East Side Story: How Transnational Coalitions Contested EU Conditionality

CRISTINA E. PARAU

Abstract
The literature on Europeanisation in relation to Eastern Europe has posited the material incentives of EU membership as the main driver of domestic reforms aimed at adopting EU rules and norms (conditionality). But this fails to explain puzzling instances where no EU rule exists yet domestic change happens under European influence, or where the rule is a condition yet has little impact. As repositories of (dis)information, transnational networks can embolden a candidate country to breach the rules or influence it to comply with the ‘extra-conditionality’ the networks themselves create out of their own agendas.

The uppermost problem of the EU’s Eastern enlargement has been how to induce the countries of post-communist Central and Eastern Europe (CEE), to behave in conformity with EU-established norms. The EU differs from most federal systems of government in lacking coercive powers and having limited material resources. Hence ‘positive reinforcement’, whereby compliance with specified pre-conditions is rewarded with EU membership, emerged as a behaviour-modification strategy best suited to the nature of EU governance (Schimmelfennig & Sedelmeier 2005a). This approach, known as ‘accession conditionality’, features the adoption by all accession candidates of the acquis communautaire—a substantial body of settled law that includes EU directives, decisions and regulations. The acquis is non-negotiable except as to the implementation timetable, but the candidate countries must also meet other, vaguer conditions that embody important values and norms shared by the older member states, including the rule of law and requirements concerning minority rights. Both orders of conditionality were enshrined in the Copenhagen Criteria of 1993.

I would like to thank my interviewees, each one of whom gave their precious time to answer my sometimes excruciatingly detailed questions; the Ratiu Family Foundation and Central Research Fund, who contributed to funding this research; and the British Academy, who funded the Postdoctoral Fellowship without which this article might not have been written. Special thanks are due to Dr Gwendolyn Sasse, Professor Denis Galligan, Professor Laszlo Bruszt and Professor Klaus Goetz, and to two anonymous referees, for their valuable comments on earlier drafts of the article.
The actual impact of accession conditionality on CEE has been of academic interest for more than a decade. A model of accession conditionality, known as the ‘external incentives’ model elaborated by Schimmelfennig, Sedelmeier and others, has become the dominant paradigm in the literature. This straightforward model asserts that the material benefits of EU membership, incentivising compliance with accession conditionality, best explain the adoption of EU rules. Variation in compliance observed across time and space has forced the model’s refinement and two modes of conditionality have been analytically distinguished: ‘acquis conditionality’, comprising the codified conditions; and ‘democratic conditionality’, concerning the normative conditions. Both must be met before a candidate can begin acquis negotiations. In practice however, conditionality is not so clear cut; laggard candidates have in fact been invited to begin negotiating the acquis before democratic conditionality was actually met (Schimmelfennig & Sedelmeier 2005a).

The external incentives model claims that the costs incurred by the candidate government in adopting an EU rule (or not) explain the variation in the candidate’s compliance with democratic conditionality. By contrast, variation in compliance with acquis conditionality is caused by the salience of the rule, and the credibility of the candidate’s membership prospects (which are supposed to increase once acquis negotiations begin). By this point the costs of rule adoption and domestic veto players are supposed to play no decisive role (Schimmelfennig & Sedelmeier 2005a).

Three different cases of accession conditionality in Romania are explored in this article. In all three cases, which span the entire period of acquis negotiations, it will be shown that none of the theoretical predictions matched the candidate’s actual behaviour. This was observed to vary diachronically.1 In two cases the candidate government constrained itself where no EU rule constrained it, forgoing real material benefits. In the third case the government breached EU rules set as accession conditions. In all cases salience proved of no causative importance: either the candidate breached EU rules made expressly salient by the European Commission or, the same candidate behaved compliantly under European influence in the absence of any EU rule, let alone a salient one. Neither did credibility explain the observed variation. The commencement of acquis negotiations, after which all three cases occurred, was supposed to enhance the credibility of accession promises and thus the likelihood of compliance. Yet compliantness2 was forthcoming when not officially demanded, and not forthcoming when officially demanded. Moreover, the opposite was observed to the model’s prediction that domestic costs do not affect adoption of the acquis. The costs of adopting an EU rule in fact mattered to compliance with acquis as much as to democratic conditionality.

To explain these interrelated puzzles, this article proposes a novel mechanism that builds on, while also departing from, the external incentives model: it is argued that the candidate government, faced with radical uncertainty over the eventuality of

1 Although all the cases studied occurred in Romania after the beginning of negotiations on the acquis in 2000, they all present some features of both modes of conditionality.

2 This article will observe a distinction between ‘compliance’, which denotes conformity with an actual rule, and ‘compliantness’, which is a behavioural tendency independent of any actual rule.
accession, becomes susceptible to the influence of transnational networks. As uncertainty implies asymmetry of information between actors, the (dis)information that the networks bear may affect the candidate’s degree of accession uncertainty. This empowers the networks to alter the government’s perception of the risk of non-accession, even if unintentionally. The altered perception has an impact on other aspects of its domestic practices and the net result may be to bring about unlikely outcomes in terms of candidate compliantness with EU norms and rules.

As has been shown previously, causation must sometimes be attributed to factors exogenous to the external incentives model, including epistemic communities (Andonova 2004, 2005; Jacoby 2004; Piana 2007); ‘norm-resonance’ (Schwellnus 2005); domestic elites’ concern for international recognition and domestic power uncertainty (Epstein 2005); transnational coalitions (Jacoby 2006, 2008; Parau 2009); and accession uncertainty (Grabbe 2006). The interaction of transnational coalitions with the candidate’s uncertainty of accession, two factors hitherto treated separately, will be theorised in detail below.

Accession uncertainty and transnational coalitions have been neglected as factors explaining variation in the impact of the EU (and other external conditionalities), but they are gradually being discovered. Uncertainty has been theorised as an ‘intervening variable’, which in tandem with the salience the EU gives it, explains variation. High uncertainty interacting with high salience produces a large EU impact, while with low salience it produces a lesser one (Grabbe 2006, pp. 94–95). Transnationalism figures both in the international relations literature (Keohane & Nye 1974; Slaughter 2004) and in the European integration literature, where transnational networking is implied under the rubrics of ‘multi-level governance’ (Marks et al. 1996, p. 346) and ‘intergovernmentalism’ (Moravcsik 1993, p. 480). Explicit attempts have been made to theorise the causal role of transnational actors, networks and coalitions (Orenstein et al. 2008) that reach beyond epistemic communities of technical experts (Jacoby 2004; Lavenex 2008; Schwellnus 2005).

Claiming to combine rationalism with constructivism, the ‘coalition approach’ is emerging as an explanation of domestic change under external influence (Jacoby 2006, 2008). It claims that external actors like the OSCE, NATO, IMF and the Council of Europe have, using the leverage of accession conditionality, had an impact on CEE politics by empowering domestic ‘minority traditions’ with material and ideational resources. The theorisation elaborated in this article builds on this standard coalition approach whilst taking it a step further. It is true that transnational coalitions may help civil society exert influence over governments non-compliant with international regimes (Keck & Sikkink 1998). But it is equally true that domestic veto players who resist externally imposed reforms may also build transnational coalitions that help produce outcomes that are the opposite of what the minorities and their transnational allies may wish. The candidate government may go so far as to defy unambiguous and salient rules that the EU has set as express conditions of accession.

The very existence of accession uncertainty confirms that accession conditionality is not a ‘known quantity’; the uncertainty arising from conditionality’s ambiguity is a powerful causative factor. While the external incentives model does claim that democratic conditionality is effective insofar as it is clear (Schimmelfennig & Sedelmeier 2005a), what is shown below is that democratic conditionality is effective
Indeed, conditionality is so nebulous that even transnational coalitions are able to construct, out of their own interests and agendas, an illusory conditionality (herein called ‘extra-conditionality’), which they may succeed in imposing on a candidate government as if mandated by the EU. Extra-conditionality is analytically and normatively distinct from what has been called ‘informal conditionality’ (Hughes et al. 2004). The latter is an official interpretation of democratic conditionality, which ideally renders it determinate enough for progress to be gauged. By contrast, extra-conditionality was never legislated by the European Council nor is it implicit in the Copenhagen Criteria, though sympathisers inside the EU institutions may use their office to advocate for it. Extra conditions, strictly speaking, lie outside the rule of law and exceed the legitimate powers of EU actors to impose by themselves. Implicated here are questions of the rule of law (whether a candidate should be exposed to extra-legal sanctions) and democratic legitimacy (who authorised even EU supranational actors, let alone transnational civil society, to negotiate extra conditions).

