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Romania's accession process

into the European Union:

Discourses at policy-, program-, and project- levels

in the justice sector

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Abstract

Special arrangements were made by the European Union for decision-making on the possible accession of Romania and Bulgaria. A regime of extra procedures was added to the arrangements used for the Eastern European countries which joined the Union in 2004. This paper examines how the process worked out in the Romanian justice sector, which had been identified as a key area for reform to meet minimum EU requirements. We examine the discourses at policy and program levels and in three selected projects, including at design stage, interim report stage, and final report stage. Our discourse analysis of project documents pays special attention to the key structuring device used in the EU's project and program planning: the 'logical framework' or 'project matrix'. Intended as a key discipline on project design, implementation and evaluation, its inherent limitations and typical biases in usage can lead to major divergences between project and design. A technocratic language of planning can then in various ways serve as a cover that justifies whatever happened. We examine the language use and associated behaviour, as a contribution to the understanding both of Romanian accession in the face of sceptical European public opinion and of a methodology in worldwide use.

Keywords

Romania's accession process into the European Union
Discourses at policy-, program-, and project- levels in the justice sector [1]

1   Introduction

In 1995, Romania submitted its application for European Union membership. Accession negotiations were opened in February 2000, together with Bulgaria and with several countries that joined the Union in 2004. Romania and Bulgaria joined three years later, in 2007. This two-part expansion of the EU is known as the Fifth Enlargement.

The twelve year long process for Romania and Bulgaria was marked by considerable tensions. European Union (EU) leaders were keen to absorb these two countries, rather than see them take the route of Belarus or of Serbia under Milosevic and choose for renewed affiliation with Russia. A still longer process might have endangered accession, for many reasons. The EU was keen also to 'regularise' two states immediately adjacent to the new enlarging Union, states of absorbable size but large enough to provide interesting markets and to cause significant disruption if they were major centres of crime, trafficking and conflict. The EU leadership wished yet to ensure true 'Europeanisation', not the entry of Trojan Horses of 'Balkan darkness'. (See Hansen 2006 on the history of West European stereotypes and image formation concerning 'the Balkans'). It sought to enforce the details of EU models on countries that were seen as backward and to whom the EU could dictate. This was essential also to reassure uneasy West European public opinion, such as manifested in the 2005 rejections of the proposed EU constitution. On the other side, the candidate countries were keen to quickly enter the safe haven of the EU, with its huge networks, opportunities and schemes of support especially to poorer members; while proud of their own prior 'European-ness' and capabilities, and not willing to be dictated to. Mediating this field of tensions was the edifice of Accession policy, criteria and instruments.

Special arrangements were introduced by the EU for decision-making on the possible accession of Romania and Bulgaria. A regime of extra procedures was added to the arrangements, such as extensive support to key sectors, that were already applied to the Central and Eastern European countries which joined the Union in 2004; including 'partnerships' with mentor countries, and intensified monitoring of progress; plus a provision to delay entry if progress was not according to the agreed timetable. This paper examines how the process worked out in the case of the Romanian justice sector, which had been identified as a key area for reform to meet minimum EU requirements. It

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examines the discourses at policy and program levels and in three selected projects, including at design stage and evaluation stage.

The application of forms of discourse analysis to project and program documents is relatively unusual. We extend it here to the key structuring device used in EU project and program planning (and very widely internationally): the 'logical framework' or project matrix. Intended as a key discipline on project design, implementation and evaluation, we show how its inherent limits (such as absence of reference to unintended effects, and static character) together with typical biases in usage (top down, monological, rigid: following a single set of objectives declared by the formally stronger partner) can lead to major divergences between it and the reality of events. At later stages, the technocratic language of planning can become a cover that helps to justify almost whatever has happened: including through focusing on the (reported) fulfilment of lower level targets such as numbers of people who have attended training courses, as if these figures are strong proxies for the intended effects; and through sheer repetition of stereotypical technocratic formulations and paper volume of reporting. We examine the language use and associated behaviour, as a contribution to the understanding of a major planning methodology used worldwide and of Romanian accession in the face of sceptical EU public opinion.

2   Romania in the 5th EU Enlargement process, 2000-2007

In order to join the European Union, a candidate member state has to be voted in by each existing Member State and to fulfil the economic and political conditions that are called the Copenhagen Criteria (1993). These require that the candidate country has achieved 'stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities; the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union'.[2] In particular the candidate country must fully adopt the acquis communautaire, the body of EU law and policy frameworks.[3] The emphasis on full 'acquis transposition' illustrates, for many commentators, that EU strategy is based on a 'top-down direction of the process' and that in the accession negotiations the candidate countries are simple consumers of the products and the medicine, without any rights for negotiating the strategy content (Papadimitriou, 2006:7).

Adoption of the acquis communautaire requires adjustment of the candidate state's le-gal framework to respect all EU legislation. Adjustment of

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[2] http://europa.eu/scadplus/glossary/accession_criteria.en/25.09.2007.
[3] The *acquis* '"comprises not only Community law in the strict sense, but also all acts adopted under the second and third pillars of the European Union and the common objectives laid down in the Treaties…. To integrate into the European Union, applicant countries will have to transpose the acquis into their national legislation and implement it from the moment of their accession."'
(http://europa.eu/scadplus/glossary/community_acquis_en.htm/25.09.2007)

legislation is not enough: the institutions responsible for implementing and applying the acquis typically need to be strengthened. In order to sustain the efforts of candidate countries not having enough institutional capacity for policy formulation, but showing commitment to become part of the Enlargement, the Union designed detailed 'road-maps' to show them the way in reform implementation. Together with a policy of 'carrots and sticks', it was an innova-tion for the countries in the Fifth Enlargement. A 'road maps' initiative was begun for Romania in 2002.

Pre-Accession Partnerships are legal instruments defining relations between the Union and the candidate countries. They fix short and medium-term priorities for each candidate country and specify resources which they can draw on for their preparations. A variety of programs, such as PHARE pre-accession assistance and the Transition Facility, were offered to Romania to strengthen its administration and ensure implementation of the *acquis*. The Transition Facility was to provide tools to remedy the weakness of institutions involved in 'acquis transposition'. One tool is 'twinning', which involves secondment of advisers from one or more Member States to a sector deemed to require guidance in the candidate country. These 'Pre-accession Advisers' may be officials from a Member State or hired advisers. They train their counterparts in the candidate countries in adoption and implementation in key sectors of the *acquis*.[4]

In the pre-accession stage, the Romanian government launched the National Program for the Adoption of the Acquis (NPAA) in order to implement the European Commission's recommendations.[5] The lead areas needing strengthened institutional capacity were identified as in Justice and Home Affairs (JHA). But progress registered within the pre-accession stage was slow. Upgrading of the public administration was a centrepiece of EU conditionality, yet just a year before the admission decision 'the successive EC Regular Reports stated that the Romanian public administration is characterized by cumbersome procedures, a lack of professionalism and inadequate remuneration' (Jora, 2006:15). The monitoring reports during 2002-5 also mentioned constantly as areas for improvement the judicial system, anticorruption strategy, external border controls, and law enforcement capacity. There was a consistent tension between the pessimistic tone by EU officials in internal reports and the optimistic tone adopted in the public arena. The latter prevailed during the stages of decision in 2004-5: the seniormost EU leaders and Commission officials settled on a tone of qualified optimism that led to conditional acceptance of Romanian entry by the Member States. The Accession Treaty was signed by the 25 Member States, Romania and Bulgaria in April 2005.

A series of specific conditions remained to be fulfilled by Romania and Bulgaria in order to become EU members in 2007. These included for example for Romania: 'The development and the implementation of an updated and integrated Action Plan and Strategy for the reform of the judiciary… The considerable acceleration of the fight against corruption and specifically against

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[4] http://europa.eu/scadplus/leg/en/lvb/l60020.htm/25.05.2008
[5] See Annex 3 for a list of acronyms.

the high-level corruption by ensuring the strict application of the anti-corruption legislation and the effective independence of the National Anti-Corruption Prosecutor's Office'.[6] Non-fulfilment would allow EU member states to defer or veto Romanian entry. The Commission published monitoring reports twice a year during 2005-2007, 'in order to ensure that this country can meet all duties and requirements of a full-fledged member' (COM (2005) 534 final).[7]

Towards the end of this extended monitoring period, rather than postpone the date of accession to 2008 or veto both countries on grounds that they had not fulfilled the criteria, the Commission promoted 'a mechanism of accompanying measures - for a limited number of areas where they need to see further progress in the months leading up to accession and beyond accession - as well as a mechanism for cooperation and verification of progress in the areas of judicial reform and the fight against corruption and organized crime' (Rehn 2006a; emphasis added). This was an innovative solution found at a time of confusion and dilemmas after the EU constitution referendum, over whether Romania and Bulgaria could join the EU in 2007 'without compromising the proper functioning of EU policies and institutions' (Rehn 2006b). Based on the progress declared and the hypothesis that improvements would continue to be made in the sectors with deficiencies in implementation of the reforms, Romania and Bulgaria were accepted as Member States of the EU from the 1st of January 2007.

The 5th EU Enlargement thus strained the rules that governed the four previous enlargements, and was characterised by resort to new measures, especially for Romania and Bulgaria during the second part of the Enlargement. For example, 'the pre-accession safeguard clauses emerged as a clever instrument designed by the Commission in order to keep an effective pressure on the candidates and to conciliate the worries of some Member States' (Jora 2006:12). Critical judgments have appeared concerning the objectivity of the criteria used to measure the performance of candidate countries. Kochenov argues that the Copenhagen Criteria system 'clearly failed with respect to democracy and a constitutional state' and that 'the Union is operating on a slippery slope of vague causal links and fuzzy definitions.' (Kochenov, 2007:3).

Does the EU's accession strategy ensure coherence, through from formulation of objectives and of support offered to the candidate country, via stages of implementation and evaluation of progress, through to argumentation of a proposal for accession? An opposite hypothesis to consider could be that the EU's approach, including its proclamation of and declared adoption of a package of best practices, formed a ritual of validation; in other words, that there was only one possible political outcome (accession), almost regardless of what was done and produced within the process. Could outcomes always be sufficiently beautified by layers of vacuous reporting of presumed proxy variables and by optimistic projections based on heroic assumptions about the power of EU procedures and models? In an intermediate possible

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[6] http://www.infoeuropa.ro/25.05.2008
[7] http://delegatie.infoeuropa.ro /ROMR2005.pdf/25.05.2008

interpretation, the mindset which produces such pressure to report successes could also generate a top-down style that diverts attention from real potentials and real steps for relevant locally rooted advances.

We will look at the language of the EU's proposed 'best practice' package of admission components and procedures, made up of objective sounding generalisations and of systems for instrumental rationality supposed to implement the package. Specifically, we look at how its 'Project Cycle Management' language was understood and applied in the Romanian field of justice, in particular the judiciary sector, in the process of implementing the acquis communautaire. Reform of the judiciary had been highlighted in a safeguard clause that was applied only to Romania.

As examples of the innovative conditions used in the fifth Enlargement process, particularly for Romania, we look at pre-accession twinning programs in this field. Twinning can be seen as exemplying the intended spirit and rationale of European cooperation. We examine a set of three such projects that had as their overall objective to strengthen the functioning of the Romanian judiciary. Together they formed a project 'fiche' related to priority areas for the judiciary underlined in the National Program for Adoption of the Acquis.[8] The investigation casts light on how the Copenhagen criteria for entry are operationalised and applied in practice, and to what extent their use could become a ritual validation of performance.

Before presenting the case study, in Sections 4 and 5, we must examine the framework which the European Commission specified for planning and management of activities that request EU support.

