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Notes

Crafting Employment Policy During EU Accession: Strategies for Romania and Bulgaria

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INTRODUCTION

Prior to the early 1990s, employment law and policy within the European Community (EC)¹ had traditionally been the prerogative of individual Member States.² Since then, a number of interdependent developments have necessitated a rearrangement from soft coordination towards closer alignment of national employment policymaking and concomitantly, greater involvement of European institutions.³ Following the initial

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1. The European Union proper was established by the Treaty on European Union, signed in Maastricht in 1992. Treaty on European Union, Jul. 29, 1992, 1992 O.J. (C 191) 1, available at <http://europa.eu.int/eur-lex/en/treaties/dat/11992M/html/11992M.html> [hereinafter EU Treaty]. For the sake of simplicity, I will use the terms "European Union" and "European Community" interchangeably throughout the article.

2. Until the signing of the EU Treaty, intergovernmental cooperation within the EC had been limited to little more than a customs union—i.e., an economic alliance based upon freedom of movement of goods, services, capital, and people. See Consolidated Version of the Treaty Establishing the European Community, Mar. 25, 1957, 2002 O.J. (C 325) 33, available at http://europa.eu.int/eur-lex/en/treaties/dat/12002E/pdf/12002E_EN.pdf [hereinafter EC Treaty]. Until 1992, the integration of Europe thus lacked both the legislative and institutional framework to cope with themes such as employment and social policy at the supranational level. See *id.* On the progression of European integration, see generally JOHN GILLINGHAM, EUROPEAN INTEGRATION, 1950–2003: SUPERSTATE OR NEW MARKET ECONOMY? (2003).

3. The primary impulse for this shift has been the closer integration of

impetus provided by the influential *Delors' White Book on Growth, Competitiveness and Employment*⁴ in 1993, the progress toward deeper concord culminated in the second half of the 1990s with the ratification of the Treaty of Amsterdam⁵ and the subsequent adoption of the European Employment Strategy (EES).⁶ These two developments mark a paradigmatic shift in

macroeconomic policies following the 1992 signing of the EU Treaty. See EU Treaty, *supra* note 1. Additionally, since the early 1990s, there has been a growing awareness among European governments of the spillover effects of national-level employment regulation. The recognition of the interdependence of national employment policymaking with other areas of "common concern"—economic, social, or political—is reflected in a variety of recently passed EU instruments. See, e.g., Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, art. 2(19), Oct. 2, 1997, 1997 O.J. (C 340) 1, available at <http://www.europarl.eu.int/topics/treaty/pdf/amst-en.pdf> [hereinafter Treaty of Amsterdam]. Finally, during this period, EU institutions have become more attentive to economic research pointing to a strong relationship between employment policy and the persistent economic problems facing the Community. See, e.g., ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, THE OECD JOBS STUDY: FACTS, ANALYSIS, STRATEGIES (1994) [hereinafter OECD JOBS STUDY]. The 1994 OECD JOBS STUDY has been particularly influential in pointing to the link between employment policy and high unemployment, a phenomenon that European governments have battled since the 1980s. It should be stressed, however, that irrespective of the strong move towards supranational decision making on employment issues, national prerogatives continue to permeate deeply employment policy within European Union. See *infra* note 21. See also *infra* note 36 and accompanying text.

4. *Commission White Paper on Growth, Competitiveness, and Employment: The Challenges and Ways Forward into the 21st Century*, COM (93) 700 final (Dec. 2, 1993), available at <http://europa.eu.int/en/record/white/c93700/contents.html>. The White Book, among other things, set forth the theoretical baseline for the creation of a coordinated approach towards employment issues at the EU level. See *id.*

5. See Treaty of Amsterdam, *supra* note 3. See generally *European Commission, Directorate-General for Employment, Industrial Relations and Social Affairs, Employment in Europe 1998, Jobs for People—People for Jobs: Turning Policy Guidelines into Action*, at 3, 11 (1999), available at http://europa.eu.int/comm/employment_social/employment_analysis/eie/1998_en.pdf ("Times have changed with the . . . Treaty [of Amsterdam]. The Union now treats employment, not just as a Member State responsibility, but as a 'matter of common concern.'"). The Treaty entered into force on May 1, 1999. For a more detailed discussion of the Amsterdam Treaty, see also *infra* Part I(A).

6. Sourced in Article 125 of the Treaty of Amsterdam, *supra* note 3, the EES centers on priority themes under the four pillars of employability, entrepreneurship, adaptability, and equal opportunities. See Presidency Conclusions, Extraordinary Council Meeting on Employment, Luxembourg, 20 and 21 November 1997 (Nov. 24, 1997), available at http://europa.eu.int/comm/employment_social/elm/summit/en/papers/concl.htm. The EES, among other things, calls on Member States annually to formulate National Action Plans on Employment (NAPs) that incorporate these priority themes, which are subsequently used by EU institutions for reprioritizing and making recommendations to Member States with respect to their employment policies. See *id.* In 2003, the EES was refined in order to bring about the goals of the 2000 Lisbon Strategy—most importantly, full employment. The new priorities

the way the European Union approaches employment issues and provide broad legal and institutional bases to bolster the EU's influence on policymaking at the national level.⁷

Instruments dictating the European Union's influence on and involvement in national employment regulation have become vital components of the modern *acquis communautaire*, the body of common rights and obligations that binds all Member States.⁸ As a result, the implementation of EU employment *acquis* became a prerequisite for the satisfaction of the Copenhagen criteria,⁹ a set of three focal principles that an EU-acceding country must satisfy before entering the Union.¹⁰ Since

are: (1) the reduction of the unemployment rate, (2) the encouragement of labor market participation by women and the retired, (3) the promotion of entrepreneurship and lifelong learning, and (4) the fight against undeclared work. See Council Decision 2003/578/EC of 22 July 2003 on Guidelines for the Employment Policies of the Member States, 1997 O.J. (L 197) 13, available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_197/l_19720030805en00130021.pdf.

7. See, e.g., Treaty of Amsterdam, *supra* note 3, art. 130 (creating the Council Employment Committee designed to "promote coordination between Member States on employment and labour market policies").

8. These instruments are sourced primarily in the provisions of the Amsterdam Treaty and channeled through the EES. See *infra* Part I.

9. Presidency Conclusions, European Council in Copenhagen (June 21–22, 1993), at 13, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf [hereinafter Copenhagen criteria]. Although the EU expressly reserved its discretion to decide whether or not to accept a particular acceding country, the 1993 Copenhagen European Council set forth three broad criteria the fulfillment of which was held to be a *sine qua non* for accession into the Union. These include: (1) *political* requirements— aspiring members have to possess "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;" (2) *economic* requirements—acceding countries have to have a "functioning market economy;" and (3) *incorporation* of the *acquis communautaire*—candidates have to adhere "to the aims of political, economic and monetary union." *Id.* The 1995 Madrid European Council, while recognizing the Copenhagen criteria, further focused on the adaptation of the applicant countries' institutional structures to create proper conditions for harmonious integration into the EU. See Presidency Conclusions, Madrid European Council (Dec. 15–16, 1995), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=DOC/95/9&format=HTML&aged=1&language=EN&guiLanguage=en>. As is evident, national employment law and policy touches all three of the Copenhagen criteria. On the basics of EU enlargement, see also generally Heather Grabbe, *The Implications of EU Enlargement*, in DEVELOPMENTS IN CENTRAL AND EASTERN EUROPEAN POLITICS 3 (Stephan White et al. eds., 3d ed. 2003), available at http://www.cer.org.uk/pdf/grabbe_CEE_oct02.pdf; Hanns-D. Jacobsen, *The European Union's Eastward Enlargement*, in 1 EUROPEAN INTEGRATION ONLINE PAPERS (1997), <http://eiop.or.at/eiop/pdf/1997-014.pdf>; Dimitry Kochenov, *EU Enlargement Law: History and Recent Developments: Treaty-Custom Concubinage?*, in 9 EUROPEAN INTEGRATION ONLINE PAPERS (2005), <http://eiop.or.at/eiop/pdf/2005-006.pdf>.

10. On enlargement readiness of both acceding countries and the EU itself, see

1998, the objective of the European Commission¹¹ has been to oversee that the twelve countries acceding to the EU,¹² ten of which became Member States on May 1, 2004,¹³ bring their legislation into alignment with the EU employment *acquis* and progressively adjust their institutional frameworks in order to prepare themselves for EU membership.¹⁴

The compulsory implementation of EU employment law into domestic legislation is certain to put a burden on acceding countries' public and private sectors, as the new legal and institutional framework demands structural readjustment of both government and firm behavior.¹⁵ This is particularly true in

generally Katinka Barysch & Heather Grabbe, *Who's Ready for EU Enlargement* (Centre for European Reform, Working Paper No. 416, 2002), available at http://www.cer.org.uk/pdf/wp416_enlargement.pdf; Jacobsen, *supra* note 9. See also *infra* note 91.

11. Within the EU institutional framework, the European Commission, along with the European Council, is—with an array of dissimilarities—roughly the equivalent of the U.S. executive branch. See EU Treaty, *supra* note 1, arts. C, E, G(61).

12. On March 31, 1998, accession negotiations were commenced with six applicant countries—Cyprus, the Czech Republic, Estonia, Hungary, Poland, and Slovenia. On October 13, 1999, the Commission recommended opening negotiations with Bulgaria, Latvia, Lithuania, Malta, Romania, and the Slovak Republic. In addition, on October 6, 2004, the Commission recommended the opening of accession negotiations with Turkey. See *Communication from the Commission to the Council and the European Parliament—Recommendation of the European Commission on Turkey's Progress Towards Accession*, COM (2004) 656 final (Oct. 6, 2004), available at http://europa.eu.int/comm/enlargement/report_2004/pdf/tr_recommendation_en.pdf; see also *EU Commission Backs Turkey Talks*, CABLE NEWS NETWORK, Oct. 6, 2004, <http://www.cnn.com/2004/WORLD/europe/10/06/eu.turkey.talks/>.