The legitimacy of certain criteria like minority rights has already been questioned, inasmuch as minority rights are absent from the acquis (Schwellnus 2006; Wiener & Schwellnus 2004). This is a relatively minor legitimacy issue. Such criteria were made plain before bargaining began, the candidates being free to accept or reject them; and democratic conditionality prevents enlargement from adulterating the quality of the member states’ domestic regimes. The problem appears when the rules change after the game has begun and without the consent of all parties. The indeterminacy of democratic conditionality constitutes a moral hazard (Elkins et al. 2007); elements within the EU and their civil society allies may exploit indeterminacy to impose extra conditions over and above what the member states actually countenanced.

The foregoing theorisation emerged from empirical research into Romania during acquis negotiations, between 2000 and 2004. A marginal candidate and notorious laggard in the accession process, Romania was excluded from the first wave of Eastern enlargement and, according to some criteria would be better placed in the same category as states like Belarus or Albania than with an existing new member state such as Poland (Mungiu-Pipidi 2006). Romania’s accession experience as interpreted here is probably repeatable; enlargement has not ended, and those on the outside looking in are also ‘second-class’ candidates and historically not of central concern to the West. Conclusions drawn from the Romanian experience should therefore interest both scholars investigating the impact of the EU on the remaining prospective candidates, and those revisiting the external incentives model.

Accession uncertainty and transnational coalitions

The conditions of accession, particularly the democratic ones, resemble in their sketchiness a contract left incomplete. Withholding complete information is a tactic the Commission in particular uses to create and maintain pressure on candidates to

---

3 The European Council could legitimately enact extra-conditionality, and might well do; this is entirely speculative, however, since they seldom or never have done.
comply fully with all accession conditions (Avery 2009). Incomplete information nurtures uncertainty (North 1996, p. 25).

Uncertainty over the whether and the when of accession preys on all accession candidates (especially the marginal ones). These two pivotal uncertainties are compounded by uncertainty over the existence and meaning of democratic conditionality (Grabbe 2006). The existence or meaning of conditionality could not be uncertain if all actors were content with a state of affairs where the Commission as the third-party arbiter resolved all ambiguity. Because all parties resist this power in the Commission, many contests over existence and meaning may be unresolvable. Moreover, contests may arise even when the EU rules set as accession conditions are made clear; uncertainty arises over actual enforcement. None of these analytical distinctions, however, changed the causal mechanism; uncertainty about any particular issue was observed to be liable to snowball into uncertainty about accession itself, so long as accession remained uncertain.

These uncertainties severely bound rationality and sub-optimal choices become harder to avoid (Elster 1995). Indeed, rational choice, in the sense of the reckoning of risks, is effectively eliminated:

a fundamental distinction [exists] between risk and uncertainty. In the case of the former, probability distributions of outcomes could be derived with sufficient information and therefore choices made on [that] basis . . . [b]ut in the case of uncertainty no such probability distribution is possible . . .. But human beings do construct theories all the time in conditions of pure uncertainty . . . myths, taboos, prejudices and simply half-baked ideas . . . serve as the [informational] basis of decision making. Indeed . . . the fundamental . . . decisions that shape the direction of polities and economies are made in the face of uncertainty. (North 1999)

Human nature abhors uncertainty and will endeavour to find information allowing risk to be estimated with tolerable accuracy. Given how much valuable information is not publicly available, networking with like-minded counterparts will become a main recourse of domestic actors, especially in candidate countries where scarcity is universal. A network is a sub-society of like-minded people within the larger society of people who are not like-minded. As repositories of information are often accessible only to insiders, networks constitute a political resource (Thurner & Binder 2008). Insiders can use this information to overcome the boundedness of rationality stemming from incomplete or asymmetric information.4

The network type featured in this article is the coalition, a ‘semi-permanent arrangement . . . among actors pursuing separate but, by and large, convergent and compatible purposes and using their separate action resources in coordinated strategies’ (Scharpf 1997, p. 55). Thus a ‘coalition’ will be a looser, contingent and often temporary conglomeration of networks like-minded on a range of issues more limited than the typical network.

It is postulated that a network which an actor is ideologically or politically aligned with and accepted into will be more likely to yield true information (and

4Rationality is used in its classical sense: an act of choosing that course of action out of many which can be known with a probability of >0.5 as having the highest payoff given the chooser's knowable preferences.
misinformation only accidentally). Networks opposed to the actor will be more likely to supply disinformation. While disinformation is typically free, true information is costly; in exchange, an actor must surrender some autonomy to the network and appreciate the needs of its other actors (Keohane & Nye 1974; Thurner & Binder 2008). On the basis of this postulate, it is theorised that a candidate’s uncertainty will be exploited or allayed depending on which networks the government becomes enmeshed in.

Uncertainty may open a window of opportunity for certain parties—transnational coalitions of civil society actors dissatisfied with the domestic status quo—to exact concessions from reluctant (but information-hungry) candidate governments. They ‘relieve’ the candidate’s uncertainty by supplying it with disinformation in the form of speciously authoritative constructions of conditionality (extra-conditionality). This is conjured up from the networks’ own agendas and made salient by their own discourses.

Under conditions of high uncertainty where information is very scarce, a candidate opposed by a transnational coalition may cling to disinformation, faute de mieux, as readily as to true information. Even if the candidate government suspects disinformation, it might still be prevented by the severity of accession uncertainty from ruling it out as untrue. In economic terms, the candidate government is exchanging ‘good behaviour’ for more information and hence more certainty; but severe uncertainty will eventually alert a candidate that its rationality is intolerably bounded. This is likely to drive it to seek out a network that will support rather than exploit it. It is theorised that a candidate that builds bridges to member states may drastically lower its uncertainty. Proactive coalition building, if it minimises accession uncertainty, may empower a candidate to estimate risks and choose the course of action actually yielding the highest payoff for itself, and even to reverse (if only temporarily) the power asymmetry between itself and the European Commission. This may entail non-compliance with clear and salient accession conditions.

**The puzzle laid bare**

The cases exhibiting the research puzzles explored above occurred after Romania had begun negotiating the acquis in 2000. All three cases featured a conflict or misfit between the preferences of the Romanian executive and accession conditions, both real and illusory. It is striking that in all three cases the executive’s behaviour in many ways did not meet either the predictions of the external incentives model, or the prediction that conditionality expires (Steunenberg & Dimitrova 2007). This is all the more striking in that none were deliberately chosen for their anomalousness. In fact, all were selected before the external incentives model had even been published. The cases were thus randomly chosen relative to that model, and at least as likely (if not more so) to be normal to the model as deviant from it.

Since each exhibits a distinct phase in one process, the cases together embody a diachronic evolution: the waning of executive accession uncertainty in tandem with the waxing of their networking capacity and achievements. The evolution is visible in the variable outcomes of the cases. In the first case the executive had scarcely discovered transnational networking and could draw on few transnational allies, but faced a sophisticated, superbly networked adversary. This constrained them to make
sub-optimal choices. By the third case the executive had become adept at networking, by which they overcame uncertainty enough to defy the Commission. They pursued a limited pay-off at the theoretical risk of non-accession because in practice their coalition-building had contained and managed that risk. The second case bridges the other two, highlighting the waning power of the civil society transnational coalitions involved. The network of member state executives into which the Romanians were beginning to become integrated enabled them to adjourn (but not abandon) the pursuit of their interests.

The first case coincided with the commencement of *acquis* negotiations during the period October 2001–April 2002, when accession itself was still uncertain. The executive had planned a theme park (hereinafter ‘Dracula Park’) next to a World Heritage Site in Transylvania. A transnational coalition of civil society actors drawing on supranational and member-state allies prevailed on it to behave compliantly, as if an EU rule or EU-wide norm had existed which forbade such a park, even though none did. The highest Romanian political executives sacrificed to the cause of accession their domestic and external reputation, as well as an estimated $25 million a year in tourism revenues, a considerable sum for a poverty-stricken country.

The second case immediately followed in the period November 2002–June 2003. Uncertainty overshadowed Romania’s accession, but now only as to when it would take place (2004 or later). The government was poised to permit gold mining using cyanide at Rosia Montana in Transylvania. A coalition of transnational civil society actors were unable by themselves to defeat the gold-mining interests inside and outside the government decisively. No EU rule banned cyanide gold mining; nevertheless, the Romanians felt obliged to pacify the opposition to the extent of procrastinating over the project until after accession.

These two cases compound the puzzle if one believes (as many scholars do) that the credibility of conditionality had been vitiated by the EU’s strategic interest in Romania’s accession (Schimmelfennig & Sedelmeier 2005c, p. 15). In these circumstances—and in the absence of any EU rule, let alone a salient accession condition—what could have induced an already defection-prone government to behave compliantly at the cost of so many material benefits?