3   Authoritative Policy Implemented in Managerialist Mode: - become like us by doing what we say

Policy language seeks to enforce authority and order across a broad field of activity. In the traditional ideal-type, a centre deemed to have legitimate authority declares clear goals, whose implications are then derived through an exercise of instrumental rationality, to establish justified stable patterns for action (Colebatch 1998). This traditional model of policy seeks to extend an intra-organizational form of hierarchical management, such as from an army, to intra-societal and inter-societal coordination. How far the asserted authority and declared set of appropriate actions will be respected, within the vertical line of command, and especially outside it, remains to be seen in each case. Not only do many agents lie beyond the direct authority of any single centre, the centre itself is plural and typically has multiple conflicting objectives. In the

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[8] We distinguish 'policy', 'program' and 'project'. 'Policy' applies to a sector (e.g. Justice and Home Affairs), field (e.g., Justice) or higher level. 'Program' refers to a broad grouping of activity within a field. It may include a number of ' projects' (each of which is a focused set of planned expenditures). The terms program and project are however sometimes used interchangeably, since for the EU a 'project' is an administrative grouping of expenditure. A 'project fiche' contains a number of projects and is what we otherwise call a program.

EU's Fifth Enlargement, for example, the Union sought a rigorous adherence to 'the European model' but also a fairly rapid accession for the candidate states.

3.1   Carrots, sticks, and sermons

The EU employed an arsenal of methods and instruments for financial and economic control over candidate countries (CCs) in the Fifth Enlargement. Conditionality was a key feature. EU pre-accession strategy has been to seek the 'right mix of carrots and sticks' (Jora, 2006:1), or 'carrots, sticks and sermons' if we use the typology of policy instruments by Bemelmans-Videc et al. Regulations (allied to 'sticks'), economic means ('carrots'), and advocacy, information and exhortation ('sermons') are tools used by all governments to achieve compliance after 'a decision has been made that some form of government intervention is justified' and now has to be enforced or promoted rather than further negotiated (Bemelmans-Videc, Rist & Vedung, 1998:30). In the case of accession to the EU, the sticks mainly consist of withholding access to carrots (Ionita & Freyberg-Inan 2008); however, as we will see, the EU has in the past typically been keen that applicants will indeed eat plenty of carrots and will join. The carrots (projects and programs) that are intended to encourage, enable and enact acceptance of new regulations must be designed through a standardised set of procedures called 'Project Cycle Management', that represents a leading exemplar of managerialist thinking: a particular sort of 'sermon' that is found in the project and policy documents and the associated manuals and speeches.

'Managerialism' is an ideology of professional 'management' based on private sector management experience which sets explicit standards and measures of performance and emphasizes output controls (Hood, 1995). The language of managerialism consists in large part of normative statements about how managers at different levels should possess the following:

a)   A clear view of their objectives, and instruments to assess and wherever possible measure outputs and performance in relation to those objectives;

b)   Well defined responsibility for making the best use of their resources, including a critical scrutiny of outputs and value for money;

c)   The information (particularly about costs), the training, and the access to expert advice which they need to exercise their responsibilities effectively (Pollitt, 1993:4).

Managerialism can be considered as an ideology, firstly in the sense of a set of beliefs and ideas that belong to a specific group and social arrangement, and that are systematically structured, developed and maintained in order to provide a justification for the preferred behaviour of their proponents (Hartley 1983; discussed by Pollitt, 1993:7-11). Secondly, it often hides important issues, from its proponents as well as from others. The objectives established as 'the project objectives' or 'the policy's objectives' are often not recognised as the objectives chosen by the ostensibly most powerful participants, the process controllers, objectives which are not necessarily held for the project or policy by other stakeholder groups. Managerialism involves attempted enforcement

of the view of objectives held by a particular authoritative group, and seeks to consolidate and extend their authority over other groups.

Managerialist approaches in the 'carrots, sticks and sermons' mode are broadly used internationally. David Ellerman's theory of autonomy-respecting assistance provides a critique based on observing the record of World Bank development assistance approaches and the similar approaches adopted by most other external development funders in the 1980s and 1990s and to a large extent still today (Ellerman, 2004, 2005). The funders presumed that they knew better, indeed far better, than recipients what the latter required; for were they not far more successful? They craved, and correspondingly presumed the real existence of, valid standard rules of good economic, political and administrative practice; and they sought to enforce the supposed general principles, as seen and interpreted by them, upon struggling low-income countries whose dependence had been further increased by high energy prices, debt crises, technological change, out- and in-migration, and other structural features and trends in the world economy. Detailed commitments were laid down in loan agreements and project designs, and policed through machineries of monitoring and evaluation. The record of two decades of such carrot-stick-and-sermon was very disappointing. The prescriptions produced in Northern headquarters were insufficient to fit the varied and changing realities of and in each developing country; mechanisms of learning, to try to find out and build on what really worked in specific local circumstances, were deficient, while monitoring and evaluation were geared more to checking that generalized prescriptions designed in the North were adhered to; and the energies and ideas of participants in the South were too often ignored, suppressed or diverted into short-term self-enrichment or out-migration. Ellerman's Helping People to Help Themselves (2005) proposes an alternative set of principles for the relationships between helpers and doers, so as to build the autonomous and mature capacity of the doer.

Compared to the World Bank, the EU is seen by Ghaziri (2007:131) as an actor of middle ranking on the axis of managerialism, 'in the process of policy making adopting the general discourse of the World Bank and IMF premised on economic, fiscal and managerial reform' (Ghaziri, 2007:184). In recent years, the EU has declared that it will ease its labyrinthine procedures for external cooperation, in recognition of the enormous transaction costs imposed on partner countries and the insufficient responsiveness to their needs, priorities and feelings of ownership (see e.g. the EU's PCM Guidelines of 2004). Little of this applied however in the Fifth Enlargement, which was already underway and involved the minute 'transposition' of a single model of EU laws and practices.

3.2   The logical framework approach

The logical framework approach (LFA) is an important instrument of managerialism, though in some contexts of use it is employed more flexibly and democratically. Devised by consultants working for USAID around 1970, it progressively spread worldwide in international development cooperation projects and also in some domestic uses (e.g., in some corners of local

government). 'The logframe' and 'logframing' became standard, compulsory, preoccupations. In the 1980s major refinements were made by the German development cooperation agency GTZ, many of which were absorbed in the 1990s into the European Commission's model of 'Project Cycle Management'.

A framework created for development cooperation, a context of strong power-hierarchies, was available then for use in the EU's relations with the post-Soviet world, including with states seeking entry to the Union.

LFA centrally contains, first, a method to logically derive a hierarchy of objectives from a problem-situation analysis; and second, a format for project design and description that meets the need of central funding-agency managers for a concise overview of the project's activities and purposes, with emphasis on instruments for monitoring progress and compliance in relation to pre-set objectives and targets. This second feature is the approach's best known face and is what concerns us here: the project-matrix format, used through the stages of design, contracting, monitoring and evaluation. The frame has evolved remarkably little. The EU's version in 2002, when the projects we will examine were designed, differed only slightly from the USAID matrix of 1970. The same applies for the current version, from 2004.

The EU matrix has four columns and four rows. The first column gives a hierarchy of objectives: 1 – planned Activities, 2 – planned Outputs/Results, which should contribute importantly towards 3 – the intended Purpose/Immediate Objective of the project, which should similarly contribute towards 4 – the intended Overall/Higher/Wider Objective. Levels 1 and 2 represent the project itself, and levels 3 and 4 represent the effects it is supposed to lead to. But achievements at those higher levels depend on the operation of forces outside the project's control. So indeed do achievements at the lower levels, though to a significantly lesser degree.

Forces outside project control are to be considered in the matrix's fourth column, where relevant assumptions about key external factors should be identified. The assumptions should be ones that are not self-evidently valid and thus not worth mentioning, (such as 'the sun will continue to shine during the next ten years'), nor ones that are clearly unrealistic (such as 'members of the EU will no longer give high priority to their own national interests, from next year'). A design that is found to require clearly unrealistic assumptions should be abandoned. The assumptions in a good design are plausible judgements about key issues which the project planners have considered with care, but which deserve continuing attention.

The *'vertical logic'* of the matrix consists of a linked series of propositions, each in the following form: If intentions are fulfilled at level X in the objectives-hierarchy (first column) *and* assumptions are fulfilled as specified in the corresponding cell of the assumptions column (fourth column), then intentions will be fulfilled at level X+1, the next higher level. Only if these propositions are coherent, and the assumptions are realistic, is the design in fact logical. Strangely the vertical logic thus concerns two maximally separated columns in the matrix. This reflects, firstly, the emergence of LFA from engineering design procedures in USA in the 1960s, where there were expectations of high control within the area of engineering action, and secondly, the associated preoccupation of control engineers – and foreign aid

managers – with close monitoring of the achievement of intended objectives rather than a prime focus on monitoring the fulfilment of assumptions, let alone on the occurrence of unintended effects. So, between the first and fourth columns sit two columns for monitoring performance in terms of intended effects. The second column specifies indicators and, typically, even targets for such performance; and the third specifies where the required information for checking will be found. Each row should be logically coherent (the *'horizontal logic'*): the indicator should be valid and reliable for showing the project's distinct contribution at that level; and the source of information too should be relevant, reliable and feasible.

The danger arises that the checking of vertical logic is disrupted by the interposition of the performance monitoring apparatus. With the assumptions column marginalised at the end of the format, assumptions checking can become superficial or absent. Vertical logic then becomes outweighed and undermined by the priority to monitoring. This is partly disguised, for a project design with a rigorous but irrelevant vertical logic can be readily produced: 'If the assumptions required for project success are present then the project will be successful'. The assumptions column is easily filled with lists of wishful thinking – or not filled at all, thanks to an implicit meta-assumption that the project exists in isolation from other forces. A method intended to encourage systematic realistic thought can lead towards the cheerful but unhelpful chorus that: 'The best results will be reached given the best conditions (/best intentions).' One of us has called this the 'lack-frame' syndrome (Gasper, 1999; 2000b).

The typical preoccupation with performance monitoring of a narrow type (asking 'Have you done exactly what you contracted to do?', rather than 'What important results and costs have occurred as a result of the project?') involves neglect of 'side-effects'. It implies managerial indifference to other people's objectives and ignores what may be the main effects (Gasper 2000a). Further, the elaborate project design can become not a basis for ongoing systematic and creative thinking, responding to emergent new information, ideas and challenges, but a restrictive and rigid contract, intended by a mistrustful funder for control of a supposedly unreliable recipient. This is the 'lock-frame' syndrome, whereby recipients are held accountable (at least on paper) to a partly outdated system of objectives.

The logical framework is a very simple format, a one-table overview of a complex of practices. For the convenience of head offices, it tries to reduce all projects to the same pattern, in which just a few steps will take us from tangible inputs through to broad development objectives. Like any simple tool for dealing with complexity it then needs careful handling. Well used, it can help; crudely used, it can mislead. But even in the latter case, the method's intensive language of objectives and indicators may help to legitimate plans and activity, even when they are poorly conceived (cf. Colebatch, 1998).

Annex 1 shows the matrix for a cluster of three projects in the Romanian justice sector. The Overall Objective could perhaps be reformulated as 'Compliance with EU models and procedures', and beyond it is implied a further objective of 'Achievement of European norms of performance'. Those higher objectives are immutable, politically given criteria, derived not from a

situation analysis but from the given vision of the EU and accepted by the candidate country in its request for membership.

3.3 The EU instruments and procedures for institution building in candidate countries

Three main sources of expertise and financial assistance were provided by the EU for a candidate country (CC): the PHARE program for building capacity, ISPA for structural policy support and SAPARD in the agriculture field. PHARE programs have two main priorities: institution building and investment.[9] The institution building work concerns components and processes that strengthen the economic, social, regulatory and administrative capacity of the CC in line with EU standards (SEC/1999/1596 final:4). 'Structures, strategies, human resources and management skills' are necessary resources for 'the implementation of the acquis communautaire and the preparation of a coherent policy in line with the principle of economic and social cohesion [sic]; the fulfilling of the first Copenhagen Criterion: the stability of the institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities' (ibid.). 'Twinning' is one PHARE instrument in institution building, for transfer of expertise and knowledge from particular member state countries to a candidate country.

