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ADDRESS
University of Craiova, 13 A. I. Cuza Street, Craiova, 200585, Dolj, Romania, Tel / Fax: +40251418515.

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Vladimir FROLOV*

Moscow Finds its Way in a Multilateral World

It is widely assumed that Russia for years has been a staunch supporter of multilateral international institutions and a believer in multilateral approaches to solving international problems. While this is generally true, a careful look at the history of Russia's relations with international organizations reveals a much more complicated picture.

Russia was among the founding fathers of modern international institutions, starting with the establishment of the International Committee of the Red Cross in 1875.

After the Bolshevik revolution in 1917, Moscow initially spurned international institutions (such as the League of Nations, founded in 1919) as creatures of bourgeois regimes, but later sought membership as a way to increase the international legitimacy of the Soviet government, which was not diplomatically recognized by the leading world powers in the early years of its existence.

Of course, the Soviet Union took a leading role in the beginning of the modern international system of multilateral institutions that emerged from the wreckage of World War II. But Moscow's approach to international institutions has vacillated over the years between two principal concepts that define the country's objectives. The first is known as political realism (or neorealism), and it views international institutions as playing a secondary role to state actors. These institutions are therefore either a platform to compete with other major powers or a useful – but not a particularly effective – policy tool.

The second dominant theory is called political idealism (or neoliberalism), and it sees international institutions increasingly gaining in importance as direct actors in international affairs and perhaps eventually replacing nation-states on the international scene. Some adherents of this concept go as far as suggesting that over time, international institutions should become supranational, assuming international responsibilities of nation-states that would delegate much of their sovereignty to multilateral bodies. Some even dream of creating a world government out of a universal international organization.

Russia has largely adhered to the first concept – neorealism – but there were brief periods in its history, even dating back to the imperial period, when international idealism and institutionalism gained the upper hand in Moscow's foreign policy community.

The first time Russia embraced the idealistic tendencies of neoliberalism was during the reign of Emperor Nicholas I,

who chose to adhere blindly to the principles chartered in the Holy Alliance rather than consider the realities of the geopolitical climate. Nicholas sent Russian troops to Hungary in order to prevent the breakup of the Hapsburg Empire during the 1840s, but Austria refused to return the favor during the Crimean war in 1856. After suffering a humiliating defeat, Russia eschewed foreign partners and pursued a policy of self-reliance and decisive unilateralism.

During the Soviet period, Moscow's approach to international institutions was guided largely by political realism. International organizations were viewed as useful tools to promote Soviet influence and gain leverage over other states. Moscow painstakingly avoided those multilateral institutions where it had no dominant role. For example, the Soviet Union refused to join the International Monetary Fund and the World Bank because their voting rules were based on proportional financial contributions (although the Soviet Union was among the founding fathers of both institutions at the Dumbarton Oaks Conference in Washington in 1944 and was invited by other powers to join).

In late 1980s, Mikhail Gorbachev and then-Foreign Minister Eduard Shevardnadze introduced the policy of New Thinking in international relations, a strategy that gave increasing importance to multilateral institutions like the UN, the Organization on Security and Cooperation in Europe and the International Atomic Energy Agency (IAEA).

With the collapse of the Soviet regime in 1991, the Russian "democrats" took this idea a step further and made clear their desire to join all the multilateral institutions it had been excluded from during the Soviet period. Joining international institutions became one of the pillars of democratic Russia's foreign policy. During those idealistic times, Moscow supported robust multilateralism by giving its consent to the internationally sanctioned use of force against Iraq in 1990 and against Yugoslavia in 1995 during the Bosnian crisis.

Toward the end of the 1990s, however, particularly after the NATO bombing of Kosovo, the Russian political elite soured on multilateralism and began to doubt the effectiveness of international institutions, even becoming increasingly suspicious of some of them – particularly NATO, the OSCE and the International Criminal Court. Moscow again began to develop a policy that focused on Russia's sovereignty at the expense of international legal niceties.

With the advent of American unilateralism under the Bush administration, however, Moscow again began to voice its support for UN-mandated actions and multilateral solutions. Nevertheless, the Kremlin remains deeply skeptical of international institutions meddling in Russia's internal affairs or limiting Russia's foreign policy options.

Russia and the UN

The Soviet Union was one of the principal architects of the international system created around the United Nations. It was at the Moscow ministerial conference in October 1943 and at Yalta in February 1945 that the leaders of the Allied powers - the Soviet Union, Great Britain and the United States - developed the founding principals of what later became the UN Charter.

The Soviet Union became one of five permanent members of the UN Security Council, winning the ability to exercise a veto over the group's major decisions. In addition to this privileged position, the Soviet Union got three seats in the UN

General Assembly instead of just one: Ukraine and Belarus, as constituent republics of the Soviet Union, were admitted to the UN as sovereign states, receiving diplomatic missions at UN headquarters in New York and in other UN institutions.

However, the Soviet Union's first moves in the United Nations lacked coherence. Moscow used its power in the UN Security Council to support Israel's recognition in 1947, but later sided with the Arab states against Israel after the 1948 war and occupation of Palestine. In 1950, Moscow decided to boycott the UN Security Council, allowing the United States to obtain a UNSC resolution authorizing the use of force to defend South Korea from an invasion by the North rather than using its veto to block the action.

During the Cold War, Moscow used the UN as a tool to block the United States from encouraging revolutionary change in the Third World through military action. The UN was instrumental in bringing about the collapse of the colonial system in the 1960s, and Moscow tried to bring these new UN members under its influence in order to boost its power within the organization.

It was typical during those times for the Soviet Union to sponsor General Assembly resolutions that favored its foreign policy initiatives and increased the costs for U.S. adventures abroad, such as in Vietnam. The Soviet Union also supported UN peacekeeping operations in the Middle East, and it played a major role in developing the body of modern international law through UN-sponsored multilateral conventions and treaties, such as the Nuclear Non-Proliferation Treaty, the International Human Rights Convention and the Convention on the Law of the Sea.