The third case happened at the peak of *acquis* negotiations (December 2003–March 2004). The government allowed a discretionary contract to Bechtel Inc. to build a motorway from Bucharest through Transylvania to Hungary (hereafter ‘the motorway’) but there was considerable uncertainty over the deadline of the end of 2004 for closing negotiations in time to accede in 2007 (Phinnemore 2006a). Nevertheless, the executive flouted not one but two agreements negotiated with Brussels: that motorways of the Trans-European Network (TEN), which bypassed Transylvania, were to have fiscal priority; and that large infrastructure projects were to be publicly tendered for according to the terms of the public procurement *acquis*. Construction began just before the 2004 elections though the risk of proceeding thus was extremely high: any postponement of accession would have spelt disaster for the Partidul Social Democrat’s electoral fortunes. This rounds off the puzzle: why would the government defy explicit EU rules which the Commission had set as condition for accession?

Intuitively, it might seem that the external incentives model explains the defection observed in the third case as resulting from the high domestic adoption costs of an EU
rule, such as losing a major election, but the empirical evidence presented here demonstrates that adoption costs by themselves are not explanatory. Instead it can be theorised that candidate governments compare rule-adoption costs to the costs of non-accession discounted by their estimate of the risk of non-accession actually happening. In principle, all costs should be discounted by risk of happening.\(^5\) Herein, however, only the costs of non-accession were discounted, as only that risk notably changed over time (falling from case to case). Other costs were not observed to vary noticeably over the period covered by this research. If the risk of non-accession decreases over time, the candidate may come to perceive rule-adoption costs as outweighing the (now heavily discounted) cost of non-accession. Once the candidate becomes assured of accession, it may believe itself to be better off breaching an EU rule if this enables it to avoid significant domestic costs.

The three cases chronicle a progression from high to low uncertainty of accession. This might seem to corroborate the prediction that conditionality is expirable: that candidates defect once membership becomes assured (Steunenberg & Dimitrova 2007). Observation showed, however, that expirability is not fully explanatory, as the behaviour of the candidate varied even under ‘expiry’. Even while breaching one of three conditions made salient by the Commission—breaching any of which risked non-accession—the candidate was hastening to appease it over the remaining two conditions. Such concomitant variation proves that complementary explanatory factors must be sought.

The methodology in all cases was to trace causality from the bottom up, from the domestic level, thereby obviating the many shortcomings of top-down approaches (Dyson & Goetz 2003; Radaelli & Franchino 2004). Interviews were conducted with most of the elite members involved in the controversies, from local civil society and political executives to their transnational and supranational allies. Particular attention was paid to members of the domestic executive as they are supposed to dominate the accession process (Grabbe 2001), deciding the what, when and how; however they were a secretive group, the more so in these cases where corruption (and the censure it risks) was implicated. This opacity was pierced by triangulating to a wide variety of primary and secondary sources. More than 60 one-to-one interviews with the author were conducted with counterparties and observers to supplement the executive interviews.\(^6\) This is a reliable way of proceeding, since the cases involved ‘non-cooperative’ games where actors opposed to the executive had no less an interest than the researcher in discovering the truth (Scharpf 1997). The biases inherent in such interviews were

---

\(^5\) Discounting of costs may be conceptualised as a numerical index assigned to an eventuality to betoken its estimated costs on a scale from 1 to 10 (1 being least and 10 most costly) multiplied by a percentage fraction \(n/100\) (0 < \(n\) < 100), where 0/100 represents certainty of avoiding the costs and 100/100 certainty of incurring them. Fractions falling in between represent a probability of costs-incurrence; for example 75/100 means that, if a course of action risking the costs could be repeated indefinitely, costs would be incurred 75 out of every 100 times. An eventuality costing of ‘7’ if discounted by this fraction would yield the index \(5.25 = 7 \times 0.75\). Discounted costs are thus a fraction of costs in the abstract.

\(^6\) Semi-structured interviews were conducted with all the key actors who feature in the case studies: leaders of civil society organisations, European Commission officials, members of the European Parliament, Romanian senior civil servants and ministers, and the Romanian EU negotiations team.
checked by consulting non-interview sources such as official pronouncements, parliamentary debates, and discussion groups in an online discussion forum.  

The domestic political milieu

All three cases occurred between 2000 and 2004 when Prime Minister Adrian Năstase and President Ion Iliescu, both of Romania’s Social Democratic Party (*Partidul Social Democrat*, PSD), held power. The PSD was the successor party to the Communist Party, hence the new cabinet included former *apparatchiks* tainted by association with Ceauşescu (Tismaneanu & Mihăies 2004, p. 225). The domestic institutional setting featured few if any veto points: PSD ‘packed’ the Constitutional Court and governed the media through outright ownership or through indebtedness to banks controlled from within the PSD inner circle (Mungiu-Pippidi 2005). Winning 36% of the vote, they coalesced with the Hungarian party, cementing parliamentary control against a fragmented opposition. Civil society was thought too weak to pose significant challenges (Roper 2000, Nicholson of Winterbourne 2006). Excepting the severe scarcity of material resources affecting all Romanians, the executive was constrained only by the exigencies of re-election and of the overwhelming popular consensus favouring accession to the EU and NATO.

The first PSD government (1990–1996) earned a reputation for procrastinating over reforms that alienated their power base but were required for membership of the EU and other international bodies (Phinnemore 2001; Vachudova 2005). This was a factor contributing to their election loss in 1996 to a pro-Europe centre–right coalition. The PSD government under Năstase (2000–2004) was determined not to repeat this mistake. Euro-Atlantic integration became the overriding priority, to achieve which the PSD were reportedly prepared to do anything (Ciobanu & Shafir 2005).

Romania’s accession was riddled with uncertainty throughout enlargement, and Romanians felt great anxiety lest, excluded from Europe, they were condemned to ‘an uncertain future in some grey zone between a European core, a Russian-dominated east, and the fringes of Asia’ (Phinnemore 2006a, p. 38). Earning a reputation as a laggard even in the 1990s (Phinnemore 2001), Romania’s self-imposed timetable of accession by 2000 was dashed in 1997 when the first wave of invitations to negotiate excluded her. This severely disappointed Romanian political elites (Phinnemore 2001), heightening their anxiety over exclusion. Romania was not invited until 2000, following her support of NATO’s Yugoslav campaign. By mid-2001 Eastern enlargement was ‘moving into a higher gear’ (Avery 2004, p. 51); Romania strove—once again in vain—to be included in the first wave (Phinnemore 2001).

Acutis negotiations only gained momentum after Năstase took office in 2001. The PSD-created Ministry of European Integration closed negotiations on more than half of the *acquis* by the end of 2002 (Phinnemore 2006a). The European Council of December 2003 proposed 2007 for Romania’s accession—‘if ready’. This gave greater assurances, yet not so that the government could have expected to flout the *acquis* with

---

7The online discussion forum on environment includes the most prominent civil society organisations in Romania. As a subscriber to this forum I was able to pose questions relevant to my research. I often received answers from relevant civil society actors.
impunity. Indeed, Brussels intensified pressure on Romania. It toughened its stance on the *acquis*’s most difficult chapters, demanding progress especially over the implementation of public procurement rules, over which the executive had procrastinated because it threatened their peculation privileges. Implementation, in fact, lagged so far behind that in February 2004 European parliamentarians called for suspension of negotiations until Romania’s fundamental problems had been redressed. This brought her closer than any other candidate has ever come to being denied accession (Pridham 2007).⁸

That Romania acceded at all owed much to the Nastase government’s networking with powerful member states to build a supportive coalition inside the EU, a belated change of direction that bore timely fruit. Romania had been negotiating accession on some level since 1993, but had realised the inadequacy of her approach only in 1998, when the Commission belaboured Romania’s application for membership. Her negotiators have admitted being unaware until late that patronage is an EU norm, too; and a ‘new dimension’ only emerged in 2001—cooperation and communication with member states, especially those holding the Presidency (Orban 2006, p. 83). Building bridges ‘around’ Brussels to member-state capitals took time, but eventually paid off.

By 2003 Romania had secured ‘consistent [and] strong support’ from Britain, Italy and Spain.⁹ Tony Blair ‘kept all his promises [to Romania] and even more’;¹⁰ indeed, his 1999 speech was what moved the EU to open negotiations (Pridham 2007). Language affinity and shared Roman history underlay the support of Spain and Italy.¹¹ As one of Romania’s largest foreign direct investors (Papadimitriou 2002, p. 112), Italy under Berlusconi became Romania’s ‘most vocal champion’ and, during the Italian Presidency of the EU, imposed the 2004 deadline for closing negotiations—met only under ‘considerable pressure’ from Romania’s sponsors.¹²

By 2004 other member states had joined in supporting Romanian accession. French President Jacques Chirac, after his anger over the Iraq war subsided, ‘reverted to being a strong supporter’ (Gallagher 2005, p. 327). Germany, with historical ties to Transylvania, believed Eastern enlargement necessary for post-Cold War security and prosperity (Papadimitriou 2002). The Union’s geopolitical interest in stabilising the Balkans also weighed heavily (Pridham 2007), but bridges were also built to the Socialist International. Under Blair’s sponsorship Nastase led the PSD into membership, eventually becoming its East European President.¹³ Enabling strategic alliances with Social Democrats throughout Europe, it became a pillar of Romania’s bridge-building. The lessons of networking, however, took time to learn, as is witnessed in the first case study discussed in the next section.