13. Treaty Concerning the Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union art. 1, subdiv. 2, Apr. 16, 2003, 2003 O.J. (L 236) 17, available at http://europa.eu.int/eurlex/pri/en/oj/dat/2003/l_236/l_23620030923en00170032.pdf. The Presidential Conclusions of the 2003 Thessaloniki European Council confirmed that “the objective is to welcome Bulgaria and Romania as [EU] members in 2007.” Presidency Conclusions, Thessaloniki European Council (June 19–20, 2003), para. 37, available at http://europa.eu.int/futurum/documents/other/oth200603_en.pdf; see also *infra* note 174.

14. Specifically, the *acquis* dealing with employment and social policy constitutes Chapter 13 in the negotiations with countries aspiring for EU membership. See *European Commission, Enlargement of the European Union: Guide to Negotiations—Chapter by Chapter* (Dec. 2004), available at <http://europa.eu.int/comm/enlargement/negotiations/chapters/negotiationsguide.pdf>; see also *infra* note 91.

15. Many analysts have criticized the new administrative, financial, and legal constraints as anticompetitive and protectionist. Among other things, the critics

Central and Eastern European (CEE) countries, which were recently forced to undergo a profound transformation from centrally planned economies to the free market.¹⁶ It is therefore desirable, from both the perspective of the European Union and that of the acceding countries, to pay close attention to the tradeoffs—political, economic, and social—that are being made during this process. Apart from other palpable benefits, crafting a proper labor market framework prior to accession has significant advantages to doing so *ex post facto*, in that it allows an acceding country to fully exploit, upon accession, its economy's comparative advantages.¹⁷ Furthermore, *ex ante* activation of a viable and flexible labor market policy is likely to contribute to the creation of goodwill that will undoubtedly assist the country in attracting Foreign Direct Investment (FDI).¹⁸ Strong FDI inflow is an element that is highly desirable for acceding countries because it introduces employment opportunities and new know-how into their economies.¹⁹ As such, it is subject to fierce

allege that the constraints cause increased labor costs, increased startup costs for small- and medium-sized businesses, and decreased labor market flexibility. See, e.g., Marian L. Tupy, *EU Enlargement: Costs, Benefits, and Strategies for Central and Eastern European Countries*, POLY ANALYSIS, Sept. 18, 2003, at 1, available at <http://www.cato.org/pubs/pas/pa489.pdf>. See generally Roger H. Gordon & David D. Li, *Taxes and Government Incentives: Eastern Europe vs. China* 1–2 (William Davidson Inst., Working Paper No. 56, 1997), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp56.pdf>.

16. See, e.g., Gérard Roland & Thierry Verdier, *Transition and the Output Fall* 1–3 (William Davidson Inst., Working Paper No. 37, 1997), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp37.pdf> (analyzing transition output fall that took place in CEE economies in the early 1990s and its relationship to price liberalization); Dan Candea & Rodica M. Candea, *Understanding and Managing Challenges to the Romanian Companies During Transition* (William Davidson Inst., Working Paper No. 196, 1998), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp196.pdf> (analyzing salient problems on both the macro- and microeconomic level that Romanian companies face during transition); see also Jan Svejnar, *Labor Market Flexibility in Central and Eastern Europe* (William Davidson Inst., Working Paper No. 496, 2002), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp496.pdf> (analyzing labor market flexibility and its relationship to macroeconomic performance).

17. For CEE countries, the most important advantages include low cost of labor and lack of market saturation. See, e.g., Tupy, *supra* note 15, at 8.

18. See, e.g., Beata K. Smarzynska & Shang-Jin Wei, *Corruption and Cross-Border Investment: Firm-Level Evidence* (William Davidson Inst., Working Paper No. 494, 2002), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp494.pdf> (finding a positive relationship between lack of transparency (corruption) and the level of FDI inflows).

19. See, e.g., Sumon Kumar Bhaumik, Saul Estrin & Klaus Meyer, *Determinants of Employment Growth at MNEs: Evidence from Egypt, India, South Africa and Vietnam* 1–4 (William Davidson Inst., Working Paper No. 707, 2004),

competition, particularly in the CEE region, as countries strive for economic convergence with Western Europe.²⁰

The purpose of this Note is twofold. First, Parts I and II provide a comprehensive overview of the current EU *acquis* dealing with employment issues and analyze whether the recently amended Romanian and Bulgarian labor codes comply with its mandates. Second, taking into account the situation in their respective labor markets, Part III suggests possible strategies for Romania and Bulgaria on how to take advantage of the fact that the current employment *acquis* concerns only a limited set of topics and constitutes, as a general rule, broad minimum-standard legislation that leaves national policymakers a significant amount of flexibility.²¹ Part III utilizes modern research on labor market dynamics as well as documented transformation experiences of the eight CEE countries that entered the European Union in May 2004. The analysis reveals that the present Romanian and Bulgarian labor codes fail to satisfy provisions of several applicable EU directives.²² Furthermore, Romania and Bulgaria can extract multiple lessons from economic research on transition in fellow CEE countries, such as strategies to lower unemployment. These lessons, if implemented, have the potential to aid the two countries in achieving the ultimate goal of their economic and political transformation: convergence with the West. Importantly, many of the relevant transition economists' insights about labor market dynamics in

available at <http://www.bus.umich.edu/KresgeLibrary/Collections/Workingpapers/wdi/wp707.pdf>; Alan A. Bevan & Saul Estrin, *The Determinants of Foreign Direct Investment in Transition Economies* 3 (William Davidson Inst., Working Paper No. 342, 2000), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp342.pdf> (“[F]oreign direct investment plays a crucial role, in terms of fostering accelerated growth, technical innovation and enterprise restructuring.”).

20. See generally Saul Estrin & Giovanni Urga, *Convergence in Output in Transition Economies: Central & Eastern Europe, 1979–1995* (William Davidson Inst., Working Paper No. 30, 1997), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp30.pdf>.

21. As is observable from the presentation of applicable EU legislation in Part I, *infra*, irrespective of the strong trend towards closer alignment and substantial involvement of Brussels' institutions, employment policymaking within the EU remains heavily infused with national interests of individual Member States and less harmonized than other “matters of common concern” (e.g., economic and monetary policy). See, e.g., European Commission, *Going for Growth, The Economy of the EU* (Directorate General Press and Communication, Sept. 2003), available at <http://europa.eu.int/comm/publications/booklets/move/40/en.pdf>; see also *infra* note 36 and accompanying text.

22. See *infra* discussion accompanying notes 92–129; see also *supra* note 9 and accompanying text.

the CEE region can be successfully utilized while at the same time remaining faithful to both the text and purpose of the applicable EU employment *acquis*.

I. CURRENT EU EMPLOYMENT ACQUIS

The EU employment *acquis* encompasses four sets of inter-related instruments: (1) treaties; (2) secondary legislation, such as regulations and directives; (3) case law of the European Court of Justice (ECJ);²³ and (4) nonbinding tertiary instruments, such as Council²⁴ recommendations and guidelines adopted pursuant to the Lisbon Strategy²⁵ and the EES.²⁶

A. TREATIES

Treaties, the core legislation of the EU, establish broad general principles that set the stage for more comprehensive and detailed secondary legislation. In the context of employment law, the 1997 Treaty of Amsterdam²⁷ is particularly significant. Among other things, the treaty amended Article 2 of the EU Treaty²⁸ and Article 2 of the EC Treaty²⁹ to make achievement of "a high level of employment" one of the key objectives of European institutions.³⁰ More importantly, however, the treaty added a new title, Title 8, to the EC Treaty that deals exclusively with employment. Title 8 commands the development of a "co-ordinated strategy for employment and . . . for promoting a skilled, trained and adaptable workforce and labour markets

23. ECJ case law, even though directly binding on EU Member States, will not be analyzed in Part I, as decisions of the ECJ are based on interpretation of primary and secondary instruments and generally concern resolution of narrow technical issues that are beyond the scope of this article. See EU Treaty, *supra* note 1, arts. G(51)–(57).

24. For specifics about The Council of the European Union, see *id.* arts. C, D, E, G(61); see also *supra* note 11.

25. See Presidency Conclusions, Lisbon European Council (Mar. 24, 2000), available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00100-r1.en0.htm; see also *infra* discussion accompanying note 88.

