exception to this Europeanizing trend is the abovementioned adoption of OUG 75/2018, with strong reform-reversal effects caused

[17] Parliament of Romania (2021) Law 151/2021.

by the exclusion of non-governmental organizations from the management of protected areas. This reversal was however only temporary, for the decision of the Constitutional Court (DCC 214 of 2019) followed by the adoption of Law 220/2019 reinstated the former right of civil society to take an active part in the administration of protected areas.

At the core of Romania's nature protection legislation stands the principle that nature conservation interests take priority over any other interests, exceptions only being allowed in rare cases: to ensure national security, public health and public safety, or to prevent natural disasters. This principle, laid down explicitly in Article 6 of the initial Government Emergency Ordinance 57 of 2007 (OUG 57/2007), remained unchanged throughout the numerous refinements to the law, and remained in force and in full accordance with the spirit of the European Nature Directives.

By law, any area may be placed under a nature protection regime, regardless of its use or its ownership status. The protection and conservation of natural resources thus goes beyond the borders of private property. In such cases, the law guarantees proper and just compensation for landowners who set aside their land for nature conservation. Article 26 of OUG 57/2007 outlines the compensation rights for landowners who suffer losses due to restrictions on land use imposed under nature conservation legislation.[18] As adopted in its initial form in 2007, this provision established a right to compensation claims, without specifying either the form or the term within which compensations should be awarded. In its amended draft[19] of October 2007, the Senate stated that *financial* compensations were to be paid to landowners *within six months* after the institution of the nature protection regime on the site in question. This provision, however, never entered into force, as it was amended once more in the Chamber of Deputies[20] in 2011. The final version once more removed the type of compensations awarded and the time frame, but explicitly established the Government as the designated authority responsible for laying down the compensatory amounts and the compensatory mechanisms within 90 days after the entering into force of the law. Even though not completely satisfactory, the article in its current form at least provides clarity regarding who is the responsible authority for compensation payments; it renders the Government accountable for the realization of the right to adequate compensation, thereby helping those who are not justly compensated to seek remedy in court.[21]

As mentioned already at the beginning of this chapter, the protection of habitats and species of European importance is realized through the designation of Special

[18] Government of Romania (2007). OUG 57/2007, Art. 26 (1).

[19] Parliament of Romania, Senate of Romania (2007). Draft bill adopted by the Senate of Romania on 22 October 2007, in the process of adopting Law 49/2011.

[20] Parliament of Romania, Chamber of Deputies (2011). Draft bill adopted by the Chamber of Deputies on 8 March 2011, in the process of adopting Law 49/2011.

[21] Parliament of Romania, Chamber of Deputies, The Committee for Public Administration Territorial Planning (2011: 78–9). Report published in the process of adopting Law 49/2011.

Protection Areas (SPA) or Special Areas of Conservation (SAC),[22] i.e. by creating the so-called Natura 2000 network of protected areas. At the domestic level, the Romanian Ministry of Environment acts as the central authority with the task of defining these areas,[23] establishing a system to monitor the conservation level[24] and the incidental capture and killing of protected animal species.[25] At the same time, it maintains communication with the EU and coordinates and supervises all other environmental authorities, i.e. the National Environmental Protection Agency (ANPM), the National Agency for Natural Protected Areas (ANANP), and the National Environmental Guard (GNM), with their regional and local structures, as well as the Administration of the Danube Delta Biosphere Reservation. In this way, it oversees the enforcement of the nature conservation legislation and helps Romania to fulfil its reporting obligations under the European Nature Directives.[26]

The network of protected natural areas includes a wide variety of sites, with very different conservation needs and land use patterns. They range from areas of strict conservation under complete freedom from human interference, to national or natural parks available for recreational or educational use, or productive land- and seascapes that are managed to provide other services (such as agriculture, fishery or forestry), but in balance with wildlife. The designation of nature conservation areas under Government Emergency Ordinance 57 of 2007 (OUG 57/2007) fell under the responsibility of the Parliament (for biosphere reserves and for sites listed as natural world heritage sites), of the Government (for geo-parks, national or natural parks, for Special Areas of Conservation (SAC) or Special Protection Areas (SPA) among others), and of the Ministry of Environment (for the designation of Sites of Community Importance (SCIs)).[27] An attempt to include the national and natural parks in the network of protected areas designated by Parliament, as proposed by the Senate in its October 2007 draft of Law 49/2011,[28] was rejected by the Chamber of Deputies in 2011. In its current form, the law provides that only areas listed as natural world heritage sites (257 sites globally) be designated by law in Parliament. All other protected areas are designated through governmental decisions, a measure which, given the current legislative practice in Romania, renders the entire process more efficient and timely, and allows for a better level of compliance with European standards.

A different procedure is to be followed though for the Sites of Community Importance (SCI), which are to be designated by Order of the Ministry of the Environment following the opinion of the Romanian Academy. It is worth clarifying

[22] Government of Romania (2007). OUG 57/2007, Art. 31.

[23] Government of Romania (2007). OUG 57/2007, Art. 8 (3).

[24] Government of Romania (2007). OUG 57/2007, Art. 32.

[25] Government of Romania (2007). OUG 57/2007, Art. 36.

[26] Government of Romania (2007). OUG 57/2007, Art. 40.

[27] Government of Romania (2007). OUG 57/2007, Art. 8(1).

[28] Parliament of Romania, Senate of Romania (2007). Draft bill adopted by the Senate of Romania on 22 October 2007, in the process of adopting Law 49/2011.

at this point that the designation of such areas of *community importance* through the Ministry of the Environment is only an intermediary stage that comes before the acknowledgement of these sites at the European level. Based on the proposals provided by Member States, the European Commission holds scientific seminars on each biogeographical region, evaluating and approving the listed SCIs. Once they are formally adopted by the European Commission pursuant to Art. 4 of the Habitats Directive, these sites must be designated as Special Areas of Conservation (SAC) at the domestic level "as soon as possible or within six years at the most."[29] This change in status of a protected area from an SCI to an SAC triggers the implementation of Art. 6(1), in addition to Art 6(2), 6(3) and 6(4) of the Habitats Directive onto the site, thus offering an enhanced level of protection through positive and proactive interventions to maintain and improve the status of conservation of its habitats and species. Under these requirements, Romania needs to establish—within six years—conservation objectives and measures tailored to the needs of each area approved as an SCI, and proceed to its designation as an SAC through a decision of the Government. This is a legal obligation with which Romania often fails to comply in practice. At the legislative level, the already intricate procedure of designating such conservation areas was initially complicated further by the requirement laid down in OUG 57/2007 that the Ministry of the Environment, while giving a site its initial status as a Site of Community Importance (SCI), takes note not only of the opinion of the Romanian Academy, but also seeks the approval of five other central authorities competent in public administration, agriculture infrastructure or regional development.[30] This provision, as adopted in June 2007, significantly impeded and delayed the designation of SCIs, causing Romania to lag behind in the implementation of the Habitats Directive. The situation was remedied in March 2011, when Law 49/2011[31] established that the Ministry of the Environment only needs to respect the opinion of the Romanian Academy on matters regarding the designation of Sites of Community Importance, allowing for these areas to enter the process of approval at the EU level with more ease.

While it is true that the designation of protected natural areas represents a recognition of the importance of those areas and establishes specific obligatory requirements which must be met in order to reach clearly defined conservation objectives, it is not in itself a guarantee of species and habitats protection. The management of these areas is a much more decisive factor affecting the extent to which the stated conservation objectives are achieved. Currently, almost one-quarter of the national land area of Romania is covered by protected areas (with 1574 designated nature conservation sites),[32] the management of which is still a considerable challenge. In this respect, Art. 18 of OUG 57/2007 made an important

[29] European Council (1992) Council Directive 92/43/EEC, Art. 4.2.

[30] Government of Romania (2007). OUG 57/2007, Art. 8 (1) c).

[31] Parliament of Romania (2011). Law 49/2011, Art. I (8).

[32] According to the inventory published by ANANP on its website (URL: http://ananp.gov.ro/wp-content/uploads/inventar_arii_Ro_v1-00000003.pdf, accessed 22 Mar 2022).

contribution to the administration of protected natural areas by allowing, from 2007 onwards, the responsibility for their management to be delegated to a variety of public, private or non-governmental actors such as public or private research institutes or educational institutions, museums and public or private forestry administrations.[33] Management responsibilities could be assigned on a contractual basis for a period of 10 years, provided that the organizations entrusted with the management of protected areas had not only the technical expertise, but also the necessary resources to establish and implement the measures required for nature conservation.[34] This made it legally possible for the state to delegate its authority and responsibility to other actors (both governmental and non-governmental), who had the obligation to apply for grants, develop management plans, implement and monitor their application, and ensure compliance with the relevant nature conservation legislation. Subsequent amendments to this clause, through Law 49/2011, OUG 31/2014 and Law 95/2016, did not for a long time change the essence of these provisions.

A notable exception was the amendment of Art. 18 through Government Ordinance OG 20 of 2014[35], which specifically allowed the management of protected areas to be delegated to the National Forest Administration Romsilva. It is true that regardless of who bears responsibility for managing a protected area, the central environmental authority remains the final decision maker with respect to the management measures to be adopted, approving all management plans and monitoring their implementation. Still, this legislative change raised questions with regard to an increased scope for potential conflict of interest. Romsilva—a profit-oriented state company mainly active in forest administration, whose revenue largely comes from forestry and non-timber forest products—may indeed find itself in a conflict of interests if given the responsibility to manage nature conservation areas and expected to cover its full management costs from self-generated income.[36] The specific reference to Romsilva was eventually eliminated from the law through an amendment of Art. 18.[37] The National Forest Administration, however, remained legally entitled to manage nature conservation areas, and is currently sub-contracted by the Ministry of Environment as administrator of no less than 22 national and natural parks or Natura 2000 sites.[38]

A much more consequential change in the provisions of Art. 18 was adopted in 2018, also by means of a governmental decree, when OUG 75/2018 provided for non-profit organizations to no longer be entitled to manage nature-protected areas, having their responsibilities transferred to the ANANP. This abrupt amendment of the legislation was adopted without any consultation with the affected organizations

[33] Government of Romania (2007). OUG 57/2007, Art. 18 (1).

[34] Government of Romania (2007). OUG 57/2007, Art. 20 (1).

[35] Government of Romania (2014).

[36] Stanciu and Ioniță (2014: 98–9).

[37] Parliament of Romania (2016). Law 95/2016, Art. 9 (2).