---

⁸Less drastically, the Commission could have delayed accession by reopening a provisionally closed chapter (Orban 2006).
⁹Author’s interview with senior official in the Romanian Negotiations Team, 16 June 2006, Bucharest.
¹⁰Author’s interview with senior official in the Romanian Negotiations Team, 16 June 2006, Bucharest.
¹¹Author’s telephone interview with MEP in the Foreign Affairs Committee, Brussels, 11 April 2006.
¹²Phinnemore (2006a) and author’s interview with the European Commission Delegation, 10 May 2006, Bucharest.
Transnational coalitions construct extra-conditionality

In early 2001 Nastase’s new government resolved to rekindle Romania’s attractiveness to international tourism by building an amusement mega-park in Transylvania themed around the Hollywood image of Dracula. Dracula Park was to be sited on Breite Plateau, which harboured a nationally protected nature reserve overlooking the twelfth-century Saxon town of Sighisoara, itself a World Heritage Site. The park was timetabled for completion by 2002 (Romanian Government 2001). An 80-fold increase in tourists was projected, bringing in $25 million yearly, a bonanza for poverty-stricken Romania. The local populace and governmental and business elites welcomed the plan enthusiastically.

Only a handful of dissidents, calling themselves ‘Sustainable Sighisoara’, emerged in opposition. Although they lacked experience and resources, and their attempts to attract support within Romania failed, the local and national authorities over-reacted, threatening them with Securitate surveillance and lawsuits. Being Europe-minded, Sustainable Sighisoara turned to Western civil society and media, whose prompt response effectively started a transnational advocacy coalition. This networked German and British civil society organisations with EU supranational and UN international actors, each contributing his own ‘Lilliputian thread’ to the tying-down of the executive.

Sharing a vision of sustainable development, the coalition denounced the Park’s incongruity and warned of damage to a World Heritage Site lacking the infrastructure for mega-tourism, and to the overgrazed, neglected Breite Plateau with its ecological treasure, a 400-year-old oak forest. They claimed the executive was endangering the Saxon patrimony in Transylvania, which breached the EU norms of democracy and the rule of law. In reality the executive had breached no accession criteria; the network was projecting their agenda onto the EU’s accession criteria, creating an extra-conditionality beyond the legal requisites: ‘The [Romanian] government is forever declaring that its first priority is integration into Europe; if so, ... [it] should be [rather] in the vanguard of any campaign to protect ... the cultural heritage in Transylvania [which proves] we belong to the European cultural space’ (Pro Europe League 2001). European identity and therewith accession were invoked to capture EU-wide attention and to intensify the executive’s accession anxiety.

The cumulative power of undecisive constraints

The main nodes in the coalition were two London-based charities with aims to preserve Romania’s cultural heritage, the Mihai Eminescu Trust (MET) and the Pro Patrimonio Trust. They were networked within British governmental and media circles—MET, for example, is patronised by Prince Charles—within UNESCO, and

---

14 Author’s interviews with Sustainable Sighisoara, 10 December 2005 and 9 January 2006, Sighisoara.
15 Author’s interviews with Sustainable Sighisoara, 10 December 2005 and 9 January 2006, Sighisoara.
16 Author’s communication with Pro Europe League, 7 April 2006.
17 Author’s interview with Pro Patrimonio Trust, 3 January 2006, London.
within Romanian elites in London and Bucharest. They called on their network connexions to help them reinforce the salience and credibility of extra-conditionality. UNESCO sent a ‘fact-finding’ mission to Sighisoara, headed by a member of MET, which warned that severe censure awaited at its June 2002 session in Budapest. If Dracula Park went ahead, Sighisoara would be moved to the Danger List, an outcome perceived internationally as a ‘disreputable thing to happen to a state’.

The EU was persuaded to ‘half-intervene’ next. In the absence of legal grounds, the Commission hesitated; however, a Member of the Culture Committee of the European Parliament, with links to Greenpeace, prevailed on the Committee President to intervene. The latter admonished Nastase by official letter that ‘the international community will be sensitive’ to his permitting Dracula Park and urged him to await the verdict of UNESCO in June 2002. The Culture Committee warned the Romanian government that ‘UNESCO’s ideas and concerns do have influence on the European level’. Lastly, Prince Charles was persuaded to intervene, probably at MET’s behest; during a private visit to Sighisoara, he telephoned Romanian President Ion Iliescu—known for receptivity to signals from abroad—to dissuade him from building the park.

Accession uncertainty sways the executive

Each of these interventions contributed a share to heightening the executive’s ‘alert level’, altering their perception of the risk of non-accession. MET’s articles in the British press, aimed at deterring foreign investors, goaded Nastase into declaring: ‘We must promote an aggressive tourism . . . This is a governmental project; we support it, and this is the sort of thing we want to do, to bring money to Romania’. This suggests the MET’s barbs had stung the executive, yet not enough to sway them; indeed, the executive endeavoured to hasten the project, authorising the issue of $5 million worth of bonds. To entice emulation, Nastase and the Tourism Minister Dan Matei Agathon publicly bought hundreds of pounds worth.

Nevertheless, faced with a continually reinforced transnational opposition feeding their accession anxiety, the executive tried to appease the critics by unilaterally producing a compromise plan in which they made some marginal, ad hoc modifications in hopes of swaying UNESCO’s fact-finding mission. The Tourism

18 Author’s interview with the UNESCO mission, 3 January 2006, London.
19 Author’s interview with the UNESCO mission, 3 January 2006, London.
20 Author’s interviews with DG Environment, 6 July 2005 and 7 June 2006, Brussels.
21 Author’s interviews with an MEP on the Culture Committee, 5 October 2005 and 15 December 2005, Brussels.
23 Author’s interviews with an MEP on the Culture Committee, 5 October 2005 and 15 December 2005, Brussels.
24 BBC, 6 May 2002; and author’s interviews with MET, 2 January 2006 and Pro Patrimonio, 3 January 2006, London.
27 Author’s interview with Sustainable Sighisoara, 13 January 2006.
Minister Agathon promised to decrease the height of the ‘Dracula Castle’ to minimise its visual impact on Sighisoara’s citadel; the Environment Minister Ilie Sârbu pledged to preserve the Breite oaks; the Culture Minister Răzvan Theodorescu commissioned archaeological diggings to evaluate claims that the Park would efface the remains of a Roman road.28 Meanwhile President Iliescu had responded immediately to the intervention of Prince Charles, declaring Romania was ‘open to all suggestions’ and that the project ‘will not be implemented blindly’.29 These efforts failed however. The mission departed with a warning to the executive that UNESCO was poised to excoriate them before the world,30 and this threat was amplified by media reports suggesting the humiliation would risk Romania’s accession.31 The Culture Committee, too, preyed on executive anxiety to try and make them feel they were ‘being watched’ by the EU.32 And although executive morale wavered before Prince Charles, his intervention was still not ‘quite enough’,33 and the most vehement cabinet supporters remained defiant. The Secretary of State for Culture Alin Burcea downplayed Charles’s opposition as merely a ‘personal viewpoint’, publicised by those close to Charles but not by Charles himself (Romanian Parliament 2002).

Nevertheless, it was the extra-conditionality evoked by MET and Pro Patrimonio that finally turned the executive. Using their contacts in the Romanian Embassy in London, the two charities arranged to meet Tourism Minister Agathon on a visit to London soon after Prince Charles’s intervention. Knowing that Romanians ‘feel very flattered’ by his ‘soft spot’ for Transylvania, they represented Charles as ‘fabulous public relations’ who had championed Romania’s interests; to ‘slap him in the face’ would forfeit his goodwill and might trigger a contretemps with the British government. Romania must conserve her ‘special relationship’ with Britain, one of the few member states giving ‘essential and very consistent support’ to her accession.34 Unable to estimate the risk of non-accession rationally, this minister, too, finally yielded. Upon returning to Romania he announced the government would be seeking alternative sites.