But during the Cold War, the ideological and geopolitical rivalry between the Soviet Union and the United States made the UN largely ineffective in resolving matters of war and peace because the superpowers usually supported the conflicting parties against each other and blocked consensus in the UN Security Council. Of some 700 regional armed conflicts that happened during the course of the 20th century, two-thirds of them occurred after the UN was founded. In 14 cases, UN interference led to the escalation of the conflict and in 76 cases, the UN failed to achieve conflict resolution. The UN contributed meaningfully to an eventual settlement in only 25 cases. The UN's inability to act during the 1995 massacre in Rwanda, as well as during the several wars in the former Yugoslavia, was perhaps the largest blemish on the organization's reputation.

It was not until 1990 and the invasion of Kuwait by Iraq under Saddam Hussein that the Soviet Union and the United States were able to close ranks in the UN Security Council and pass a Chapter 7 UN Security Council resolution authorizing the use of force. It took more than 10 years for another such case of multilateral unanimity – the Security Council-authorized use of force against the Taliban government in Afghanistan in 2001.

During the 1990s, Russia generally cooperated closely with the United States within the Security Council, even supporting the use of force during the Bosnian war under the authority of the UN. But after NATO's unauthorized attack on Yugoslavia bypassed the Security Council on the grounds that it was a humanitarian intervention designed to stop a major massacre, Russia became increasingly skeptical of UN-sponsored multilateralism. Since Russia was extremely weak (reeling after the financial meltdown

of 1998) and the United States extremely strong, Moscow began to view the UN system as tied to the U.S. agenda. Once again, thwarting this agenda became a serious objective for Russia's relationship with international institutions. Today this policy is reflected in Moscow's endeavors to block U.S. efforts to pass tough Security Council resolutions on Iran and North Korea condemning their open pursuit of nuclear weapons.

NATO Expansion

Few people in the West are aware of the fact that the Soviet Union sought membership in the North Atlantic Alliance in the early 1950s. President Vladimir Putin showed documents confirming this pursuit at his first summit with U.S. President George W. Bush in Ljubljana in 2001. The idea was to "corrupt NATO internally" and have a voice at the table that would have blocked decisions, which were taken by consensus under rules set out in the NATO Charter. During the Cold War, NATO was Moscow's principal adversary and any relationship between the alliance and the Soviet Union was non-existent. But after the Soviet Union broke up, Russia and NATO established diplomatic relations and launched several cooperative programs.

In 1993, the Clinton administration introduced the Partnership for Peace Initiative that initially was intended as a substitute for membership in NATO for former Warsaw Pact members and former Soviet republics. But the process quickly evolved into a stepping stone to full membership, and NATO enlargement became a major irritant in Russia's relationship with the organization.

Even signing the Founding Act of 1997, designed to put certain limits on what an enlarged NATO can and cannot do militarily close to Russia's border did not erase the suspicion and mutual recriminations. NATO's war against Yugoslavia further worsened the relationship.

In 2002 Russia and NATO created the Russia-NATO Council (RNC), which was designed to give Russia a voice, but not a veto over NATO's internal decisions. Although the RNC got off to a promising start, another wave of mutual suspicion between Russia and the West in 2003-2004 prohibited the RNC from achieving any breakthroughs in the relationship.

Russia's Place in Europe

As a founding member of the Organization on Security and Cooperation in Europe, Russia initially was very enthusiastic about filling this international institution with real substance and clout. Moscow hoped to turn the OSCE - the only pan-European organization - into a substitute for NATO on security matters and thus reduce the urgency of NATO enlargement.

But the United States and other Western powers quickly transformed the OSCE agenda from one focused on security to one focused on human rights and democracy promotion. The OSCE gradually became another nuisance for Russia, since it continually scolded Moscow for the imperfections in its democracy and the frequent election irregularities in Russia and some former Soviet republics friendly to Russia.

Today Russia is insisting – so far unsuccessfully – on major OSCE reform in order to return it to its original mission of security provision in Europe; in the meantime, the West continues to use this organization as a tool to thwart Russia's political agenda in the former Soviet Union.

The Council of Europe, which Russia joined after much effort in 1996, has become yet another institution intent on

criticizing Russia's political system. The Council became the primary platform for condemning Russia's human rights record - particularly over the war in Chechnya - leading Moscow to regret joining the organization in the first place.

Russia was placed under continuous political monitoring, from which it has not managed to gain release even as it assumed the rotating presidency of the Council in May. Many politicians in Russia call for a withdrawal from the Council of Europe or reduced payments to the organization until the monitoring is removed. Moscow believes it is being unfairly singled out for criticism by European parliamentarians inherently hostile to Russia.

In the early 1990s, some enthusiastic supporters of a Western-style democracy in Russia spoke hopefully about Russia's eventual membership in the European Union. At that time, the great European project was just gathering steam and had already planned the first wave of enlargement, which included Poland, Hungary, the Czech Republic and Slovakia. By 1996, however, it became clear that Russia was not going to be a candidate for enlargement in any reasonable period of time – if ever. In 1997, Moscow and Brussels codified their relationship in the Partnership and Cooperation Agreement (PCA), which aimed at establishing a free trade zone and unifying Russia's laws and regulations with those of the EU. It also created a twice-a-year ritual of Russia-EU summits.

In 2002, as the EU was preparing its second wave of enlargement, which included the Baltic States, it quickly became clear that Russia's Kaliningrad region would be surrounded by EU territory. Following a series of nerve-wracking negotiations at the highest level, the issue of visa-free travel for Russians to and from Kaliningrad was resolved in the fall of 2002. More importantly, the issue of future visa-free travel by Russian nationals to the EU was put on the bilateral agenda. In 2004-2005, Russia began to lobby for a new comprehensive bilateral agreement that would replace the PCA, which is scheduled to expire at the end of 2007. But the EU failed to reach an internal consensus on the mandate for such negotiations and the talks have yet to be launched.

For now, Russia's relations with Europe and the West in general continue to be best characterized as maintenance of the status quo, although they are occasionally irritated by small, but important issues, such as energy security and unpredictable U.S. foreign policy initiatives.

Résume

L'article de M. Vladimir Frolov est une analyse globale de la politique extérieure de la Russie, depuis la révolution de 1917, jusqu'à nos jours. L'auteur discute les grands défis contemporains auxquels la Russie doit répondre pour «trouver sa voie dans un monde multilatérale» (specialement l'élargissement de l'OTAN vers l'Est). On parle aussi du rôle de la Russie au sein des Nations Unies et de sa place dans la nouvelle Europe.