26. See *supra* note 6 and accompanying text.

27. See Treaty of Amsterdam, *supra* note 3.

28. See *id.* The current Article 2 of the EU Treaty corresponds to the former Article B.

29. See *supra* note 2.

30. See Treaty of Amsterdam, *supra* note 3, arts. 1(5), 1(16)(2). As mentioned above, prior to the ratification of the Amsterdam Treaty, employment law and policy within the EU had historically been the exclusive domain of national legislatures. See *supra* note 2.

responsive to economic change."³¹ The treaty further man-dates that EU Member States "regard promoting employment as a *matter of common concern*."³² In addition, Title 8 allows EU institutions to draw guidelines and make recommendations to Member States concerning employment issues,³³ gives the European Council authority to adopt incentive measures and initiatives,³⁴ and creates an advisory Council Employment Committee to "promote co-ordination between Member States on employment and labour market policies."³⁵ Despite the above developments, deference to national prerogatives respecting employment law and policy constitutes an important aspect of the treaty's overall scheme.³⁶

B. SECONDARY LEGISLATION

Secondary legislation puts into operation specific provisions of the foundational EU and EC Treaties and often incorporates relevant decisions of the ECJ.³⁷ The adoption of secondary legislative instruments—that is, regulations, decisions, and directives—involves a delicate interplay among the three pivotal EU institutions: the European Commission, the Council of Ministers, and the European Parliament.³⁸

1. Regulations and Decisions

Regulations are self-executing legislative instruments of general application that directly bind all Member States and thus do not require implementing legislation at the national level.³⁹ In the context of employment law, the role of regulations is minimal due to the politically sensitive nature of employment regulation, as well as the recognition that the existence of diverse institutional and legal frameworks across the EU currently makes uniformly applicable employment legislation inappropriate.⁴⁰

31. See EC Treaty, *supra* note 2, art. 125 (emphasis added).

32. See *id.* art. 126 (emphasis added).

33. See *id.* art. 128. While nonbinding, recommendations and guidelines are an oft-used tool of the EES. See *supra* note 6.

34. See *id.* art. 129.

35. See *id.* art. 130.

36. See, e.g., *id.* arts. 127, 129.

37. See EU Treaty, *supra* note 1, art. G(60).

38. See *id.* See also *supra* notes 11 and 24.

39. See EU Treaty, *supra* note 1, art. G(60).

40. See *infra* notes 43–84 and accompanying text.

Conceptually similar to regulations, European Council decisions are directly binding on EU Member States to whom they are addressed and do not require implementing legislation.⁴¹ For the same reasons as regulations, decisions play a minimal role as regards EU employment *acquis*.⁴²

2. Directives

Directives are non-self-executing legislative instruments that bind signatories as to the results to be achieved, yet give national legislatures discretion with respect to the form and method of implementation.⁴³ Currently, directives of the European Council are the primary tool used to regulate employment in the EU.⁴⁴ The directives tend to be relatively recent and focus on a limited number of employment-related issues, including collective redundancies (layoffs), transfers of undertakings (changes of employer due to transfer or merger), employee rights of information, employee protection in cases of employer insolvency, working conditions, and nondiscrimination.⁴⁵

a. Collective redundancies

Directive 98/59/EC on Collective Redundancies⁴⁶ sets forth procedures that employers must follow when “contemplating collective redundancies.”⁴⁷ The Directive commands, among other

41. See EU Treaty, *supra* note 1, art. G(60).

42. *But see, e.g.*, Council Decision 2000/750 of 27 November 2000 Establishing Community Action Plan to Combat Discrimination, art. 8(1), 2000 O.J. (L 303) 23–28, available at <http://europa.eu.int/infonet/library/m/2000750ce/en.htm> (mandating coordination of the EU’s anti-discrimination program with activities related to employment).

43. See EU Treaty, *supra* note 1, art. G(60). Directives operate on the same principle as non-self-executing treaties in the American legal system. See, e.g., Berne Convention Implementation Act of 1988, Pub. L. No. 100-568, 102 Stat. 2853; Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as last revised July 24, 1971, 25 U.S.T. 1341, 828 U.N.T.S. 221.

44. See *infra* notes 46–84 and accompanying text.

45. See *infra* Part I(B)(2)(a)–(f).

46. Council Directive 98/59/EC of 20 July 1998, On the Approximation of the Laws of the Member States Relating to Collective Redundancies, 1998 O.J. (L 225) 16, available at http://europa.eu.int/comm/employment_social/labour_law/docs/directive98_59_en.pdf [hereinafter Directive 98/59/EC].

47. *Id.* art. 2(1). The term “collective redundancies” refers to “dismissals effected by an employer for one or more reasons not related to the individual workers concerned.” *Id.* art. 1(1)(a). The number of employee dismissals has to exceed certain numerical thresholds established by the Directive. See *id.*

things, written notification to public authorities⁴⁸ and consultation with employees' representatives about ways to avoid or reduce the collective redundancies and mitigate the consequences of the redundancies "by recourse to accompanying social measures."⁴⁹

b. Transfer of undertakings.

EU law addressing transfers of undertakings⁵⁰ aims to reduce differences among European countries with respect to their statutory provisions safeguarding employee rights in the event of a change of employer brought about by legal transfer or merger.⁵¹ Among other things, it directs that the transferor-employer's rights and obligations *vis-à-vis* its employees be transferred to the transferee-employer.⁵² The directive further obliges the transferee to "continue to observe . . . any collective agreement on the same terms applicable to the transferor under that agreement"⁵³ and specifies that the transfer "shall not in itself constitute grounds for [employee] dismissal."⁵⁴

c. Rights of information

Directive 2002/14/EC on Information and Consultation of Employees⁵⁵ aims to strengthen the dialogue between management and labor and calls on Member States to enact legislation

48. See *id.* art. 3(1).

49. See *id.* art. 2(2).

50. Council Directive 2001/23/EC of 12 March 2001, On the Approximation of the Laws of the Member States Relating to the Safeguarding of Employees' Rights in the Event of Transfers of Undertakings, Businesses or Parts of Undertakings or Businesses, 2001 O.J. (L 82) 16, available at http://europa.eu.int/comm/employment_social/labourLaw/docs/directive2001_23_en.pdf [hereinafter Directive 2001/23/EC].

51. See *id.* pmb. ¶¶ 3–4, art. 1(1)(a).

52. See *id.* art. 3(1). The Directive allows "Member States [to] provide that, after the date of transfer, the transferor and the transferee shall be jointly and severally liable in respect of obligations which arose before the date of transfer." *Id.*

53. See *id.* art. 3(3). This obligation continues "until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement." *Id.*

54. See *id.* art. 4(1). "This provision shall not stand in the way of dismissals that may take place for economic, technical or organisational reasons entailing changes in the workforce." *Id.*

55. European Parliament and Council Directive 2002/14/EC of 11 March 2002, Establishing a General Framework for Informing and Consulting Employees in the European Community, 2002 O.J. (L 80) 29, available at http://europa.eu.int/comm/employment_social/labourLaw/docs/directive2002_14_en.pdf [hereinafter Directive 2002/14/EC].

to prevent “serious decisions affecting employees from being taken . . . without adequate procedures having been implemented beforehand to inform and consult them.”⁵⁶ A related directive⁵⁷ addresses the effect inconsistencies in national laws regarding an employee’s notification rights with respect to the terms of their employment might have on the common market.⁵⁸ The directive is designed “to provide employees with improved protection against possible infringements of their rights and to create greater transparency on the labour market.”⁵⁹ It obligates employers to notify their employees in writing of the essential aspects of the contract or employment relationship within two months after the commencement of employment.⁶⁰

56. See *id.* pmb. ¶ 6. The Directive allows Member States to choose to restrict the applicability of the Directive to either “undertakings” with at least fifty employees or “establishments” with more than twenty employees. See *id.* arts. 2(a), 2(b), 3(1). Motivated by identical concerns, Council Directive 94/45/EC of 22 September 1994, On the Establishment of a European Works Council or a Procedure in Community-Scale Undertakings and Community-Scale Groups of Undertakings for the Purposes of Informing and Consulting Employees, 1994 O.J. (L 254) 64, available at http://europa.eu.int/comm/employment_social/labour_law/docs/directive94_45_en.pdf [hereinafter Directive 94/45/EC], mandates that “employees of Community-scale undertakings are properly informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed.” *Id.* pmb. ¶ 15. The Directive aims at eliminating unequal treatment of employees across countries and requires undertakings “to set up European Works Councils or to create other suitable procedures for the transnational information and consultation of employees.” *Id.* pmb. ¶ 16; see also *id.* arts. 1(1), 1(2), 2(1)(a), 2(1)(g).

Additionally, Council Directive 2001/86/EC of 8 October 2001, Supplementing the Statute for a European Company with Regard to the Involvement of Employees, 2001 O.J. (L 294) 22, available at http://europa.eu.int/comm/employment_social/labour_law/docs/directive2001_86_en.pdf [hereinafter Directive 2001/86/EC], sets standards for employee participation in the affairs of European public limited liability companies, that is, Community-scale businesses created under Regulation (EC) No 2157/2001. See *id.* art. 1(1). Finally, Council Directive 2003/72/EC of 22 July 2003, Supplementing the Statute for a European Cooperative Society with Regard to the Involvement of Employees, 2003 O.J. (L 207) 25, available at http://europa.eu.int/comm/employment_social/labour_law/docs/directive2003_72_en.pdf [hereinafter Directive 2003/72/EC], establishes the framework for employee participation in the affairs of European Cooperative Societies. See *id.* arts. 1(1), 2(a).

57. Council Directive 91/533/EEC of 14 October 1991, On an Employer’s Obligation to Inform Employees of the Conditions Applicable to the Contract or Employment Relationship, 1991 O.J. (L 288) 32, available at http://europa.eu.int/comm/employment_social/labour_law/docs/directive91_533_en.pdf [hereinafter Directive 91/533/EEC].