Procedures required by the Commission are laid down in exhaustive manuals. Commission manuals and its documents as a whole characteristically use decisive, doubt-free language. The continually repeated term 'guaranteed', for example, comes to refer not only to mechanisms of checking and support but helps to convey a certainty of fulfilment.

While the Commission in Brussels supervised the procedures, its implementation tasks were delegated to its Delegation in the CC. During the pre-accession stage, the Delegation was vested with most financial and contract management decision power. Monitoring of program implementation was checked by a Joint Monitoring Committee composed by representatives of the CC and the Commission. 'In order to ensure the effectiveness of monitoring, each Financing Memorandum will incorporate objectively verifiable and measurable indicators of achievements with regard to financial and physical inputs, activities, outputs and objectives and the timescale for implementation.' (SEC/1999/1596 final, art 5.2: 14).

The following sections consider how the EC method was applied in the Romanian field of justice.

a) First, we situate the design of projects within the political context; looking at the Romanian field of justice as treated in the EU's *policy formulation* (Section 4.1), and at the influence of the EU's design format (the 'logical framework' approach) (Section 4.2). We will consider the extent to which the programs offered were based on two-way interaction or a one-way approach, and later how this affected their achievements in terms of building capacity.

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[9] http://europa.eu/scadplus/leg/en/lvb/l60020.htm/25.05.2008

b)   Specifically, we analyse the project matrix (2002/3) for a cluster project with three twinning components concerning key institutions in the judiciary sector, to see how far it was built in a coherent manner (Section 4.2; *program design*)

c)   Next, we analyse an interim evaluation (2004/5) of one project from the cluster -- the PHARE Twinning project between Romania and the Netherlands: 'Assistance in strengthening the independence and functioning of the Romanian judiciary system' – in order to find out what the program design had neglected or marginalized (Section 4.3; *program/project implementation*)

d)   Lastly, we review the evaluation done for the cluster (2005); we will look at the interpretation of data and at limitations of the method used, namely the scheme of evaluation prescribed by the Commission (Section 5; *program evaluation*).

In other words, we will look at the planning, implementation and evaluation within a designated top priority field and sector, with special attention to reforms in a priority sub sector, the judiciary; and in particular at the attempts to transform the key institutions that represent and promote the independence and efficacy of the judiciary.

4   The EC Method Applied in the Romanian Justice Sector – Policy, Program and Project Design

4.1   The policy design in relation to EU priorities and the Romanian justice sector

For the European Commission, the first step in planning is identification of the needs or problems in a policy sector. In the case of accession to the EU, the 'needs' are identified according to the degree of divergence from the EU model, and are specified in a 'road-map'. In line with the Roadmap recommendations, Romania adopted in 2003 a comprehensive Strategy aiming to reform the field of justice (Government Decision no. 1052/2003). The objectives covered by the strategy address the following:

> *Legal certainty*: increase impartiality, transparency, credibility and effective-ness; create a unitary jurisprudence; complete transposition of the acquis com-munautaire in the field of justice; improve the judicial system's capacity in ap-plying the law and consolidate the administrative capacity; continue the process of penitentiary system reform.

> *Quality of judgements*: reasonable periods of time for trials; structural changes of the judicial system organisation, aimed at restructuring courts and prosecu-tor's offices based on criteria of effectiveness together with the specialisation of certain courts and prosecutor's offices to solve cases in special matters; reform the administration of justice and ensure the resources necessary to the accom-plishment of the justice act; professional training for magistrates and auxiliary personnel.

Independence of the judiciary: ensure the transparency of judicial activity, by interaction with civil society; define the prerogatives of the Superior Council of the Magistracy (SCM) and of the Ministry of Justice, in order to consolidate the independence of the judiciary; establish the magistrates' statute – their rights and obligations. (Fiche projects 2004-06).[10]

To move to create an independent judiciary system in line with EU standards, the Romanian government took both legislative and organizational initiatives. To separate legislative and executive power, an independent Superior Council of Magistrates (SCM) was established, autonomous from the Ministry of Justice. For educating the magistrates in European law, a similarly independent National Institute of Magistrates (NIM) emerged. The two organisations benefited from technical and financial support from the EC, including cooperation with experts from different member states.

As a result, in 2003 the revised Accession Partnership with Romania recommended the following measures in the field of justice: 'Develop and implement a strategy for the reform of the judiciary that will: ensure full independence in particular by: establishing a transparent system for recruiting and selecting magistrates. Enhance the professionalism of the judiciary in particular by: improving training programs in the National Institute for the Magistracy (NIM): strengthening the ability of the National School of [Court] Clerks' (Fiche projects 2004-2006, ibid.). These recommendations and the objectives of the Strategy paper became tasks for senior managers, departments and autonomous institutions such as NIM and SCM.

Of 15 projects designed for the justice and home affairs field already in 2002, three projects were for strengthening NIM and SCM. These projects are the object of our analysis[11], from the stage of project design (2002/2003) to the stages of implementation (2004-2005) and mid-term evaluation (2005). The three together constituted a project 'fiche', or, in our terms, a program:

- A: RO 02/IB/JH-01 'Strengthening the functioning of the Romanian Judiciary and its representative body – Superior Council of Magistrates' (18 months):

- B. RO 02/IB/JH–02 'Further Assistance for the Development of NIM and TCC' (18 months; TCC is the Training Centre for Court Clerks);

- C: RO02/IB/JH-03 'Creating and strengthening conflict analysis and resolution capacities by introducing alternative means to the judiciary in solving civil and commercial cases' (6 months).

Implementation was due to begin in July 2003, with Components A and B due to continue through 2004, while Component C would finish at the end of 2003. In practice most such projects start with a delay of at least several

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[10] http/europa.eu.int/comm./enlargement/fiche_project/index.cfm /23.09.2007)
[11] The program is selected at random out of those which had adequate accessibility but not chosen as a prototype for the Justice sector. Our assumption though is that any projects in this field should score high and show strong performance since the sector was under the closest supervision by the EC.

months, often a year (cf. Papadimitrou & Phinnemore 2004). Component B which we focus on in section 4.3 started with a delay of about six months.

4.2 Investigating the logic of program design: reading the program matrix

In investigating the logic of the program matrix, which is given in Annex 1, one might distinguish the limitations of the method behind the matrix – rooted in its philosophical approach and its conception of policy processes – and deficiencies in how the method was understood and applied. In practice it is difficult to fully separate these, but we start with some matters that can be seen as poor use of the logical framework approach, then turn to issues that reflect the parameters of this policy exercise and others that show limitations of the method.

A. The manner in which the matrix is filled reflects that the guidelines are confusing, ignored or difficult to apply:

1. *The vacuous correspondence between vertical levels.* The matrix mixes levels into a confusing and overcrowded scheme. The relation of results and activities appears as tautological. For example, intended results are described such as 'In-service training curricula of NIM improved' and the corresponding activity simply repeats the idea: 'to improve the design of the in service training curricula of NIM…'.

2. Vacuous indicators. The objectively verifiable indicators are merely restatements of the overall objectives, with the same level of generalization and close or similar meaning. For example, the project purpose (in component A) 'Institutional capacity and functioning of SCM enhanced in line with EU requirements' has as its objectively verifiable indicator 'By 2005 the SCM will be strengthened in line with EU requirements'. Such vacuous indicators are rhetoric of managerial assertion, in place of scientific substance.

3. Absent indicators. As we move away in either direction from the Results level in this matrix approved by the Commission, the indicators column becomes empty. At Activities level this is perhaps because in the EC's schema Inputs are (rather misleadingly) taken as the indicators for Activities. But at the higher levels too, no meaningful indicators are given. The supposed connectors with *the empirical reality are not in place.*

4. Vague formulations within a ritual of validation. Items mentioned under the sources of verification include vague references in eclectic style: 'reports; statistics; annual'. (This is typical of other such projects too.) Correspondingly, the manner of verification and time references were barely referred to in the later reports during program implementation. This makes the language of verification one of ritual validation, not of real comparison. There is no serious correspondence to the empirical level. If for example the objective given in the design was that '100 magistrates will be trained by 2005', the 2005 report will dutifully remark '100 magistrates were trained'.

B. Top-down approach

1. Constantly reiterated in the design matrix are the words 'in line with EU requirements'. The design of the project starts from priorities which have been externally fixed a priori as a political agenda, so the needs that it addresses are given and not negotiated. They follow from the 'road-map', the EU prescription. The actual needs of beneficiaries of the project and the insertion of the scheme into local reality are not investigated in the phase of design.

2. As part of a top-down perspective, the design shows extreme simplification. It vaults from mundane inputs to vast objectives in just three or four steps.

3. Due to the top-down approach and prescriptive rules fixed by EU, the concept formulation is stereotypical and oversimplified. For example, one ambition is 'to strengthen the Romanian judicial system in line with the EU model'. 'The EU model' is the prototype. Yet, in practice, 'the EU model' must be created in a specific context and must blend expertise coming from European experts from different countries, who interpret 'it' differently.[12] In Twinning projects, including this one, the expertise is sometimes offered by two MS countries and the 'unity' of 'the EU model' is an issue of negotiation. The model gets born ad-hoc out of an encounter between different expertises, as a compromise or according to the values of whoever was able to impose his will. Besides the fact that in reality the 'EU has no EU model with which it can ask the accession country to comply, there is no methodology for how to put these abstract principles into practice or how to monitor their implementation in the developing public administration as there is no acquis in the field the acceding countries must implement .' (Ionita & Freyberg-Inan, 2008: 21).

C. Mechanicist determination: one cause → one effect. The program contains three project components each with a similar overall objective: 'Contribution to the improvement of the Romanian judicial system'. This box is easy to fill in. But elsewhere the design stresses separate statements of objectives per project. A one cause → one effect mechanism is the only type considered. How the overall objective is then 'guaranteed'? Although the final objective is shared by the three components, the scheme lacks a system of convergent action for achieving compatibility and convergence in other objectives, actions and results of the components. The degree to which the relevant Copenhagen criteria can be reached as result of the convergent actions of these three projects remains questionable.

D. The marginalisation and trivialisation of attention to factors which will prevent fulfilment of the intended results. The sequence of the horizontal chain is: Objective – measure (verifiable indicator) – sources of verification – assumptions. Assumptions come last. We saw that this arrangement can endanger serious attention to assumptions and generate propositions of the form 'the best result will be obtained under the best conditions'. In the program under study the

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[12] As stated for the project implementation level (Project Covenant, component B) "Romania's experts will meet both French and Dutch experts to compare their systems and will develop its national strategy according to the EU standards deriving from these comparisons." (Project Covenant: 29)

danger intensifies, for the higher objectives are formulated as mandatory. The assumptions that are examined and stated may then be restricted to those required to reinforce commitment to the given destination: they must 'fulfil the prophecy'. Consequently, alternative scenarios will not be seriously discussed, and the possible failure of the proposal is effectively ignored.

Table 2 shows that these features apply to the Romanian judiciary case, by considering the assumptions formulated in the last column of the matrix..

TABLE 2
Assumptions formulation in the program design stage, for the three-project fiche

Assumptions in program design	Comments
1. The relevant legislation on judicial organization is compliant with EU requirements	The formulation of assumptions is made exclusively in favorable terms.
2.1 Willingness of the NIM and TCC to assimilate the recommendations of the contractor partner	Looking at the types of verbs and the manner in which the assumptions are formulated, the verb for Romanian institutions is passive in character ('assimilate') versus the active stance of the EU side (e.g., 'recommendation of the contractor'). This reflects an asymmetry of power, in which one part takes what is given, which is presumed to be best.
2.2. Willingness to enforce alternative means of solving conflicts	
2.3. Full commitment of the parties involved	
2.4. NIM and TCC implemented the recommendations of the experts 3.1. Successful implementation of other previous and ongoing related projects	Willingness and full commitment are the only preconditions required from the Romanian part for achieving successful results.
3.2. The training seminars are fully completed	The expertise is given to be assimilated by the trainees in line with the recommendation of the contractor. The relevance of 'expertise transfer' is measured in 'EU units of compliance' without need to look into the 'consumer needs': what is relevant is simply what is compliant with EU norms.
3.2. The CC network developed all the training activities.	