[38] Data retrieved from Romsilva's website (URL: http://www.rosilva.ro/articole/management__p_2308.htm, accessed 22 Mar 2022).

or the general public, without any transitory arrangements, and without making sure that the ANANP had the capacity to streamline the administration of a greater number of protected natural areas and ensure their effective management through its regional structures. The amendment was in effect a minimal change in the wording of the law, as small as the removal of NGOs from the list of legal entities entitled to the administration of protected areas. It implied however a transfer of all responsibilities from non-profit organizations to the ANANP, a hasty termination of all running contracts of those organizations acting as stewards of protected areas, and as such it disrupted management plans and caused uncertainty for no less than 264 nature conservation sites covering approximately 1.6 million hectares.[39] This legislative change again raised concerns with regard to a potential conflict of interests, this time generated by an overlap of management, coordination, but also monitoring and control responsibilities all held by the ANANP. Assessed against the objective to ensure adequate administration of protected areas as a basic requirement to fulfil the goals set out in the Nature Directives, this amendment shows a clear case of de-Europeanization.

This legislative setback was subsequently counteracted by a ruling of the Constitutional Court that required a return to the status quo which was enacted through Law 220/2019, followed by a formal rejection in Parliament of the OUG 75/2018 in 2021. At present the legislation, by virtue of the said Art. 18, as well as Art. 16 (3^1), again allows non-governmental organizations (along with various other types of scientific and non-scientific organizations) to act as administrators of nature conservation areas, which marks an important step back from centralized decision-making towards joint management or even private stewardship of protected sites. Terminologically, the legislation currently in force no longer refers to *custody* and *custodians* of protected areas, but instead to *administration* and *administrators,* without clearly differentiating between these concepts. It does however make clear that non-governmental organizations and associations enjoy the right to act as administrators of protected areas.

A return to the status quo that preceded the adoption of OUG 75/2018 was only reasonable, given the fact that the administration of protected natural areas delegated to non-profit organizations was functioning with comparative success before July 2018. The ANANP itself evaluated the performance of 166 such custodians to be in 93% of cases very good or good.[40] At the same time this approach of the collaborative administration of protected areas is perfectly in line with Art. 6 of the Habitats Directive: it serves not only the purpose of sharing the burden of management, but also provides opportunities for the pro-active participation of right-holders and stakeholders in the development of nature conservation strategies.[41] What is more, by virtue of Art. 19 of OUG 57/2007, the administrators of nature conservation areas

[39] WWF-România (2018a).

[40] According to a report published in 2017 on the ANANP website (URL: http://ananp.gov.ro/ananp/2017/12/21/raport-evaluare-custozi-administratori/, accessed 24 Mar 2022).

[41] Stanciu and Ioniță (2014: 129).

are required to establish advisory councils that meet on a regular basis and have a consulting role in decision-making. By law, advisory councils are multi-stakeholder bodies which include representatives of the local or regional administration, representatives of institutions responsible for the management of natural resources at a central or regional level, and representatives of civil society or other stakeholders. This provision and the obligation to establish such advisory councils not only opens up a source for expertise, but also creates an indispensable platform for debate, deliberation and the dissemination of information among stakeholders at different levels in order to promote the different interests involved.

Financial support for the management of nature conservation areas is provided by the central environmental authority. Under Art. 30 of OUG 57/2007, the various organizations responsible for the management of nature conservation areas are required to estimate the costs of management and communicate them to the central authority, which is in charge of awarding grants from the state budget. Furthermore, the same article authorizes the administrators of protected natural areas to determine fees for nature conservation services, allowing them to complement the resources needed for an adequate management of protected sites.

Of particular importance for the protection of biodiversity and species is the legally enacted obligation to assess the environmental impact of all projects likely to have a significant negative influence on the conservation of a site, due to their nature, location or size. Article 28 of OUG 57/2007 prohibits the deterioration of habitats and the disturbance of species; under this provision, any private or public project must be subject to an appropriate assessment and shall be authorized by competent environmental authorities with the approval of the ANANP or the administrator of the protected natural area. The latter determine if projects with negative implications for nature conservation are justified by an overriding public interest.[42] This requirement of the prior consent of the administrator functions as a filter screening all potential projects in a protected area to distinguish between environmentally friendly and environmentally destructive plans or projects. Several amendments were made to this provision to better comply with Art. 6 of the Habitats Directive and Art. 4 of the Birds Directive. Among the most important changes is the one adopted in 2008,[43] which more clearly defined the obligation to issue environmental approval, and additionally included the obligation to consult the public before issuing such approvals. In this manner, the law stimulates public participation, giving individuals the opportunity to engage in consultations, debates and hearings on environmental issues.

The articles of law described above indicate that Romania's approach to nature conservation and protected-areas-governance, as reflected in its legislation, has been (excepting the period between July 2018 and November 2019) one rather oriented towards a multi-stakeholder inclusive environmental governance. The manner in which the state decentralized responsibility empowered a wide variety of actors to

[42] Government of Romania (2007). OUG 57/2007, Art. 28 (3) and (4).

[43] Government of Romania (2008). OUG 154/2008, Art. I (2).

get involved in the management of protected areas, and brought nature conservation closer to the broad public. The various governmental and non-governmental organizations acting as custodians of protected sites not only brought local expertise and a better awareness of the particularities of the area, but also better possibilities to mobilize and engage local communities.[44]

However, the advantages offered by the decentralized management of protected areas came at the expense of a lack of coherence and coordination across the different organizations responsible for planning and implementation. Article 17 of OUG 57/2007 addressed this challenge by establishing the National Agency of Natural Protected Areas (ANANP), a body specialized in the field of nature conservation and in charge of coordinating all managers of protected areas and ensuring a consistent and uniform approach to conserving biodiversity and species.[45] Disregarding the need for coordination among the various entities responsible for the management of protected areas, this provision (enacted in 2007 by OUG 57/2007) was removed from the final version of the law adopted in 2011,[46] with all responsibilities of the ANANP being transferred back to the Ministry of the Environment. In 2016, however, under Law 95/2016,[47] the ANANP was re-established, and started to play an important role in monitoring the management of protected areas, evaluating the requests for custody, endorsing regulations, conservation measures and management plans, and carrying out the administration of protected areas that are not managed by other organizations.[48]

Allowing for a more coherent administration of protected areas was one of the arguments advanced by the government in support of adopting the controversial OUG 75/2018 that transferred the management responsibility from all non-governmental organizations to the ANANP. However, this shift towards a centralized management proved ineffective. For the ANANP it was already a challenge to ensure the administration of those areas that lacked stewardship, which made it practically impossible for it to handle the management of an even greater number of sites. In effect, under these circumstances, the much pursued coherent management of protected areas was no longer attainable. Therefore, the annulment of this legislative change first through the decision of the Constitutional Court in 2019 and then in Parliament later in the same year was a welcome restoration of the right of non-governmental organizations to act as administrators of protected areas. Following the adoption of Law 220/2019, the ANANP resumed—in theory, but not yet in practice—a mainly coordinating role: to partner with governmental or non-governmental organizations, to ensure a uniform approach to site administration, to help the administrators to share experiences,

[44] Stanciu and Ioniță (2014: 122).

[45] Government of Romania (2007). OUG 57/2007, Art. 17 (2).

[46] Parliament of Romania, Chamber of Deputies (2011). Draft bill adopted by the Chamber of Deputies on 8 March 2011, in the process of adopting Law 49/2011.

[47] Parliament of Romania (2016). Law 95/2016, Art. 1 (1).

[48] Manolache et al. (2017: 29).

and to provide expertise and facilitate dialogue.[49] On these grounds, the re-establishment of the ANANP through Law 95/2016, but also the restored rights of non-profit organizations to act as administrators of protected areas through Law 220/2019, are here regarded as shifts back towards Europeanization, steps towards achieving a more coherent but also a more efficient implementation of nature conservation law.

Lastly, an equally important provision for nature conservation that contributes to the protection and restoration of key habitats and species is the imposition of sanctions for the failure to comply with the laws and protected area regulations. In this respect, Art. 52 and Art. 53 of OUG 57/2007 provide for a set of sanctions designed to compensate for damages and losses and to reduce the risks of such occurrences. These sanctions include imprisonment or significant fines (of up to 13,000 Euro) for acting without the administrator's approval, for the hunting of strictly protected species, for damages caused on site, and even for the protection of species and habitats unauthorised by the Ministry of Environment. In 2011, with the adoption of Law 49/2011,[50] the scope of sanctions was significantly broadened to include restrictions on camping outside already established campsites, driving vehicles off designated routes, inadequate waste disposal and further activities that can be harmful to protected habitats or species. These newly imposed fines help build a greater sense of responsibility and a deeper respect for nature among visitors to protected areas. Moreover, following a pre-infringement procedure launched by the European Commission against Romania, a tougher sanctioning regime was adopted for legal persons or entities found guilty of crimes under the nature conservation legislation. Law 90/2021 amended Art 52 of OUG 57/2007 providing for fines between 500 and 25,000 Lei (approx. 100 and 5000 Euro) daily, a shift from a one-time fine between 30,000 and 60,000 Lei (approx. 6000 and 12,000 Euro) applicable to natural and legal persons alike. While it is true that the minimum sanctions were lowered (from approx. 6000 Euro to only 100 Euro per day), making criminally liable legal persons subject to sanctions on a daily basis does have a higher potential to compel compliance over time.

Overall, unlike in the case of Romania's integrity legislation, which went through a clear process of de-Europeanization after the state joined the EU, nature conservation legislation evolved more often than not towards a refinement of existing provisions in order to ensure a more effective implementation and consistency with the requirements of the two European Nature Directives. Although Romania's path towards Europeanization as regards nature conservation legislation has by no means been a linear one, its reform oscillates between progress and reversal. And yet, in the field of nature conservation as opposed to the field of public integrity, the legislation in its current form—still far from ideal—is better suited than it was in 2007 to meet the European standards for nature conservation. If assessed against the measures in the Birds and Habitats Directives, this case displays a generally satisfying legislative

[49] Stanciu and Ioniță (2014: 69).

[50] Parliament of Romania (2011). Law 49/2011, Art. I (78), (79) and (81).