58. See *id.* pmb.

59. See *id.* pmb. ¶ 6.

60. See *id.* arts. 2(1), 3(1).

d. Employee protection in cases of employer insolvency

In this area, EU legislation⁶¹ reduces differences in the way EU countries protect employees when employers become insolvent.⁶² The applicable directive, among other things, mandates that Member States establish a guarantee institution to assure payment of outstanding employee claims arising out of employment contracts or relationships.⁶³

e. Working conditions

The EU directive⁶⁴ dealing with health and safety in employment requires national legislatures to enact laws which ensure "that workers with [a temporary or fixed-term] employment relationship . . . are afforded, as regards safety and health at work, the same level of protection as . . . other workers."⁶⁵ The directive calls for the creation of accident-preventive measures, such as the duty to inform workers of job risks⁶⁶ and mandatory training tailored to the particular characteristics of the job.⁶⁷ A related directive⁶⁸ mandates that Member States prohibit work by persons under fifteen years of age.⁶⁹ It further calls on national legislatures to "ensure that young people are

61. Council Directive 80/987/EEC of 20 October 1980, On the Approximation of the Laws of the Member States Relating to the Protection of Employees in the Event of the Insolvency of Their Employer (as amended by Directive 2002/74/EC), 1980 O.J. (L 283) 23, available at http://europa.eu.int/comm/employment_social/labourLaw/docs/directive80_987_en.pdf [hereinafter Directive 80/987/EEC].

62. See *id.* pmb. ¶ 5.

63. See *id.* art. 3(1). The Directive requires that Member States set forth "detailed rules for the organization, financing, and operation of the guarantee institutions," including, among other things, that "the assets of the institutions . . . be independent of the employers' operating capital and . . . inaccessible to proceedings for insolvency." See *id.* art. 5.

64. Council Directive 91/383/EEC of 25 June 1991, Supplementing the Measures to Encourage Improvements in the Safety and Health at Work of Workers with a Fixed-Duration Employment Relationship or a Temporary Employment Relationship, 1991 O.J. (L 206) 19, available at http://europa.eu.int/comm/employment_social/labourLaw/docs/directive91_383_en.pdf [hereinafter Directive 91/383/EEC].

65. See *id.* art. 2(1).

66. See *id.* art. 3(1).

67. See *id.* art. 4.

68. Council Directive 94/33/EC of 22 June 1994, On the Protection of Young People at Work, 1994 O.J. (L 216) 12, available at http://europa.eu.int/comm/employment_social/labourLaw/docs/directive94_33_en.pdf [hereinafter Directive 94/33/EC]. The Directive is sourced in the Community Charter of the Fundamental Social Rights of Workers. See *id.* pmb.

69. See *id.* arts. 3(b), 4(1).

protected against economic exploitation and against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardize their education.”⁷⁰

Finally, Directive 2003/88/EC on the Organization of Working Time⁷¹ “lays down minimum safety and health requirements for the organization of working time.”⁷² The Directive introduces maximum limits on weekly working hours,⁷³ limits on the duration of periods of night work,⁷⁴ as well as minimum requirements for daily, weekly, and annual periods of rest.⁷⁵

f. Nondiscrimination

The EU’s most important employment nondiscrimination directive⁷⁶ aims to create “a level playing-field as regards equality in employment,” and “lay[s] down a general framework for combating [both direct and indirect] discrimination on the grounds of religion or belief, disability, age or sexual orientation.”⁷⁷ Similarly, Directive 97/81/EC on Part-Time Work⁷⁸ implements the 1997 Framework Agreement reached by

70. *See id.* art. 1(3). The term “young people” refers to people who are under eighteen years of age. *See id.* art. 3(a).

71. European Parliament and Council Directive 2003/88/EC of 4 November 2003, Concerning Certain Aspects of the Organisation of Working Time, 2003 O.J. (L 299) 9, available at http://europa.eu.int/comm/employment_social/labour_law/docs/directive2003_88_en.pdf [hereinafter Directive 2003/88/EC].

72. *See id.* art. 1(1).

73. *See id.* art. 6. The Directive calls on Member States to ensure that “the average working time for each seven-day period, including overtime, does not exceed 48 hours.” *See id.* art. 6(b) (emphasis added).

74. *See id.* art. 8. The average normal hours of work for night workers are capped at eight hours per day. *See id.* art. 8(a).

75. *See id.* arts. 3, 5, 7. The Directive commands that workers be afforded a minimum daily rest period of eleven consecutive hours, a minimum weekly rest period of twenty-four consecutive hours, and a paid annual leave of at least four weeks. *See id.*

76. Council Directive 2000/78/EC of 27 November 2000, Establishing a General Framework for Equal Treatment in Employment and Occupation, 2000 O.J. (L 303) 19, available at http://europa.eu.int/comm/employment_social/labour_law/docs/directive2000_78_en.pdf [hereinafter Directive 2000/78/EC].

77. *Id.* art. 1. Similarly, Council Directive 2000/43/EC, 2000 O.J. (L 180) 22, available at <http://europa.eu.int/eurlex/pri/en/oj/dat/2000/l180/l18020000719en00220026.pdf>, implements the principle of equal treatment regardless of racial or ethnic origin. *See id.* pmbl. ¶ 10.

78. Council Directive 97/81/EC of 15 December 1997, Concerning the Framework Agreement on Part-Time Work Concluded by UNICE, CEEP and the ETUC, 1998 O.J. (L 14) 9, available at http://europa.eu.int/comm/employment_social/labour_law/docs/directive97_81_en.pdf [hereinafter Directive 97/81/EC].

European cross-country organizations.⁷⁹ This agreement sets forth a “general framework for eliminating discrimination against part-time workers” and aims at “developing the potential for part-time work” acceptable to both employers and workers.⁸⁰ Correspondingly, Directive 1999/70/EC on Fixed-Term Work⁸¹ codifies a 1999 Framework Agreement concluded by the same organizations, which focuses on the elimination of discrimination in Member States against workers with fixed-term contracts and the prevention of “abuse arising from the use of successive fixed-term employment contracts or relationships.”⁸²

Finally, Directive 96/71/EC on the Posting of Workers⁸³ regulates free movement of persons in the context of transnational provision of services and sets forth “mandatory rules for minimum protection” of temporarily-posted workers to be observed by host country employers.⁸⁴

C. TERTIARY INSTRUMENTS

In addition to secondary instruments, both the European Commission and the Council set forth nonbinding⁸⁵ recommendations and guidelines primarily designed to channel national policymaking to achieve broad employment policy objectives across the EU.⁸⁶ Tertiary instruments constitute an indispensable part of the modern European Employment Strategy,⁸⁷ as European institutions strive to achieve the chal-

79. *See id.* pmb. ¶ 8.

80. *Id.* pmb. ¶ 11, art. 1.

81. Council Directive 1999/70/EC of 28 June 1999, Concerning the Framework Agreement on Fixed-Term Work Concluded by ETUC, UNICE and CEEP, 1999 O.J. (L 175) 43, available at http://europa.eu.int/comm/employment_social/labour_law/docs/directive1999_70_en.pdf [hereinafter Directive 1999/70/EC].

82. *Id.* pmb. ¶ 14.

83. European Parliament and Council Directive 96/71/EC of 16 December 1996, Concerning the Posting of Workers in the Framework of the Provision of Services, 1997 O.J. (L 18) 1, available at http://europa.eu.int/comm/employment_social/labour_law/docs/directive96_71_en.pdf [hereinafter Directive 96/71/EC].

84. *See id.* pmb. ¶ 13, art. 2(1).

85. *See* EU Treaty, *supra* note 1, art. G(60).

86. *See, e.g.*, Council Recommendation 92/443/EEC of 27 July 1992, Concerning the Promotion of Participation by Employed Persons in Profits and Enterprise Results (including equity participation), 1992 O.J. (L 245) 53, available at http://europa.eu.int/comm/employment_social/labour_law/docs/recommendation92_443_en.pdf (urging Union Members to “ensure that [their] legal structures are adequate to allow the introduction of [employee] financial participation schemes”).

87. *See supra* note 6 and accompanying text.

lenging goals set forth by the 2000 Lisbon European Council.⁸⁸

II. CONSISTENCY OF CURRENT ROMANIAN AND BULGARIAN EMPLOYMENT LEGISLATION WITH THE EU EMPLOYMENT ACQUIS

The determination whether a specific piece of national legislation complies with the mandates of European Union law is comprised of two separate inquiries. First, the text of the national statute in question must be aligned with the text of the corresponding EU instrument and, unless an exception has been negotiated, must include all mandatory elements that the instrument prescribes.⁸⁹ Second, and perhaps more importantly, national governments are expected to assure that the amended laws in fact produce effects consistent with the purposes for which the EU measure was enacted.⁹⁰ This second enquiry is naturally more challenging than the preliminary textual evaluation, as it demands an examination of enforcement effectiveness of the provisions in question. Little empirical or other evidence of actual effects of implementing specific EU legislation exists with regard to Romania and Bulgaria⁹¹ and this Note therefore focuses mainly on textual

88. The 2000 Lisbon Council set forth a new strategic goal to be achieved by the EU no later than 2010: "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion." See Presidency Conclusions, Lisbon European Council, *supra* note 25, para. 5 (emphasis omitted). The guidelines on how to achieve this challenging goal have become known as the "Lisbon Strategy." For assessment of the overall progress achieved under the Lisbon Strategy, see generally High Level Group Chaired by Wim Kok, *Facing the Challenge—The Lisbon Strategy for Growth and Employment* (Nov. 2004), <http://europa.eu.int/growthandjobs/pdf/2004-1866-EN-complet.pdf>.

89. See generally *Communication from the Commission to the Council and the European Parliament, Roadmaps for Romania and Bulgaria*, at 2–3, COM (2002) 624 final (Nov. 13, 2002), available at http://europa.eu.int/comm/enlargement/docs/pdf/roadmap-br-ro-2002_en.pdf.