To conclude, a transnational coalition exploited executive uncertainty to induce self-constraint. By constructing an extra-conditionality, it seeded the minds of executive members with disinformation which they could not overcome. The cognitive disturbance sensitised them further to the very same disinformational discourses. This skewed the executive’s rational calculation of the odds of achieving their optimum result of both accession and the park. Discourses that in ordinary circumstances would never have moved them sufficed under severe uncertainty to foil plans to which the executive was publicly committed. It is clear that Romania would and should not have been sanctioned by the EU for permitting this project. The executive probably suspected it was too small to hold up (let alone bar) accession. Nevertheless, the

---

28 Author’s interview with advisor to UNESCO, 3 January 2006, London.
29 Author’s interview with MET, 2 January 2006, London.
30 Author’s interview with MET, 2 January 2006, London.
31 Author’s interview with MET, 2 January 2006, London.
32 Author’s interview with MEP, Culture Committee, 5 October 2005 and 15 December 2005, Brussels.
33 Author’s interview with MET, 2 January 2006, London.
34 Author’s interview with Pro Patrimonio, 13 June 2006, London.
cumulative impact of the coalition’s discourses left too few assurances amid such uncertainty that non-compliantness would remain unpunished. The net result was that the executive sacrificed all benefits to themselves in exchange for nothing tangible.\(^{35}\)

The opposition coalition’s pivotal contribution was in constructing an extra-conditionality where no real condition existed. Originating with powerless domestic civil society actors, extra-conditionality was ‘authenticated’ by more influential actors whose approval the executive deemed needful. Insofar as they took it for real, the executive partook in the social construction of extra-conditionality as a credible threat.

*High anxiety eclipses rationality*

The second case, spanning June 2002–June 2003, also found a transnational coalition constructing an extra-conditionality to capitalise on executive anxiety. Unlike in Dracula Park, however, this coalition was only partly successful.

In this case the Nastase government inherited the problem from the previous government, a coalition of centre–right parties, which had negotiated a joint venture between a state mining *régie* and the Rosia Montana Gold-mining Corporation (RMGC) to exploit ore-bearing land in the remote Transylvanian district of Rosia Montana.\(^{36}\) In supporting this project, the then-Industry Minister Radu Berceanu had circumvented the public tender provisions of Romania’s new Mining Act.\(^{37}\) Using open-cast cyanide heap-leaching methods, the operation would entail levelling a mountain honeycombed with ancient Roman mining ruins, and flooding an inhabited valley to build an earthen dam to contain the tailings pond. The local populace, who were suffering 50% (expected to reach 90%) unemployment, supported the company. The central executive, keen to enrich the state treasury to attract foreign direct investment, and to uplift one of Romania’s poorest regions, were also supportive. Even before obtaining the necessary permits, RMGC began buying up properties and, with the connivance of local government and the miners union, pressurising owners who were unwilling to sell (O’Hara 2004).

The resistant property owners organised an opposition movement calling itself Alburnus Maior. Lacking resources or experience, initially they failed to attract notice (let alone support) beyond Rosia Montana. But by chance, Stephanie Roth, a Western environmentalist, did notice, and taking up their cause, transformed it into a professional campaign centred around the impact on the local environment and cultural heritage. Under her influence Alburnus was integrated into a pre-existing transnational network of like-minded actors. The coalition that emerged empowered them with resources, particularly discourses framing accession conditionality as ‘sustainability’, with which they lobbied the EU and the Romanian government. In

\(^{35}\)From their own subjective standpoint the executive might have seen this as rational behaviour, but from the standpoint of an objective observer a rationality so severely bounded is indistinguishable from irrationality.

\(^{36}\)A *régie* is a state-owned agency charged with managing public works on behalf of the government. It is an alternative to the contract system.

\(^{37}\)Author’s interview with former Director of the Romanian Agency of Mineral Resources, 22 December 2005, Bucharest.
particular they accused the executive of conniving with RMGC in circumventing EU environmental norms.38 The Environment Ministry in Bucharest found itself wedged between two lobbies: RMGC and its local supporters, lobbying for the issuance of all outstanding permits, and Alburnus’s coalition lobbying against.39

Accession anxiety undispelled

Nastase was personally drawn into the affair by Mercedes Echerer, an MEP on the Culture Committee of the European Parliament. Calling first at the Environment Ministry, the MEP inquired into public safety and alternatives to cyanide and both the minister and the State Secretary for Environment made ‘visible efforts’ to convince her of their respect for EU standards. She hinted they could conciliate Brussels by commissioning experts to assess environmental impacts and by clarifying RMGC’s ability to bear the post-accession costs of compliance with (prospective) EU standards.40 That the MEP ‘certainly had an influence’ was confirmed by a former director of RMGC, who claimed the Environment Minister’s confidence.41 The cabinet proceeded to forestall the possibility of the Rosia project drawing unwanted attention from Brussels and Nastase himself tasked the Environment Minister with drafting an action plan. The whole cabinet felt anxious: ‘everybody wanted to know whether the Commission was for or against Rosia’ when the plan was discussed two weeks later.42

The discursive construction of extra-conditionality

Drawn in through her connexions with Alburnus’s transnational coalition, the MEP’s personal values manifestly overlapped theirs. Intending to signal to all parties that Alburnus had legitimate concerns that Brussels would heed, lending credibility to the claims that the project violated EU norms, she warned that any mining must comply with ‘EU standards’43 without specifying what these were. Although a draft Directive on Mining Waste was under consideration, the EU had not yet begun to regulate cyanide heap-leaching in the member states.44 As in the Dracula Park case, the MEP prevailed on the Culture Committee to make her an ‘official delegate’ to Rosia Montana, a status which enhanced her authority.45 However well intentioned, she was in fact using her office to wage personal activism. The MEP’s warnings lacked a legal

38Personal communication with Alburnus Maior, 28 June 2005, 7 July 2005 and 31 August 2005.
39Author’s interviews with the Romanian Environment Ministry, 14 July and 17 June 2005, Bucharest.
40Author’s interviews with an MEP on the Culture Committee, 12 November 2005, Brussels.
41Author’s e-mail communication with former RMGC Director who wished to remain anonymous, 4 July 2005.
42Author’s interview with the Romanian Environment Ministry, 14 July and 17 June 2005, Bucharest.
43Author’s interview with an MEP on the Culture Committee, 5 October 2005 and 15 December 2005, Brussels.
44Author’s interview with the Romanian Environment Ministry, 15 October 2005, Bucharest.
45Author’s interview with an MEP on the Culture Committee, 5 October 2005 and 15 December 2005, Brussels.
basis in the acquis and she was actually acting in a private capacity to reinforce Alburnus’s invented extra-conditionality, as is suggested by the subsequent defeat of a motion she proposed to amend the EP’s draft Annual Progress Report on Romania to target Rosia.

The executive omits to draw on transnational coalitions

In a quandary over the coalition’s extra-conditionality, the Environment Minister Petre Lificiu endeavoured to engage the European Commission in resolving the Rosia case. He petitioned it for guidance in November 2002, writing to Environment Commissioner Margot Wallström to inquire what, if any, EU law was applicable and if the EU had banned cyanide-based mining. He also proposed an intergovernmental committee, to include the Commission, to assist the Ministry in resolving Rosia. The Commission demurred: ‘If the EU had been represented on the committee . . . it would have been difficult not to take a [formal] position either for or against the project’. It responded therefore that the decision had to remain with the Romanian government. Wallström disclaimed any EU law banning cyanide mining. Though asking the government to comply with and, if possible, exceed all applicable EU law in force, she admitted that the acquis could not constrain Romanian gold mining. The minister was surprised by the Commission’s disengagement, having expected it to at least express ‘some opposition or give some direction’, so that he would have ‘something to cling to’.

This evidences that many Romanian executive members at that time failed to comprehend the Commission’s proper role. Accession negotiations exposed Romania’s pervasive culture of dependency (Pridham 2007) that both opened it to the Commission’s (arguably) undue influence and impaired the Environment Minister’s ability to integrate into West European peer networks, where allies might have been found especially amongst member states exploiting similar mining techniques.