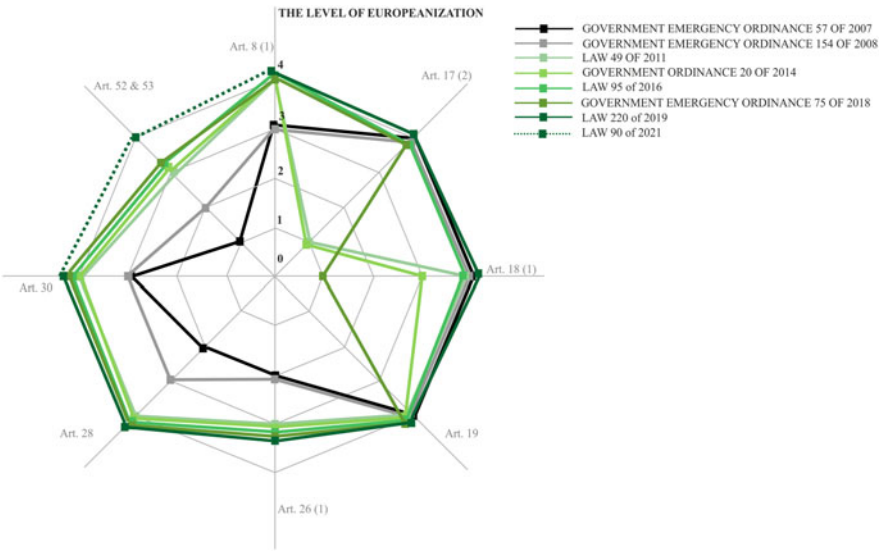

Fig. 5.2 The Europeanization of nature conservation legislation

performance, despite its rather cumbersome procedural path and its temporary reversals of the status quo (see Fig. 5.2[51]).

As described above, two remarkable legislative setbacks were registered: in 2011, when Art. 17 of OUG 57/2007 was amended, eliminating altogether the National Agency of Natural Protected Areas (ANANP) despite its important role in coordinating local-level environmental bodies; and in 2018, when OUG 75/2018 abruptly and without consultation deprived non-governmental organizations of their right to act as administrators of nature protected areas despite their effective capacity to mobilize and allocate skills and resources for nature conservation. The relevance of the agency was reasserted few years later when the ANANP was re-established through Law 95/2016, which defined in a more clear and elaborate manner its competences and aims. Non-governmental organizations also regained their right to manage protected natural areas, as imposed by Law 220/2019. In all other respects, the subsequent modifications of the legislation—adopted either through governmental decrees or drafts voted upon in Parliament—led to an improved alignment of the legislative framework with European norms and standards.

[51] Figure 5.2 was developed by the author based on the developments of the most relevant provisions of Nature Conservation legislation.

5.2 The Elite's Pursuit of Societal Interests

As shown above, Romania responded to the adaptational pressure posed by the EU through its European Nature Directives by adopting measures that to a large extent made its nature protection legislation increasingly compatible with European law. In practice, however, Romania still lags behind in applying and enforcing this legislation. The law, if not implemented in full, correctly or on time, fails to achieve its desired effects in conserving habitats and species and protecting biodiversity. It is important to note though that the difficulties slowing the actual implementation of nature conservation legislation were even greater before Romania's accession to the EU, when the lack of resources and administrative capabilities was coupled with a lack of experience in Natura 2000 protected area governance.

It was this need for a better and faster implementation of the legislation that called for a diverse and decentralized management system for protected areas in Romania. As mentioned above, decision-making power and responsibility was *de jure* and de facto devolved from the central to the regional or local levels, from state actors to private or non-governmental organizations, and from one public sector to another (for instance, from the environmental to the forestry sector). In other words, the lack of administrative capacity in environmental governance led to the emergence of co-management and other forms of collaborative administration. This was on the one hand a practical response to the questionable performance achieved under centralized authority before 2007, but also a change of perspective with respect to who should make management decisions in protected areas. A decade later, in 2017, the data published by the Ministry of Environment showed 239 sites out of a total of 531 Natura 2000 areas (55%) under local or regional custody[52]: 110 administered by non-governmental organizations, 59 managed by state-owned companies, 44 by public authorities, 18 by private companies and 8 by universities and research organizations.[53] This more flexible and decentralized form of governance, secured through legislative enactments, contributed in fact to a more effective protection of habitats and species and led to a gradual convergence with European standards. Such an approach to nature conservation—promoting the delegation of responsibility and participatory decision-making processes—was already in itself an indicator of a high degree of commitment on behalf of the elite to move the reform forward and give a voice to those in society who had hitherto had no say or control in shaping the strategy for nature conservation. Sharing power in order to prevent a further loss of biodiversity was a policy choice that showed a domestic political elite willing to act in the common interest and in line with European nature conservation objectives.

The adoption of OUG 75/2018 in 2018 disrupted this balance; it triggered an abrupt movement away from the decentralized decision-making in which the non-governmental sector played an important role in the management of protected

[52]The remaining Natura 2000 sites, in high number, were officially administered by the National Agency of Nature Protected Areas.

[53]Manolache et al. (2017: 29).

natural areas. Following this infamous governmental decree, non-profit organizations no longer had the right to exercise administrative control over protected nature sites, with the entire responsibility placed instead in the hands of the ANANP. One of the reasons invoked by the Government in support of its blanket decision to shift the responsibility to the ANANP was the fact that the existing system of decentralized management created significant problems for the implementation of infrastructure projects that overlapped with protected natural areas. With this approach, the Government suggested there was a direct conflict between public interest in economic and infrastructure development and the interests of environmental non-governmental organizations in nature conservation. The public debate stirred in the aftermath of the adoption of OUG 75/2018 and the continued efforts of the civil society in environmental issues showed however that these different interests could and should be reconciled. Non-governmental organizations often remained in place as de facto (even though no longer *de jure*) stewards of protected natural areas, further developing management plans and working in collaboration with local or regional authorities and assisting them to find solutions for infrastructure or economic development projects with limited or no environmental impact. In 2019, perhaps not least as a result of this bottom-up pressure to legally acknowledge the role non-governmental organizations continued to play as active partners in the administration of protected areas, the provisions of OUG 75/2018 were repealed in Parliament by Law 220/2019, marking a return to the joint responsibility for nature conservation.

A look back at the hasty manner in which the *nature conservation acquis* was initially transposed at the domestic level in 2007 (without proper review, though a Government Emergency Ordinance, OUG 57/2007) brings up an important observation: the adopted legislation could not promise a high degree of accuracy and a full convergence with European law. The elite's hurry to establish a legal framework for protecting habitats and species on the eve of EU accession resulted in faulty legislation that remained in constant need of amendments. The initial legislative response to European requirements failed to adequately implement the Nature Directives; it often included vague, imprecise and incomplete provisions and allowed for legislative parallelisms.[54] As a consequence, the European Commission opened an infringement procedure against Romania in October 2007 for its failure to adequately transpose the European Birds Directive into national legislation. This triggered a prompt response at the domestic level, and Romania swiftly corrected the legislative errors by adopting another Emergency Ordinance, OUG 154/2008. At least six further infringement procedures were opened against Romania in the following years,[55] and several other governmental decrees and fast-track laws further refined the legislative framework. The hasty manner in which this legislation was drafted, the sloppy manner in which it was adopted—mainly by governmental ordinances and in the absence of any significant parliamentary debate—and the

[54] Parliament of Romania, The Legislative Council (2008: 2).

[55] European Commission (2010, 2012b, 2019c, 2020b, 2020c, 2020d).

legislative ambiguity resulting from it, might hint towards a general disinterest and reluctance of the political elite to undertake genuine environmental reform. And yet, the measures adopted and the justifications provided suggest that the political elite tried to accommodate both societal interests and European demands, refraining from the pursuit of personal interests that was evident during the adoption of public integrity and anti-corruption legislation. In this case, legislators did not point to pressure from the EU and the need for legislative change as an excuse to enact additional measures to curb reform and serve personal ends.

Without addressing in detail all the issues raised during the adoption and amendment of the laws under analysis, it is sufficient here to point out again that, being under pressure from the European Commission, Romania gradually improved its nature conservation legislation: it added several new definitions of terms, clarified the mechanism through which protected areas are designated and their management delegated to other institutions, and significantly broadened the scope of sanctions put in place for failures to observe the laws and the rules applicable to protected areas. The substance of the proposed changes and the urgency with which these changes were adopted was motivated by the desire to bring domestic legislation in line with EU requirements as soon as possible.[56]

Indeed, in the explanatory notes accompanying each legislative draft and in the interventions during the debates surrounding their adoption in Parliament, reference was repeatedly made to the imperative to pass remedial measures in order to comply with European requirements.[57] In this case, however, the measures adopted were not only justified by the need to ensure domestic legislation's compatibility with European law. Another justification was that the failure to properly designate protected areas and thereby ensure the conservation of habitats and species was considered to produce negative effects at the level of the society; it was believed to affect the quality of life and infringe upon the right of all Romanians to a clean and healthy environment, as guaranteed by the Constitution.[58] Therefore, prompt action to improve the legislation in this field was considered an essential step in protecting the environment and the public's right to it.

At the same time, concerns were raised with respect to the impact that environmental reforms might have on local communities. Arguably, the restrictions imposed by nature conservation legislation could significantly affect social and economic development at the local level. Often enough, the measures adopted remained far from the interests and concerns of local communities, with voices in Parliament

[56] Government of Romania (2008) Explanatory note to OUG 154/2008; Parliament of Romania (2014) Explanatory note to Law 161/2014; Parliament of Romania (2015) Explanatory note to Law 73/2015; Parliament of Romania (2016) Explanatory note to Law 95/2016.

[57] PSD Senator: Parliament of Romania, Senate of Romania (2009: 43–4); PDL State Secretary: Parliament of Romania, Chamber of Deputies (2011b); UDMR member in the Chamber of Deputies: Parliament of Romania, Chamber of Deputies (2011c); PSD State Secretary: Parliament of Romania, Senate of Romania (2015a: 126); PSD member in the Chamber of Deputies: Parliament of Romania, Chamber of Deputies (2015).

[58] Government of Romania (2014). Explanatory note to OUG 31/2014.

therefore arguing in favour of consulting all stakeholders and involving local authorities more closely in legislative decision-making.[59] Compensatory payments were a key issue during these debates.[60] It was often claimed that the government's rush to act by decree in order to fulfil its citizens' right to a healthy environment was not matched by an equal concern for the citizens' right to private property. Since nature conservation had been given priority over any type of economic interest, landowners had the right to claim compensation for losses caused by the limitations imposed on the use of their land. Without further assistance from the government, this right would continue to exist *de jure*, but not de facto. The proper functioning of these compensation mechanisms, it was argued, was vital for maintaining both social and environmental well-being; Members of Parliament repeatedly called on the Government to enforce its commitment to awarding compensation grants.

