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In 2018, Romania's GDP per capita will exceed 10,000 USD for the first time ever, marking Romania's emergence as a medium-income economy. If we look at the raw data in terms of real income, Romanians now have twice the disposable income they had in 2000, when their country was invited to join the European Union (EU). Despite this change in income, and despite all the broader social, institutional and economic changes EU membership has brought, Romania failed to overcome its striking development gaps, and prosperity is still far away. One explanation for this can probably be found in the fact that a number of reforms implemented before accession have either been abandoned, poorly implemented or ignored. Also, a considerable part of Romania's workforce has emigrated, and, similarly to Bulgaria, Romania did not switch to the Euro, was not welcomed into Schengen, and has thus remained a second-tier country within the EU.

One of the most obvious signs of Romania's status is the continuation of the Mechanism for Cooperation and Verification (CVM), the Commission's safeguard measure which aims to impose various benchmarks on Romania and Bulgaria due to the fact that the rule of law in those countries was weaker than in other, formerly communist, candidate countries, such as Hungary or Poland. Even though the Mechanism was supposed to last for just three years, it is in full force in 2018 and, with every passing year, controversies pile up. It is indeed difficult to give a clear verdict: by 2018, Romania imprisoned 18 ministers, one former

Prime Minister and sent to court one sitting Prime Minister. Comparatively, Bulgaria did almost nothing of the sort. Moreover, a decade later, the World Governance Indicators for corruption perception and rule of law are not only very close to the values registered in 2007, but they are also close between the two countries. Ironically, despite this, Bulgaria does a better job of absorbing EU funds and developing its infrastructure. All things considered, Romania is seen as a success story, while Bulgaria is not. Romania is often served as a positive example for other countries, especially by the International Monetary Fund (IMF) and various American governmental organizations.

Taking all things into account, in this report we aim to answer the following questions:

1. Did Romania's quality of governance improve after its adherence to the EU?
2. Even more so, can Romania's experience provide useful lessons for other countries that wish to follow its path?

We will mostly focus on the substantial success of good governance policies and their attempt to improve the rule of law rather than looking at the CVM as a successful conditioning instrument. Because Romania is seen, through the eyes of the CVM, as a success story as far as European institutions go, and Bulgaria is as a failure and despite the fact that the CVM itself is identical for both countries, it is quite clear that the discrepancies between the two countries can be explained by factors that are mostly or completely unrelated to the CVM.

I.

In the first section of the report, the RAS experts panel expands on its assessment that the Romanian economy will continue to grow at a faster pace than the EU average, and aside from a 5,3% GDP growth forecast, the BET stock market index will see similar growth with a 27,8% estimate, the same can be said for the real estate market, with a 6% rise. Similar optimism can be seen for both the unemployment rate, where the current 5% rate is expected to drop to 4,7%, as well as the inflation rate (3,3% compared to the 3,7% calculated by the National Prognosis Commission). However, the exchange rate will continue to weaken for the year 2018, following an already established pattern, with the current account deficit expected to grow by 5,4% of GDP.

Bucharest has emerged as the main beneficiary of European integration, alongside Warsaw, with incomes that exceed the European regional average. Unfortunately, only Cluj and Timisoara showcase similar numbers and statistics by Eurostat further cast a shadow on the existing picture, with poor showings in both individual inequality (GINI) and regional inequality (the difference between Bucharest and Teleorman county, for example). These gaps structure in a very different manner the risks and opportunities provided by European integration, often bringing with them negative political consequences, along with a constant erosion of the ability to create public policies that can ensure national wellbeing. Instead we see that regions are forced to compete for resources.

It is forecasted that, by the end of 2018, Romania will not meet the convergence criteria for joining the Euro zone. The panel's experts also estimate that, aside from the budget deficit, both inflation and the interest rate will not meet convergence criteria. The Romanian economy is not prepared for the implications of switching to the Euro. The panel has warned that the issue of increasing revenue collection should be approached with considerable caution, considering the country's poor administrative capacities. It does not help that

the year 2017 was one of the poorest years for tax regulation, with numerous poorly prepared regulation changes, that were eventually abandoned weeks after. The measures led to considerable uncertainty in the private sector and have deteriorated the already poor quality of the tax administration services.