* Mr. Vladimir Frolov is the director of the National Laboratory for Foreign Policy in Moscow. This article originally appeared in *Russia Profile magazine*, http://www.russia profile.org/international/2007/2/15/5236.wbp, February 15, 2007.

Turkmenistan – a New Geopolitical Dispute between Russia and the USA

Ion DEACONESCU

In his famous paper, *The Grand Chessboard*[1], published in 1997, the former American Secretary of State, Zbiegniew Brzezinski, draws attention that some of the former republics of the "deceased" Soviet empire, at present independent states, will become powerful geopolitical axes, even if, due to various reasons, they remained on Russia's political orbit. The collapse of the Soviet Union generated an impressive geopolitical confusion, by spectacularly shifting the balance of power of the international system, and it triggered a series of challenges in the international relations area, which determined the USA to radically modify its home and foreign politics alike.

The disintegration of the state with the world's greatest territory, at the end of 1991, deeply shattered the word because of its considerable size and a vacuum of power within the component states, which found themselves in the surprising situation of proclaiming their independence from Moscow, be it real or symbolic.

This geopolitical goal had major and immediate consequences all over Europe, but also in the USA, turning into the world's sole power. Russia's political position and the geo-strategic options have been seriously threatened because of the loss of Ukraine, with its 52 million inhabitants, of the Caucasian states (Georgia, Armenia, Azerbaijan), of the Baltic States and implicitly, of the access to the Black Sea, to the Caspian Sea and to the Baltic Sea, but, mostly, of the enormous energy resources of these areas.

Under the new historical and political circumstances, the emergence of the Central-Asian independent states meant a different approach of Russia, Turkey, Iran, as well as of the USA, towards the natural wealth of the former, one knowing the fact that Azerbaijan, not only through its geopolitical position, but also through its immense energy potential, will play an essential role within this space, because its independence towards Russia will force the Moscow authorities to modify their strategy and ambitions to monopolize this region in which both Turkey and Iran are really interested.

"*An independent Azerbaijan, bound to the Western markets through pipe-lines which do not pass through territories controlled by Russia, will also become an important gateway to the developed and energy-consuming economies towards the central-Asian republics rich in energy resources. Almost as in the case of Ukraine, the future of both Azerbaijan and Central Asia is itself crucial in defining what Russia could or could not become*"[2], Z. Brzezinski argues.

Both the geostrategic players and the important geopolitical axis (Azerbaijan, Turkmenistan, Kazakhstan, and Uzbekistan) have already been involved in building some alternative pipe-lines for fuel transportation, building the new railroads that link these states not only among them, but also to Iran, Afghanistan etc., in order to facilitate the trade between Europe and Central Asia, thus avoiding Russia.

The USA, and not only, is directly interested in this area rich in power resources, but also the scene of various political and religious disturbance, pursuing in parallel Asia, the weakening of Russia's political and economic influence and the efforts of an effective integration of these states in the Community of the Independent States. At the same time, the USA has as immediate objective to prevent Russia from controlling and exploiting the continental plateau of the Caspian Sea and of the huge power resources lying on the riverside resident states.

The sudden death of Saparmurat Ataevici Niazov, president of Turkmenistan, already triggered off a geopolitical dispute in Central Asia, with two fierce protagonists who will struggle for the natural riches from this country: Russia and the US – the stake being the power issue.

One is acquainted to the fact that Turkmenistan disposes of natural reserves estimated to over 22.5 billion m^3, being the second Asian state with such potential, whose gas is exploited, almost entirely, by the Russian concern *Gazprom*, which ensures its obligations towards Western Europe with the Turkmen gas. Moreover, the European part of Russia itself would be affected if Gazprom did not benefit from the natural resources of Turkmenistan.

Not only Russia, but also the US and China aim to have access to the huge riches this country has to offer, the Bush administration already planning a gas pipeline which should have as starting point the Caspian Sea, pass through Azerbaijan, Georgia, Turkey, to the Mediterranean Sea shore. The Chinese government, strongly motivated to penetrate the region, signed a contract with the Ashabad authorities agreeing to exploit the natural gas of the area and to transport it through a pipeline which will pass through Uzbekistan and Kazakhstan, thus pumping as much as 30 billion m^3 of natural gas, for a period of 30 years, starting with January 2009. Thus, a substantial advantage for Beijing in this geostrategic space will be created, because China has also been granted natural gas reserves from a vast territory which belongs to the Iolotan province that, according to some studies, is said to produce 7 billion m^3 of gas.

The present political situation, emerged in Turkmenistan after the death of Niazov, risks deteriorating itself as a consequence of the complex interactions among the interests of Russia, the US, Turkey, Iran and China. Both the Russians and the Americans have grounded reasons to administer the big oil and gas companies here and to prevent the building of another energy empire in Central Asia, a situation which would radically unbalance Moscow's claims and its export contracts with Europe and with other countries lacking in energy resources.

After the economic collapse which followed Turkmenistan's proclamation of independence in 1991, the member states of the Community of the Independent States "have forgotten" to pay their huge debts for gas import to this state; later on, a visible sudden change was recorded, due to the gas exports made with Russia and Ukraine, and also, due to the foreign

investments in the power field. Today, the export of gas reaches 80% of the Turkmen foreign trade.

At present, Turkmenistan represents a special opportunity for the US, which aims at having a productive influence, in the sense of essential changes of the political regime, of establishing an authentic democracy, of ensuring fundamental freedom, reforms and a market economy. This opportunity of the Americans' actively infiltrating themselves in the area has already generated immediate response on the part of China, Russia and Iran, which see their present and future interests threatened, along with their position in the area which represents the centre of global resources for Central Asia and an excellent location for the American military units and oil and gas pipelines. Both Turkmenistan and Azerbaijan are seen to belong to "the epicenter of huge power resources", the stake being huge as, both the US and Russia, as a matter of fact, have identical aims: the access to the important gas and oil assets in the area; the elimination of the strong competitors – thus, diminishing the other's role in the region; the deployment of military bases which would ensure the priority and the military control over an explosive space.