The legislation under discussion here underwent significant improvements, which were meant not only to address people's need for a clean environment and the community's need for sustainable development, but also articulated the need for the administrators of protected areas to work on a clear legal basis. Concerns over the manner in which earlier nature conservation legislation was being interpreted and applied called for further revisions of the law, aimed at clarifying the rights and obligations of managers of protected areas, and at simplifying and unifying implementation mechanisms.[61] Concrete examples of protected areas threatened with destruction were presented in plenum, which served to underline once more the fact that a more effective implementation of the law and an improved legal framework for the administration of such areas was not only desirable, but also necessary in order to ensure that Romania would be able to meet its nature conservation objectives.[62]

Even the controversial OUG 75/2018 allegedly resulted from a commitment to public rather than personal interests of the political elite. It was claimed in both the act's explanatory note and during the parliamentary debates that the adoption of the governmental decree was motivated by the need for transport infrastructure in Romania, which had been stalled by the severe environmental constraints imposed

[59] PSD Senator: Parliament of Romania, Senate of Romania (2009: 41–3); UDMR member in the Chamber of deputies: Parliament of Romania, Chamber of Deputies (2016).

[60] PNL member in the Chamber of Deputies: Parliament of Romania, Chamber of Deputies (2011b); PNL member in the Chamber of Deputies: Parliament of Romania, Chamber of Deputies (2014); UDMR member in the Chamber of Deputies: Parliament of Romania, Chamber of Deputies (2015); PNL member in the Chamber of Deputies: Parliament of Romania, Chamber of Deputies (2016).

[61] PSD State Secretary: Parliament of Romania, Senate of Romania (2015a: 126); a PSD member and a UDMR member in the Deputies Chamber: Parliament of Romania, Chamber of Deputies (2015); PSD State Secretary: Parliament of Romania, Senate of Romania (2015b: 69–70).

[62] PSD Senator: Parliament of Romania, Senate of Romania (2015a: 127); PNL Senator: Parliament of Romania, Senate of Romania (2015b: 70); PNL member in the Chamber of Deputies: Parliament of Romania, Chamber of Deputies (2016).

by non-governmental organizations.[63] While such economic welfare concerns are real, and are often raised in local and regional contexts across Romania, the prioritization of economic growth over environmental protection cannot be a viable solution. After all, not granting authorizations to projects that have a significant negative impact on protected natural areas is not a failure, but on the contrary, a fulfilment of responsibilities in line with the precautionary principle that guides environmental decision-making, and with the EU's *nature conservation acquis*. At the same time, as certain of the counterarguments presented during parliamentary debates pointed out, this justification of economic growth falls short of explaining the rationale behind a blanket exclusion of all non-governmental organizations from the administration of protected areas.[64] The need for strategic transport investments and infrastructure projects that overlap with protected areas could at most be an argument for derogatory measures adopted on the basis of project-specific assessments of the implications for nature conservation as opposed to an overriding public interest. Additionally, any potential delays in the approval or denial of authorizations for infrastructure projects are circumstantial issues to be dealt with through particular measures in line with the custody contracts between the ANANP and the NGOs concerned, leading at most to the withdrawal of those specific custody contracts, but not to the withdrawal of all custody contracts in general.

Arguably, the priority of economic and infrastructure development and the support for banning non-governmental organizations from managing protected areas resulted not so much from a pursuit of personal interests, but rather from a lack of concern among a large part of the elite with ecological issues. The fairly limited parliamentary debates around issues related to nature conservation suggest a rather widespread inattention to environmental protection. This knowledge gap exists not only at the level of political decision-making, but also at the initial stage of design, proposal and assessment of the impact of such projects, with civic planners themselves often lacking the necessary expertise to pay close regard to environmental considerations in their planning documents.[65] This makes the role played by non-governmental organizations and their expertise even more relevant. Luckily the vocal concerns expressed by civil society about the negative impact of OUG 75/2018 found a positive response in Law 220/2019: an acknowledgement of the fact that non-profit organizations are an important resource for nature conservation. The experience, tools and data acquired through scientific work, field work, and direct involvement with members of local communities cannot easily be replaced by the ANANP or any other central public authority, as was firmly stated during the debates in Parliament.[66]

[63] Parliament of Romania (2018: 3–5); PSD Senator: Parliament of Romania, Senate of Romania (2018: 12–8).

[64] USR Senator: Parliament of Romania, Senate of Romania (2018: 17–8); a PNL and an USR member in the Chamber of Deputies: Parliament of Romania, Chamber of Deputies (2019a).

[65] Naumann et al. (2021: 41).

[66] USR member in the Parliament of Romania, Chamber of Deputies (2019a); USR member in the Parliament of Romania, Chamber of Deputies (2019b); USR Senator: Parliament of Romania, Senate of Romania (2019: 21–2).

As this analysis demonstrates, in the field of nature conservation reform the Romanian political elite often allowed social concerns to come to the fore; while shaping the reform, representatives largely favoured the interests of those they represented. Indeed, the measures adopted and the concerns voiced in Parliament (especially with regard to the need for a more effective conservation of natural heritage sites) were in accordance with the goals and expectations of the broader society. Public opinion has shown that Romanians strongly support environmental action: in late 2017, protecting the environment was an important issue for 87% of Romanians,[67] while 80% believed environmental issues had a direct impact on their daily life and health.[68] In the following years the attitudes remained constant, with 87% of Romanians in 2019 considering environmental protection to be important or very important.[69] It is also worth noting the manner in which the political elite promoted the interests of local communities through its initiatives and inclusive approaches, in an attempt to harmonize nature conservation and rural or agricultural development. Their concern for the economic well-being of landowners affected by the establishment of protected areas and their focus on establishing compensation mechanisms is understandable, particularly if one takes into account that at the time of Romania's accession to the EU, 2.5 million people were employed in agriculture[70] and were thus more likely to prefer short-term economic development over the long-term efforts to protect biodiversity.

In sum, it could be argued that in the field of nature conservation Romania on the whole maintained a positive trend towards Europeanization throughout the post-accession period, often due to the willingness of the Romanian political elite to push for a swift transposition of EU legislation. It is certainly true that the legislative framework remains far from ideal, while Romania's enforcement performance is still far from the standards laid down by the European Union. According to a 2017 report on the conservation status of habitats and species in Romania, habitats have achieved the best conservation status in the EU, while the conservation of species is the worst.[71] A 2019 report on Romania[72] raised concerns regarding extensive illegal logging in the member state, including in Natura 2000 sites; it also noted the failure of the member state to designate SCIs as Special Areas of Conservation (SAC), no SAC being designated within the six year deadline imposed by the Habitats Directive. Thus, unlike in the previous case study, the main obstacle to successful reform here was the inadequate implementation of laws, which remained an issue, and not the self-serving behaviour of the political elite which stopped meaningful reforms from passing into law altogether. In this case, the legislative framework for nature conservation emerged as a response to EU requirements and—as the literature on

[67] European Commission (2017e: 9–10).
[68] European Commission (2017e: 28).
[69] European Commission (2019a: 1).
[70] Mikulcak et al. (2013: 129).
[71] European Commission (2017c: 11–2).
[72] European Commission (2019b: 11).

Europeanization predicted—the infringement concerns voiced by the EU; hence, the EU's adaptational pressure resulted in gradual refinement of this legal framework. The main challenge of finding appropriate remedies and striking a sustainable balance between nature conservation and socio-economic development remained throughout the post-accession period. Even when economic interests came to the fore, there was no clear sign of opportunistic behaviour surrounding the adoption and refinement of nature-conservation legislation; rather, political discourses and action showed an attempt to pay attention to the sometimes conflicting needs of nature conservation and economic welfare.

5.3 The Strong Impact of Civil Society

The largely Europeanizing trend of nature conservation legislation, and the gradual refinement or re-adjustment of the laws during Romania's post-accession period, is inextricably linked to the emergence of a strong environmental civil society. The state's low administrative capacity, which led to the adoption in 2007 of a decentralized management system for protected areas, also led to an empowerment of civil society in the field of environmental protection. The fast expansion of nature conservation areas (both in number and in size) made their management challenging, especially given the state's insufficient financial and human resources and its lack of experience in managing such areas. As noted above, this resulted in a wide use of delegated management and a transfer of power from the Government to various governmental and non-governmental organizations, at least until 2018 and the adoption of OUG 75/2018. Conserving habitats and species in a system of devolved management provided civil society with the opportunity to contribute directly to protected area governance for many years, which strengthened ties between public authorities and the environmental civil society, and also between the natural environment and the people.

Indeed, the adoption of this system of governance in 2007 translated into increased public participation in environmental protection and environmental decision-making.[73] Not only could decisions be made locally, but often they were made by people with local expertise who were fully in touch with the needs of the communities and the challenges faced by nature conservation sites. Moreover, local organizations proved better equipped to engage the broader public,[74] providing the latter with the chance to voice its concerns, and increasing local awareness and involvement. The multi-stakeholder campaign "Let's Do It, Romania"[75]—a civil

[73] Manolache et al. (2017: 30).

[74] Stanciu and Ioniță (2014: 122).

[75] This initiative is part of the movement "Let's Do It, World", which engages over 20 million volunteers in more than 150 countries who clean up illegal waste during the World Cleanup Day (according to data available at https://www.letsdoitworld.org/about/overview/, accessed 6 August 2018).

society-led mass movement in which people come together to clean up, in only a day, the entire country—is worth mentioning here, not only for its success in improving waste-management and providing incentives to maintain a clean environment, but more importantly for its success in engaging a large number of participants. Over 200,000 volunteers participated in 2010 in this nation-wide initiative to make public areas litter-free, and by 2011 the figure rose to 300,000 volunteers.[76] With an average of about 200,000 participants mobilized every year on World Cleanup Day, "Let's Do It, Romania" is a great example of the emerging commitment to environmental volunteering in Romania. A mobile app launched in 2015 has increased people's participation even further: currently, thousands of volunteers report illegal waste disposals by marking littered areas on a map; user reports are translated into formal complaints by "Let's Do It, Romania" team members, which alert authorities and monitor their response.