90. See *id.*

91. See, e.g., Commission of the European Communities, *2004 Regular Report on Romania's Progress Towards Accession*, at 91–96, COM (2004) 657 final (Oct. 6, 2004), available at http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_ro_2004_en.pdf [hereinafter *2004 Regular Report on Romania*]; Commission of the European Communities, *2004 Regular Report on Bulgaria's Progress Towards Accession*, at 83–88, COM (2004) 657 final (Oct. 6, 2004), available at http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_bg_2004_en.pdf [hereinafter *2004 Regular Report on Bulgaria*]; Commission of the European Communities, *2002 Regular Report on Romania's Progress Towards Accession*, at 83–87, COM (2002) 700 final (Oct. 9, 2002), available at <http://europa.eu.int/comm/>

analysis.

A. COLLECTIVE REDUNDANCIES

With respect to collective redundancies, the recently amended Romanian Labor Code is in full compliance with the EU's Directive 98/59/EC.⁹² Provisions of the new Bulgarian Labor Code, on the other hand, fall short of the directive's mandate. Most importantly, the Bulgarian statute does not provide for mandatory notification to public authorities by the employer,⁹³ an omission that is likely to diminish significantly the capacity of the Bulgarian government "to seek solutions to the problems raised by the projected collective redundancies."⁹⁴ In addition, the definition of a "collective redundancy" in the Bulgarian code is considerably narrower than that included in Directive 98/59/EC, which limits the purported broad sweep of the directive.⁹⁵ Finally, the Bulgarian statute deviates from Directive 98/59/EC with regard to the time at which an employer becomes obligated to commence consultations with employee representatives.⁹⁶

enlargement/report2002/ro_en.pdf http://europa.eu.int/comm/enlargement/report2002/ro_en.pdf [hereinafter *2002 Regular Report on Romania*]; Commission of the European Communities, *2002 Regular Report on Bulgaria's Progress Towards Accession*, at 80–83, COM (2002) 700 final (Oct. 9, 2002), available at http://europa.eu.int/comm/enlargement/report2002/bu_en.pdf [hereinafter *2002 Regular Report on Bulgaria*].

92. Compare Rom. Law. No. 53 of 24 Jan. 2003, Off. Gazette of Rom. No. 72 of 5 Feb. 2003, arts. 68–71, available at http://www.mmssf.ro/e_legislatie/law53.htm [hereinafter *Labor Code of Romania*], with Directive 98/59/EC, *supra* note 46.

93. Compare Bulg. Decree No. 31 of 11 Feb. 1994, Bulg. State Gazette Nos. 26 & 27/1986 (as amended), art. 130(a), available at <http://www.mlsp.government.bg/en/docs/labour/Labour%20code%20consolidated%20en.pdf> [hereinafter *Labor Code of Bulgaria*], with Directive 98/59/EC, *supra* note 46, arts. 2(3), 3.

94. Directive 98/59/EC, *supra* note 46, art. 4(2). Participation and oversight by competent government authorities in the effectuation of collective redundancies is mandatory under the Directive. See *id.*

The Bulgarian Code limits the term "collective redundancy" to employee dismissals caused by the following enumerated occurrences: (1) closing down of the enterprise; (2) partial closing down of the enterprise or staff cuts; (3) reduction of the volume of work; and (4) work stoppage for more than fifteen work days. See *Labor Code of Bulgaria*, *supra* note 93, § 1(9), art. 328(1)(1)–(4). Cf. Directive 98/59/EC, *supra* note 46, art. 1(1)(a) ("collective redundancies" means dismissals effected by an employer for one or more reasons not related to the individual workers concerned"). See also *id.* pmb. ¶¶ 8–9, 11.

96. Compare *Labor Code of Bulgaria*, *supra* note 93, art. 130(a)(1) ("In cases where the employer *intends* to undertake collective redundancy, he/she shall be obliged to undertake consultations . . .") (emphasis added), with Directive 98/59/EC, *supra* note 46, art. 2(1) ("Where an employer is *contemplating* collective

B. TRANSFER OF UNDERTAKINGS

Regarding undertaking transfers, the Romanian code seems to fall short of satisfying the mandates of Directive 2001/23/EC⁹⁷ in a number of ways. Significantly, the law does not provide for the protection of employees in the event the relevant transfer impairs the working conditions of the employees⁹⁸ and fails to specify the procedure to be taken when the entity being transferred has no employee representatives to be notified.⁹⁹ In addition, the Romanian code does not define the term “transfer,”¹⁰⁰ fails to stipulate that the duty to consult employee representatives applies irrespective of whether the transfer is undertaken by the employer or “an undertaking controlling the employer,”¹⁰¹ and omits several notice requirements.¹⁰²

The Bulgarian Labor Code suffers from many of the same deficiencies—it fails to provide for employee “dismissals” caused by deteriorated working conditions¹⁰³ and for transfers undertaken by the employer’s parent company.¹⁰⁴ Interestingly, the

redundancies, he shall begin consultations. . . .”) (emphasis added).

97. See *supra* note 50.

98. Compare Labor Code of Romania, *supra* note 92, arts. 169–70, with Directive 2001/23/EC, *supra* note 50, art. 4(2).

99. Directive 2001/23/EC, *supra* note 50, art. 4(2). Compare Labor Code of Romania, *supra* note 92, art. 170, with Directive 2001/23/EC, *supra* note 50, art. 7(6). See also *infra* note 102.

100. Compare Directive 2001/23/EC, *supra* note 50, art. 1(b), with Labor Code of Romania, *supra* note 92, art. 169. Such transparency deficit can undoubtedly cause considerable ambiguity that may, for example, substantially increase the transaction costs of effecting layoffs, reduce the efficacy of public oversight, as well as severely diminish the amount of effective protection Directive 2001/23/EC intends to bestow on employees. See also *supra* note 18 and accompanying text.

101. Directive 2001/23/EC, *supra* note 50, art. 7(4). Compare *id.* with Labor Code of Romania, *supra* note 92, art. 169(1).

102. Compare, e.g., Directive 2001/23/EC, *supra* note 50, art. 7(1) (“The transferor and transferee shall be required to inform the representatives of their . . . employees . . . of the following: [1] the date or proposed date of the transfer, [2] the reasons for the transfer, [3] the legal, economic and social implications of the transfer for the employees, [4] any measures envisaged in relation to the employees The transferee must give such information to the representatives of his employees in good time, and in any event before his employees are directly affected by the transfer as regards their conditions of work and employment.”), with Labor Code of Romania, *supra* note 92, art. 170 (“The transferor and the transferee must inform and consult, prior to the transfer, the trade union or, as the case may be, the employees’ representatives as regards the legal, economic, and social consequences for the employees deriving from the transfer of the property right.”).

103. See Directive 2001/23/EC, *supra* note 50, art. 4(2); cf. Labor Code of Bulgaria, *supra* note 93, art. 123(1).

104. See Directive 2001/23/EC, *supra* note 50, art. 7(4); cf. Labor Code of Bulgaria, *supra* note 93, art. 123(1).

law prohibits outright most post-transfer employee dismissals¹⁰⁵ and allows the parties to the transaction to agree as to who will remain responsible for obligations to the company's employees.¹⁰⁶ Both provisions are inconsistent with Directive 2001/23/EC.¹⁰⁷ Finally, Bulgarian legislators, by enumerating a limited set of discrete transactions to which protection applies, narrowed—perhaps inadvertently—the intended broad scope of Directive 2001/23/EC.¹⁰⁸

C. RIGHTS OF INFORMATION

The Romanian labor laws are in compliance with Directive 2002/14/EC¹⁰⁹ with respect to all mandatory elements regarding an employee's right of information but for the protection of confidential information.¹¹⁰ The Bulgarian statute on the other hand,

105. See Labor Code of Bulgaria, *supra* note 93, art. 123(1) ("The employment relationship with the employee *shall not be terminated . . .*" (emphasis added)); *cf.* Directive 2001/23/EC, *supra* note 50, art. 4(1) ("The transfer . . . *shall not in itself constitute grounds for dismissal* by the transferor or the transferee. This provision shall not stand in the way of dismissals that may take place for economic, technical or organisational reasons entailing changes in the workforce." (emphasis added)).

106. See Labor Code of Bulgaria, *supra* note 93, art. 123(3) ("*Unless otherwise agreed between the two employers, liable for the obligations to the employee . . . shall be . . .*" (emphasis added)); *cf.* Directive 2001/23/EC, *supra* note 50, art. 3(1) ("The transferor's rights and obligations . . . *shall . . . be transferred* to the transferee." (emphasis added)).

107. The two provisions nevertheless seem to be consistent with the underlying purpose of the Directive—i.e., employee protection. See *supra* text accompanying note 51. *But see* Directive 2001/23/EC, *supra* note 50, art. 8.

108. Compare Directive 2001/23/EC, *supra* note 50, art. 1(b) ("There is a transfer within the meaning of [Directive 2001/23/EC] where there is a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary."), with Labor Code of Bulgaria, which states:

The employment relationship with the employee shall not be terminated: 1. in case of merger of enterprises; 2. in case of joining of one enterprise with another; 3. in case of distribution of the operations of one enterprise between several enterprises; 4. in case of transfer of an autonomous part of one enterprise to another; 5. in the event of change of the owner of the enterprise or of an autonomous part thereof; 6. in the case of delivery of the enterprise or an autonomous part thereof for rent, on lease or under concession.

Labor Code of Bulgaria, *supra* note 93, art. 123(1).