In 2003 however, the Commission did engage with the case, making Rosia a ‘permanent topic of discussion’ and insisting on regular updates. Worried thenceforward that Romania’s accession timetable might be set back, the Environment Ministry informally sought the candid opinions of the DG Environment and DG Enlargement. In response they were quietly warned that if EU law was not fully implemented, or if an accident happened, their credibility, and thus the accession

---

\[46\] Author’s interview with the Romanian Environment Ministry, 15 October 2005, Bucharest.
\[47\] Author’s interview with DG Environment, 15 March 2005, Brussels.
\[48\] Author’s interview with the Romanian Environment Ministry, 12 April 2005, Bucharest.
\[49\] Author’s interview with the Romanian Environment Ministry, 5 October 2005, Bucharest.
\[50\] Their lack of understanding probably stemmed from the traditional Romanian social construction of the state as a master of serfs—as Russians called Stalin khozyain (‘landowner’)—rather than a social contract.
\[51\] Author’s interviews with senior officials in the European Commission, 24–26 January 2010, Brussels.
\[52\] Author’s interviews with DG Environment, 12 April 2005 and 16 June 2006, Brussels.
\[53\] Author’s interviews with the Romanian Environment Ministry, 5 October 2005 and 16 March 2006, Bucharest.
process, might be compromised.\textsuperscript{54} DG Enlargement even suggested that Romania abide by the draft EU Directive on Mining Waste, then only in the first stages of the legislative process.\textsuperscript{55} The Romanians were allowed to read between the lines that accession would go smoother if the Rosia project were not given approval. Thus informally, the Commission had taken sides against permitting Rosia.\textsuperscript{56}

The Commission had been prompted not only by the transnational coalition’s petitions but also by questions from MEPs and, especially, Hungarian expressions of concern. Its proximity to Rosia Montana made Hungary fear the worst—after being severely damaged by a gold mining accident that had happened at Baia Mare (also in the north of Romania) in 2000. The Hungarian government engaged itself in the Rosia affair throughout 2003, bringing up Rosia in the Council of Environment Ministers as she approached the close of her own accession negotiations. Although without a vote in the Environment Council, the ministers did heed the Hungarians’ concerns and thereafter the Council regularly questioned the Commission about the project, leading to a continuation of monitoring. Hungary insisted Romania should commit to transposing the draft Mining Waste Directive by her 2007 accession date, guaranteeing neutralisation of the cyanide-laced tailings-pond and lower risks to Hungary of another spill.\textsuperscript{57}

Following the Hungarian intervention, Romania set up several bilateral commissions and working groups to facilitate the exchange of information and consultation between the two countries. The Romanians were well aware of Hungary’s ‘extremely negative’ views, and, wanting to maintain good relations, took this to heart in their ultimate decision to proceed cautiously.\textsuperscript{58} Romania’s accession negotiators came to perceive Rosia Montana as posing ‘an extraordinary political risk’, creating not only ‘very serious image problems’ for Romania but also ‘political problems’ with new member states like Hungary.\textsuperscript{59} The executive wanted to avoid this at all costs, given that ‘every member state has a vote, and such things [as Rosia] matter within the entire framework of the process deciding [Romania’s accession]’.\textsuperscript{60}

The executive’s regard for Hungary was not motivated solely by fear that she might complicate their accession; they genuinely wanted to preserve good relations with their newly found accession allies. The Environment Minister claimed he and his Hungarian counterpart ‘worked together extremely well’, and perceived him to be a ‘colleague and neighbour’.\textsuperscript{61} Nastase, too, had cultivated his Hungarian counterpart Viktor Orbán, approaching the Hungarian government soon after the PSD election victory in 2000. Sharing common interests as new members of the European and Euro-Atlantic

\textsuperscript{54}Author’s interviews with DG Environment, 5 April 2005 and 16 June 2006, Brussels.
\textsuperscript{55}Author’s interviews with DG Enlargement, 5 April 2005 and 13 February 2006, Brussels.
\textsuperscript{56}This gap between the Commission’s formal and informal positions differs from cases where the Commission sent ‘mixed signals’ because of internal disagreements. In this case no internal disagreement is evident; a consensus existed within the Commission that differed from the conditionality actually legislated by the European Council.
\textsuperscript{57}Author’s interviews with DG Environment, 5 April 2005 and 16 June 2006, Brussels.
\textsuperscript{58}Author’s interview with senior official, Romania Negotiations Team, 16 June 2006.
\textsuperscript{59}Author’s interview with senior official, Romania Negotiations Team, 16 June 2006.
\textsuperscript{60}Author’s interview with senior official, Romania Negotiations Team, 16 June 2006.
\textsuperscript{61}Author’s interview with the Romanian Environment Ministry, 15 October 2005, Bucharest.
communities, a ‘new way of approaching [their] bilateral relations’ was needed to further these interests. In 2002, after elections had returned the socialists to government in Hungary, Romania and Hungary entered into a formal partnership focused on EU and NATO integration, minority affairs, and economic co-operation—a rapprochement where before relations had been strained over the rights of the Hungarian minority in Romania and the Romanian perception of a Hungarian threat to revise their common border. The likeliest mainspring of rapprochement for the Romanians was an uncomplicated accession, yet the new Hungarian Prime Minister Péter Medgyessy, being a socialist like Nastase, must have also contributed. According to the Romanian Environment Minister Petre Lificiu, relations improved markedly after the Hungarian Socialist Party (Magyar Szocialista Párt) won in 2002 and the new prime minister cemented a friendship with his Romanian fellow socialist.

Rapprochement stemmed from bottom-up inter-governmental cooperation driven by shared interests and identities. This suggests that it was not just ‘rational’ fear of sanctions that governed the Romanians’ behaviour concerning the Rosia project, but also their need to be accepted within a like-minded network of EU executives.

Although powerful Romanian ministers favoured licensing the project, the cabinet as a whole deemed it too risky. Troubled negotiations over the Environment Chapter were coming to a climax and no further complications were wanted. In June 2003 Nastase declared the project a ‘non-priority’ for Romania, and asked parliament to investigate and make recommendations. RMGC understood that mining would not be permitted under Nastase and withdrew its application to await a more propitious time (which came after the PSD lost the 2004 elections).

In this case a transnational coalition constructed extra-conditionality and deployed it to modify executive perception of the risk of non-accession. Unlike in Dracula Park, however, the coalition succeeded only partially. Even this was most likely due to Nastase’s need for acceptance into the network he had so assiduously cultivated since coming to office, which included the Hungarian government and the real risk of non-accession that it posed.

The Environment Council’s intervention notwithstanding, questions cloud the legitimacy of imposing extra conditions, especially compliance with a draft directive. Even the European Council could not in justice have bound an accession candidate to such a condition; the draft might have still been rejected and in any case the EU did not ratify it until 2006; a fortiori, then, both the Environment Council and the Commission were acting ultra vires. Romania’s compliance was assessed against neither the formal conditions of accession nor any informal interpretation comporting with the rule of law.

The executive builds bridges

In June 2003 the executive laid plans to build a motorway linking Romania to Hungary through Transylvania. It was constrained by Romania’s poverty and by an

---

63 Author’s interview with the Romanian Environment Ministry, 15 October 2005, Bucharest.
64 Author’s interview with the Romanian Environment Ministry, 15 October 2005, Bucharest.
agreement negotiated with the EU Commission by its predecessor stipulating that Trans-European Network (TEN) routes through Romania (which skirted Transylvania) had absolute budgetary priority.\textsuperscript{65} Once EU funding had been denied, the executive led itself to believe the Americans would finance a Transylvanian motorway-building contract with the construction firm Bechtel (Romanian Parliament 2004).

The last constraint was their agreement with the Commission to comply with EU public procurement law even before its transposition.\textsuperscript{66} The Commission 'insisted very strongly' that Romania submit all major infrastructure projects to public tender,\textsuperscript{67} using this as proxy for progress against Romania's 'frightening corruption'.\textsuperscript{68} Domestic public procurement law had been formally harmonised with the \textit{acquis} by 2001, but actual implementation 'was nothing short of catastrophic . . . competitive bidding was systematically by-passed and direct attribution [of contracts] was usual . . .' (Negrescu 2006, p. 116). Diversion of funds through public procurement has been a major temptation for Romanian politicians (Mungiu-Pipidi 2004). Public tendering would radically change the procurement regime, impinging on the elite's pecuniary interests.\textsuperscript{69} The government dragged their feet, but were obliged to yield after the Commission refused to close the Transportation Chapter on schedule unless implementation was pledged.\textsuperscript{70} The pledge bound the Romanians to publicly put the motorway out to tender, but keeping this promise would have delayed commencement of the work until after the 2004 elections.\textsuperscript{71} The PSD needed the project to be underway before then to buttress the crumbling electoral fortunes of their only reliable coalition partner, the Democratic Union of Magyars in Romania (\textit{Uniunea Democrat a Maghiarilor din Romania}), the party of Transylvania's ethnic Hungarian minority whose viability was threatened by the revolt of a major faction. The party leadership believed the motorway, linking Transylvania with Hungary and the West, would pacify the rebels.\textsuperscript{72}

Faced with this dilemma, the government sought to speed up construction. In December 2002, Prime Ministers Nastase and Medgyessy announced a joint plan to link Bucharest to Budapest through Transylvania (Amariei 2004), and both agreed on the importance of transport to the EU internal market and to their own economic development. The motorway also had symbolic value: in Nastase's words 'the building of a motorway can, at times, say much more [about relations between two countries] than the many agreements left in the drawers'.\textsuperscript{73} The project had been broached in July