The very same system of devolved management of protected areas encouraged a restructuring not only of the relationship between civil society and the general public, but also between the elite and civil society. Contrary to the previous case—in which the relationship between civil society and the political elite steadily deteriorated during Romania's post-accession period—environmental civil society moved somewhat closer to the political elite as a response to the latter's openness in allowing non-governmental organizations to play a crucial role in the administration of nature conservation areas. Shortly after Romania's EU accession, environmental civil society organizations assisted the government in completing the lists of protected natural areas (based on strictly scientific criteria) in an attempt to meet the requirements established for Romania by the European Commission.[77] This move could be regarded as an important first step towards establishing an effective cooperation with public authorities. Indeed, after January 2007, environmental civil society in Romania gradually diversified its activities: it counterbalanced its watchdog role with its partnership role; it shifted away from protest and towards advocacy (through lobbying and litigating) and most importantly, it shifted towards managing and monitoring nature conservation. International contacts and memberships in transnational networks, such as the World Wide Fund for Nature (WWF), Greenpeace, Friends of the Earth or BirdLife International reinforced this trend.[78]

At least in as far as nature conservation is concerned, and with the notable exception of the period 2018–2019, the political elite seemed inclined to perceive civil society as a source of support and expertise rather than a threat. Proof of this is provided by the numerous contracts for custody awarded to civil society organizations prior to 2018. In 2017, 110 nature conservation sites were handed over to

[76] According to the data available on the website of the initiative (https://letsdoitromania.ro/despre/, accessed 1 Apr 2022).

[77] Börzel and Buzogány (2010b: 722).

[78] Börzel and Buzogány (2010b: 718–9).

non-governmental organizations,[79] the number being even higher (166) in 2018 before the adoption of OUG 75/2018.[80]

The Federation Coaliția Natura 2000 alone, which has members including WWF Romania, Romanian Ornithological Society (SOR)/BirdLife Romania, ProPark—Foundation for Protected Areas, Foundation Conservation Carpathia (FCC), and Milvus Group among many others, was awarded custody of 10% of the country's nature conservation areas. It brought in more than 400 experts[81] from the fields of policy and advocacy, education, research and awareness-raising. The Federation (formally an alliance of 20 non-governmental organizations active in biodiversity conservation with a much broader informal network comprising over 50 organizations) adopted in its work of protecting Romania's natural heritage a cooperative approach that facilitated dialogue between civil society organizations and the political elite on the one hand, and among the various civil society organizations themselves on the other. It successfully complemented its watchdog activities with direct involvement in identifying and monitoring the status of Natura 2000 sites, offering expertise directly to local or central authorities or other administrators, developing awareness-raising campaigns, and strengthening the capacity of other non-governmental organizations in the field.[82] In November 2016, the Federation Coaliția Natura 2000, together with the Romanian Ornithological Society, ProPark—Foundation for Protected Areas, and the Academic Society of Romania (SAR), initiated a series of public debates about the legislation and the rules governing nature conservation. Central to these debates was the fact that they brought together an impressive number of administrators of protected areas, representatives of the Ministry of the Environment, members of Parliament and members of the press in a joint attempt to facilitate the political elite's access to expertise and thereby to improve legislative output. As part of the same project, which was entitled "Let's make laws for nature together!", more than 200 draft laws were evaluated and reviewed. For several of them, the project proposed specific amendments, with position papers providing expert guidance.[83] More recently, in 2021, a project entitled "Participatory Governance through Civil Society Involvement in Nature Protection in Romania", developed by Coaliția Natura 2000 in partnership with the Association Pro Democrația Club Brașov, provided environmental non-profit organizations with assistance to overcome the difficult period following the adoption of OUG 75/2018. Even though the OUG was declared unconstitutional in 2019 and its provisions eliminated by Law 220/2019, the damage had already been done: non-governmental organizations had had all their running contracts annulled and had also had difficulties reassuming their responsibilities and regaining their rights as

[79] Manolache et al. (2017: 29).

[80] WWF-România (2018a).

[81] WWF-România (2018a).

[82] According to the data available on the website of the Federation (https://natura2000.ro/, accessed 01 Apr 2022).

[83] Federația Coaliția Natura 2000 Romania (2017).

administrators of protected areas. This project was therefore an important step forward in restoring the broken ties between civil society and legislators. As a result, at the initiative of the Federation and the Ministry of Environment, a trans-institutional working group (including political decision-makers as well as civil-society participants) drafted a series of specific proposals for legislative changes aimed at repairing the harmful measures adopted in 2018, and also at improving the financing of nature conservation, upgrading the system for monitoring and evaluating the efficiency and effectiveness of the management of protected areas (with improved zoning based on scientific and practical criteria and consultations with specialists and stakeholders), eliminating over-regulation, increasing Romania's level of compliance, strengthening the collaboration with stakeholders, imposing tighter deadlines, and de-bureaucratizing.[84]

ProPark—Foundation for Protected Areas itself maintained a fruitful cooperation with the political elite. A relevant example in this respect is its collaboration with the Ministry of the Environment in developing a project titled "Efficient Managers for Efficient Natura 2000 Network!",[85] which was aimed at improving Romania's territorial planning, and rendering the country more sensitive to concerns surrounding biodiversity.[86]

The projects and initiatives of WWF Romania's department of public policies also played a crucial role in mediating between the interests of citizens or local communities, and the preferences of the political elite that find form in legislation or executive action. A highly effective tool in this respect was the online platform *actionez.ro*, which offered citizens the chance to directly address public authorities, voice environmental concerns and stop activities with potentially negative impacts on nature.[87] Other notable successes were the projects developed by WWF Romania aimed at facilitating the coexistence between humans and large carnivores, including improving the monitoring, identification and securing of the network of cross-border ecological corridors for Brown bears, and the development of an adequate emergency response network to protect both animals and humans. This involved maintaining intensive communication with political decision-makers to promote modern species-management concepts and strategies based on data and scientific

[84] According to the Report on the Federation's Activity for 2021, available on Coaliția Natura 2000 website (URL: https://natura2000.ro/raport-de-activitate-2021/, accessed 04 Apr 2022).

[85] The project was developed in cooperation with the Ministry of Environment, the EUROPARC Federation and the Metropolitan Agency for Sustainable Development Brașov. It was implemented between 2012 and 2015 and was funded by the European Union's Life+ Communication programme (according to data available on ProPark's website: https://propark.ro/en/proiecte/efficient-managers-for-efficient-natura-2000-network-120.html, accessed 6 August 2018).

[86] According to data available on the website of the organization (https://propark.ro/en/proiecte/efficient-managers-for-efficient-natura-2000-network-120.html, accessed 6 August 2018).

[87] The platform was backed by WWF Romania and was launched in 2018 at https://www.actionez.ro/, it is however no longer available, last accessed 04 Apr 2022.

methods.[88] In 2021, WWF Romania also offered political decision-makers innovative solutions in response to the infringement procedure launched by the EU against the member state for illegal logging, while at the end of that year it published its recommendations for Romania's National Recovery and Resilience Plan, adopted as part of the EU's Recovery and Resilience Facility.[89]

Given the fact that in the field of nature conservation, the EU largely favours joint ventures between state and non-state actors,[90] non-governmental organizations or coalitions of organizations are perceived by the political elite not only as a source of expertise, but also as a source of funding. In 2018, more than 200 nature-protected areas were given in custody (covering approximately 1.6 million hectares of Romania's total area), yet without financial support from the central environmental authority, custodians using privately raised funds.[91] In fact, non-profit organizations and universities performed more effectively than public authorities in accessing nature conservation funds,[92] either from EU programmes or other assistance schemes, which further encouraged the emergence of cooperative relationships between the elite and civil society. In 2013, Romania was among the European states with the lowest environmental protection budgets, with less than 0.5% of its GDP set apart for such activities, while the European average was higher than 0.6% with the best performer, the Netherlands, investing almost 1.5%.[93] In 2020, Romania's expenditure on environmental protection was still around 0.7% of its GDP, ranking lower than the EU average of over 0.8%, and much lower than Belgium, Greece, Malta or the Netherlands who each invested more than 1.4% of their GDP on environmental protection.[94]

Without enumerating further instances documenting the successful involvement of civil society in environmental governance or their success in terms of fundraising, it suffices here to stress once more the fact that when there are no particular personal interests to be pursued, civil society is accepted as an ally of the political elite. This does not mean, however, that environmental civil society has renounced its watchdog activities. In fact, the inconsistent procedures, the faulty legislation and the slow implementation of laws attracted, and continue to attract, the criticism of environmental civil society organizations. Non-profit organizations active in nature conservation are vocal in drawing attention to legislative or administrative shortcomings, alerting the media or informing European bodies about perceived non-compliance.

[88] According to the Report on WWF Romania's Activity for 2019 available on the website of the organization (URL: https://wwf.ro/app/uploads/2020/10/Raport-Anual-2019_WWF-Romania.pdf, accessed 4 Apr 2022).

[89] According to the Report on WWF Romania's Activity for 2020 available on the website of the organization (https://cdn.wwf.ro/uploads/2021/05/06114934/raport-anual-2020-05-05-21-web.pdf, accessed 4 Apr 2022).

[90] Börzel and Buzogány (2010b: 720).

[91] WWF-România (2018a).

[92] Manolache et al. (2017: 29).

[93] Eurostat Data Base (2015).

[94] Eurostat Data Base (2020).

They were also firm in their reaction to OUG 75/2018, publicly condemning the government's decision, the manner in which it was adopted (without any consultation with the more than 60 non-governmental organizations directly affected by this abrupt shift of responsibilities to the ANANP), and pointing out the incapacity of the agency to streamline the management of such a great number of protected areas. It is not surprising that the governmental decree adopted in 2018 triggered widespread criticism from non-governmental organizations (such as the Federation Coaliția Natura 2000,[95] ProPark[96] or WWF Romania[97]), just as it is not surprising that that criticism eventually resulted in the repeal of the controversial act in 2019. A few other examples of the success of civil society in the area of nature conservation legislation and the enforcement thereof merit attention.

The Federation Coaliția Natura 2000 filed several complaints to the European Commission, denouncing illegal logging or damaging construction projects that were affecting Natura 2000 sites. It also successfully lobbied for administrative changes: its actions resulted in the adoption of measures increasing the number of administrative staff employed at both the central and regional levels that is responsible for designating and managing protected areas.[98] In 2015, the Coaliția Natura 2000, together with the Romanian Ornithological Society, successfully opposed legislative changes to the hunting law, amendments which would have endangered the existence of several species.[99] Furthermore, in 2021 the Federation supported the OTUS Association in securing a positive court judgement in which all hunting was prohibited for migratory birds under the Governmental Order 1460/2021. At the same time it was active in providing the Constitutional Court with thorough assessments of data, scientific evidence and legal arguments in support of its decision regarding Romania's Hunting Law. It also took a stand, together with WWF Romania, ACDB, Milvus Group and FCC in improving the management of certain species, such as the Brown bear, protected under EU law, and is planning a major advocacy campaign for the amendment of the nature conservation legislation to roll out in 2022.