109. See Directive 2002/14/EC, *supra* note 55. Directive 2002/14/EC provides a general framework for informing and consulting employees in the EU. See *id.*

110. See *id.* art. 6 ("Member States *shall* provide that . . . employees' representatives, and any experts who assist them, are not authorised to reveal . . . any information which, in the legitimate interest of the undertaking or establishment, has expressly been provided to them in confidence." (emphasis

fails to satisfy the directive's mandates in a number of ways. First, the duty to inform and consult provided for by the law is much narrower than that prescribed by the directive.¹¹¹ Second, the statute fails to provide for the protection of employee representatives carrying out their functions.¹¹² Finally, as in Romania, Bulgarian legislators failed to satisfy the directive with respect to protection of confidential information.¹¹³

With regard to informing employees of essential aspects of their employment contract, the Romanian code is in full compliance with Directive 91/533/EEC.¹¹⁴ This is in contrast to the Bulgarian statute, which contains a number of deficiencies related to, among other things, content of the mandatory disclosure, protection of expatriate employees, and modification of the employment contract.¹¹⁵

added)). Compare Directive 2002/14/EC, *supra* note 55, with Labor Code of Romania, *supra* note 92, arts. 37, 42, 52, 221(2).

111. Directive 2002/14/EC states:

Information and consultation shall cover: (a) information on the recent and probable development of the undertaking's or the establishment's activities and economic situation; (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment; (c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1).

Directive 2002/14/EC, *supra* note 55, art. 4(2). Compare Directive 2002/14/EC, *supra* note 55, art. 4(2), with Labor Code of Bulgaria, *supra* note 93, art. 130(1) ("The employees shall be entitled to timely, authentic and understandable information about the economic and financial position of the employer, such as may be important for their employment rights and obligations.").

112. See Directive 2002/14/EC, *supra* note 55, art. 7.

113. Unlike the Romanian Code, the Bulgarian statute does contain a provision dealing with the right of an employer to refuse, under certain circumstances, to provide pertinent information to employee representatives. This right, however, is more constricted than that provided by Directive 2002/14/EC. Compare *id.* 6 ("Member States shall provide that... employees' representatives... are not authorised to reveal... any information which, in the legitimate interest of the undertaking or establishment, has expressly been provided to them in confidence." (emphasis added)), with Labor Code of Bulgaria, *supra* note 93, art. 52(1)(2)(b) ("[P]rovision of information the disclosure of which could cause damages to the employer may be... granted subject to requirement for confidentiality." (emphasis added)).

114. Compare Labor Code of Romania, *supra* note 92, arts. 16–19, with Directive 91/533/EEC, *supra* note 57, arts. 2–5, 8.

115. Compare Labor Code of Bulgaria, *supra* note 93, arts. 62, 66(1), 127(4)–(5), with Directive 91/533/EEC, *supra* note 57, arts. 2(2)(e)–(f), 4–5.

D. EMPLOYEE PROTECTION IN CASES OF EMPLOYER INSOLVENCY, WORKING CONDITIONS, AND NONDISCRIMINATION

The Romanian Labor Code is in full compliance with all provisions of the EU Directive on Employer Insolvency,¹¹⁶ as well as all of the relevant directives on working conditions—the Directive on Health and Safety,¹¹⁷ the Directive on Young People,¹¹⁸ and the Directive on Working Conditions.¹¹⁹ As for nondiscrimination, Romania's statute is consistent with three of the four EU directives aimed at eliminating labor market discrimination—the Directive on Equal Treatment,¹²⁰ the Directive on Part-time Work,¹²¹ and the Directive on Fixed-term Work¹²² but fails to provide for the protection of temporarily-posted workers.¹²³

The Bulgarian Labor Code, on the other hand, does not contain any provisions regarding employee protection in the event of employer insolvency and therefore does not presently satisfy Directive 80/987/EEC.¹²⁴ Bulgaria, however, is in full compliance with all three relevant EU directives on working conditions,¹²⁵ as well as all four directives on nondiscrimination.¹²⁶

116. Compare Labor Code of Romania, *supra* note 92, arts. 167–68, with Directive 80/987/EEC, *supra* note 61, arts. 3, 5.

117. Compare Directive 91/383/EEC, *supra* note 64, with Labor Code of Romania, *supra* note 92, arts. 6(1), 27–28, 171–87, 258(a).

118. Compare Directive 94/33/EC, *supra* note 68, with Labor Code of Romania, *supra* note 92, arts. 13, 109(2), 125(1) 130(2).

119. Compare Directive 2003/88/EC, *supra* note 71, with Labor Code of Romania, *supra* note 92, arts. 39(1)(b)–(c), 108–24, 130–33, 139–48.

120. Compare Directive 2000/78/EC, *supra* note 76, with Labor Code of Romania, *supra* note 92, arts. 59(a), 154(3).

121. Compare Directive 97/81/EC, *supra* note 78, with Labor Code of Romania, *supra* note 92, arts. 91, 100, 103, 128.

122. Compare Directive 1999/70/EC, *supra* note 81, with Labor Code of Romania, *supra* note 92, arts. 80(3), 82(1), 128.

123. The Romanian Labor Code does not contain any provision specifically providing for the protection of temporarily-posted workers. See Labor Code of Romania, *supra* note 92.

124. Compare Labor Code of Bulgaria, *supra* note 93, with Directive 80/987/EEC, *supra* note 61.

125. Compare Directive 91/383/EEC, *supra* note 64, with Labor Code of Bulgaria, *supra* note 93, arts. 275, 277, 281–90; compare Directive 94/33/EC, *supra* note 68, with Labor Code of Bulgaria, *supra* note 93, arts. 137(1)(2), 147(1)(1); compare Directive 2003/88/EC, *supra* note 71, with Labor Code of Bulgaria, *supra* note 93, arts. 136–37, 140–41, 143–53, 155–56, 261–62.

126. Compare Directive 2000/78/EC, *supra* note 76, with Labor Code of Bulgaria, *supra* note 93, art. 8(3); compare Directive 97/81/EC, *supra* note 78, with Labor Code of Bulgaria, *supra* note 93, art. 138; compare Directive 1999/70/EC, *supra* note 81,

In sum, the Romanian and Bulgarian labor codes currently in force both fail to satisfy the demands of numerous EU directives dealing with employment issues. The two countries' non-compliance with applicable EU legislation could potentially have an adverse effect on the speed of their integration into the European Union.¹²⁷ In addition, Romania and Bulgaria run the risk that if they are accepted into the Union despite their labor codes' nonconformity, their legislation could be attacked by parties injured by such nonconformity or by EU bodies before the ECJ.¹²⁸ More significantly, the two countries could be subject to significant monetary sanctions.¹²⁹

III. STRATEGIES

Central and Eastern European transition economies have received a significant amount of attention by economic researchers in the past decade as an ideal place both to test established economic theories¹³⁰ and to analyze the less-explored mechanics of economic transition.¹³¹ This research has provided

with Labor Code of Bulgaria, *supra* note 93, arts. 68, 70; compare Directive 96/71/EC, *supra* note 83, with Labor Code of Bulgaria, *supra* note 93, arts. 10(1), 11.

127. See *supra* note 9 and accompanying text.

128. See, e.g., Case C-117/01, K.B. Nat'l Health Serv. Pensions Agency and Sec'y of State for Health, 2004 E.C.R. 00541, available at http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=62001J0117&model=guichett; Case C-55/02, Comm'n of the Eur. Communities v. Portuguese Republic, 2004 E.C.R. I-00541, available at http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=62002J0055&model=guichett.

129. See, e.g., *Budget Sanctions Hit Germany and France* (BBC radio broadcast Nov. 19, 2002), available at <http://news.bbc.co.uk/1/hi/business/2492339.stm>.

130. See, e.g., Jan Hanousek & Zdenek Tuma, *A Test of the Permanent Market Hypothesis on Czech Voucher Privatisation* (William Davidson Inst., Working Paper No. 75, 1997), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp75.pdf>.

131. See, e.g., Manuela Angelucci et al., *The Effect of Ownership and Competitive Pressure on Firm Performance in Transition Countries: Micro Evidence from Bulgaria, Romania and Poland* (William Davidson Inst., Working Paper No. 434, 2002), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp434.pdf>; Daniel Daianu & Radu Vranceanu, *Subduing High Inflation in Romania: How to Better Monetary and Exchange Rate Mechanisms?* (William Davidson Inst., Working Paper No. 402, 2001), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp402.pdf>; Claire Wallace, *Work Flexibility in Eight European Countries: A Cross-national Comparison*, in SOCIOLOGICAL SERIES 60 INST. FOR ADVANCED STUDIES (2003), available at <http://www.ihs.ac.at/publications/soc/rs60.pdf>; Alexandru Voicu, *Labor Force Participation Dynamics in the Romanian Labor Market* (William Davidson Inst., Working Paper No. 481, 2002), available at

a number of valuable insights about the path from Marx to market, insights which can be utilized by other countries that have started transforming their economies later in time or that will do so in the future.¹³² Romania and Bulgaria are noted to be two of the late-starters in the process of economic transition, and this was undoubtedly one of the primary reasons for their nonacceptance by the EU in May 2004, along with eight fellow countries from the former Soviet bloc.¹³³

Nevertheless, this tardiness gives Romania and Bulgaria the benefit of being able to learn from the transformation experiences of the newly-acceded EU countries and thus avoid at least some of the common mistakes that have had a variety of negative economic and social effects.¹³⁴ While the national political, economic, and social contexts naturally differ to a certain extent across the CEE region, the level of homogeneity nonetheless is sufficient to allow Romania and Bulgaria to extract a number of valuable lessons, enabling them more easily to achieve the ultimate goal of their economic and political transformation: convergence with the West.¹³⁵

With respect to employment law and policy, the lessons that can be learned span a number of topics, ranging from the proper structure of labor market institutions to the effects of privatization on labor market flexibility. Importantly, many of the relevant transition economists' insights about labor market dynamics in the CEE region can be used successfully while at the same time remaining faithful to both the text and purpose of the applicable EU employment *acquis*.¹³⁶

A. LOWERING UNEMPLOYMENT

Like other post-communist economies, since the early 1990s Romania and Bulgaria have experienced an until-then unknown

<http://www.bus.umich.edu/>

KresgeLibrary/Collections/WorkingPapers/wdi/wp481.pdf.