For 2018, the most important recommendations coming from the experts are:

- The main priority: computerization of public administration and interconnection of databases;
- Economic decentralization in order to empower and disconnect local authorities from the discretionary allocation of funds from Bucharest;
- Replacing the bureaucratic lump with efficient IT solutions for both the taxpayer and tax authorities;
- Avoiding the global income tax and progressive tax, as they are complicated to administer, neither the authorities, nor taxpayers are prepared for such a change;
- Unblocking public investment and moderating wage and pension increases.

II.

The second section of the report focuses on the persistence of the poor governance phenomenon despite Romania's 12 years in the EU. In spite of efforts to strengthen integrity, the Romanian state has failed to substantially reform in such manner as to allow for an increase in the administrative capacity needed for a better public services delivery and for the sustainability of economic growth. In addition, Romania is still affected by collective action problems caused by the lack of trust and cooperation between individual citizens and their different groups. Romania, perhaps more than any other country since Italy's *Mani Pulite* investigations, has implemented a repressive campaign in a systemic corruption environment. However,

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if judicial activism is politicized and used strategically in political debates by political parties, political leaders and the press, thus exacerbating polarization, the consequence is the decline in electoral accountability for corrupt politicians rather than vice versa. Romania seems comparable to Italy, which failed to implement the structural reforms necessary for progress, the result being political destabilization without great progress in the overall quality of governance.

The fragile progress made by the Romanian judiciary is mostly owed to courts and the National Anticorruption Directorate's (DNA) public image gains, but real reforms to strengthen the system did not take place. Romania is at the top of the EU and EU-11 rankings in terms of access to justice and its integrity, while official data on the efficiency and resources of the judiciary indicates deep institutional dysfunctions and challenges. In other words, successes are in fact a timely but *ad hoc* use of the existing legal and institutional framework and do not reflect profound structural or systemic changes.

The issue of **politicizing public administration** is dealt with in depth and the analysis reveals that the level of political patronage in Romania is the second highest in new European democracies, after Greece. Politicization is the main problem for the Romanian public office.

Politicization of the central apparatus is often motivated by the capture of resources which are concentrated at the central level rather than at the local level. However, in Romania there is an almost equal degree of politicization at the level of Government and that of local public administrations. Taking into account the size of the civil servants' body in Romania, the politicization of these functions can be a very important lever for consolidating party organizations (by rewarding loyal allies with important positions) and for corruption and siphoning public resources (by controlling key institutions and departments).

There is a clear tendency to increase the number of government officials over the past

5 years. The most pronounced increases are registered in the years immediately after elections. Thus, in 2013 the total number of civil servants increased by 469 in the 14 ministries existing at that time: from 4,528 in 2012 to a total of 4,997 in 2013. The main increase was recorded in the Ministry of Education. In 2017, the total number of civil servants in the Government increased by 704, i.e. from 4,555 in 2016 to 5,259 in 2017.

In institutions with generous pay, there is a significant pressure to obtain lucrative positions. The Fiscal Surveillance Agency for example, over the last year, had about 60 councilors. They were held in well paid positions for a period, after which they were transferred to permanent positions in subordinate departments. Furthermore, instability in institutional processes is derived from the frequency of appointments and dismissals of secretaries and deputy secretaries. The level of instability of senior management positions (secretaries-general and deputy general secretaries) is highest in the case of the Ministry of Economy, with the Ministry of Internal Affairs coming in second, followed by the Ministry of the Environment in third. The Rotation Index shows us an annual average of six changes related to these functions in the Ministry of Economy and Internal Affairs. Moreover, about 60% of the changes in high civil servants occurred immediately after the minister was reshuffled. If these changes were targeting contract staff, that is, the minister's working apparatus, there would have been nothing unusual. But these high level positions being a counterbalance of bureaucratic stability, these changes point to an unnatural extension of political arbitrariness.