Be it Russian or American hegemony, one thing is for sure: in the foreseeable future, as far as the balance of power in the region is concerned, spectacular changes will occur within this geography, with positive consequences for the inhabitants of the states in question.

Notes

[1] Zbiegniew Brzezinski, *The Grand Chessboard*, Harper Collins Publishers, New York, 1997; in Romanian translation, *Marea tablă de şah. Supremaţia americană şi imperativele sale geostrategice*, translated by Aureliana Ionescu, Ed. Univers Enciclopedic, Bucureşti, 2000.
[2] *Ibidem*, pp. 59-60.

Résumé

Cet article analyse la nouvelle situation de Turkménistan, survenu après la mort de Niazov. Le pays est, à cause de son potentiel économique et de sa position stratégique, un poit d'intéraction des intérêts russes, américains, turques, iraniens et chinois.

The World's Worst Organization

Michael RADU*

Americans frequently express dissatisfaction with the United Nations. Their reasons are numerous: dragging its feet on Darfur; the corrupt practices exposed in the Oil-for-Food scandal; refusing to accept meaningful management and financial reforms; electing Iran as vice-chair of the Disarmament Committee and placing Cuba on the Human Rights Council, among numberless other foibles and failures.

All of these complaints are justified, but they confuse the symptoms with the disease. The problem is not what the UN does but what it is, or, more accurately, what it is not. It remains based on the premise that there is such a thing as an "international community," when, in fact, there is no such thing, certainly not in any meaningful sense.

Born in the wake of WWII, the UN possessed fatal defects from birth. The popular assumption among Western elites that the failed League of Nations could be revived in a new and improved version was shown to be utopian when Joseph Stalin conditioned his participation on the Soviet Union having three members: itself, Belarus, and Ukraine, the latter two being provinces of the Soviet empire.

There followed the charade of five permanent members of the Security Council – the US, the declining imperial powers Britain and France, the rising one led by Stalin, and the irrelevant China of Chiang Kai-shek. What was the moral, political and legal unity of those five, not to mention other founding "powers" like Guatemala or Saudi Arabia that supposedly constituted the "community of nations"?

With respect to the structure of the organization, there has always been a complete disjunction between the members' rights, benefits, and responsibilities, beginning with funding.

The finances of the United Nations are the only concrete application of Karl Marx's description of communist Utopia: "from each according to his ability, to each according to his need." Thus, the United States foots 22 percent of the UN bill, Japan 19.63 percent, Germany 9.82 percent, France 6.50 percent, the United Kingdom 5.57 percent, Italy 5.09 percent, Canada 2.57 percent, Spain 2.53 percent, and Brazil 2.39 percent—which is to say that 9 countries, constituting 4.7 percent of total membership, pay 76 percent of the UN budget. The U.S and Japan (the latter not even a permanent member of the Security Council) pay over 40 percent of the costs. (If you are a New Yorker, the people who work at the UN owe the city nineteen millions in parking fines.) China and Russia, incidentally, pay 2.053 percent and 1.1 percent, respectively. Ultimately, the entire UN financing system is nothing but a global form of wealth redistribution that

entails, as one observer said, taking money from the poor in the richest countries to give it to the richest in poor countries.

Nor it is just wealth that is transferred but influence as well, with the General Assembly, International Criminal Court, and all other UN agencies being strongly influenced, if not controlled, by those who have the least to contribute and most to benefit. That this trend continues, and indeed grows, is yet another real life manifestation of Dr. Johnson's definition of second marriage: the triumph of hope over experience.

With the decolonization of Africa in the early 1960s, a new wave of weak, artificial states dependent on international welfare arose – the Sierra Leones and Somalias of today, all subsisting on the dubious legitimacy provided by UN membership, and the funds coming from it, all of whom found power in the General Assembly, where they established the so-called Non Aligned bloc (meaning non-aligned with the Western money providers), now the Group of 77 (in fact over 120). It was a process easily manipulated during the Cold War by Moscow and paid for by the West.

Nowhere are the UN's defects more obvious than on security issues, the domain of the Security Council. There the interests of the US, China and Russia and the idiosyncrasies of Paris are supposed to mix in a brotherhood seeking world peace, which of course they do not.

Hence the inevitable results: if an issue is sufficiently marginal, a decision is made, money is wasted in fixing it, usually temporarily and in terms of PR more than reality, and we get Cambodia in 1993 (I was there – the election losers, with guns, stayed in power), or East Timor later.

If the issue is of regional importance, and UN "solutions" have failed, a way is found outside the system – and we have Kosovo and Bosnia, where NATO rather than New York imposed a still shaky outcome. And when the issue is obviously serious and does threaten world peace, no solution is found – and we have Iran, North Korea, Saddam Hussein, all attended by innumerable meaningless resolutions, presidential statements, and expressions of the "international community's" opinions.

The problem is that, beyond the rhetorical and ritualistic banalities of global bureaucrats, there is no substance in the "international community" – and so we have the spectacle of repeated UN condemnations of terrorism matched only by the organization's longstanding inability to even define the term.

Given these realities, known to all, it remains a mystery that so many are still disappointed in the UN's performance, or, worse, blame the United States, George Bush or the "neocons." Worse still, the same elites, and far less well-intentioned Third World anti-Western regimes, persist in proclaiming the UN as the source of international law, which led Kofi Annan inevitably to declare the war in Iraq "illegal."

Like the institution it bases its legitimacy on, "international law" is "evolving" – human rights fundamentalists à la Amnesty International really love the word – further and further away from real life and common sense. As a result, we end up with bans on landmines, attempts to ban small arms, a nuclear non-proliferation treaty openly flaunted, and so on.

All of this is furthered by the little-noticed fact that "progressive" UN-recognized Non-Governmental Organizations, especially their "human rights" and environmentalist versions, not only participate in decision making but, given their financial power and government

support, have more influence than most member states.

True, there is a World Health Organization, a Universal Postal Union, and a few other organizations in the UN system that either do a commendable job or cannot realistically be replaced by anything better, and are needed and deserve support. But on all security and economic matters the United Nations proves, on a daily basis, that it is nothing but the reflection of a violent and disordered international system, no different from its ill-fated predecessor, the League of Nations. To expect it to "work" is to forget Albert Einstein's definition of stupidity: doing the same thing over and over but expecting different results.