\textsuperscript{65}Author's interview with the European Commission Delegation, 12 April 2006, Bucharest.
\textsuperscript{66}Author's interview with DG Enlargement, 12 April 2006, Brussels.
\textsuperscript{67}Author's interview with a senior official in the Romanian Negotiations Team, 12 June 2006, Bucharest.
\textsuperscript{68}Author's telephone interview with an MEP in the Foreign Affairs Committee, Brussels, 11 April 2006.
\textsuperscript{69}Author's interview with a senior official in the Romanian Negotiations Team, 12 June 2006, Bucharest.
\textsuperscript{70}Author's interview with a senior official in the Romanian Negotiations Team, 12 June 2006, Bucharest and an interview with senior officials in the European Commission Delegation, 12 April 2006, Bucharest.
\textsuperscript{71}Romanian Transportation Ministry quoted in \textit{Evenimentul Zilei}, 16 December 2003.
\textsuperscript{72}Revista 22, March 2004; interview with senior officials in the European Commission Delegation, 12 April 2006, Bucharest.
2002, when the two prime ministers first met. Nastase’s aide-mémoire, ‘On the Strategic Romanian–Hungarian Partnership for 21st-century Europe’, included cooperation on infrastructure.74

The two prime ministers proceeded to seek funding from the EU. In the spring of 2003 Nastase and Medgyessy by joint letter petitioned Commission President Romano Prodi ‘to convince the European Union to grant some special funds for this route’ (Romanian Parliament 2004). Prodi answered they would have to wait until both countries acceded, or else to finance the project from private sources (Romanian Parliament 2004). However, neither prime minister was discouraged by this. Medgyessy publicly stressed that ‘Hungary wanted to see the road run through the middle of Transylvania, not simply skirt it’.75 The Hungarians decided they would ‘use loans and their own [financial] resources to accelerate the process of building motorways’.76

Nastase, too, sought alternative financing. The idea of engaging the Bechtel Corporation came to fruition in July 2003 when Romania and the US signed a Declaration of Intent to cooperate in the transport field. Samuel Bodman, US Deputy Secretary of Commerce, expressed interest in helping develop Romania’s transportation infrastructure as a first step in ‘strengthening’ bilateral relations (Romanian Parliament 2004). It was also ‘a token of appreciation for the support given by the Romanians in the fight against international terrorism’ (Branzan 2004). At this juncture, it was apparently agreed that the Export–Import Bank of the United States (EXIMBANK) would guarantee the financing of projects agreed under Romanian–US cooperation (Romanian Parliament 2004). The Romanians concluded that hiring Bechtel would bring EXIMBANK on board.77 The US and Bechtel had opened a financial window of opportunity the cabinet could exploit to circumvent Brussels’ competing priorities and slip its supranational constraints.

The unavailability of cheap EU money and the approaching elections drove the executive to break its promises to the Commission and forge ahead with US support. The ministers timed the signing of the contract with Bechtel so as to leap through another political window of opportunity that lay open after the close of the Transportation Chapter but before the 2004 elections, and after the announcement by the European Council in December 2003 that Romania would accede in 2007 (if ready). Romanian public opinion cheered the motorway; even ‘progressive’ civil society, paralysed by internal divisions, did not mobilise against it.78

Although civil society actors had protested against Dracula Park and Rosia Montana they favoured this motorway as modernising Romania’s backward, universally vexatious transport infrastructure. The few objectors to allowing such a large contract without public tender protested only symbolically, expecting a priori
that it would have no effect (as indeed it did not). General mobilisation would have failed anyway, as civil society depended on Brussels’ leverage over their government—a leverage already undermined by Nastase’s bridge-building to powerful member states. Brussels’ reaction was swift and vehement; and yet, the sanctions it threatened never materialised. Romania commenced building the motorway in June 2004 only two weeks before the local elections; she then completed negotiations by the end of 2004 and acceded on schedule in January 2007.

**Empowered by bridge-building to member state patrons**

It was only in 2001 that the Romanians realised the importance of patronage in the EU, and began to make up lost time by converting from ‘poor diplomacy’ to ‘professional lobbying’. Nastase proved particularly shrewd at cultivating powerful friends amongst member states and within the supranational organs. Observers of Romanian politics have noted that Nastase allowed many public infrastructure contracts, not on the basis of business judgments, but on the political logic of bridge-building to key member state governments and to the US. Nastase apparently strove ‘not to take sides’ but to please all his friends and ‘keep them on his side’ by distributing ‘presents’ evenly: ‘one present for the Americans and one present for the Europeans’. Allegedly, to cement his friendship with German Chancellor Gerhard Schröder, for example, Nastase approved a €650 million contract to securitise Romania’s borders to the European Aeronautic Defence and Space (EADS) company without public tender. Not ending at intergovernmental level, Nastase’s coalition-building even reached inside the supranational organs. Observers have alleged that Emma Nicholson, the EP’s rapporteur on Romania, sympathised with Nastase, even personally; and that Nastase forged a friendship with Enlargement Commissioner Günter Verheugen, who was often criticised for his permissiveness toward Romania (Pridham 2007).

**Rationality redux**

Nastase’s success in building bridges eventuated in firm commitments to Romania’s accession by key member states, considerably lowering the Romanian executive’s uncertainty. Empowered thereby to reckon the risk of non-accession rationally, they were emboldened to break faith with the Commission. As one senior Commission official put it: ‘They took the risk of circumventing public tender . . . because they were

79 Author’s personal communication with Romanian Academic Society, 18 March 2006.
80 Author’s interview with a senior official in the Romanian Negotiations Team, 12 June 2006, Bucharest.
81 Author’s interviews with senior officials in the European Commission Delegation, 14 April 2006, Bucharest.
82 Author’s interviews with senior officials in the European Commission Delegation, 14 April 2006, Bucharest.
83 Cotidianul, 16 September 2004; Revista 22, December 2004.
84 RFE, 5 February 2004.
85 Author’s interviews with the European Commission Delegation, 14 April 2006 and with former BBC Romanian correspondent, 12 March 2006, Bucharest.
too confident in the good relations they had with certain individuals in the EU, including our former Commissioner Verheugen.6 With greater assurance about the future, the executive could behave more ‘rationally’ in calculating the consequences of alternative courses of action. In contracting with Bechtel they chose that course which seemed to promise the highest rewards.

The Nastase government was empowered, too, by lessons learnt—most likely through networking—about how other member states skirt the public procurement acquis. The Nastase government’s justificatory discourses before parliament were noteworthy for citing member states who had also bypassed EU procedures (allegedly). The Transport Minister Miron Mitrea admitted in parliament that the cabinet had studied how other accession candidates and member states did this. They discovered that even France and Germany cut corners by approving contracts through special legislation (Romanian Parliament 2004). The implicit lesson was that if she refrained, Romania would be a ‘loser’, bearing costs others were able to evade.

By early 2004, when Brussels threatened to suspend negotiations, the Romanians were openly defiant. The Transport Minister Miron Mitrea tartly rejoined that the contract followed the Romanian law of public procurement, having been specially enacted by parliament.7 Nastase himself retorted that, since Romania was paying for the motorway, Brussels should ‘mind its own business’. He even censured Brussels’ stinginess: ‘We have had a lot of promises, but to be frank nothing has moved very fast … Romania cannot wait decades and decades for projects to begin’.8 Vasile Puscas, Romanian Chief Negotiator, deploying inter-governmentalism against the supranational organs, emphasised that the Council in December 2003 had already decided to close negotiations by the end of 2004.9 Even President Iliescu called Brussels’ criticism ‘unfair’, pointing out that European firms had signed many motorway-building contracts with Romania without public tender.10

Few can doubt this was a case of rational behaviour, not emotional discharge, as witnessed by the government’s response to concomitant censure over international child-adoptions and judicial reform. Instead of defiance, Nastase in person presented to the Commission and EP a plan of action with deadlines, including a new Penal Code, judicial reforms eliminating ministerial interference, and a draft bill on adoption which tightened procedures so much that international adoptions were rendered all but impossible.11

Brussels relents

Romania’s defiant behaviour prompted MEPs from the Foreign Affairs Committee to call for suspension of negotiations with Romania. When the call was brought before

86 Author’s interviews with senior officials in the European Commission Delegation, 12 April 2006, Bucharest.
89 RFE, 5 February 2004.
90 ‘President Iliescu Claims that the European Parliamentarians are Wrong in the Bechtel Case’ ['Presedintele Iliescu sustine ca parlamentarii europeni nu au dreptate in cazul Bechtel'], BBC Romanian, 11 March 2004.
91 Author’s interview with the Romanian Negotiations Team, 12 June 2006, Bucharest.
the Committee in February 2004, however, a toned-down report in the more conciliatory language of ‘reprogramming’ and ‘reorientation of the accession strategy’ was voted out of committee and the call for suspension ignored.\textsuperscript{92} This was forced by the Committee’s social democrats, along with British and Italian conservatives.\textsuperscript{93} Disappointed elements of civil society complained that Romania profited from a ‘too permissive’ Foreign Affairs Committee.\textsuperscript{94}

But the Commission restrained itself, too. Though having no right to demand cancellation of private contracts, the Commission wielded a fearsome sanction: reopening the Transportation Chapter, which would have postponed the close of negotiations and sent an ‘extremely negative political signal’ to the whole EU.\textsuperscript{95} This would have suddenly drastically altered all calculations of the risk of non-accession. The Nastase government would have avoided this outcome at all (other) costs; postponement would have devastated them electorally.\textsuperscript{96}

Instead, the Commission opted for softer discipline in order to accommodate the EU’s strategic interests, which they nonetheless hoped would deter the Romanian government from circumventing the public procurement \textit{acquis} in the future. It made an issue of the Bechtel contract in the ongoing negotiations over the Regional Policy Chapter of the \textit{acquis}, and quarantined the motorway and everything connected with it from the Cohesion and other Funds, and European Development Bank financing.\textsuperscript{97} Nevertheless, the Romanians did ‘walk away’ from their solemn undertaking to abide by the public procurement \textit{acquis} and to prioritise TEN.