Another key area is the **correct implementation of corporate governance legislation** and even the attack on it by Parliament in 2017. In Romania, public enterprises account for about 6% of GDP, employ about 4% of the workforce, but 20% of all outstanding payments from the Romanian economy are due to them. According to the latest data, the 187 public companies under the central government record an operating profit of 6.6 bn. RON,

and an operating loss of 1.3 bn. RON, with an improvement in the results from 2012 to date, a result that can be undoubtedly attributed to improved corporate governance. At the same time, receivables of over 10 bn. RON are recorded, along with total debts of 21 bn. RON, including an increase in 2016 of outstanding payments. Moreover, these state companies receive annual subsidies of about 6 bn. RON, a figure almost as high as their operating profit. The modern legislation adopted by Romania in this area, at the pressure of international financial institutions and the EC, has never been properly implemented, the lack of executive political will being obvious. In 2016, it was found that from a total of 144 public enterprises for which the tutelage authorities had the obligation to transmit information on how this law was applied, the selection process for the board of directors was initiated for only 27 entities. At the local level, out of the 795 local authorities, only 136 declared the establishment of the internal system for collecting, monitoring and analysing the legal obligations in force. However, the degree of compliance with legislation appears to be higher for local public enterprises than for central ones, at least in triggering selection processes. In the Ministry of Finance, the department in charge of issuing warnings and sanctions for non-compliance did not provide any information related to the nature of the sanctions applied. As far as we know, despite the fact that the non-application of the sanctions regime means damage to the state budget, the Court of Accounts did not trigger an inspection. In a nutshell, if the corporate governance law was overlooked recently in its spirit, it is now infringed by public enterprises and ministries alike without anyone applying any sanction. Moreover, in 2017, Parliament stormed the existing legislation, seeking to exempt no less than 94 public enterprises from implementing the law by invoking the national interest. The Constitutional Court has temporarily blocked the process, but no state-owned company out of the nearly 1500 has completed the law enforcement process more than one year after its adoption.

The main area where poor governance is evident is the **European funds** sector. Given the great development gap between Romania and the EU average, the executive could have taken full advantage of the funds, but poor governance has led to wasteful use and missed opportunities. An estimate of earnings (reimbursements) and losses (decommitments, budget receivables) shows that Romania lost 1.6 bn. Euro definitively via decommitments. It is exactly those programs that should have addressed some of society's main problems - infrastructure and human resources - registered not only low absorption rates, but also the highest decommitments (OP Transport and OP Environment together lost almost 1 bn. euro), and the largest claims following the implementation of the projects. In other words, OP Transport and OP Human Resources were among the worst implemented cohesion programs in the previous programming period. As far as the amount of financial corrections is concerned, it amounts to almost 1 bn. Euro. Again, we see that the most problematic programs are those on infrastructure: OP Transport (almost 500 mil. Euro), OP Regional (almost 300 mil. Euro) and OP Environment (almost 100 mil. Euro).

More than halfway through the current program period (2014-2020), Romanians are still stuck in the need to raise the absorption level and do not pay enough attention to the projects' impact and quality for the final beneficiary. A high absorption rate is not a sufficient condition for Romania to narrow the gap with the EU average and, at worst, may even lead to waste and an aggravation of defective governance, as in Greece.

III.

The third section provides a framework for addressing the intensely polarizing question: to what extent do the three "justice laws" affect the independence of the judiciary.

Judicial independence is often invoked in political debates, most recently on amendments

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to the three justice laws: 303, 304, 317/2004. Although codes have been upgraded and justice is the focus of the CVM, we always hear that the judiciary's independence is in serious danger and must be defended or safeguarded. The head of state is often urged to hold a referendum on "justice".

