

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

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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