The Commission’s self-restraint was driven by its political branch—to the chagrin of its career civil servants, who wanted a tougher stance.\textsuperscript{98} The most likely driving force was Enlargement Commissioner Verheugen, whose word on Romania was said to be final, and whose friendship shielded Nastase from the worst consequences: ‘[It] was a good relationship and personal relationships in international affairs and in diplomacy matter in situations of this kind’.\textsuperscript{99} Other motives probably mattered: the Commission may have deferred to the accession timetable set by the Italian Presidency to conserve the culture of consensus upon which the EU relies.\textsuperscript{100} If true, then it was Romania’s patrons, some of whom have been known to circumvent the public procurement \textit{acquis} themselves, who truncated the Commission’s conditionality lever.

Powerful member states were indeed willing to condone discretionary contracts allowed to companies from their own countries. Just months after the Bechtel contract,

\textsuperscript{92}RFE, 18 February 2004.
\textsuperscript{93}RFE, 18 February 2004.
\textsuperscript{94}RFE, 5 February 2004.
\textsuperscript{95}Author’s interview with the Romanian Negotiations Team, 12 June 2006, Bucharest.
\textsuperscript{96}Author’s interview with senior official in the Romanian Negotiations Team, 12 June 2006, Bucharest.
\textsuperscript{97}Author’s interview with senior official in the Romanian Negotiations Team, 12 June 2006, Bucharest.
\textsuperscript{98}Author’s interviews with DG Enlargement, Brussels and the European Commission Delegation, 12 June 2006, Bucharest.
\textsuperscript{99}Author’s interview with a senior official in the Romanian Negotiations Team, 16 June 2006, Bucharest.
\textsuperscript{100}Author’s telephone interview with an MEP in the Foreign Affairs Committee, Brussels, 11 April 2006.
Romania allowed such deals to French companies Airbus and Vinci Construction.\textsuperscript{101} The EADS deal was signed in Schröder’s presence just weeks before the Commission was to publish its Regular Report and close negotiations with Romania: ‘Schröder put the Commission in an even more delicate situation than the Bechtel contract, as European companies and governments were informed and even involved’.\textsuperscript{102}

Coalition-building with member states accurately informed the Nastase government about Romania’s accession prospects, drastically lowering their uncertainty and enabling them to estimate that the risk of non-accession was in fact low. By ‘unbounding’ their previously tightly bounded rationality, the network empowered the Romanians to behave more autonomously—within limits acceptable to the network itself—breaking even the constraints imposed by real conditionality. Their newfound certainty could not have derived merely from the Council’s public announcement in December 2003 of Romania’s accession date; this alone could hardly have emboldened them to defy the Commission openly and flout the \emph{acquis} repeatedly. The escape clause (‘... if ready’) appended to the statement constituted conditionality of its own; surely boundless non-compliance would not have been tolerated even by the member states? The Romanians never ignored the \emph{acquis} massively or at whim, as witnessed by Nastase’s conciliatory response over judicial reform and adoptions. Networking taught them enough about member-state culture to know just where the \emph{acquis} could be circumvented with impunity.

Without network empowerment, they would not have dared defy the Commission at the peak of accession negotiations. Delay would have cost them more, electorally, than appeasing the Hungarian minority would have helped. It was the network that deconstructed the credibility of real (even salient) conditionality and with it the power asymmetry between Romania and Brussels. It is an extraordinary fact, but the Commission found itself constrained to waive even the real conditionality applicable in the motorway case, an outcome precipitated by the Romanians themselves and guaranteed by their transnational coalition of allies, the EU principals of whom the Commission were but the agents.

\textit{Conclusion}

These findings show that, although the hope of acceding to the EU may be the general driving force of candidate behaviour (Schimmelfennig & Sedelmeier 2005b), a broader perspective is needed on the range of stimuli capable of redirecting the driven behaviour in any particular case.\textsuperscript{103} The unexamined relationship between uncertainty, risk, transnational coalitions and bounded rationality is left out of the account in the external incentives model, compromising its predictiveness.

\textsuperscript{101}Author’s interviews with senior officials in the European Commission Delegation, 12 April 2006, Bucharest.
\textsuperscript{102}Author’s interview with DG Enlargement, 12 April 2006, Brussels.
\textsuperscript{103}These findings also challenge the claim of the external incentives model that domestic veto players and the costs of adopting the \emph{acquis} are rendered insignificant by the opening of \emph{acquis} negotiations. Neither factor may predict whether or not an EU rule is adopted formally, but the motorway case shows that they may determine whether the rule is implemented on the ground, which is what matters. The explanatory power of veto players and of the costs of adopting the \emph{acquis} ought therefore to be rethought. For further discussion see Zubek (2008).
Variation in compliantness with real and constructed EU rules was observed in the cases analysed above, contradicting in puzzling ways the predictions of the external incentives model. Transnational coalitions interacting with the candidate government’s uncertainty over accession were revealed to powerfully determine and potentially predict variation in domestic response to external incentives. The coalitions’ effect was to use information (or disinformation) to alter the executive’s perception of the risk of non-accession. Like all rational actors, the executive found it intolerable to confront uncertainty that was of such a magnitude that they could not rationally estimate risk. Thus, in this sense, these coalitions are the ulterior causes of variation in compliantness. However, the proximate cause is the candidate government’s estimate of the variable costs of adopting EU rules/norms—weighed against the invariably high (yet variably discountable) costs of non-accession. Until accession happens, the costs of non-accession can never be discounted to zero; in other words, conditionality cannot really expire before membership. Because the costs of non-accession are so high, even a drastically lowered risk will not discount these costs below the costs of adopting most (if not all) EU rules or norms.

Transnational coalitions that support the candidate government, by allaying accession uncertainty with real information, enable it to estimate the risk of non-accession accurately. This in turn empowers it to choose non-compliance even with real conditionality. Transnational coalitions opposed to the candidate government, by feeding it disinformation purporting to allay its uncertainty over the eventuality of non-accession, can manipulate its calculations of risk. The result may be compliantness with a phantom extra-conditionality. It may be objected that whether conditionality is real or ‘constructed’ does not matter, so long as it determines the candidate’s behaviour. While the point might be valid in the abstract, it casts doubt on the predictive power of the external incentives model. Further research is needed into the predictability of who will construct extra-conditionality when, and of whether and how they translate it into a credible threat. This may depend on sheer chance as well as domestic factors, including intangibles like social constructions of reality that can be investigated but the emergence and effects of which cannot be predicted (Parau 2009). In any case, the leverage of such coalitions over a reform-shy candidate declines in tandem with the waning of accession uncertainty.

The concept of extra-conditionality raises interesting issues about the normative nature of EU law, which the political science literature on conditionality has glanced over. Any member state would have felt affronted had their compliance with a draft directive been demanded before enactment. Such demands on accession candidates fall outside the rule of law insofar as they neither interpret nor elaborate any legally binding EU rule or norm. Though sometimes indiscriminately classified with more legitimate demands as ‘informal conditionality’, demands of this sort rather suggest agent drift than bona fide attempts at clarifying indeterminate norms like the Council of Copenhagen’s enactments. The origin of the extra-conditionality with civil society constituting only a minority inside Romania further raises issues of illegitimacy and illusoriness. It is undisputed that Bucharest flouted conditionality and the rule of law by allowing the Bechtel contract without public tender, and that they were abetted in this by actors inside both the Commission and member-state executives. But the reverse side is the question of the conformity of extra-conditionality itself with the rule
of law. Is that really a ‘law’ which is merely a transitory social construction between minoritarian civil society acting ‘from the bottom up’ (or the ‘periphery’), political entrepreneurs in Brussels and a candidate executive of severely bounded rationality? This is a normative question which bears further investigation.

*University of Oxford*

**References**