Therefore, we aim to answer the question to what extent the three justice laws - as they were and still are to be amended - affect the independence of the judiciary. The main argument is that a total separation of justice from any form of political control is not desirable, because it means implicit democratic control, with its pluses and minuses. Prudently speaking, what do we do if elements of justice do not follow certain procedures, and their hierarchical chiefs overlook this situation? A form of balanced organization must strive to establish an equilibrium between responsibility and independence in a given context. The amendments currently in the process of adoption, after bringing them in line with the decisions of the Constitutional Court, are not likely to bring about any significant impact on the current functioning of the Romanian judiciary.

This analysis only proposes the adoption of a framework of approach to counteract the tendency to make soundbites or slogans out of concepts (rule of law, independence of justice, parliamentary sovereignty, democracy, etc.) and their increasing undifferentiated use in the political and constitutional discourse of the last years. These tendencies (tribalism, politicization and the "ideologization" of discourse) are harmful to a constitutional democracy.

Recommendations

The central recommendation of this report - and its warning - is that in the absence of an emphasis on the prevention of corruption instead of its repression, the anti-corruption campaign in Romania will fail. The DNA's actions, after having had undue interactions

with the intelligence services, are orchestrated not only politically, but also by the media by exaggerating them because of various interests. These were insufficient anyway, given the extent of the problem. The rules of the game can be changed only through bipartisan agreed policies where the elimination of corruption is a secondary but indispensable objective, for example by placing more emphasis on increasing the quality of public services, the efficiency of public procurement or the predictability of long-term investments.

1. Depoliticization of the bureaucracy

Significant amounts are allocated to technical assistance programs undertaken by international institutions to develop framework laws or to develop recruitment, monitoring and evaluation systems for civil servants. These structural reform programs are not "digested" by the institutions concerned. Their effects are often limited, if not non-existent. What has turned out to work in recent years is, however, the change of procedures in terms of transparency of decision making and objective recruitment of staff. The second element which needs to be addressed is wage growth and targeted expansion. Given that over 60% of public administration employees are over 50, it is extremely important to recruit young people. This can lead to a positive development of a new approach to the public function, but it is important whether or not to reach a critical mass of young professionals.

An extremely important medium-term objective is to develop a training system for civil servants, but more of a certification system for the whole category of civil servants. A "cadre nursery" is absolutely necessary to have a functional and well-prepared administrative apparatus. The National Institute of Administration can be a good ecosystem to develop a collective identity and a fair approach to the public function. A second important objective is the development of an integrated civil service management system. Here the National Authority for Public Servants can play a much more important role in the recruitment and evaluation of civil servants at national and

local level. It is currently a monitoring body without concrete instruments of sanction or intervention. An integrated system covering the entire career of civil servants may lead to a significant improvement in the professionalism of public administration in Romania. There are also a number of remedies at the fingertips of political decision-makers and society through pro-active engagement in supporting good practice at institutional level. First of all, the professionalisation of the public service does not necessarily require a national structural reform. Another good example is the implementation of the public management system. Although it continues to be subordinate to the political decision-maker, a professional decoupled from power relations within a political party can still have a more effective outlook on public resource management. Public management has been successfully established for a period of time at the level of state-owned companies. At local level, the existence of a City Manager tends to increase the competitiveness of the local public administration.

2. The real implementation of corporate governance law

A return to the virtuous circle of corporate governance would mean that the Finance Ministry undertake the leading role in implementing this process through actions such as immediate and public sanctioning of all public authorities and enterprises that do not implement the current legislative framework, as well as actions to assist them to develop law enforcement capacity. These actions can be funded via European funds or by international financial institutions. It would mean that the state should produce firm and realistic expectations letters, select administrators transparently and professionally, and systematically monitor the performance of management bodies according to a set of appropriate performance indicators tailored to the company profile. Parliament, in this context, should withdraw any attempt to modify the law. In the long run, state ownership packages in these companies can be transferred to a Sov-

ereign Investment Fund controlled by a small group of people who are faithful to the governing coalition. Though this would come up with great opposition from the EC and even the Finance Ministry (partly) it is not inconceivable.