The narrative is simple: expertise from the EU contractors will be absorbed by the trainees, following the contractors' recommendations. The assumptions are equivalent to this: the Romanian side will do as it is told. The willingness of the Romanian institutions ('doer') to implement (assimilate) what the EU ('helper') recommends is explicitly assumed. The relevance of the expertise transfer is presumed implicitly, with no need for specific examination of the situation of intended beneficiaries; what is relevant is what complies with the EU model. Possible unintended effects are not considered seriously. The context, the situation from where the Romanian-side doers start, is largely ignored.

F. The absence of understanding of the specifics of the Justice and Home Affairs (JHA) sector. The sector of JHA requires a specific language and new approach, adequate to explore concepts such as 'rule of law, good governance, freedom'. Without such tools the managers of the reforms in the candidate countries struggled to conceptualise, implement and measure the impact of such elusive and multi-faceted themes (ECOTEC, 2006). No PCM manual existed to show how to conduct a risk assessment in this field. No general manual is adequate to the specific demands of the sector, and the methods in the EC's PCM

Guidelines are less universal than they claim. In the 2004 Guidelines, for example, all the project examples come from health, industry, and environment; there is no reference to crosscutting sectors such as JHA and to their methodological requirements. A language to make better sense of the JHA sector is essential if plans and evaluations are not to turn into charades, in which fairy stories are told of how small deeds contribute to giant achievements.

The Thematic PHARE Evaluation Report (ECOTEC, 2006) on support for transfer of the JHA Acquis to the twelve CCs during the Fifth Enlargement stresses repeatedly that adoption of legislation is far from enough: 'the requirements… [for] adequate standards of administrative, judicial and executive policy and practice, are particularly extensive in this sector' (Key Finding #1), but 'have not been a significant or structured component of PHARE support' (Conclusion #6). Yet despite this extra complexity, 'no special guidance was provided' (Key Finding #2), and the real impact of PHARE activities in the JHA sector is open to doubt (Key Finding #3 and Conclusion #6). Much activity was ad hoc and driven by pressure to disburse (Conclusion #3).

Concluding, a project matrix is a simple conceptual tool useful as a starting point in ordering the priorities and tasks of project planners, but it fails in covering complex tasks involving many actors and operating with differentiated information at different levels of policy making. Its construction is limited by the assumption that reality can be captured through an algorithm easily readable by top managers and leaders, by just following the manual's instructions. We have seen the 4x4 boxes of the matrix working in a restrictive way, encouraging a mechanical application of principles, and excluding serious thinking about alternative scenarios. The project matrix for these three key projects of justice reform provided instead a format for ritualistic validation of the pre-set objectives and standard activities.

4.3   The implementation stage did not validate the assumptions – but they remained

A key role of analysis during implementation should be to profile what was marginalized or excluded in the stage of design. We do this for component B in the program, in which the new National Institute for Magistrates (NIM) and the Training Centre for Court Clerks (TCC) benefited from assistance and Member State expertise from the Netherlands and France, during nineteen months in 2004-5. The findings are based on project descriptions and interim reports. The main project description during implementation is the 'Project Covenant', which is based on the successful bid made via a member state government to provide a detailed plan of how to implement the broad conception given in the program design that we just looked at.

The goal of the project was to assist NIM and TCC in strategy development, curriculum development and training activities in 2004-2005. Almost every line of the project description uses the language of adjustment to EU models; EU requirements and EU legislation (see Table 3). Best practice here means EU practice. Results are presented as 'guaranteed', conveying not

just the sense that they have specified sources of backing – relevant activities have been planned – but that they are solemn commitments which will be achieved with near-certainty and whose non-achievement would be a matter of some shame.

TABLE 3
Project description: RO 02/IB/JH – 02
' Further Assistance for the Development of NIM and TCC'

Goal: to contribute to the Romanian programme for approximation to and harmonisation with European legislation.
Objective: to assist the 'National Institute for Magistrates' (NIM), and the 'Training Centre for Court Clerks' (TCC) in strategy development, curriculum development and training activities'.

Guaranteed results

1. A National Strategy of NIM in-service-training in line with EU-requirements drafted and approved by the NIM.

2. Improvements in the in-service training curricula of NIM effectuated and approved by the NIM.

3. A system of trainers for in-service training of magistrates in line with EU-model set up and functioning.

4. Training for up to 700 magistrates in both EC and national matters in line with EU-standards delivered.

5. Legal documentation on best practices, jurisprudence and relevant EU legislation for each training seminar designed.

6. An institutional policy of TCC, guaranteeing autonomous functioning, drafted and approved by the TCC.

7. A system of trainers for in-service training of auxiliary staff in line with EU-models set up and functioning.

8. A national strategy of TCC for in-service training of auxiliary staff in line with EU-requirements drafted and approved by TCC.

9. Training for up to 420 auxiliary staff members in both EC and national legal matters in line with EU-standards delivered.

Legal documentation on best practice, procedural techniques and legal provisions for training courses designed.

Source: Project Covenant, p.3.

The assessment of risk factors external to the project was formulated such as:

> Political, economic and natural factors. Although not likely, political changes resulting in changes in policy with regard to the judiciary might interfere with project implementation. Economic development resulting, e.g., in price increases could affect the financial viability of the project. Likewise, political or economic developments leading to strikes and other forms of public disorder could disrupt project. So could natural disasters (e.g. floods or severe winters). (p.29)

The statements are commonplaces that fill the required boxes within a bureaucratic format. The severity of such risks in terms of degree of impact, and possible ways of mitigating the impact, were not discussed.

The statements on risk factors internal to the project were similarly routine remarks such as could be made for any project (p.29; comment in italics is added):

> 1. All partners are [*i.e., must be but might not be*] fully committed to the project.

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2. Nevertheless, unforeseen non-availability of experts and/or trainees could reduce the quality of the program.

3. A risk that needs closely monitoring by the project management is incompatibility of the expert interventions/contributions with the project's goal and objectives.

4. Timely signalling of internal and external factors threatening the implementation of the project and taking adequate counter-action will require close monitoring by the project management, the PAA in particular.

5. …sufficient [CC] staff should be made available to begin and to continue the results after…

The interim reports during program implementation declared that the objectives mentioned in the project design were fully achieved ('validated'). That the objectives were 'achieved' was 'proved' by the number of sessions of training offered to clerks and magistrates following the new curriculum. Acquis transposition with respect to the Copenhagen Criteria was reduced to counting the number of magistrates trained and number of manuals written as tools for knowledge transfer in EU law matters. Thus, the transfer of knowledge became the only component considered with respect to achievement of the Copenhagen criteria. How this knowledge, if gained, is used and with what effect, was not assessed.

Other evidence, including the Interim Evaluation Report for the field of Justice (ECOTEC 2005), indicates that some key assumptions were not fulfilled. Several of the foreseen internal risks became reality, and also some unforeseen ones. Although the institutional policy of the NSCC and a national strategy for in-service training of auxiliary staff were addressed, the domestic human and financial resources were not put in place and therefore the content of the policy could not yet be fulfilled (see also section 5.4 below, on sustainability of the project). In general, insufficient Romanian staff was available or recruited to meet the long list of objectives that we saw in Table 3. Similarly, the local institutional capacity (as something going beyond just institutional commitment or appointments of staff) to absorb the expertise and its impacts was limiting, but not recognised as a problem in any stage of the project. The logic of the principle that 'best results will be reached given the best conditions' was clearly insufficient.

The assumption of 'willingness of the NIM and TCC to assimilate the recommendations of the contractor partner' was also refuted. Local organizations had their own recommendations. As noted in the Interim Evaluation Report, the cooperation had 'initial problems, including the need to change both project leaders [from the Member State and from Romania], changes in the management of NIM and delays in starting activities' (ECOTEC 2005: 9). In the end, the PAA also withdrew early. Thus all the leading figures were replaced. This failure of the ideal model of cooperation seems to have been viewed as bad luck rather than as reflecting any systemic flaw in the model, and so did not bring in the evaluation report any analysis of the dynamics of the interaction or recommendations for future projects. The 'transfer of expertise' from MS to CC countries continued under the same

scheme, by just replacing the actors. While ad hoc adjustments were made, the non-confirmed assumptions were not revised.[13] The problems of clashing expertise or inappropriateness of the model transfer to Romanian institutions remained out of the field of vision of the project evaluators and designers. Thus assumptions exist that, whoever the EU experts are, a consensus will be reached between them on what 'the EU model' means, as well of course that the model – whatever it is – will work. The problem of leadership in a multi-cultural space, and issues of the social, political and cultural profile of the actors and their personal values, remains neglected dimensions of design. In sum, the EC scheme of design and monitoring reflected a philosophy of a presumed value-free system, conceived apart from any 'cultural, psychological and linguistic context' (Fischer, 1995:11), and was marked in practice by rituals of validation.

5   Reading the EC's 2005 interim evaluation for the Romanian field of Justice

Analysis of the frames and argumentation used by external evaluators hired by the EC helps us to better understand both the projects and programs in the justice field, and the problems in the Commission's strategy and methods. The Interim Evaluation Report for the Romanian field of Justice (ECOTEC 2005) serves us as a source of secondary data analysis and as itself an object of analysis.

Guidelines and supervision for evaluation are given by the Evaluation Unit in the Commission's Directorate-General for Enlargement. Following the Commission's Project Cycle Management manuals, five broad evaluation criteria are used, related to different stages of the policy cycle: relevance, efficiency, effectiveness, impact and sustainability.

- The *relevance* of the project is defined as related 'primarily to its design and concerns the extent to which its stated objectives correctly address the identified problems or real needs' (PHARE I.E. Guide, 2004:13).

- The *efficiency* criterion is defined as 'how well the various activities transformed the available resources into the intended results (sometimes referred to as outputs), in terms of quantity, quality and timeliness. A key question it asks is 'have things been done right?' and thereby also addresses value-for-money, that is whether similar results could have been achieved more by other means at lower cost in the same time' (PHARE I.E. Guide, 2004:13)

- The *effectiveness* criterion, in the Log Frame terminology, concerns how far the project's results were used or their potential benefits were realised - in

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[13] In another project the clash of expertise between experts from different Member States was such that one MS was assigned to work exclusively on the institutional infrastructure and the other exclusively on capacity building or expertise transfer. The lack of coordination between them showed an inappropriate institutional mechanism in relation to the expertise received or their inappropriate expertise in relation to the organisational design.

other words, whether they achieved the project purpose. The key question is what difference the project made, as measured by how far the intended beneficiaries really benefited from the products or services it made available. (PHARE I.E. Guide, 2004:13)

- The term *impact*, referred to also as outcome, denotes the relationship between the project's purpose and overall objectives, that is the extent to which the benefits received by the target beneficiaries had a wider overall effect on larger numbers of people in the sector or region or in the country as a whole (PHARE I.E. .Guide, 2004:13).

- *Sustainability* relates to whether the positive outcomes of the project at purpose level are likely to continue after external funding ends, and also whether it's longer-term impact on the wider development process can be sustained at the level of the sector, region or country. (PHARE I.E. Guide, 2004:13)

Diagram 1 shows how these criteria, listed in the left hand column, are meant to correspond to particular links between the levels in the hierarchy of project objectives.