132. This is particularly so with regard to countries of the CEE region whose geopolitical, socioeconomic, and cultural backgrounds are to a large extent similar.

133. See *supra* discussion accompanying note 13; see also *2004 Regular Report on Romania*, *supra* note 91; *2004 Regular Report on Bulgaria*, *supra* note 91; *2002 Regular Report on Romania*, *supra* note 91; *2002 Regular Report on Bulgaria*, *supra* note 91.

134. See, e.g., Daianu & Vranceanu, *supra* note 131, at 3-4 (discussing inflation in early transition).

135. See generally Estrin & Urga, *supra* note 20.

136. See *supra* Part I.

phenomenon: non-zero unemployment.¹³⁷ Particularly in Bulgaria, economic restructuring during this period has brought about a persistently high level of unemployment, which, among other negative effects, burdens its newly-created unemployment insurance and welfare schemes.¹³⁸ High unemployment has also been found to have a negative impact on the speed of transition; for example, by making it much harder for policymakers to implement further pro-market transformation measures.¹³⁹ Research on unemployment in CEE transition economies offers a number of tools that can be used by Romania and Bulgaria to help lower their unemployment levels and keep them low.

1. Tightening Unemployment Benefits

A number of researchers studying CEE transition economies have found that higher unemployment benefits lead to an increase in unemployment in these countries.¹⁴⁰ Conversely, economists have discovered that tightening of unemployment benefits—that is, reducing the amounts or duration of unemployment insurance transfers—during a period of rising unemployment has the negative effect of pushing the unemployed towards nonparticipation in the labor force rather than towards

137. See Tito Boeri, *What Can We Learn from the Experiences of Transitional Economies with Labor Market Policies 2* (William Davidson Inst., Working Paper No. 62, 1997), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp62.pdf>.

138. Eurostat data indicates that unemployment in Bulgaria has remained above fifteen percent for most of the past five years but has begun to decline recently. Romanian unemployment, on the other hand, has remained relatively low by European standards, oscillating around seven percent in the past five years. *Total Employment Rate*, EUROSTAT (2004), <http://europa.eu.int/comm/eurostat/> [hereinafter EUROSTAT].

139. See, e.g., Philippe Aghion & Olivier Blanchard, *On the Speed of Transition in Central Europe*, in 9 NBER MACROECON. ANN. 283 (Stanley Fisher & Julio J. Rotemberg eds., 1994) (arguing that when the emerging private sector fails to absorb jobs being lost in the restructuring of the public sector, the resulting rise in unemployment slows down the speed of further transformation as political consensus shifts against pro-market reforms); see also Valentijn Bilsen & Jozef Konings, *Job Creation, Job Destruction, and Growth of Newly Established, Privatized, and State-Owned Enterprises in Transition Economies: Survey Evidence from Bulgaria, Hungary and Romania*, 26 J. COMP. ECON. 429, 429–44 (1998).

140. See, e.g., Aghion & Blanchard, *supra* note 139; Michael Burda et al., *Unemployment, Labor Markets and Structural Change in Eastern Europe*, 16 ECON. POL'Y 102, 102–37 (1993); Pietro Garibaldi & Zuzana Brixiova, *Labor Market Institutions and Unemployment Dynamics in Transition Economies* (Int'l Monetary Fund, Working Paper No. 97/137, 1997), available at <http://www.imf.org/external/pubs/ft/wp/wp97137.pdf>.

employment.¹⁴¹ Correspondingly, the Czech Republic's reduction in unemployment benefits in the first half of the 1990s has been viewed as a success by economists due to, *inter alia*, the fact that the reforms were put into place at a time when the country's unemployment was still relatively low and did not therefore have the negative effect of driving a significant number of unemployed workers from unemployment insurance toward nonparticipation.¹⁴²

These findings are of current relevance to both Romania and Bulgaria. In Bulgaria, the number of the long-term unemployed has been decreasing since 2002.¹⁴³ This indicates that the cost savings associated with potential tightening of unemployment insurance benefits would not be offset by a significant cost increase brought about by workers giving up their search for work and falling back towards the welfare rolls.

Similarly, given the experiences of the Czech Republic in the early 1990s,¹⁴⁴ Romania would also seemingly benefit from decreasing the amount of unemployment transfers, as the country has relatively low total unemployment,¹⁴⁵ and at the same time, its long-term unemployment has remained more or less constant over the past five years.¹⁴⁶ It should be emphasized, however, that the benefits brought about by the lowering of unemployment benefits—most importantly, budget savings and higher employment—are more likely to be achieved through a concomitant expansion and better effectiveness of government employment programs.¹⁴⁷

141. See, e.g., Marek Góra & Christoph M. Schmidt, *Long-Term Unemployment, Unemployment Benefits and Social Assistance: The Polish Assistance* (William Davidson Inst., Working Paper No. 110, 1997), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp110.pdf> (arguing for the payment of unemployment benefits to the long-term unemployed to foster employment growth).

142. See Boeri, *supra* note 137, at 11 (“[T]he pace of growth of unemployment prior to [the labor market] reforms was not lower in the Czech Republic than in other central and eastern European countries and active policies have had significant and strong *net* effect on outflows to jobs . . .” (emphasis added)).

143. EUROSTAT, *supra* note 138. The number of long-term unemployed in Bulgaria fell by more than 100,000 persons (out of approximately 3.3 million economically active persons) between 2002 and 2003 alone. See *id.*

144. See *supra* note 142 and accompanying text.

145. See *supra* note 138.

146. Since the second quarter of 2002, the rate of the long-term (twelve months or more) unemployed to the total number of unemployed persons has been oscillating between fifty-five and sixty-five percent. See EUROSTAT, *supra* note 138.

147. See Boeri, *supra* note 137, at 11 (discussing the relationship between Czech Republic's low unemployment in the mid-1990s and the design of its government

2. Attenuating the Tripartite Structure of Government Employment Agency Decision-Making

As noted by economists, a tripartite structure of government employment services—a structure in which the employees' and employers' representatives are heavily involved in the day-to-day operations of employment agencies along with the government—has a negative impact on both efficiency and effectiveness of such services.¹⁴⁸ Employment agencies in Romania and Bulgaria therefore would benefit from attenuating burdensome tripartism, a presently standard feature of employment agency decision-making in the CEE region.¹⁴⁹ This is particularly true at the local level, where agencies have been found to be most effective when they keep their focus on providing client-oriented services.¹⁵⁰

3. Regional Cooperation Among Employment Agencies and Proper Targeting

Similar to other countries in Central and Eastern Europe, Romanian and Bulgarian unemployment varies substantially across regions.¹⁵¹ High unemployment is characteristic particularly for regions whose industries have undergone deep restructuring or where large-scale privatization projects have failed, with unemployment being the lowest in large cities.¹⁵² The two countries undoubtedly would profit from closer inter-regional cooperation among government employment agencies, the development of a national online job database, and greater support of interregional worker relocation.¹⁵³

employment programs).

148. See *id.* at 5 (noting that substantial involvement of the social partners slows down the decision-making process and thus decreases efficiency).

149. *Id.* See also Labor Code of Romania, *supra* note 92, arts. 214–35; Labor Code of Bulgaria, *supra* note 93, arts. 2, 3(a)–(f).

150. See Boeri, *supra* note 137, at 11 (arguing that “a strongly decentralized and client-oriented administration [of government employment agencies] is not at odds with the pursuit of policies promoting the regional mobility of workers”).

151. EUROSTAT, *supra* note 138.

152. *Id.*

153. The two countries could, at least in part, finance these new tools through assistance funds provided by the EU's *Phare* program (along with funds from the *ISPA* and *SAPARD* programs). The *Phare* program is one of the pre-accession devices financed by the EU to assist the applicant countries of Central and Eastern Europe in their preparations for joining the European Union. The purported uses of the *Phare* funds include, *inter alia*, market institution building and financing of measures aimed at strengthening economic and social cohesion in the applicant

In addition, the experiences of Hungary, Poland, and the Czech Republic from the mid-1990s underscore the importance of proper targeting of active government employment programs, such as the training and retraining of unemployed workers. In particular, these programs should include measures to prevent participation by workers with favorable labor market characteristics, i.e., those who would likely have found a job even without partaking in the government programs,¹⁵⁴ as well as measures which would assure that the participation in the training programs does not in fact decrease the probability of subsequent employment.¹⁵⁵

4. Adequate Staffing of Government Employment Agencies and Development of Private Placement Agency Networks

Available data indicates that both Romanian and Bulgarian government employment agencies suffer from inadequate staffing (measured by labor force per staff), as well as insufficient staff training.¹⁵⁶ These two factors, while understandable from an historical perspective, clearly have a negative effect on a person's ability to find work and have a tendency to increase

countries. See, e.g., Council Regulation 3906/89, 1989 O.J. (L 375) 11 (EC), available at http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Regulation&an_doc=1989&nu_doc=3906; see also European Commission, Enlargement Directorate-General, *Enlargement of the European Union—An Historic Opportunity* 16–23 (2003), http://europa.eu.int/comm/enlargement/docs/pdf/historic_opportunity_2003_en.pdf [hereinafter European Commission, *Enlargement of the European Union*].