Does that mean that the United States should give up on the UN? That is a tempting notion, albeit advocated far too often by the wrong people for the wrong reasons, such as isolationists like Pat Buchanan, and, one suspects, by a majority of Americans. However, the fact is that the United Nations Organization has long become a "cultural habit" – and not just on the East Side of Manhattan or, more understandably, in Malabo, Port Vila and Antanarivo, but also, indeed more so, in Brussels, Paris, Berlin and London and, let us be honest, Washington, D.C. So we are stuck with it so far.

Stuck with it does not, however, mean subject to its whims. Congress should examine in detail exactly what we taxpayers are paying for. We should do a much better job in educating the public on the real nature of the UN – wherein the non–working recipient decides the amount of his allowance from the hardworking parent. Would any American parents accept those terms in dealing with their teenagers?

Blaming Kofi Annan for being true to the UN is unfair to him and avoids our own responsibility for taking seriously the people on the United Nations Plaza, New York. We should just treat them as unpleasant guests that, for now, we have to pay for, and nothing more.

Résumé

L'article «La pire organisation du monde» est une dure critique de l'état actuel des Nations Unies, aussi bien qu'une recherche des causes réelles de celui-ci et des solutions pour resusciter l'organisation et la faire capable de réaliser ses missions.

* Michael RADU is Co-chaiman of the FPRI's Centre on Terrorism, Counter-Terrorism and Homeland Security, Philadelphia. Article reprinted from FrontPageMagazine.com | August 29, 2006 with author's permission.

United Nations Organization and European Union – Determined to Maintain International Peace and Security

Irina Olivia POPESCU

The creation of the United Nations was the effect of the terrible disaster produced by the Second World War.

During World War Second the United States President Franklin Roosevelt, the British Prime-Minister Winston Churchill and some other leaders of most important combatant states decided to create an organization which can guarantee the international peace and security.

The main purposes of the United Nations are underlined in the UN Charter.

Preamble

"*We the peoples of the United Nations determined:*

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom,

and for these ends

- to practice tolerance and live together in peace with one another as good neighbors, and
- to unite our strength to maintain international peace and security, and
- to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
- to employ international machinery for the promotion of the economic and social advancement of all peoples,

have resolved to combine our efforts to accomplish these aims:

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations".

The UN has six main organs: the Secretariat[1], the Security Council, the General Assembly[2], the International Court of Justice, the Trusteeship Council[3], the Economic and Social Council[4]. The UN system also includes a lot of programs and funds such as United Nations

Children's Fund (UNICEF), United Nations Conference on Trade and Development, International Trade Centre (ICT), United Nations Development Programme (UNDP), United Nations Environment Programme (UNEP), United Nations Population Fund (UNFPA), United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), World Food Programme (WFP), United Nations Office on Drugs and Crime (UNODC), United Nations Human Settlements Programme (UNHSP-UN-Habitat) and 12 specialized agencies, such as the World Health Organization (WHO), the International Civil Aviation Organization (ICAO).

The UN Headquarters is located in New York City and is considered to be an international territory. The UN has 191 Member States which are determined to promote the international peace and security.

The main documents of the UN are the UN Charter, the Statute of the International Court of Justice, the Universal Declaration of Human Rights.

The *General Assembly* is the major deliberative organ. It is composed of representatives of all Member States, each of which has one vote. The UN Charter establishes the limit of 5 representatives for each member in the General Assembly.

Functions and powers: to discuss any questions or any matters within the scope of the UN Charter; to consider and make recommendations on the principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and arms regulation; to discuss any question relating to international peace and security; to discuss and, with the same exception, make recommendations on any question within the scope of the Charter or affecting the powers and functions of any organ of the United Nations; to initiate studies and make recommendations to promote international political cooperation, the development and codification of international law, the realization of human rights and fundamental freedoms for all, and international collaboration in economic, social, cultural, educational and health fields; to promote international cooperation in the economic, social and cultural fields; to receive and consider annual and special reports from the Security Council and other United Nations organs; to consider and approve the budget of the United Nations and also any financial and budgetary arrangements with the specialized agencies; to elect the non-permanent members of the Security Council, the members of the Economic and Social Council and additional members of the Trusteeship Council (when necessary); to elect jointly with the Security Council the Judges of the International Court of Justice; and, on the recommendation of the Security Council, to appoint the Secretary-General.

In order to ensure equitable geographical representation, the presidency of the Assembly rotates each year among five groups of states: African, Asian, Eastern European, Latin American and Caribbean and Western European and other states. At the request of the Security Council, of a majority of member states or of one member if the majority of members concur, the General Assembly may meet in special sessions. The emergency sessions may be called within 24 hours of a request of the Security Council, on the vote of any nine members of the Council, or by a majority of the United Nations members, or by one member if the majority of members concur.

According to the UN Charter, the main responsibility of the *Security Council*[5] is the maintenance of international peace and security. It has a continuous structure in order have at least one representative of each of its members at all times at the United Nations. Usually, the council meets at the UN Headquarters, but it is also possible for the Council to meet in other places, as for example in 1972, the Council met in Addis Ababa, Ethiopia. The Council has the authority to examine any conflict that can threat the international peace and security. The first action that the Council can do is to recommend to the parties to try to reach an agreement by peaceful means. The Security Council can investigate and also can mediate the conflict by appointing special representatives or request the Secretary General to do so or to use his good offices.

When the Security Council identifies an aggressive action, it is the duty of the Council to try to bring it to an end as soon as possible by calling on UN members to make an appropriate response, including the application of economic sanctions and even military action. On the recommendation of the Security Council, the General Assembly can suspend from the exercise of the rights and privileges of membership, one member state against which have been taken preventive or enforcement action. The Security Council has a continuous structure in order to assure the presence at all times at the United Nations Headquarters. The Security Council has 15 members, 5 Permanent members: The Republic of China, France, The Union of the Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the Unites States of America and another 10 non-permanent members elected from the members of the United Nations for a term of two years.

The meetings of the Security Council are held at the call of the President whenever he considers it is necessary. The interval between two consecutive meetings has to be less than 14 days.

The President of the Security Council can call a meeting if he is requested to do so by any member of the Security Council. The meetings of the Security Council are normally held at the seat of the UN but the Council can meet also in other places.