The Finance Ministry must urgently apply the sanctions regime imposed by law and the Court of Accounts must evaluate the damage to the state budget by not applying these sanctions. A massive process of educating the officials in these public authorities (ministries, city halls, county councils, etc.) must take place in order to highlight that the law does not weaken the ministries' power, but strengthens the state's shareholder position. The massive pressure from civil society (for example, through a barometer on corporate governance or activism in the general assemblies - it is sufficient to acquire a single share in any of the listed public companies to sue the state for failing to respect the rights of minority shareholders - another essential principle of corporate governance) and the media, in conjunction with the parliamentary opposition, remains in this context the only real weapon to prevent the complete cancellation of any trace of good governance in state-owned companies.

3. Streamlining public investment

Despite its spectacular growth, Romania has too many elements of the Greek model that is known in history under the anecdotic name "from boom to bust", meaning from full bloom to bankruptcy. Discretion in public investment, with a lack of predictability, transparency and ongoing bargaining, affects the foundation of any sustainable development perspective. As it is also recommended by some European Directorates General (Work, Regio) and as it is being implemented in Poland, Romania needs a fixed investment development plan negotiated with all social and regional actors, including all national funds and European (except private ones that are uncertain) for ten years minimum. Poor governance leads to public investment inefficiency, an even greater problem in Romania

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than underfunding which can be more easily solved.

4. More power to the citizen consumer

The Social Democrats' failure, at least when it comes to the optics, to increase the salaries of qualified personnel, which has other options on the labour market, is not a random occurrence. When a timely policy becomes a PR disaster, we need to ask what has happened. Nothing more than a government unable to gather feedback or to consult in general cannot implement good, well-intentioned reforms because it lacks information.

Therefore, this is the reason why in the hospitals that had most to gain from the reforms, the physicians joined the nurses and organized spontaneous strikes instead of applause. Governments and any political parties would have much to gain if they understand that it has become indispensable to consult, in due time, citizens and groups interested in certain reforms or services. Although Romania has millions of Facebook users and good Internet coverage, service audits by citizens or representative NGOs almost do not exist, and surveys to test service performance are an exception, but they should become the main public policy calibration tool.

5. Europeanizing the reform of control bodies, protecting efficient institutions

Romania needs to reform the Court of Accounts, the Tax Authority and a number of control institutions that are suboptimal even though they enjoy good resources and staff. European technical assistance funds should be used for this purpose rather than feasibility studies, but to directly place in key points top

managers – with a mandate to evaluate and reorganize – from more advanced Member States. There is no need for World Bank loans to reform the Tax Authority, as we have European funds spent inefficiently on programs for administrative capacity or technical assistance. The condition is, however, to give up dead-end nationalism and open up to the rest of Europe. If we did not succeed in reforming the Tax Authority in 25 years, why not ask for help from high-performance institutions in other member countries? Or are we still going to try on our own for the next 25 years?

Similarly, although there is no perfect institution, to place such emphasis on reforming the DNA, the National Integrity Agency (ANI) or the Competition Council (CC) is an exaggeration since these are performing to a larger extent than the others. Of course, the DNA needs to become more transparent and more impartial, but the Constitutional Court is pushing in this direction, and the mandates for the DNA's head prosecutor and its high ranking staff are short enough to be under political control. What is absurd at this time is to have a heated discussion about the DNA and the CC, institutions that are more efficient than the average within their mandate, but for there to be no requirements at all against other less performing institutions, from the Court of Accounts to the Construction Inspectorate. Prefectures have become almost irrelevant in their legality control function. Although the emphasis of anti-corruption prevention must be expanded, this cannot be achieved if the parliamentary majority and the government are more focused on penalizing the performers instead of improving their own efficiency.