Diagram 1
The PHARE Interim Evaluation Scheme
(PHARE Interim Evaluation Guide, 2004:12)

Evaluation levels		*Log frame levels*
Impact & Sustainability link (rests even more on wider risks, assumptions and conditions, many outside direct control)		**WIDER OBJECTIVES** Overall lasting change, both at the level of the project/programme and beyond it
Effectiveness link (depends on risks, assumptions and any conditions that apply, sometimes beyond control)		**IMMEDIATE OBJECTIVES** Benefits actually received
		RESULTS Confirmed planned deliverables
Efficiency links (from means through activities to results; look also at any assumptions and conditions that apply; sometimes beyond direct control)		**ACTIVITIES** Process of converting inputs into results
		MEANS (Inputs) (material, personnel & financial resources)
Relevance to the identified problems or the real need that is to be addressed		**DESIGN & PREPARATION**

An 'in-depth' evaluation, covering in total 15 programs within the JHA chapter, was conducted from November 2004 to January 2005 by ECOTEC, an independent body hired by the EC to study progress of the EU Pre-accession Instrument for Romania. The report made overall recommendations

for the JHA chapter and specific recommendations for each of its seven sectors, one of them being the field of Justice. The cluster or fiche of projects that we discussed in section 4 above was the sample taken for evaluation in this field.

Component C of the cluster is, without explanation, barely mentioned in the report. As a 'Twinning Light [Lite]' it had no MS expert continuously present, only a few consultancy missions. Within component B, the National School for Court Clerks is also barely mentioned. Consequently, two institutions from the three are examined in the report: NIM and SCM. Sometimes these two Twinning projects are discussed separately but sometimes jointly, despite being both important, and distinct and diverse in character, activities and performance.

The components were assessed according to the five criteria of performance mentioned in Diagram 1. The technique used was score rating: the program performance was rated by individual evaluators on a scale from Highly Unsatisfactory (-2) to Highly Satisfactory (+2) for each aspect; the final grade was the average score on the various aspects. The evaluation was thus reduced to a numerical indicator lacking any force of expression and argumentation in relation with the (thin) narrative that was provided. Evaluation of a project should ideally '[contribute] to the clarification and critique of the values driving the policy or [establish] a basis for restructuring the problem.' (Dunn, 2004:58). It should at least offer more than a recording of supposedly achieved results on such a primitive scale, which can become a substitute for the reality under evaluation.

The evaluation of progress in the JHA chapter and the recommendations made for improvement are given in Annex 2. For the field of Justice, the evaluation presented the following findings.

5.1   Relevance – for whom and for what?

The relevance of the program was discussed with reference to the political criteria in the Copenhagen Treaty: 'the independence and integrity of the courts for the functioning of a democratic society'. The indicated tool in achieving the mentioned goal is 'the road maps drawn by EU […] developing and implementing an up-dated and integrated Action Plan and Strategy for the reform of the judiciary in Romania' (ECOTEC, 2005:9). Given that all the political requirements are integrally related to the objectives of the program, its relevance should be high. Yet the score given for relevance was only 'satisfactory'. Why?

A possible explanation is that in the design stage the discussion of relevance didn't ask 'relevant for whom?'. The meaning of 'relevance' at the project design stage referred to the political conditions given from outside and linked to a pure conceptual framework and normative statements: the Copenhagen criteria translated into a plan of action without any testing of how they could anchor in the reality of Romanian society and the Romanian justice sector. As we saw, arising from the overall political agenda and the design method, there was lack of close attention to that reality in the design stage. This could lead to doubts about relevance during the evaluation stage, where as

we saw relevance is defined by the extent to which the projects 'correctly address the identified problems or real needs' (PHARE IE Guide, 2004:13, emphasis added). The report's language in evaluating the relevance of the project is itself, to use the EU category, barely satisfactory, and reflects the conflicting perspectives of formulation stage and implementation stage and the limitations of the evaluation tool, which checks only on intended effects. But based on the score given, one might infer that the justice sector projects may not have identified the 'real needs' well. What was thought of as relevant in the head office by officials could be found to face major constraints in the field. Assumptions and alternative means were not thought through, and in any case issues cannot be totally anticipated as the methodology pretends to do. The projects fulfilled the standard criteria in the stage of design but failed in fulfilling the criteria required by empirical test.

5.2 Efficiency – in terms of whose objectives? Helper-Doer Relations

The efficiency of the projects was evaluated for Twinning components A and B together and given an overall score of 0, 'barely satisfactory'. For Component A (Supreme Council of Magistrates) the significant questionable aspect was 'the independence of the judiciary, and its inevitable impacts on project outputs'. The evaluation of Component B of the program (support to the National Institute of Magistrates) is familiar to us from section 4.3, and deserves closer attention. Comments are added within square brackets.

> 'Though facing initial problems, including the need to change both project leaders, changes in the management of NIM and delays in starting activities, twinning support to NIM and NSCC is currently progressing well.'

> 'However, activities [specified in the Covenant] have had to be adapted [to beneficiaries' felt needs!] since NIM developed its own strategy ['local ownership'!], without consultation with the PAA [pre-accession adviser provided by the Commission / Member State]. This strategy has subsequently been adopted and twinning support is limited to developing a road map for its implementation, although the covenant envisaged a more significant MS [member state] input. …' (ECOTEC, 2005:9; italicised comments added).

The efficiency of a project cannot be guaranteed by a simple transfer of instruments and ready-made strategy. The phase of project design had ignored the question of the readiness of the Romanian institutions and their possible resistance to the external conditionality. Program performance was then affected by the reactions of the local institutions to the ready-made strategy of the EC that was proclaimed without serious prior consultations. Reading beyond the lines, the activities in the implementation phase for NIM ignored the authority of the EC-provided adviser and the strategy fixed by the 'road maps' (ECOTEC, 2005; 4.2.2). It appears that, in contrast to training activities, which were fully accepted, for the field of institution building the involvement of an EU member state was perceived by the Romanian partner as not essential and even as inappropriate. Without waiting for the delayed Twinning

project, NIM went ahead to prepare its own strategy, as required by its domestic obligations.

NIM is an important institution with a revised mission and a major role in educating new generations of magistrates. Its importance for Romania requires more than just the formation of the organization; it must have adequate intra-national transparency and accountability. Flowing as they did out of stages of strategizing and programming by EU agencies, the project design and Covenant included accountability to external agents – MS experts and a Pre-Accession Adviser who had arrived with the agreements that were signed with the Romanian side, a supply of prescriptions, and maybe with perceived coercive powers. But the Romanian side assumed its own sovereignty. An institution like NIM has its own domestic accountability and legitimacy, including to and through its Council (CSM), links to which it gave priority over external agents and their claims. To move forward requires that a Member State external 'helper' interpret any 'road map' not as a 'route map', a fixed series of activities, but as an overview of a space within which drivers must proceed by paying attention to where they are and what they encounter in reality: including even the unanticipated phenomenon of 'doer' autonomy. In David Ellerman's terms, an adjustment of help according to what 'doer' needs are – as seen through 'doer' eyes – is essential in order to genuinely build capacity. The Thematic PHARE Evaluation Report (ECOTEC, 2006) review of a decade of JHA sector preparation for the Fifth Enlargement concludes that 'candidate countries should first define their own national strategies', with PHARE support and as a precondition for any project design work (Recommendation #4). But freedom to the CC to tailor its strategy is in tension with the imperative to align with the EU model. Given the pre-established rules the external adviser too does not have much official room to manoeuvre; yet sticking strictly to those prior formal rules is unlikely to succeed. He risks to be seen as an 'iron hand' who tries to impose an organizational strategy by enforcing the letter of a Covenant, ignoring the institutional context and constraints of the partner (including also the partner's other commitments and the lines of accountability implied by other externally supported projects). How to prioritise the multiple claims and find an appropriate intervention becomes a political bargain that requires attention to the content, the context and the process of change. The theme of multiple accountability of Romanian institutions and their reaction to unrecognised and un-legitimated external power would ideally be a theme of reflection for the EU and its consultants during an 'in depth evaluation' – at least if the role of the evaluation includes to identify inconsistencies between method and practice and not simply re-endorse a fixed model of 'best practices'.

The notion of 'road map' appears to function as a sense-making term for EU and MS experts. It makes a claim for authority, and its apparent precision offers reassurance within the fog and ambiguity of accession practice. As with other composite terms, piling-up of components that denote purpose ('road') and expertise ('map') can be a substitute for real control and real action. At each stage the Commission and its agents announce 'road maps', but they bear no inevitable close connection to plans or actions in the next stage. Those arise out of the interaction (and mutual avoidance) of numerous agents, from

various member-states and from the candidate country, which has its own maps. Vague general intentions of reform, such as existed before NIM worked out its strategy, are not real route maps. The new roads on the Romanian map of justice got drawn partly ad-hoc.

5.3   Effectiveness

The effectiveness of the projects was ranked by the evaluators as 'satisfactory'. The evaluation text is fragmented and uses stereotypical vague bland language: 'twinning activities aimed at assisting both institutions' [NIM and SCM], 'assistance is being provided to both institutions' 'training are contributing effectively in all areas [sic; with the exception of strategy development for NIM] … the capacity of both institutions to deliver in-service training is being significantly enhanced […] training manuals are being prepared […] pools of trainers are being created' (ECOTEC, 2005:10; italics added). The delivery of project activities here takes the place of fulfilment of the guaranteed results.

The PHARE IE Guide offers nuanced suggestions to guide the assessment of effectiveness in project implementation, for example (2004: 37): 'whether behavioural patterns have changed in the beneficiary organizations and how far they have planned improvements; if the assumptions and risk assessments at results level turned out to be inadequate or invalid or unforeseen factors intervened'; and so on. None of these guidelines are followed in the evaluation. The discussion is shaped purely around giving scores and doesn't offer any nuanced argumentation with respect to sensitive topics such as: why people consider the capacity of the institutions to deliver in-service training is 'significantly enhanced', or why the training is contributing less effectively in the field of the strategy development (see above), and so on. The study remains at a superficial level, without reflection on and interpretation of the data. What was designed to be the strength of the method – an exhaustively long list of indicators – is reduced to a 'satisfactory' score (+1), a token without much meaning.

5.4   Impact and Sustainability

Evaluation of project impact and sustainability must attend to the transition from the limited life of a project – in which the transformation of the state institutions can stop when the project is finished – to a phase when the project gets 'melted' into the wider societal context and serves, it is hoped, as a tool in ongoing transformation. Such evaluation must pay attention to 'wider risks, assumptions and conditions, many outside of direct control' (PHARE Interim Evalation Guide: 2004:12). One success indicator is for the project to gain ownership from the context. Knowing and understanding the 'language' of the place, accessing tacit knowledge, is key to an appropriate intervention, rather than a pre-determined model that tries to force the reality to fit into it. The life of the institutions – mentalities, values, beliefs – cannot be planned and strategically fitted into a ready-made model. The personalities of the actors, their behavioural patterns and the context they belong to cannot be ignored or standardized.

(A) The impact of both projects was assessed by the evaluators in terms such as '*should be, in principle, positive and significant*', based on the '*intended purpose* to contribute to the Romanian programs for approximation to and harmonization with European legislation' (ECOTEC, 2005:10; emphases added). The evaluators use verbs in the continuous form, to emphasise that project activity is ongoing. Validation of project impact is then made by reference to the good intentions (intended purposes) of the projects. The rhetorical usage of language that we saw in the design stage ('the best results will be obtained under the best conditions') is paralleled by these references to approved intentions and approved activities.

A 'however' introduces a new line of argumentation. An Action Plan and Strategy has been created with 'significant support from this programme'. How little supported this strategy is becomes clear from the warning letters used for the score of 'barely satisfactory', given due to the absence of adequate documentation from the Romanian Government on how to proceed with the realisation of the Plan. The gaps mainly concern provision of financial and human resources.

> 'However assessment of impact MUST take serious account also of progress in the preparation and implementation of a comprehensive strategy for the reform of the judiciary, and its associated development as a separate and independent power of the state. An action Plan and Strategy for the reform of the Judiciary has been created, with significant support from this programme. However, doubts remain with respect to the availability of adequate financial and human resources for their implementation and this has a significant effect on impact. GoR is required to submit to the EU by March 2005 further documentation to support the realization of the Action Plan and Strategy. At this point in time, and in the absence of such documentation, impact is rated as **'barely satisfactory'**.' **(**I.E R/Ro/JHA/0411/2005:10; emphasis in the original).