Each member of the Security Council has to be represented at the meetings by a credential, an accredited representative. These credentials have to be issued only by the Head of Government or Minister of Foreign Affairs of each member of the Security Council. If a state that is not member of the Security Council is invited to take part in the meeting of the Council then that state has to submit credentials.

The presidency of the Security Council has to be held only by the member states, in turn, in the English alphabetical order of their names. The President presides over the meetings of the Security Council. The Secretary General acts in this capacity in all meetings of the Security Council, he can also authorize a deputy to act in his place at the meetings of the Security Council. The Security Council may appoint a commission or committee for a specific question.

The resolutions, amendments and substantive motions are placed before the representatives in writing. The principal motions and draft resolutions have precedence in the order of their submission. The UN structure includes committees and working group on general issues on sanctions. The Security Council has two types of *committees*:

Standing Committees:

- Committee of Experts on Rules of Procedure;

- Committee on Admission of New Members

Ad Hoc Committees:

- Security Council Committee on Council meeting away from Headquarters;
- Governing Council of the United Nations Compensation Commission;
- Committee established pursuant to resolution 1373 concerning counter terrorism.

Working Group on General Issues on Sanctions

*Sanctions Committees***:** Security Council Committee concerning the situation between Iraq and Kuwait, Security Council Committee concerning the Libyan Arab Jamahiriya, Security Council Committee concerning Somalia, Security Council Committee concerning the situation in Angola, Security Council Committee concerning Rwanda, Security Council Committee concerning Liberia, Security Council Committee concerning Sierra Leone, Security Council Committee, Security Council Committee, Security Council Committee concerning the situation between Eritrea and Ethiopia, Security Council Committee concerning Liberia.

Peace-keeping Operations: between June 1948 and August 2000, there have been 53 United Nations peace-keeping operations.

International Tribunals: International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of the Former Yugoslavia – International Criminal Tribunal for the Former Yugoslavia (ICTY); International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for such Violations Committed in the Territory of Neighboring States.

The official languages of the Security Council are: Arabic, Chinese, English, French, Russian and Spanish. These languages are also the working languages of the Security Council. All resolutions or other documents of the Security Council are published in all 6 official languages of the Security Council. The meetings of the Security Council are open to the public. The Security Council can decide to meet in private.

European Union in the struggle to maintain international peace and security

For centuries, Europe was the scene of regular and bloody wars. In the period 1870 to 1945, France and Germany fought each other three times, with appalling loss of life. A number of European leaders became certain that the only method to realize a lasting peace between their countries was to fuse them economically and politically. Consequently, in 1950, the French Foreign Minister Robert Schuman planned integrating the coal and steel industries of Western Europe in order to render another European war technically impossible while simultaneously spurring economic development. As a result, in 1951, The European Union grew out of the European Coal and Steel Community (ECSC). The latter institution, created by the Treaty of Paris in 1951, had six founding members: Belgium, the Netherlands and Luxembourg (the Benelux countries), West Germany, France and Italy. The supremacy to take decisions about the coal and steel industry in these countries was placed in the hands of a supranational body called the "High

Authority", having Jean Monnet as its first President. In the next years the major milestone was the founding of the European Economic Community (EEC) and the European Atomic Energy Community (Euratom), both through the Treaty of Rome of 1957 (implemented January 1, 1958). The goal of the EEC was to establish a customs union among the six founding members, based on the "four freedoms": freedom of movement of goods, services, capital and people. Euratom was created to group the non-military nuclear resources of the states. Of the three institutions now extant - the ECSC, the EEC, and Euratom - the EEC was by far the most important, therefore it was later renamed simply the European Community (EC). The institutions of the three European communities were merged in 1967. From now on, there was a single Commission and a single Council of Ministers as well as the European Parliament. The Treaty of Maastricht (1992) introduced new forms of collaboration between the member state governments - for example on defense, and in the area of "justice and home affairs". By adding this inter-governmental co-operation to the existing "Community" system, the Maastricht Treaty created the European Union (EU).

EU and the Middle East Peace Process

Reaching durable peace in the Middle East is a central aim of EU, whose main goal is finding a two-State solution in order to lead to a final and complete settlement of the Israeli-Palestinian conflict based on implementation of the Road Map, with Israel and a peaceful, just, democratic, viable and sovereign Palestinian State living side-by-side within secure and recognized frontiers. Over the last years, the EU role in the Middle East Peace Process has increased and approaches the following paths:

1. EU participation in the Quartet consisting in political, financial and human resources support provided in 2005 and 2006 to the Quartet Special Envoy for Disengagement, James Wolfensohn.
2. EU two-sided relations with Israel and the Palestinian Authority which are carried out by Association or Interim Agreements and by European Neighborhood Policy Action Plans adopted in 2005.
3. The facilitation of regional dialogue through the Euro-Mediterranean Partnership (Barcelona Process), which is the only multilateral forum outside the United Nations that mediate conflicts by helping parties to meet.
4. The European Commission funds the electoral observation activities to assure free and fair elections as an essential step to guarantee the success of the Road Map.

EU-Palestinian Authority Action Plan

In 2004 the Palestinian Authority was included in the first round of partner countries in the European Neighborhood Process. In 2004 the Commission prepared a Country Report describing the general situation in the West Bank and Gaza Strip and in 2005, the EU and the PA agreed on an ENP Joint Action Plan setting out mutually agreed priorities. The Commission adopted a Communication on 5 October 2005 entitled “EU-Palestinian cooperation beyond disengagement – towards a two state solution" . This is the first time since the start of the Intifada that COM has set out ideas for a comprehensive strategy for its assistance.