WWF Romania has also played a strong advocacy role. It was particularly active and vigilant in preventing the construction of micro hydropower plants along small mountain rivers, and eventually eliminated the possibilities for such investments to be financed through Structural Funds in the 2014–2020 programming period.[100] In 2011, WWF Romania led an effective campaign to save Romania's virgin forests. It launched a petition which was signed by 100,000 supporters, which lead in 2012 to the adoption of a governmental decree which defined *virgin forests* and established

[95] Federația Coaliția Natura 2000 Romania (2019).
[96] ProPark – Foundation for Protected Areas (2018).
[97] WWF-România (2018b).
[98] Börzel and Buzogány (2010b: 721).
[99] USAID (2016: 197).
[100] USAID (2014: 182).

criteria for their identification, as well as strict conservation measures.[101] By its side, Greenpeace Romania also pushed for the protection of virgin forests as part of its much wider campaign for the conservation of Romanian forests. Broadly speaking, this vast and effective campaign was aimed, and still aims, at preventing illegal logging, supporting sustainable forest management, restoring and improving woodland biodiversity, and proposing forests for inclusion in the international UNESCO World Heritage List.[102]

A number of effective tools were developed and gradually improved during these campaigns against illegal logging: the Integrated Information System for Wood Tracking (SUMAL) was initiated in 2008, and was later made more efficient through the Wood Tracking System developed in 2014; the online platform *inspectorulpadurii.ro* (Forest Inspector) was later upgraded through the launch of the mobile app Forest Guardians; and the improved SUMAL 2.0 was launched in 2021. These systems were launched by the Ministry of Environment in response to the initiatives of Greenpeace Romania, WWF Romania and other environmental organizations, and allowed citizens to verify the legal status of any timber transport and directly report any cases of deforestation.[103] The Ministry often discontinued its support for these instruments and their further development, which forced non-governmental organizations to rely on their own resources and raise funds to support the continuation of the systems that currently enable the public to monitor forests using satellite imagery, to report suspicious logging activities or to verify the legality of timber transports.[104] In 2021 WWF Romania identified a further improvement needed to cover the loopholes in SUMAL. The organization called for the development of SUMAL 3.0 in order to prevent the wood in Romania being sold on the basis of a rough estimation of the volume of the standing trees (with errors that can exceed 20%), and to encourage the verification of all transports that leave the forests, in addition to the already existing obligations that had to be met when the wood is placed on the market.[105] Equally notable is the fact that, in 2016, Greenpeace, together with Bankwatch and 18 landowners, reversed the abusive expropriations in Runcurel Village[106] by suing the government, or the fact that, in

[101] According to data available on the website of the organization (http://www.wwf.ro/despre_wwf/wwf_in_ romania/, accessed 6 August 2018).

[102] According to data available on the website of the organization (http://www.greenpeace.org/romania/ro/ campanii/paduri/, accessed 6 August 2018).

[103] USAID (2017: 195).

[104] A detailed description of the Forest Guardians app is available on the website of Greenpeace Romania (URL: https://www.greenpeace.org/romania/implica-te/forest-guardians/, accessed 5 Apr 2022).

[105] According to an Opinion Statement available on WWF Romania's website (URL: https://wwf.ro/app/uploads/2021/04/SUMAL-2.0s-Failure.pdf, accessed 04 Apr 2022).

[106] USAID (2017: 194).

2020, WWF Romania began a 3-year collaboration with prosecutors and investigators in 11 countries to combat illegal activities that violate wildlife laws.[107]

Remarkable in this context is not only civil society's capacity to influence political and legislative outcomes, or to file court cases in environmental matters, but also its power to mobilize the broader public in holding political elites to account. Not only did non-governmental organizations develop online platforms allowing citizens to interact directly with authorities, or offer legal training for citizens interested in defending their right to a clean environment in court,[108] but they also organized demonstrations aimed at denouncing vices of the law, abuses of the political elite or projects deviating from Romania's nature conservation goals. As early as 2012, environmental civil society launched important and widespread protests aimed at stopping the exploration and exploitation of shale gas in Romania. As a result, the then Prime Minister and the Minister for the Environment decided to extend the moratorium on the exploitation until further research was completed.[109] This movement, however, was only the beginning; more virulent protests were to come, opposing the mining project in Roşia Montană in northern Romania.

The mines in Roşia Montană were to comprise the largest open cast mining site in Europe; approximately 300 tons of gold and 1600 tons of silver were intended to be extracted using cyanide-based technology.[110]. The opposition to this mining project began as early as 2000 with the establishment of the now well-known Alburnus Maior Association,[111] which gradually developed into a motor and an icon of the campaign to save Roşia Montană. Over several years, Alburnus Maior led numerous demonstrations and lobbying activities, wrote petitions, initiated actions in court, held seminars informing the local community about alternative economic activities to mining, hosted cultural events, and in this way succeeded in postponing the launch of the mining project.[112] In September 2013, however, the Romanian government approved the project, dependent upon a vote in Parliament. This decision provoked the largest environmental protests yet in Romania. Thousands of protesters spoke out to prevent the potential environmental damage the project would cause and the destruction of highly valuable historical sites. They showed an unprecedented solidarity with the people in Roşia Montană, defending not only their right to a clean environment, but also their right to private property, their right to cultural heritage, and also their right to free expression of opinion. These protests were unique in their peaceful character, in the resilience and creativity of the participants,

[107] According to the Report on WWF Romania's Activity for 2020 available on the website of the organization (https://cdn.wwf.ro/uploads/2021/05/06114934/raport-anual-2020-05-05-21-web.pdf, accessed 4 Apr 2022).

[108] WWF-România (2017).

[109] USAID (2013: 163).

[110] Verseck (2013).

[111] More information on the association and the entire campaign are available at: https://www.rosiamontana.org, accessed 6 August 2018.

[112] According to data available on the website of the organization (https://www.rosiamontana.org/node /1885?language=en, accessed 6 August 2018).

but also in their unexpected success in keeping the mining project on hold. As a matter of fact, later in 2016, after sixteen years of campaigning against this gold mining project,[113] the Romanian Ministry of Culture initiated the process of adding Roşia Montană to the UNESCO World Heritage List. In 2021, UNESCO finally named the ancient Roman gold-mining-area of Roşia Montană a world heritage site, which made the mining project practically impossible to move forward. The relevance of the movement to protect Roşia Montană lay not only in its ability to protect the site and its natural environment, but rather in the major influence it had on the future development of civic engagement. The environmental protests of 2013 triggered a broader public engagement and further actions undertaken by citizens against the abusive behaviour of the political elite in other fields. This trend culminated in the widespread demonstrations of February 2017, which counted over 500,000 protestors urging the government to sustain its commitment to anti-corruption reform.[114]

This review of Romania's nature conservation reform, and the role played by the political elite on the one hand and civil society on the other, reveals a largely linear trend of increasing compliance with EU requirements. It demonstrates that EU membership, may—when the political will is aligned—encourage positive legislative changes and a higher stability of reform. It thus provides a valuable example of a policy field in which the political elite was motivated in its action less by self-interest, and more by a need and an interest to co-operate with civil society in developing and implementing legislation. As illustrated above, the rationale for delegating power to civil society organizations was indeed instrumental, and derived not so much from normative or substantive concerns; it was the only way in which Romania's nature conservation objectives could be achieved and infringement procedures and sanctions be avoided. But this instrumentality notwithstanding, the result was the promotion of delegated responsibility and a decentralized management of nature conservation areas; on the one hand, through an enhanced protection of habitats and species in line with the European Nature Directives, and on the other, through the empowerment and growth of environmental civil society, which itself contributed to an increased level of public engagement in support of environmental causes. After all, a functional partnership and commitment among all stakeholders—including actors at the EU level, national, regional or local authorities, civil society organizations, landowners and local communities—is crucial in achieving the required level of protection for habitats and species and a prerequisite for developing a coherent network of protected areas.[115]

The evaluation of the legislative performance of the Romanian political elite in the field of nature conservation may have shown a questionable use of legislative procedures similar to that observed in the previous case study of justice and anti-

[113] OpenPolitics.ro provides a detailed timeline of the case, available at https://www.openpolitics.ro/timeline-rosia-montana/, accessed 6 August 2018.

[114] *The Economist* (2017).

[115] Naumann et al. (2021: 73).

corruption reform, but this time it was coupled with a far higher level of responsibility and responsivity to societal concerns which clearly contrasts with the findings of the previous case. Furthermore, the greater involvement of civil society in the conserving and protecting of Romania's biodiversity has brought non-governmental organizations a step closer to the public authorities and to each other. The developments in nature conservation legislation thus not only paved the way for a gradual improvement of the legislative framework in that area, but also led to an empowerment of civil society in general, which is now better equipped to re-negotiate and forestall any attempts at de-Europeanization. Romanian citizens, with the support of civil society, grew more aware of their interests and their rights, and proved increasingly ready to hold political decision-making to account and call for good environmental and democratic governance.

Chapter 6
Conclusion: Civism Against Cynicism

Men exist for the sake of one another
(Marcus Aurelius)

This book started from a puzzling empirical observation: that Romania abruptly reversed its public integrity and anti-corruption reform right after its accession to the European Union, while it carried on with Europeanization in other reform areas. The high priority the EU attached to the adoption of anti-corruption policies was clearly not sufficient to trigger lasting commitment, and many of Romania's pre-accession reforms were overturned once accession was complete. Political elites intentionally relaxed legislation, delaying judicial decision-making in cases of high-level corruption, hindering the investigation of abusive practices, and diminishing the sanctions against public officials failing to comply with the provisions of public integrity laws. Contrary to what we might expect from this, things have proved very different in the field of nature conservation, where European impulses for change resulted in a largely linear increase in compliance with the *acquis communautaire.* As we have seen, this apparent contradiction can be resolved by showing that reform instability heavily depends on the extent to which political elites are inclined to instrumentalize law-making and legislate in pursuit of personal gains.