(B) The score for sustainability of the projects is 'barely satisfactory' (0).

> '…there is significant doubt whether these initiatives will be sustained in the absence of external support. Twinning support to SCM is working hard to ensure greater independence of the judiciary from both internal and external interference, but its realization is far from secured. The continuous operation of inspector judges, with a direct involvement in the work of their colleagues, raises fundamental questions with respect to independence.
>
> Similarly, both, in NIM and NSSC, it is unlikely that sufficient funds will be made available to maintain in-service training of magistrates and court clerks at necessary levels after twinning support is completed**'** **(**ECOTEC, 2005:10).

Concluding, the EC policy evaluation of the projects cluster appears the product of a limited approach and rigid conceptual tools, operating with distorted and limited information. It was torn between an evident reality of change that was both troubled and in different directions—perhaps more locally relevant and certainly more locally 'owned'—than those planned. Superficial attention to unintended effects, and treatment of partial indicators as perfect measures of all facets of an objective, can be seen as negative effects of the tools used. They reduce the usefulness of the evaluation as a response to the problems that it mentions.

Only if the purpose is simply to confirm Romanian acceptance of the hegemony of EU norms and procedures could this form of evaluation suffice. The impact of projects addressed to the Romanian justice sector should, ideally, be measured in a more meaningful way than by number of Courts of Appeal built or number of judges trained. The content of the transformation should eventually require attention to subsequent processes: e.g., whether magistrates' behaviour is changing in relations with their 'clients', or how their communications skills have developed. Who can say something about this are the intended beneficiaries of a reform; and these are neither the Ministry of Justice nor the Program Implementation Unit. Ordinary people should give the real measure of the reform.

6   Conclusions: Carrots, sticks, sermons – and dialogue?

The preparation and use of statements and systems of policy is an attempt to build and exercise authority, including through demonstration of expertise, and to build order, including through the institutionalization of sets of accepted ideas and values (Colebatch 1998). Even if the ideas and values are far from always followed in practice, they may become absorbed as being considered appropriate, and can reinforce the pre-eminence of those who promote them.

A delicate task

How can we interpret the policy story of Romania's accession to the EU? One can ask different questions. The simplest is: Did Romania deserve to enter the EU in terms of the specified criteria? Many commentators say, no (see e.g. Freyberg & Holman 2005). But no country can transform overnight, instantly create new institutions, new cadres of people with new skills, new attitudes and new networks, all immediately available to work devotedly at local salaries to perform tasks which hard-to-find and vastly more rewarded EU consultants temporarily fill or propose. Italy remains deficient in terms of various formal EU criteria after fifty years of membership. So, a subtler set of questions emerges: How could the EU leadership try to assure that 1. Romania made sufficient progress in terms of the formal criteria in order to be able to 2. Ensure in effect the hegemony of EU ideas over Romania, and 3. Sufficiently plausibly state that Romania would make future progress, and thus 4. Keep critical EU publics sufficiently happy and 5. Admit and 'capture' Romania even though it had, inevitably, failed in certain ways to fulfil the full formal set of criteria, and could never fulfil them in just a few years? And we can specifically ask: How did the various formalities of method and procedure contribute to this process?

The EU procedures for Romania accession shared grosso modo the features adopted for the previous entrants, including a strategy of conditionality and a general managerialist style. At the same time, this accession had marked particularities. The measures used and the new mechanism for cooperation and verification of progress were demonstrative public tools thought of only for Romania and Bulgaria, in order to cover inconsistencies between the EU policy's objectives and its established methods. Those

methods were panoply of technical apparatuses to assess progress in terms of numerous complex criteria; yet the prime underlying policy objective was simple, to absorb these former Communist European states within a few years. How could this be done in a manner defensible to electorates of the existing member states?

Phase I: The EU sets the goal and defines the route to supposedly assure its achievement

The European Commission's favourite method of planning and evaluation for dealing with external clients has been the logical framework approach. Its typical usage is based on a top-down approach and technocratic conceptions of organizations, objectives and development (Gasper, 2000b). Such an approach matches a certain political context or perspective, of strong vertical hierarchy or of attempts to build that. EU policy formulation for handling Romania's possible accession was in this top-down, technocratic mode, and correspondingly it employed a planning methodology centred on the logical-framework approach. This provides a very limited format, especially in standard usage. While the PCM manual says one should include an alternatives analysis, for example, that typically does not happen.

The new mechanisms created show that EU accession policy, like most EU development policy, follows an instrumental approach: the EU sets fixed universal goals and devises a country-specific road-map to reach those goals through application of various instruments, incentives and penalties. Instead of paying close attention to understanding the current situation of the prospective doer that is supposed to carry out reforms – here, Romania – and instead of correspondingly later assessing the case for Enlargement according to what Romania had achieved in an autonomous way, the European Commission centred its discourse around the supposed power of its own mechanisms: its existing model of European behaviour, which was to be transposed via application of existing standard EU management processes. This discourse overestimates the role of the 'external incentive', the 'carrots', the prize of EU membership and the associated funding arrangements, and the strength of the mechanisms of verification and control. In the Commission's discourse, Romania's progress is attributed solely to the 'power of external coercive, remunerative and persuasive measures' (Etzioni, 1998: 29). The results achieved by Romania are presented by the EC as purely consequences of the European mechanism of conditionality; and the discourse uses biased information to induce a belief that the progress will surely continue and Romania will achieve the standard required, via a best-practice mechanism of control and verification.

Phase II: Implementation -- a technocratic conception of programmes and projects

A key lacuna in the EC's policy approach concerns the dimension of resistance by local actors to the conditionality of the elements of the policy transfer. The EU approach uses the oversimplified assumption that a consensus can be reached between stakeholders *without* prior assessment of and specific attention paid to the societal and political context to which they belong and their different and sometimes conflicting interests and experience. This reflects the

influence of a managerialist approach operating with an assumption of a single 'rational actor' who can formulate 'a rational–comprehensive position, [through examination of] a well defined problem, full baseline information, fully adequate time and no resource constraints' (Forester, 1989:50). The assumption brings low respect for the autonomy of the doer. When faced with the contradictions that arise, the EC justifies continuing the process under the assumption of the willingness of the actors to cooperate and assimilate the EU model (Table 2 above). The EC needs to grasp that the member states and the candidate countries are two polar sides of a policy transfer who enter into dialogue—or bargaining—from different positions and with 'different senses of valuations of the problem', so that information 'becomes a political resource, contested, withheld, manipulated and distorted' (Forester, 1989:56).

Phase III: The time for decision -- 'Future improvement is assured'

Romania's accession process was not a systematic, thorough and ingenious ensuring of fulfilment of the stated necessary conditions. For example, the EU's methods lose in force once accession procedures are far advanced, for it becomes enormously difficult to declare failure. But nor could we describe them as purely a ritual of validation, in the sense of having no impact and yet having only one possible political outcome (accession) regardless of what was done and produced within the process. The process brought major pressures and resources to bear on important structures and practices within Romania, and initiated significant changes. We have talked however of rituals of validation because, firstly, the process and methods were in various ways counterproductive to achievement both of the declared immediate objectives (for the approach often alienates 'the helped') and the declared fundamental objectives, for the approach fails sufficiently to use local knowledge and mobilise local energy. Secondly, much of the approach exists primarily of claims on paper, the filling in of boxes and reports, through from design stage ('Assumptions: all the conditions that are required for the pre-specified objectives to be attained') to report stage ('100 judges were trained') to the evaluation stage's 'barely satisfactory', the euphemism for 'unsatisfactory but tolerated'.

Given the limited power of the tools of inducement and evaluation, the technical verification of the results (in monitoring reports) was replaced in the decision-making stage by an openly rhetorical discourse, with regard to Romanian readiness for accession. The gulf between the EC's political rhetoric and its methods for program and project intervention is visible when one tries to make the link between the results of the monitoring reports and the moment in 2005 when the EC presented its reasoning in favour of Romanian accession in front of the European Parliament. Not finding sufficient assurance in the state of the reforms already on the ground, the proposal that Romania was ready for accession was held together by the declared beliefs that the mechanisms of cooperation and verification are technically solid and that Romania is 'on track', a track of continuing improvement.

Phase IV: The sting in the tale – and the real work that lies ahead

The decline in the EU's power to induce change may increase further once countries are fully admitted. A February 2008 report from the Commission found that: '"Procedural errors" had blocked criminal probes [in Romania] into corruption by serving or former ministers. Romania's parliament had made significant changes to a criminal-investigation law, including a demand that suspects be informed in advance if their telephone was going to be tapped, and the downgrading of embezzlement worth less than E9m to a "minor" offence. … [T]he justice minister, Monica Macovei (revered in Brussels as the country's most effective sleaze-buster), was sacked three months after EU entry, accused by her prime minister of failing to uphold "government solidarity".' (*The Economist*, 2008: 14). The Economist argues nevertheless that delay would not have helped: 'A whole generation of corrupt old judges will have to leave office before things change, says an EU official' (p.15), and arguably in that transition period reformers are helped and more influence is exerted by having Romania inside rather than outside the Union.

Real improvement requires attention to locally relevant and locally grounded innovation, going beyond a centrally enforced technocratic blueprint to a more adequate conception about organizations and institutions. Innovation must not be seen as concentrated in one ('helper') pair of hands (Ellerman, 2005). The sharing of knowledge is more relevant than the pre-announced transfer of ready made models should be the first step toward a more realistic practice of reform. Second, within such sharing the horizontal diffusion of innovation, amongst and between recently acceded countries and countries in accession will often be more relevant than appointment of experts from very different countries. Third, in all cases, re-invention of the innovation as it is adopted and implemented by local units is important. Interpretative policy analysis makes us aware that 'meanings and actions are actively constructed in social context through relational dynamics' (Healey et al., 2003: 64). Therefore, an authentic transformation and an authentic dialogue demand careful attention both to the 'process by which meanings are disseminated' and to the intrinsic value of local knowledge as 'resources of the transformation' (ibid). The EU non-negotiability of both the content and the means of its strategy had as side-effect the incapacity or limited capacity of the Romanian institutions to 'absorb' the model of practice and to achieve the intended results in building their other capacities.

Romania's 'reconstruction in line with the EU model' must therefore mean more than Romania adopting 'European values'. Besides the vague character of the values definition and the question of whose values, Romania has something to preserve as its own identity and something to offer to Europe, in culture, values, and practices. Instead, everything Romania reads from the EU's method and discourse is presented in terms of 'what Romania must do', 'in line with EU requirements'. The current Commission discourse consists of publicizing EU asserted success and Romania's continued deficiencies. Romanians do not know why they have been accepted by Europe if they have so many sins. As shown by Freyberg and Holman, overambitious and over-rigid goals and deadlines in institutional reform projects lead to much embarrassment and unfortunate side-effects. This situation arises in the

absence of an authentic dialogue, and where the channels of real communication function in one direction only.

References

Bemelmans-Videc, M.L.B., Rist, R.C. and E. Verdung (1998) *Carrots, Sticks and Sermons. Policy instruments and their evaluation,* New Brunswick (USA) and London: Transaction Publishers.

Colebatch, H. (1998) *Policy.* Buckingham: Open University Press.

Dunn W.N. (2004) *Public Policy Analysis,* Third edition, Upper Saddle River, New Jersey

Ellerman D. (2004) Autonomy respecting Assistance: Toward an Alternative Theory of Development Assistance, *Review of Social Economy*, vol LXII, no 2, June.

Ellerman D. (2005) *Helping People to Help Themselves.* Ann Arbor: University of Michigan Press

Etzioni A. (1998) in: Bemelmans-Videc M.L.B., Rist R.C. and E. Verdung (eds.) *Carrots, Sticks and Sermons. Policy instruments and their evaluation*, New Brunswick (USA) and London: Transaction Publishers.