"The focus is on ensuring both the political and economic viability of a future state:

1. Achieving *political viability* requires reinforcing legitimacy and accountability of administrative structures, strengthening rule of law, human rights and fundamental freedoms as well as improving security, engaging civil society, and making public administration more efficient. Protecting the status of the Arab population of Jerusalem, and addressing the refugee issue beyond immediate humanitarian needs will also be important.
2. *Economic viability* will be achieved through: developing bilateral and trade relations, building up a customs administration, reconstructing and rehabilitating West Bank and Gaza Strip, creating the enabling environment for private sector investment, improving the management of public finances, developing knowledge based economy, and addressing the social dimension. *EU assistance*. Commission support towards Palestinian institution building and reform has long underpinned EU assistance to the Palestinians. Efforts by the EU, through the conditions attached to its financial assistance package to the PA and specific technical assistance programmes, have already produced a number of positive results such as improvements in the public finance management system. The Commission has also extensively promoted the process of democratic transition and elections in the Palestinian territories, with substantial support to the Central Election Commission. In January 2005 the EU deployed an EU observation mission, led by the former French Prime Minister and MEP Michel Rocard, to observe the Palestinian Authority presidential elections and in January 2006, a largest ever EU observation mission led by MEP Dominique De Kayser was deployed to observe the Palestinian Legislative Council elections)"[6].

Notes

[1] The role of the Secretariat is to carry the day-to-day work of the Organization. The Secretariat is composed by an international stuff. The head of the Secretariat is the Secretary-General. He is appointed by the General Assembly on the recommendation of the Security Council. The Secretariat has a wide range of duties, from mediating international conflicts to administering peace keeping operations. The main duty of the Secretariat is to serve the principal organs of the United Nations.The international staff of the United Nations includes 8,900 members who, as international civil servants, answer to the United Nations alone for their activities.

[2] According to the UN Charter the General Assembly meets in regular annual sessions and also in special sessions as occasion may require. The General Assembly's regular session usually begins in September. Three months before the beginning of the session takes place the election of the President of the Assembly as well as its 21 Vice-Presidents and the Chairs persons of the Assembly's six main committees.

[3] The UN Charter established the Trusteeship Council as one of the main organs of the United Nations. The role of the Council consists of supervising the administration of Trust Territories placed under the authority of the Trusteeship System. The major goal of this System is to promote the advancement of the inhabitants of the 11 original Trust Territories. The members of the Trusteeship Council are the five permanent members of the Security Council: China, Russia, the United Kingdom, France and the United States. The activity of

the Trusteeship Council was suspended on 1 November 1994, the day that Palau, the last remaining trust territory wan its independence.

[4] According to the article 62 of the UN Charter the Economic and Social Council is the principal organ which initiates studies or reports with respect to international economic, social and cultural, educational, health and related matters. ECOSOC coordinates the activity of the 14 UN specialized agencies, 10 functional commissions and five regional commissions. The Economic and Social Council receives specials reports from 11UN funds and programmes. The principles that guide the Economic and Social Council are higher standards for living, full employment, economic and social progress, international cultural and educational cooperation, universal respect for human rights and fundamental freedoms. In the United Nations Millennium Declaration the Heads of states and of Government of the member states decides to increase the role of the Economic and Social Council.

[5] "In order to ensure prompt and effective action by the United Nations its members confer on the Security Council primary responsibility for the maintenance of international peace and security and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf." – UN Charter.

[6] http://ec.europa.eu/comm/external_relations

Résumé

L'article présente les idées et les actions de l'Organisation des Nations Unies et de l'Union Européene concernant le maintien de la paix et de la sécurité mondiale. On analyse aussi le cas particulier des conflits armés du Proche et du Moyen Orient dans la résolution desquels la'Union Europénne s'est directement impliquée.

A Chronology

Angela-Ramona DUMITRU

"*I personally believe that the European construction is one of the greatest political and cultural projects generated by the democratic culture and it is fundamental to be successful. Unfortunately, the scepticism spread across many European countries like Romania, which bring hope to Europe and have an optimistic approach toward the idea of integrating the big community of European countries.*"-

Mario Varga Llosa, 21st of September 2005

Short history of Romania-EU negotiations[1]

1993

February 1st – Romania signs the Europe Agreements. *May* – the implementation of the commercial provisions within the European Agreement has been initiated, through an Interim Agreement.

1995[2]

February 1st – the European Agreement enters into force.
June – Romania officially apply for EU membership.

1997

The Agenda 2000 is formally approved by the European Commission.
It covers the Commission's opinion on the Romania's membership application.

1998

March – the European Union officially launches the enlargement process[3].
November – first regular reports are issued by the European Commission (reports regarding progress registered by candidate countries in preparing for EU accession).

1999

June – Romania adopts the National Plan for EU Accession.
October – the European Commission releases the second Regular Report.

on Romania's progress towards EU accession.
December – the European Council in Helsinki decides to start accession negotiations with six candidate countries, including Romania.

2000

February – the accession negotiations with Romania officially begins, at the opening session of the Intergovernmental Conference.
March – Romania adopts its Mid Term Economic Strategy and presents it within the EU-Romania Council Association. During the Portuguese Presidency of the EU (the first semester) 5 negotiation chapters are opened: Small and Medium Sized Enterprises (Chapter 16), Science and research (Chapter 17), Education and Training (Chapter 18), External Relations (Chapter 26) and Common Security and External Policy (Chapter 27).
These negotiation chapters currently are provisionally closed.
May – The Romanian government adopts the revised National Plan for EU Accession, as well as the Action Plan and the Macro-economy Framework, in addition to the Mid Term Economic Strategy.
October 24th – During the French Presidency of the EU two negotiation chapters has been opened: Statistics (Chapter 12), and Culture and audiovisual (Chapter 20).
November 8th – the European Commission releases new Regular Reports on Romania's progress towards accession.
November 4th – two new negotiation chapters has been opened: Competition policy (Chapter 6) and Telecommunications and Information Technology (Chapter 19). By the end of the year only one negotiation chapter is provisionally closed: Statistics (16).
December – during the European Council in Nice, EU Member States agreed on a new institutional formula for the European Union. The Treaty of Nice is a prerequisite for the admission of new Member States to the Union amid the candidate countries that are fully prepared by the end of year 2002, as it contains provisions on the distribution of power and on decision-making procedures in a Union with as many as 27 member countries.