This adds an individual dimension to Europeanization. Too heavily focussed on institutional factors and on compliance-inducing instruments, and paying too little attention to political actors and their interests, much Europeanization literature fails to account for the role played by individual decision-makers in domestic reforms. It is blind to the dangers posed by fragmented self-serving political elites, who are capable of altering the course of reform by deviating from both the public interest and European requirements. A closer consideration of the elite's motivations and strategies at the domestic level can provide much deeper insights into post-accession compliance. Thus, we can account for Romania's reform reversal in the field of public integrity and the fight against corruption by providing evidence of legislative behaviour at the highest levels of policy-making that shows how a highly fragmented domestic political elite pursues private gains by diluting the legislation in force. At the core of the argument was the reconfiguration of the idea of domestic interests: a shift in focus from group, party or societal interests, towards the private interests of

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the elite, the pursuit of which was revealed to lead to de-Europeanization. After all, why would an allegedly corrupt political elite be anything but self-serving; why would it be genuinely committed to adopting sound anti-corruption reform? Why would we expect a problem to be solved by those who are themselves part of the problem? At this point, these questions may seem to be rhetorical, but they are not. Being aware of the inherent flexibility and reversibility of laws, and of the potential for Europeanizing reforms to suffer setbacks under the influence of a self-interested political elite is the first step towards responding appropriately. Anticipating such U-turns provides stimulation for the search for potential solutions that would improve the stability and sustainability of reforms. EU post-accession conditionality clearly falls short of being (at least by itself) the solution for discouraging elites from engaging in abusive practices. As we have seen, the empowerment of civil society and the stimulation of broader societal engagement both gave Europeanization a better chance of success.

Romania's use of inconsistent and at times ambiguous law-making procedures led to unnecessary delays, uncertainties and undesirable legislative parallelisms. In both areas of reform under analysis here, different legal provisions with the same object of legislation were often kept in force, which generated confusion with regard to the proper application of these laws. Still, Romania's legislative output and its compliance record documented significantly better performance in the area of nature conservation than in integrity and anti-corruption reform. These findings challenge the standard assumption in the literature that non-compliance is due to a lack of capacities and know-how. The evidence indicates that despite similar institutional conditions and a widespread use of faulty procedures, some EU-led reforms may be progressing while others are overturned. In the field of nature conservation, unlike in the domain of public integrity, the political elite proved able to overcome institutional shortcomings, correct flawed procedures, and gain access to expert knowledge, in order to maintain a largely positive trend of Europeanization. It even paved the way for the direct involvement of environmental civil society in the development and implementation of legislation, for the same aim of strengthening its ability to cope with EU-driven reforms. This confirms the fact that Romania's selective Europeanization is less a matter of EU conditionality, limited institutional capacities or inadequate resources, and more a matter of political will—both to drive reforms forward and to allow civil society, and thus the general public, to take part in these reforms.

Although the argument presented here might have emphasized reform reversal and de-Europeanization, downplaying the progress made during Romania's accession and post-accession period, this is not a book about European disintegration. It is ultimately oriented towards explaining the relationship between the interests pursued at the domestic level and the stability of EU-driven reforms. While a self-serving corrupt political elite may have few incentives to introduce strict laws to curb corruption, a strong civil society and broad social mobilization might limit state capture and re-establish the democratic balance, ensuring a higher responsiveness of the elites to European and societal preferences. So there is hope for a deep and stable harmonization of domestic and European standards if they are supported by a

dialogue not only at the level of political decision-makers, but by a dialogue that involves democratically minded citizens, committed to the common good and supportive of good governance. Improving the capacity of civil society—and in this way of the broader public—to participate more effectively in policy formulation and implementation would make Europeanization more stable and allow for genuine reform. This lesson is an important one that the EU has learned, but still falls short of applying in its attempts to foster compliance in Central Eastern and South-Eastern Europe.

6.1 The Dynamics of De-Europeanization

6.1.1 Theoretical Reflections

The theoretical model advanced in this book explained post-accession de--Europeanization in Romania with reference to the role of elite interests. It did not inquire into the overall extent of Europeanizing change, nor did it identify factors that lead to a positive compliance record. Instead, it focussed on the disruption of reforms and reversal of legislation that was already in place. The empirical results for Romania have shown that clear instances of de-Europeanization can be identified even if they are not always evident at first sight, and even if they are not discussed in the Commission's monitoring reports or do not warrant infringement accusations. In many cases, subtle changes to the wording of legislation had major effects, resulting in the member state failing to comply with the general principles and objectives of European law while still being seemingly compliant. Much of the scholarship on Central Eastern and South-Eastern Europe fails to provide a compelling explanation for this phenomenon beyond the description of all-encompassing 'simulated' Europeanization. By empirically examining the actual details of reform, this book developed a more specific idea of simulated domestic change and *policy camouflage.* It showed how EU-driven reforms can be kept in place and continue to operate, while the political elites introduce changes which make them ineffective and precarious. In this manner, domestic decision-makers can overturn uncomfortable policies while claiming to have given due consideration to European requirements and norms. Through an in-depth analysis of Romania's legislative developments and legislative intent, developed over more than a decade into the state's post-accession period, it is possible to disclose such patterns of abusive behaviour, that are hidden in settings generally considered to be rule-bound, fair and transparent. This fine-grained longitudinal study of de-Europeanization alerts scholars to the shift from overt to more discreet forms of abuse, and stresses the importance of identifying (ideally at an early stage) the subtle ways in which political elites reverse legislation and weaken the legislative framework. The careful in-depth observation of all the steps undertaken in the process of transposing European norms and of revising legislation can go a long way towards identifying instances (even though apparently isolated) of reversal and in using them to reveal systemic infringements over time.

At the core of this study was the clear distinction between *resisting* and *reversing* Europeanization. While the literature in the field has long anticipated and discussed the possibility that new member states could *resist* implementing further reforms after their accession to the EU, the majority of scholarly texts still shy away from conceptualizing and theorizing reform *reversal.* Instead of emphasizing the inherent stickiness and the lock-in of domestic reforms, this book presents a model of de-Europeanization built on the idea that European directives transposed into domestic laws are *essentially unfixed* and constantly subject to change. It is in the nature of a law to be amended. Viewed in this light, the role played by domestic political elites (able to amend legislation) was thought to extend beyond the formal adoption of the *acquis communautaire:* their conduct, their political will and their European commitment were regarded as indispensable to the genuine transposition of EU laws. On these grounds, the theoretical model constructed here proposed a study of de-Europeanization centred on the behaviour and the interests of the domestic political elite—those actors who can break away from European requirements and who, as the findings of this research showed, can (at will) overcome any structural or institutional barriers in order to achieve their aims.

While acknowledging the importance of institutional structures, it was necessary here to adopt an instrumentalist rather than an institutionalist approach, regarding institutions more as tools through which policy-makers can realize their goals, with elites playing a critical role in shaping and changing a state's institutional design. The novelty of this model lies in the fact that it is able to explain de-Europeanization by bringing into the equation an element that is largely neglected by existing research: the interests pursued by the domestic political elite. By linking Europeanization literature with studies on democratic leadership, a more comprehensive analysis of post-accession non-compliance can be provided.

Viewing political representatives as agents entrusted by those they represent to establish legality and adapt domestic laws to European standards implies that the quality of the adopted legislation inevitably depends on the interests pursued by the lawmakers and the extent to which these interests correspond to societal needs on the one hand and European requirements on the other. But can we expect political elites to be responsive and responsible towards their electorate and therefore act in pursuit of the common good? Do their values and preferences converge with those in the wider society? In contexts where high-level corruption is the norm rather than the exception, most likely not. In such contexts, political elites are inherently prone to abusing their power in an attempt to gain benefits for themselves, regardless of the social costs of their action. Following this reasoning, the present book was premised on an assumption largely disregarded in Europeanization literature, namely that the interests pursued by the political elites in the process of EU-driven reform may run counter to societal needs and expectations. This approach excludes the very idea of *domestic* interests or cost-benefit calculations. The theoretical model proposed here opened the black box of how EU requirements are incorporated into the national legislation, by focusing on *individual* preferences that motivate each and every provision or amendment. The logic of domestic costs and benefits of Europeanization, determined overall for the member state, was here replaced by a

logic of costs and benefits arising for each member of the domestic political elite, who, in a state corroded by high-level corruption, may indeed be tempted to make calculations of a more personal nature. This rationale was based on an understanding that corrupt political elites are likely to exploit an opportunity for legislative abuse when the benefits outweigh the expected costs. In an environment of generalized corruption the expected costs of legislative misbehaviour are indeed very low, with fellow-elite members disinclined and nonelite members discouraged to speak up against misconduct. The examination of the ways in which a self-serving behaviour of the domestic political elite does indeed interfere with the course of reform takes us a step forward in understanding why the legal reality in Eastern European member states like Romania changed abruptly after the state's accession to the Union, but only selectively, in certain areas of reform and not in others.

6.1.2 Conceptual Discussion

The model presented above used concepts that previous research has not defined (or has only defined to a limited extent). Embedded in theories and investigated empirically, de-Europeanization and personal interests were here operationalized and measured, with conclusions derived as to their explanatory value.

As the central focus of the research, *de-Europeanization* demanded as a prerequisite a clarification of the term. As understood here, de-Europeanization is a formal reversal of domestic reforms following an initial harmonization of national laws with European norms and standards. The concept was limited to changes in legislation; it referred strictly to the legislative output and the domestic transposition of European laws, and not to the enforcement or to the institutionalization of norms. This narrow understanding of the concept made it possible to isolate more accurately and precisely the instances of de-Europeanization, their causes and the corresponding adaptational pressure exerted by the EU. Indeed, wider issues such as the long-term capacity for enforcement or the potential for the institutionalization of these reforms could not be addressed; still, this conceptualization provided a very insightful method to account for non-enforcement or non-institutionalization. Gaps and inconsistencies in the transposition of laws are in fact the primary causes, at least in Romania, of implementation and institutionalization failure. Secondly, it is worth noting that de-Europeanization as employed here used the level of *ex ante* achieved reform as a benchmark for measuring reform reversal. Each legislative provision in the reforms reviewed was observed and assessed in relation to its previous forms and in relation to the requirements set by the European Union. The empirical results took note of the expected European standards, but more importantly, they took into account domestic developments, identifying the provisions which were kept intact, expanded or restricted by the subsequent amendments of the legislation. By using the previously achieved level of domestic change as a standard for measuring reversal, the analysis was more easily able to remain objective and refrain from

passing judgements as to whether the reforms in question achieved a satisfactory level of Europeanization or not.