Fischer F. (1995) *Evaluating Public Policy*, Chicago: Nelson-Hall Publishers.

Forester, J. (1989) *Planning in the Face of Power,* Berkeley: University of California Press.

Freyberg, A. and O. Holman (2005) 'Painful Integration or Not So Splendid Isolation? Downsides of European Integration in the Context of Romania's Double Transformation', *Romanian Journal of Society and Politics*, 5(1), May 2005, pp. 93-145.

Gasper D. (1997) Logical Frameworks: A Critical Assessment', Working Paper 264, ISS, The Hague.

Gasper, D. (1999) Problems in the Logical Framework Approach and Challenges for 'Project Cycle Management', *The Courier* (January-February), Brussels: Commission of the European Union. Reprinted in: *Les Echos*, no.94, March 2002, Brussels: COTA, www.cota.be.

Gasper, D. (2000a) 'Evaluating the "Logical Framework Approach', *Public Administration and Development*, 20(1): 17-28

Gasper, D. (2000b) "Logical Frameworks"; Problems and Potentials. At: Participatory M&E, http://www.petersigsgaard.dk/PDFfiler/gasper_logical_framework_problems.pdf

Gasper, D. (2006) 'Carences et aléas du cadre logique', *Outil pédagogique*, no.9, juin 2006, 30-33. Brussels: ITECO.

Ghaziri, N. El (2007) *Administrative Reform in Post-War Lebanon, Donor prescription & Local realities*, Maastricht: Shaker Publishing BV.

Hansen, L. (2006) *Security as Practice – Discourse Analysis and the Bosnia War.* London: Routledge.

Hartley, J. (1983) 'Ideology and organizational behaviour', *International Studies of Management and Organization*, 13(3).

Healey, P. et al. (2003) 'Place, Identity and Local Politics: analysing initiatives in deliberative governance', in: Hajer, M.A. and H. Wagenaar (eds) *Deliberative Policy Analysis, Understanding Governance in the Network Society*, Cambridge University Press.

Hood, C. (1995). 'The "New Public Management" in the 1980s: Variations on a Theme', *Accounting, Organizations and Society*, 20(2/3): 93-109.

Ionita, L., A. Freyberg-Inan (2008) The EU's Impact on Reform in Romania: The Case of the Civil Service, *Journal of Southeast European and Black Sea Studies*, 8(3).

Jora S. (2006) Democratization and European Integration in Romania: Towards a versal Modus Operandi? – International Conference Europe's Democratic Challenges-EU Solutions? University of Trento, 30 June-1 July 2006

Kochenov D. (2007) *The failure of conditionality, Criteria for EU membership barely justifiable*, PhD dissertation, University of Groningen.

Papadimitriou D (2002) Exporting Europeanisation: EU enlargement, exercise and administrative reform in Eastern Europe, The twinning. Department of European Studies, European Consortium for Political Research- Joint Sessions, Turin, 22-27 April 2002.

Papadimitriou, D. and D. Phinnemore (2004) "Europeanization, Conditionality and Domestic Change: The Twinning Exercise and Administrative Reform in Romania', *Journal of Common Market Studies*, 42(3): 619-639.

Pollitt C. (1993) *Managerialism and the public services*, 2nd edition, Oxford: Blackwell.

Rehn, O. (2006a) Monitoring Report on Bulgaria's and Romania's progress towards accession Speaking points., Presentation in the European Parliament, Strasbourg, 16 May 2006

Rehn, O. (2006b) Bulgaria and Romania to become Member States in the EU", Presentation in the European Parliament, Strasbourg, 26 September 2006. (Olli Rehn spoke as Member of the European Commission responsible for Enlargement. See also: Monitoring the Romania progress, audience: European Parliament; http:infoeuropa.ro/28-09-2007.)

The Economist (2008) *A special report on EU enlargement*, May 31, London: Economist Newspaper Ltd.

EU Monitoring Reports, Guides, Internal documents, Decisions and Regulations:

1. Comprehensive Monitoring Report on Romanian progress toward accession, Brussels, European Commission {COM (2005) 534final} (http://delegatie.infoeuropa.ro /ROMR2005.)

2. ECOTEC, 2005. Interim Evaluation of the European Union Pre-accession Instrument PHARE. Report no.R/RO/JHA/0411.

3. ECOTEC, 2006. Thematic PHARE Evaluation Report on JHA Acquis in the Candidate Countries (Report no.ZZ/JHA/0533/2006)

4. Guidelines for PHARE Programs Implementation in Candidate Countries for 2000-2006 in application of article 8 of regulation 3906/89, Commission Decision, Brussels, 13.10.1999, SEC (1999)1956 final

5. On Progress in Romania under the Co-operation and Verification Mechanism. Report from the Commission to the European Parliament and the Council. 14 Feb. 2008. COM(2008) 62/final(2).

6. PCM, 2004. Project Cycle Management Guidelines. Supporting effective implementation of EC External Assistance .vol 1/2004 http:www.europa.eu.int/comm./europeaid/01.06.2008. Brussels: Commission of the European Union.

7. PHARE 2004. Interim Evaluation (I.E.) Guide: Approach, Procedures, Methodology and Reporting,.

8. Regular report on Romania's progress toward accession, European Commission (2004).

Appendices

Annex 1
'Logical framework'/ planning matrix for PHARE RO/2002/000-5860416
Project Fiche 'Assistance in strengthening the independence and functioning of the Romanian Judiciary system'[14]

OVERALL OBJECTIVE	Objective verifiable indicators	Sources of verification	Assumptions
Contribution to the improvement of the operation of the Romanian judicial system	The Romanian judicial system modernised and in line with the EU requirements in the areas addressed by this project	Reports and statistics; EC Commission& MoJ; annual	
PROJECT PURPOSE	**Objectively verifiable indicators**	**Sources of Verification**	**Assumptions**

Component A:
Institutional capacity and functioning of SCM enhanced in line with EU requirements;
 	
Component B:
Further development of NIM and TCC
 	
Component C:
Creating and strengthening conflict analysis and resolution capacities by introducing alternatives means to the judiciary in solving civil and commercial cases.
 	
Judges will have the basic knowledge in EC Law, and also will be updated with the new national legislation and TCC will be strengthened and fully functional
	- By 2005 the SCM will be strengthened in line with EU requirements
	
	- By 2005, approx. 2000 Romanians also will be updated with the new national legislation and TCC will be strengthened and fully functional
	
	- By 2005, alternative means will be better enforced
		- Regular reports of the Commission
		
		- Governmental report annual
		
		- Evaluation of the improvement of the activity in courts;
		  - statistics
		  - biannual	

RESULTS	**Objectively verifiable measures**	**Sources of Verification**	**Assumptions**
Component A: Institutional capacity and functioning of SCM enhanced in line with EU requirements: Result 1 – Legal framework of the SCM status improved Result 2 – Organizational structure plan of SCM set up	- SCM recognized as a representative and decision maker of magistrates - The organizational structure well designed - The secondary legislation on functioning of the SCM	- Legislation, reports; intern and international bodies; bi-annual - Legislation Statistics; MoJ and SCM; annual - Reports; the EC experts/; quarterly	- Full commitment of the parties involved. - The recommendations of the EU partners are assimilated

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[14] The project file combines the designs for 3 possible projects (phase I) submitted to the EC. After approval, the project file becomes a public document – and can be found published on the internet under the web page of European Commission, Enlargement- ec.europa.eu/enlargement/fiche_projet/document.

Result 3 - Secondary legislation relating to the functioning of SCM– drafted; Result 4 – Action Plan to monitor the enforcement of the Deontological Code of Magistrates set up	- Action plan for Deontological Code designed	- Statistics; reports Government; Commission; annual	
Component B: Further development of NIM and TCC Result 1 – A National Strategy of NIM in-service training in line with EU requirements - drafted Result 2 – In service training curricula of NIM improved Result 3. – The system of trainers for in-service training of magistrates set up in line with EU models; Result 4. – Training for magistrates in both EC and national legal matters delivered in line with EU standards Result 5– Legal documentation on best practices, jurisprudence and relevant EU legislation designed for each training seminar Result 6 – Institutional policy of TCC developed to guarantee autonomous functioning Result 7 – The system of trainers for in-service training of auxiliary staff set up in line with EU models; Result 8 – A National Strategy of TCC for in-service training of auxiliary staff in line with EU requirements – drafted Result 9 – Training for auxiliarry staff in both EC and national legal matters delivered to be delivered in line with EU standards Result 10– Legal documentation on best practice, procedural techniques and legal provisions designed for in training course	- Strategy on in-service training designed and enforced - Curricula adjusted - The network of trainers operational - By 2005, magistrates trained in EC Law - Support documentation used during and after delivering training seminars - Legal and institutional framework of TCC enacted - The network of trainers operational - Strategy on in service training designed and enforced - Clerks trained - Support documentation used during and after delivering training seminars - Assessment of existing legislation completed - Study on alternative means in EU country elaborated - Proposal for a draft law designed & approved - Evaluation Forms and proposals of participants to the debates	- Reports - EU experts NIM and TCC - Annual, quarterly Reports - EU experts, MoJ	- The training seminars are fully completed - The CC network developed all the training activities - NIM and TCC implemented the recommendations of the experts - Full commitment of the parties involved. - Willingness to assimilate new concept [that is] not enough prior tested in Romania

Component C:
Creating and strengthening conflict analysis and resolution capacities by introducing alter-
natives means to the judiciary in solving civil and commercial cases

Result 1– Recommendation of improving the existing legal framework on alternatives
means to the judiciary in solving civil and commercial cases drafted in line with EU re-
quirements
Result 2 – Best practice manual stressing on the features and advantages of mediation in
civil, family and commercial disputes drafted

Result 3– Proposal for a draft law on mediation Results 4– Awareness of large segments of beneficiaries (magistrates, lawyers, civil society, students) of the concept and advantages of using alternative means in solving civil, family and commercial cases		

ACTIVITIES	MEANS	ASSUMPTIONS
Component A: Institutional capacity and functioning of SCM enhanced in line with EU requirements: Result 1 – Legal framework of the SCM status improved A1. - to asses the legal framework and the amending proposals related to increasing the SCM' competencies Result 2 – Organizational structure plan of SCM set up A2. - to design and monitor proposals related for a new organizational structure, institutional capacity and functioning of SCM Result 3 - Secondary legislation relating to the functioning of SCM– drafted: A3. - to elaborate proposals for the secondary legislation related to the competencies and the functioning of the SCM Result 4 – Action Plan to monitor the enforcement of the Deontological Code of Magistrates set up A4. - to design an action plan aiming to monitor the proper enforcement of the Deontological Code of Magistrates and to identify specific remedies in monitoring process	A1 TWINNING A2 TWINNING A3 TWINNING LIGHT	
Component B: Further development of NIM and TCC Result 1– A National Strategy of NIM in-service training in line with EU requirements – drafted A1. to design a National Strategy of the in - service training for magistrates following the principle of train the trainers and the recommendation for such strategy initiated in the framework of Phare Horizontal 1999 "Building Capacity for Training of Judges in EC Law" in the middle 2002 year. Result 2 – In service training curricula of NIM improved A2. - to improve the design of the in service training curricula of NIM following the direction of the above National Strategy Result 3. – The system of trainers for in-service training of magistrates set up in line with EU models A3. - to strengthen the existing 24 EC trainers network by adding the 5 magistrates trained under Helsinki Committee programme, NIM specialized training staff and judges from the other courts in the country and by creating specialized trainers in other fields of law		

Result 4 – Training for magistrates in both EC and national legal matters delivered in line with EU standards

A4. - to organize training courses mainly for the sitting magistrates involving both EU and national trainers. The training seminars will offer both the EC and the national perspective of the subject matter.[15]

Result 5 - Legal documentation on best practices, jurisprudence and relevant EU legislation designed for each training seminar

A5. - to design and distribute practical manuals as tools to be used for each topic debated during training courses

Result 6 – Institutional policy of TCC developed to guarantee autonomous functioning

A6. to assess and make recommendation of the institutional capacity and functioning of TCC in line with EU standards

Result 7 – The system of trainers for in-service training of auxiliary staff set up in line with EU models

A7. strengthening the existing trainer network by adding and training new Trainers among the TCC staff and other personnel from the Romanian judiciary and auxiliary staff

Result 8 – A National Strategy of TCC for in-service training of auxiliary staff in line with EU requirements – drafted

A8. to design National Strategy of the in - service training for auxiliary staff following the principle of train the trainers

Result 9– Training for auxiliarry staff in both EC and national legal matters delivered to be delivered in line with EU standards

A9. organize training courses[16] for the auxiliary staff (trainees and sitting clerks) involving both EU and national trainers.