154. See, e.g., J. Micklewright & G. Nagy, *Flows to and from Insured Unemployment in Hungary* (European Univ. Institut., Working Paper No. 94/41, 1994) (finding that, in Hungary, many slots in training and retraining programs are filled with workers with favorable labor-market characteristics), cited in Tito Boeri, *What Can We Learn from the Experiences of Transitional Economies with Labor Market Policies* 2 (William Davidson Inst., Working Paper No. 62, 1997), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp62.pdf>.

155. Patrick A. Puhani & Viktor Steiner, *Public Works for Poland? Active Labour Market Policies during Transition* (Zentrum für Europäische Wirtschaftsforschung Discussion Paper, Paper No. 96-01, 1996). The developments in the Czech Republic in the mid-1990s indicate that government-subsidized employment can be used as one of the tools to mitigate the negative-signaling problem brought about by worker participation in government training and retraining programs. See Boeri, *supra* note 137, at 4.

156. In Romania, the labor force per staff ratio was approximately 10 times higher than in the UK as of 1993. In Bulgaria, it was approximately 2.5 times higher. Both countries' labor force per staff ratio was likewise significantly higher than that observed in other Western European countries—Denmark, Norway, and Sweden—as well as in fellow CEE transformation economies. See Boeri, *supra* note 137, at 3–4.

the outflow from unemployment to nonparticipation (welfare) as more people are discouraged from cooperating with public employment agencies which in turn decreases their chance of finding a job.¹⁵⁷ It would therefore be well-advised for the two countries to invest in a more effective employment agency infrastructure. Efforts should be channeled, *inter alia*, towards better financing and expansion of existing government programs—using Western European staffing ratios and staff training requirements as a benchmark—as well as towards the development of a framework for the creation of private sector employment agency networks.¹⁵⁸

B. PRIVATIZATION AND SUPPORT FOR SMALL AND MEDIUM-SIZED BUSINESSES

A number of recent studies analyzing the simultaneous creation and destruction of job opportunities in transforming CEE economies have shown that both “state-owned and privatized firms destroy a significant number of jobs [in these economies].”¹⁵⁹ These same studies have discovered, however, that the privatized firms have been more successful than state-owned companies in simultaneously creating new job opportunities.¹⁶⁰ Further, the largest capacity for the creation of new jobs has been found among private companies founded after the fall of the Iron Curtain.¹⁶¹ Additionally, the presence of private companies, both privatized and private from inception, has been shown to be positively related to FDI inflow, work productivity, and job satisfaction.¹⁶²

157. The notion that agency understaffing has a negative effect on people's ability to find employment is supported by evidence that, as between Romania and Bulgaria on one side, and the UK (along with other Western European countries) on the other, the differential in the placement per staff ratio as between the two groups is significantly lower than the differential in the labor force per staff ratio. *See id.*

158. For staffing ratios of Denmark, Sweden, Norway, and the UK, *see id.*

159. Ralitzia Dimova, *The Impact of Structural Reforms on Employment Growth and Labour Productivity: Evidence from Bulgaria and Romania* 4 (William Davidson Inst., Working Paper No. 600, 2003), available at <http://wdi.umich.edu/files/Publications/WorkingPapers/wp600.pdf>.

160. *See id.*

161. *See id.* (also noting that small firms have a greater job-producing capacity than large firms in transition economies).

162. *See, e.g.,* Jozef Konings, *Firm Performance in Bulgaria and Estonia: The Effects of Competitive Pressure, Financial Pressure and Disorganization* (William Davidson Inst., Working Paper No. 185, 1998), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp185.pdf>; Robert A. Roe et al., *Firm Ownership and Work Motivation in Bulgaria and*

Given these findings, as well as the strong growth potential of private sector firms in the two countries,¹⁶³ Romania and Bulgaria would indeed benefit from developing a legal and institutional framework conducive to the creation of small and medium-sized businesses, speeding up existing privatization projects, as well as from taking other measures aimed at enhancing competitiveness and FDI inflow.¹⁶⁴

C. MACROSTABILIZATION

Macroeconomic stability is one of the three prerequisites for accession to the European Union.¹⁶⁵ From a macroeconomic perspective, Romania and Bulgaria must solve two major problems before they can hope to achieve their transformation goals and successfully converge with countries of the European Union. First, both countries should bring inflation down radically, as close to one-digit levels as possible.¹⁶⁶ The second problem for the two economies is their record of meager growth. Both Romania and Bulgaria have significantly underperformed their CEE counterparts in the last ten years,¹⁶⁷ which was undoubtedly one of the primary reasons for their nonacceptance into the EU in May 2004.¹⁶⁸

D. EXPLOITING THE INTRICACIES OF EU ACCESSION NEGOTIATIONS

One potential way to avoid or mitigate the probable political backlash¹⁶⁹ stemming from unpopular employment policy

Hungary: An Empirical Study of the Transition in the Mid-1990s

(William Davidson Inst., Working Paper No. 205, 1998), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp205.pdf>.

163. See, e.g., Angelucci et al., *supra* note 131.

164. See, e.g., John S. Earle, *Industrial Decline and Labor Reallocation in Romania* (William Davidson Inst., Working Paper No. 118, 1997), available at <http://www.bus.umich.edu/KresgeLibrary/Collections/WorkingPapers/wdi/wp118.pdf> (discussing the importance of educational attainment); see also Bhaumik, Estrin & Meyer, *supra* note 19 (discussing the importance of Foreign Direct Investment).

165. See *supra* note 9 and accompanying text.

166. Both countries have been battling two-digit inflation for an extended period of time. Romania, for example, had inflation higher than fifty percent in 1999. See EUROSTAT, *supra* note 138.

167. See generally Daianu & Vranceanu, *supra* note 131.

168. See, e.g., European Policy Committee, *The Structural Challenges Facing the Candidate Countries (Bulgaria, Romania, Turkey)—A Comparative Perspective*, EPC/ECFIN/225/2004 final (Aug. 6, 2004), available at http://europa.eu.int/comm/economy_finance/epc/documents/2004/candidate_countries_final_en.pdf.

169. See, e.g., Aghion & Blanchard, *supra* note 139.

reforms, such as reductions in the amount or duration of unemployment benefits, might lie in the institutional interaction between national policymakers and EU bodies.¹⁷⁰ More specifically, the broad requirements of the Copenhagen criteria¹⁷¹ might be used by national legislators as a shield against negative reactions of domestic constituencies, and detested yet beneficial reforms could thus be implemented without losing a significant amount of domestic political support. Given that the backing for accession to the EU has been persistently high in all countries of the CEE region¹⁷² and that the constituencies in these countries are generally unfamiliar with the specific requirements and mechanics of EU accession as well as with the EU itself,¹⁷³ skillful political maneuvering seems to be one of the tools of choice for domestic politicians in Romania and Bulgaria who desire to introduce both long-term and short-term economic reforms.

CONCLUSION

Although the two countries are at present expected to be allowed to accede to the European Union in 2007,¹⁷⁴ further

170. See, e.g., European Commission, *Enlargement of the European Union*, *supra* note 153, at 10–29 (discussing the rudimentary mechanics of this institutional interaction at the pre-accession stage).

171. See *supra* note 9 and accompanying text.

172. The relationship between the acceding countries of Central and Eastern Europe and the EU has been described by some as being one of convenience, not love—i.e., while many citizens in acceding countries fear, *inter alia*, “unaccountable” Brussels’ bureaucrats and the loss of national sovereignty, accession to the European Union is seen by the vast majority as a practical necessity. See, e.g., Vaclav Klaus, *Czech Republic and the EU: The Marriage of Convenience, Not of Love*, Sept. 11, 2004, <http://www.klaus.cz/klaus2/asp/clanek.asp?id=CIIjrk437LAg>; see generally OPTEM S.A.R.L., *Perceptions of the European Union: Study for the European Commission* (2001), http://www.europa.eu.int/comm/governance/areas/studies/optem-report_en.pdf [hereinafter OPTEM]. Accordingly, in the past few years, the popular support for EU accession in both Bulgaria and Romania has been steadily oscillating around eighty percent. See, e.g., *Over Three Fourths of Romanians Would Vote for Country’s Accession to the EU*, MEDIAFAX (Jul. 16, 2002), http://europa.eu.int/comm/enlargement/opinion/imas_on_romania.pdf; EUROPEAN UNION & BBSS GALLUP INTERNATIONAL, *Bulgarian Public Attitudes Towards EU Accession* (2002), http://europa.eu.int/comm/enlargement/opinion/bulgarian_public_attitudes_towards_eu_accession.pdf.

173. See, e.g., OPTEM, *supra* note 172.

174. See, e.g., *EU Backs Bulgaria and Romania Bid* (BBC radio broadcast Apr. 13, 2005), available at <http://news.bbc.co.uk/2/hi/europe/4440755.stm>; *EU Candidates Sign Entry Treaty* (BBC radio broadcast Apr. 25, 2005), available at <http://news.bbc.co.uk/2/hi/europe/4480677.stm>; see also *supra* notes 12–13.

improvements need to be made before Romania and Bulgaria will be in compliance with all three accession requirements set forth by the 1993 Copenhagen European Council.¹⁷⁵ The analysis has shown that the current labor legislation of both countries falls short of satisfying the third of the Copenhagen criteria—mandatory incorporation of the EU's *acquis communautaire*.¹⁷⁶ Moreover, there are a number of valuable transformation lessons that can be learned from the experiences of the eight CEE countries that entered the EU in May 2004; lessons which, if used, could aid Romania and Bulgaria in satisfying the second of the Copenhagen criteria—the requirement of a functioning market economy.¹⁷⁷

175. See *supra* discussion accompanying note 9.

176. See *id.*

177. See *id.*