In the empirical study, de-Europeanization was shown to depend on the *pursuit of personal interests* by the domestic political elite, and in order to better serve the scope of the present research the concept of personal interests was itself defined narrowly as insulated from societal interests. The pursuit of personal interests by the political elite was in this case understood as a pursuit of individual gain involving an intentional disregard for societal concerns. This definition of personal interests as inherently opposed to the pursuit of *any* societal interests allowed for a more reliable assessment of the elite's self-serving behaviour. The personal interests of the political elite as understood here intentionally excluded those political decisions that accommodate societal preferences (of certain groups or of the entire society), being reduced only to those motivations that shape legislative practices and yet have no correspondence to any interests in the public sphere. The intention was to single out precisely those legislative changes for which no social groups openly expressed support (i.e. favouring corruption). The extent to which the elite acted in a self-interested manner while adopting such law amendments was measured through an examination of the elite's chosen courses of action, the justifications provided, the voting patterns and the degree to which the adopted legislation diverged from *any* societal needs and wants. This approach produced insights into the nature of the interests motivating legislative choices and thus also provided valuable lessons with regard to the elite's responsiveness and its tight or loose linkage with the nonelite.

Since personal, rather than group or societal, interests appeared to be pursued only in a context in which political elites are at odds with one another (both within and across different political parties or between and within different state institutions), the concept of *fragmentation*, borrowed from the scholarly literature on elites, greatly contributed to assessing the self-serving bias of public officials in the process of Europeanization. A high fragmentation of the political elite (mirroring a high level of disintegration in the elite stratum) was found to have crucial consequences for the quality of legislation, for the efficiency of policy-making, for the overall stability of the democratic system and ultimately, also for the stability of Europeanizing reforms. The reasoning behind this analysis of fragmentation was the fact that legislative choices are not made in isolation, but take place as part of institutional interactions with dynamics that affect the behaviour of lawmakers. Pursuing social goals while legislating also means trusting that others will do the same and that the broader society will eventually benefit from this pursuit; upholding the public interest while legislating means trusting the system and the fact that all fellow legislators uphold certain norms, values and rules of the democratic game. However, when domestic politics is characterized by mutual mistrust, aversion, and a deeply rooted lack of solidarity and value consensus, it leaves lawmakers with less incentive to pursue the common good and leaves Europeanization with little chance of success. This makes a thorough analysis of the level of integration or disintegration of the elite highly relevant to the study of Europeanization. As the empirical results above have shown, a high level of fragmentation of the ruling stratum makes reform reversal more likely, which leads to lower legislative efficiency and a lack of

responsiveness to societal preferences. In a context of high elite fragmentation, the role played by a strong civil society becomes even more relevant as a factor promoting legislative stability and reliability, ensuring reforms remain aligned with broader societal interests.

6.1.3 Limitations and Future Research

The variables in this model were built with a specific context in mind: that of relatively high-level corruption, which makes political elites more likely to pursue personal rather than societal interests. From this point of view, the findings presented here are easily applicable to other similar domestic settings in which corruption continues to weaken the elite's respect for the rule of law and widen the gap between representatives and represented. In such contexts, the relationship between the self-serving behaviour of political elites and reform reversal is likely to persist. Nevertheless, the determining factors identified are not limited to the Romanian context, and it would indeed be very interesting to test the more general applicability of this model in a very different setting—for example, in a strongly consolidated democracy—in order to verify to what extent, if at all, other political elites are prone to make self-serving laws, and how far they are dissuaded from such practices by a powerful sectoral civil society.

In its identification of factors which explain reform reversal, this study was not meant to be exhaustive. It examined one main variable (the pursuit of personal interests of the political elite) which was considered to provide the most insight into the case of Romania. However, law-making and thus Europeanization does not happen in isolation, and providing an explanation of de-Europeanization as a result of the elite's instrumental use of the legislative framework also involved taking into account the role played by specific structural conditions that invited this self-serving behaviour. Thus, it was necessary to examine the specificities of the Romanian institutional and social context, with its highly fragmented ruling stratum and differently empowered sectoral civil society actors. Additional studies may shed further light on the correlation of these factors in other member states with different institutional and social settings.

The empirical analysis above focused on two policy areas: Romania's integrity and anti-corruption reform, and its nature conservation reform. In these two fields, the member state faced an equally high transposition challenge and equally high pressure for convergence from the EU; the two fields differed, though, in the way they attract a pursuit of personal interests by the domestic political elite, which inhibited in one case and allowed in the other the empowerment of civil society. It proved challenging to find two cases with a high variation in the explanatory variable. In states where high-level corruption is a common phenomenon, it can indeed be difficult to find a policy area which allows for no pursuit of personal interests by the political elite; in the most various areas of reform, individual economic motivations may dominate societal incentives and the common good.

This indeed may pose a real challenge, but at the same time, it may point to an interesting subject of inquiry for future research: What are the reform areas free from the elite's selfish considerations of personal gain?

The main finding was that the self-serving behaviour of domestic political elites matters for the stability of reform and the sustainability of Europeanization. This does not imply that political elites never legislate on behalf of their voters or never respond to societal concerns; rather, it implies that if—as seldom or as often as this may be the case—elites pursue personal rather than societal interests, reforms are likely to be heavily compromised.

The notion of personal interests certainly posed conceptual and methodological difficulties, as individual preferences can hardly be observed or measured directly. As mentioned above, in order to resolve some of these problems, the concept of personal interests was narrowed down to mean a pursuit of preferences unsupported by *any* societal concerns. This narrow definition is almost tailor-made to make the reader aware of the contradiction inherent in Romania's reversal of anti-corruption reform: with corruption being almost universally condemned, it is impossible to justify a relaxation of anti-corruption measures by reference to arguments rooted in public interest. Such an approach to personal interests, while very useful for explaining instances where elite and nonelite interests clearly diverge, is limited in its capacity to account however for instances in which a self-serving behaviour of the political elite nevertheless results in legislative output that serves the common good. This model thus falls short of handling cases in which representation is not genuine, but in which the result of the reform responds—to a greater or lesser extent—to the needs and wants of the society; it cannot explain cases of populism or other forms of partisan politics motivated only by electoral returns and their impact on Europeanization. These subjects are far beyond the scope of this work. However, future research could refine the concept of personal interests to address in more detail the issue of genuine representation and its impact on the stability of Europeanizing reforms.

6.2 Anchors of Europeanization

This study explained Romania's de-Europeanization in the field of public integrity and anti-corruption after January 2007. In doing so, the goal was not only to produce a richer understanding of the domestic factors reversing Europeanization, but also to emphasize the strengths that might help states to achieve a higher sustainability of reforms and to legislate in a manner more consistent with European norms and standards. This book delivered an assessment of Romania's reform inconsistencies caused by a self-serving behaviour on behalf of the political elite, behaviour which could only be curbed by civic mobilization and an active civil society. After all, in a context of widespread disregard for the rule of law, problems such as the instrumental use of the democratic framework for personal benefits can hardly be addressed through law alone, but need external pressure, not only exerted

downwards from the EU to the member states, but also upwards from the society to the political elite.

The perceived wrongdoing in the adoption of self-serving laws apparently decreases with the distance between legislative choice and the harm caused by that choice. The harm involved in the reversal of anti-corruption reforms is hardly visible, being systemic in nature and far removed from the legislative action. Narrowing the gap between self-serving action and harm may go a long way in reducing the potential for reform reversal. Indeed, as the second case study above showed, widening the scope for meaningful involvement of civil society in the promotion of good governance (or good environmental governance) translated European adaptational pressures into genuine domestic reforms. Civil society played a key role in ensuring that elites and nonelites remained largely congruent in their values and priorities in nature conservation. Its success in holding elites accountable and in line with European law was only possible through an effective partnership and collaboration with political elites, whose lack of institutional and administrative capacity required support from the environmental non-governmental sector.

This case revealed a reality at odds with the expectation that limited capacities lead to non-compliance; it was precisely the lack of capacity that led, through the involvement of civil society actors, to a gradual improvement of EU-driven reforms. The elite's decision to engage in collaborative policy-making and implementation with the participation of the non-profit sector allowed citizens to pursue their interests through the actions and reactions of civil society, promoted the latter's growth and gradually strengthened its voice. Non-profit organizations in the field of nature conservation took an active part in environmental governance, assured the implementation of legislation, aggregated and communicated societal interests and preferences, and also subjected the elite's legislative practices to public scrutiny. Any attempt to diverge from the public good or from the European requirements in the field was met with severe objections from a vibrant civil society that demanded accountability for flawed legislation, notified the European Commission of cases of infringement of the *acquis*, and mobilized broad public support for the protection of environmental rights. It contributed to the development of mechanisms for oversight, shaped expectations of the represented with regard to the decisions of the representatives, and set a precedent for the nonelite to react when its political leaders legislated in manners detrimental to the common good. These research findings stress yet again how crucial an engaged and empowered civil society is for the development and sustainability of reforms, not least due to its role in closing the gap between policy choices and the impact they produce. Civil society's stabilizing and democratizing effect should be recognized and enhanced at both the domestic and the European level.

The development of concrete frameworks and mechanisms for collaboration between lawmakers and civil society could be itself part of a member state's conditionality package. Too little emphasis has been placed on the importance of civil society and civic engagement for enhancing pre- and post-accession compliance in Central Eastern and South-Eastern Europe. The EU did not react to those restrictive legislative proposals which imposed disproportionate reporting

requirements on Romanian civil society and curtailed its right to criticize political parties or their candidates, nor did it give an opinion with regard to the frequent endeavours of the political elite to delegitimize critical non-governmental organizations by targeting the latter with denunciations and accusations of supporting foreign influences in undermining national identity and values. If the EU was to defend domestic civil society organizations against such repressive measures, and if the protection of European civic space were to become a specific objective, the Union would certainly be better equipped to ensure the observance of its law, of the rule of law and the protection of the fundamental rights of its citizens. Forging closer partnerships and encouraging the creation of spaces for dialogue between political decision-makers and civil society would only benefit the Union's efforts to ensure post-accession compliance. An improved European framework for providing financial and legal support to non-profit organizations could assist new member states in meeting the commitments they made upon their accession, assure a better correlation of European and domestic expectations, and bring the EU closer to its citizens. EU support for an empowered domestic civil society with better access to domestic policy-making would be all the more necessary in order to prevent other European democracies from setting out on a de-Europeanizing path. In this respect, a good place to start could be an assessment and harmonization of NGO legislation across EU member states. In this way, the EU would hold its Central Eastern and South-Eastern European member states to high standards of democratic representation and rule of law, and give reforms a much higher chance for success, by supporting an increased amount of bottom-up pressure from their respective societies that would complement its own top-down demands for compliance. In this sense, the present book can serve as a cautionary tale about the naivety of expecting domestic corrupt political elites to lead the fight against corruption, as an account of the failure of the EU's push for reforms to produce genuine and lasting change, and as a demonstration of how important it is for the EU to find new solutions and mobilize new resources to support civil society in its member states. It is only with the support of civil society that the EU can anchor its policies in its member states for the long term.

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