Result 10 – Legal documentation on best practice, procedural techniques and legal provisions designed for in training course

A10. - to design and distribute practical manuals as tools to be used for each topic debated during training courses

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[15] The topics proposed in the stage design: EC Law (Consumer protection law, Competition law, Banking and financial law, Environmental law, Labor and social protection, Intellectual property law); Human Rights (application of the European Convention of Human Rights in the European states); regional/international cooperation in the fight against organized crime; judicial cooperation in criminal matters, new crime areas (computer crimes, economic crime); the evolution of the main concepts in civil law (property law, concept of natural and moral person, moral damages, protection of disabled, various types of contracts-including insurance), the judicial responsibility, Ethics of judges, Administration of justice and organization of courts, Access to justice for citizens, Evaluation of the quality of justice, The Relation of the judiciary with the civil society, Justice system and mass media.

[16] The following topics will be discussed…: basic civil/criminal procedure, activities developed by the register's office and by the archives, techniques of drafting procedural documents, computer literacy, deontology and ethics, judicial independence and judicial responsibility, administration of justice, organization of courts and evaluation of quality of justice.

(ACTIVITIES cont **.**)

Component C:
Creating and strengthening conflict analysis and resolution capacities by introducing alternatives means to the judiciary in solving civil and commercial cases
Result 1 – Recommendation of improving the existing legal framework on alternatives means to the judiciary in solving civil and commercial cases drafted in line with EU requirements

A1. -To assess the existing legislation on alternative conflict resolution (mainly the provisions on arbitration in commercial issues)
Result 2 – Best Practice Manual stressing on the features and the advantages of mediation in civil, family and commercial disputes drafted
A2. - to draft a detailed Manual by using the EU model perspectives on the concept of each of alternative conflict resolution. (This Manual could be a serious practical documentation incorporating not only legal provision of other EU member state but also practical experiences faced by those countries in using such alternative means and consequences related to the use the judicial procedures (workload of judges, costs etc)
Result 3 - Proposals for a draft law on mediation
A3. - to draft proposals for the future legislation on mediation
Results 4 – Awareness of large segments of beneficiaries (magistrates, lawyers, civil society, students) of the concept and advantages of using alternative means in solving civil, family and commercial cases
A4. - to organize an Awareness Forum for representatives of different categories of legal professions, civil society, other professions (sociologist, psychologist), students etc. The result of the study mentioned above should be discussed together with the action plan drafted by the EU experts.

Interim Evaluation of the European Union Pre-Accession Instrument PHARE

Country: Romania

Sector: Justice and Home Affairs

Author: ECOTEC (Independent firm of evaluation hired by the Enlargement Directorate General, EC)

Date: 13 January 2005

Scope of the evaluation

This in- depth Evaluation covers in total 15 programmes within the JHA sector, under the following main headings: Justice, Police Co-operation and Fight against Organized crime, Schengen System, Fight against corruption ,Money Laundering, Training Functions within the Ministry of Administration and Interior, and Cadastre.

Key achievements, findings and recommendations

All programmes are relevant to beneficiaries needs. Their objectives, although in general very complex and ambitious, fully respond to the current requirements of the sector and generally reflect the seven conditions upon which the negotiation chapter 24 JHA was recently closed.

Although generally just adequately efficient, with good cooperation between stakeholders and a flexible approach to activities, implementation was sometime affected by the lack of clear information from central management to regional participants regarding the overall programme objectives and by a lack of human resources to implement and secure programme initiatives. Of the 14 projects, only one cannot be fully rated, as a result of delay implementation.

Important part of the legislative framework have been revised and harmonized and valuable capacity built. Interdisciplinary cooperation has been developed and new structures created. However, it must be noted that limited resources and poor infrastructure available affect effectiveness. Also, delays in contracting reduce effectiveness of various programs.

Independence of the Judiciary system is being strengthened and the fight against organized crime and corruption enhanced. All investment components will have a positive impact, particularly if legislation drafted under current PHARE support is adopted and Information Technology infrastructure improved. In both cases, further actions are essential, if necessary with PHARE support, to maintain the impact already achieved.

There is good commitment across the sector, important legislation and strategies have been or are being developed and some key areas will be strengthened. However, only the provision of additional specialized human and financial resources can ensure sustainability. Whilst these needs are understood, at present there are no clear commitments evident from the Government of Romania, with consequent negative implications for sustainability. Also, in domains like anti-corruption and juvenile justice, further PHARE support would greatly assist sustainability and these topics should be considered as priority areas in future programming.

Key recommendations

- The Government of Romania should ensure adequate levels of human resources and Information technology infrastructure for all key bodies involved in the sector by the end of 2005.
- Implementing Authorities should, with immediate effect, make certain that programme objectives and activities are fully understood by stakeholders, particularly at the regional and local levels.
- The CFCU and the EC Delegation should provide immediate support to Programme Implementation Units in the General Inspectorate of Romanian Police and National Agency for Cadastre and real Estate Publicity to ensure urgent progress in contract realization for 2003 programes.

Sector sheet

Number	Type of assistance	Programme/ProjectTitle	Implementing Authority
2002/000-586.04.16	TWIN	Assistance in strengthening the independence and functioning of the Romanian Judiciary system	Ministry of Justice

All programs reflect the NPAA 2000-2001.

2. Evaluation Results

Fourteen programmes under Phare 2002 and 2003 are included within the cluster under evaluation. Out of these, thirteen are in advanced stage of implementation and are fully evaluated with respect to all five criteria. One 2003 programme is in an early stage of implementation, and therefore it is possible to rate only its relevance and efficiency.

Justice

2002/000-586.04.16.Assistance in strengthening the independence and functioning of the Romanian Judiciary system

Relevance

Notwithstanding the closure of negotiation with respect to Chapter 24 in December 2004, the EU continues to stress the crucial importance of the independence and integrity of the courts for the functioning of a democratic society. Further one of the seven conditions that were laid down in closing negotiations relates to developing and implementing an updated and integrating Action Plan and Strategy for reform of the Judiciary in Romania. These subjects are integrally relate to the two Twinnings that are part of the programme: strengthening of the functioning of the Romanian judiciary and its representative body, the SCM, and further assistance to the NIM and the National School of Clerks (NSCC**).**

Therefore, relevance is considered **'satisfactory'**.

Efficiency

The Twinning support to SCM is both timely and appropriate. The PAA, supported by MS experts, is closely involved with the evolution of an independent representative body for the judiciary. This has included revision to primary legislation, preparation of secondary legislation and significant involvement in the realization of the first elections of SCM officials in late 2004.There is a close working relationship between

the partners. However fundamental question remain with respect to the independence of the judiciary, and this inevitably impacts on project outputs.

Though facing initial problems, including the need to change both Project Leaders, changes in the management of NIM, and delays in starting activities, twinning support to NIM and NSCC is currently progressing well. However, activities have had to be adapted since NIM developed its own strategy, without consultation with the PAA. This strategy has subsequently been adopted and twinning and twinning support is limited to developing a Road Map for its implementation, although the Convenant envisaged a more MS significant input. So far, training sessions have been properly organized and know-how transfer is efficient. However, in some cases there was a lack of clear information from central management to regional participants regarding the overall objectives of the programme and the context within which training sessions are taking place. Overall, the programme efficiency is rated as **'barely satisfactory'**. Currently the overall disbursement level is 43.53%(ME 0.70).

Effectiveness

Both twinings are proving effective in achieving the purpose stated in their respective Convenants. Support to the SCM is unquestionably enhancing its institutional capacity and functioning, and to a limited extent assisting strengthening of the independence of the Judiciary.It is likely that an extension of activities beyond the planned completion date of September 2005 will be necessary to ensure the effective completion of all tasks.To date the inputs of both the PAA and MS experts have contributed significantly to the evolution of the SCM. Twinning activities aimed at assisting both NIM and NSCC in strategy development, curriculum development and training are contributing effectively in all areas, with the exception of strategy development for NIM. The capacity of both institutions to deliver in-service training is being significantly enhanced. Training manuals are being prepared that reflect current realities in Romania and in wider EU environment, and pools of trainers are being created; in total around 60 magistrates and 15 court clerks. The new trainers are currently being mentored in follow up training that will benefit by the end of the project around 700 magistrates and 420 court clerks. Assistance is being provided to both institutions in strategy development and realization. Overall, effectiveness is rated as **'satisfactory'**.

Impact

The impact of both twinning exercises should, in principle, be both positive and significant. Their purpose is to contribute to the Romanian programe for approximation to and harmonization with European legislation; and specifically to contribute to devising and establishing an organizational and administrative structure that will guarantee the independence the independence of the Romanian judiciary and improve its operation. In as much as the role of the SCM is being enhanced and both magistrates and courts of clerks are starting to benefit from a structured continuous training programme as well as being exposed to the practice of law in other MS countries, impact can be considered positive.

However assessment of impact MUST take serious account also of progress in the preparation and implementation of a comprehensive strategy for the reform of the judiciary, and its associated development as a separate and independent power of the state. An action Plan and Strategy for the reform of the Judiciary has been created, with significant support from this programme. However , doubts remain with respect to the availability of adequate financial and human resources for their implementation

and this has a significant effect on impact. GoR is required to submit to the EU by March 2005 further documentation to support the realization of the Action Plan and Strategy. At this point in time, and in the absence of such documentation, impact is rated as **'barely satisfactory'**.

Sustainability

Both Twinnings are at the mid-stage of implementation, and in both cases strategies have already been establish for SCM,NIM and NSCC as well as an overall strategic plan for reform of the judiciary. Significant, and positive, initiatives are emerging with programme support. The first elections have been concluded for SCM officials, in service training programmes are being developed for both magistrates and clerks, and trainers equipped with relevant skills and support materials. However, there is significant doubt whether these initiatives will be sustained in the absence of external support. Twinning support to SCM is working hard to ensure greater independence of the judiciary from both internal and external interference, but its realization is far from secured. The continuous operation of inspector judges, with a direct involvement in the work of their colleagues, raises fundamental questions with respect to independence. Similarly, both, in NIM and NSSC, it is unlikely that sufficient funds will be made available to maintain in-service training of magistrates and court clerks at necessary levels after twinning support is completed. In its 2005 budget NIM was granted approximately one quarter of the funds requested for in-service training of magistrates. Given the recent change of Government and the clear commitment to meeting accession requirements, the prospects for sustainability of programme outcomes are improved. However, they [can] still be rated only as **'barely satisfactory'**.

CC   Candidate Countries

CFCU   Central Financing and Contracting Unit

EC   European Commission

EU   European Union

IE   Interim Evaluation

IER   Interim Evaluation Report

ISPA   Instrument for Structural Policies For Pre-Accession

JHA   Justice and Home Affairs

MS   Member State

NPAA   National Program for the Adoption of the Aquis

NSCC   National School of Court Clerks (= TCC)

NIM   National Institute of Magistrates

PAA   Pre-accession Adviser

PL   Project leader

PHARE   Poland and Hungary; Assistance for Restructuring
                Economies

PCM   Policy Cycle Management

SAPARD   Special Accession Program for Agriculture & Rural
                Development

SCM   Superior Council of Magistrates

TCC   Training Centre for Clerks (= NSCC)