2001

January - June: during the Swedish EU Presidency five new negotiation chapters has been opened: Free movement of capital (Chapter 4), Company law (Chapter 5), Fisheries (Chapter 8), Transport policy (Chapter 9) and Customs union (Chapter 25). Only one negotiation chapter has been provisionally closed during this presidency.
November 13th – the fourth issue of the Regular Reports has been published.
November – the Commission revised the Accession Partnerships with Romania.
December 14-15 – the European Council in Laeken, for the first time, nominates ten candidate countries to finish the accession negotiations by the end of year 2002, except Romania and Bulgaria.
July - December – during the Belgian EU Presidency, another three negotiation chapters has been opened: Taxation (Chapter 10), Social policy and employment (Chapter 13) and Consumers and health protection (Chapter 23). Two chapters

has been provisionally closed: Company law (Chapter 5), Consumers and health protection (Chapter 23).
December – the total number of the negotiation chapters provisionally closed by Romania is 9.

2002

January - June – during the Spanish Presidency of the EU there are 9 negotiation chapter have been opened: Free movement of goods (Chapter 1), Freedom of movement for persons (Chapter 2), Economic and Monetary Union
(Chapter 11), Energy (Chapter 14), Regional policy and coordination of structural instruments (Chapter 21), Environment (Chapter 22), Justice and Home Affairs (Chapter 24), Financial control (Chapter 28) and Institutions (Chapter 30). Three negotiation chapters have been provisionally closed: Economic and Monetary Union (Chapter 11), Social policy and employment (Chapter 13) and Institutions (Chapter 30);
October 9th – the European Commission releases the fifth Regular Report.
November 13th – the Commission adopts the 'Road maps' or both Romania and Bulgaria.
November 20th – the European Parliament takes into consideration the date January 1st, 2007 as target date for Romania's accession to the European Union.
December 12-13 – the European Council in Copenhagen decides the accession of 10 new member states and adopts the road maps for Romania and Bulgaria.
July - December – during the Danish Presidency of the EU, the last four negotiation chapters have been opened: Freedom to provide services (Chapter 3), Agriculture (Chapter 7), Industrial policy (Chapter 15) and Financial and budgetary provisions (Chapter 29). During this presidency, four negotiation chapters have been provisionally closed: Industrial policy (Chapter 15), Telecommunications and Information Technology (Chapter 19), Culture and audiovisual policy (Chapter 20) and Customs union (Chapter 25).

2003

March 23rd – the European Commission release the revised Accession Partnership with Romania;
January - June – during the Greek Presidency of the EU – three negotiation chapters have been provisionally closed: Free movement of goods (Chapter 1), Free movement of capital (Chapter 4) and Taxation (Chapter 10).
November 5th – a new Regular Report regarding the process registered by Romania in preparing for EU membership have been released.
June - December – during the Italian EU Presidency – another three chapters have been provisionally closed: Freedom of movement for persons (Chapter 2), Transport policy (Chapter 9), Financial and budgetary provisions (Chapter 29);
December – out of 30 negotiation chapters, 22 are provisionally closed.

2004

January - June – during the Irish EU Presidency – another three chapters have been provisionally closed: Agriculture (Chapter 7), Energy (Chapter 14), Financial and budgetary provisions (Chapter 29).

June 30 – by the end of the Irish EU Presidency 25 of 30 negotiation chapters have been provisionally closed.
December 17 – the Brussels European Council decided the conclusion of the accession negotiations with Romania. Romania must continue reforms and the fulfilling of the commitments regarding the «acquis communautaire», especially in the fields of Justice and Home Affairs, Competition and Environment. European Union will continue the monitoring of the accession preparations and considers that Romania will be capable to assume membership obligations from 1st of January 2007. Also, the European Council recommends the signing of the common accession Treaty for Romania and Bulgaria in April 2005, after the agreement of the European Parliament, and effective accession from 1st of January 2007.

2005

13 April, the European Parliament has given the green light for the entry of Romania and Bulgaria into the EU. On the accession of Romania, MEPs voted by 497 in favour, 93 against and 71 abstentions. 25 April, during an official ceremony, taking place at the Neumunster Abbey in Luxembourg, the President of Romania, Traian Băsescu, signed the Treaty of Accession to European Union, together with the Prime Minister of Bulgaria, Simeon de Saxe-Coburg, and the 25 representatives of the EU members states.

The Treaty of Accession 2005 is an agreement between the member states of European Union and Bulgaria and Romania. The Treaty arranged accession of Bulgaria and Romania to the EU and amended earlier Treaties of the European Union. As such it is an integral part of the constitutional basis of European Union.

Full name of the Treaty is: "Treaty between the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Republic of Bulgaria and Romania, concerning the accession of the Republic of Bulgaria and Romania to the European Union".

2006

The *26 September* 2006 monitoring report of the European Commission confirmed the entry date as 1 January 2007. The last instrument of ratification of the Treaty of Accession was deposited with the Italian government on *December 20*, 2006 thereby ensuring it came into force on January 1, 2007.

European integration programs don't use all national potentials. In order to make this integration successful, Romania needs to find how it can profit from European Union structure and market, and what kind of national programs and products are interesting and beneficial for European community. Romania can occupy a metabolic role in European context creating new cultural perspectives,

new solutions for European and global problems, and a new kind of beneficial products on the European market[4].

One of these offerings can contain cultural adaptation programs, experience in creating a new job's market determined by a joint culture, and the flexibility in diplomatic actions. One example is integrating Gypsy's community and culture. Gypsies community is everywhere resistant to education parasite for different social and economic niches, or creative in different area.

Many attempts for integration of gypsy's cultures and communities in the world start becoming successful. Emancipation from traditions, decisions for an honest and respectful life start being priced by Gypsy's community. The idea that they don't have to steal from Christians, and Roman's doesn't exist from a long time decreases the power of the legend that closed their culture from external influences[5].

European community has a great experience in this kind of integrating programs due to its recent transformation in a unitary decisional structure. This is why U.E. recommendations are accurate enough considering Romanian specific problems, and this is also why U.E. will accept Romanian's programs designed for the same purpose, if these programs are properly analyzed[6].

2007

On *1 January 2007* Romania joined the European Union (EU). Accession took place following more than a decade and a half of integration with the EU[7] which has seen Romania consistently labelled as a laggard in the European integration process and persistent concerns expressed at its preparedness of EU membership. Formally, the development of a state's relations – the conclusion of a Europe Agreement, the opening of accession negotiations, or accession itself – is governed by conditionality where by states meet certain criteria laid down by the EU before being admitted to the next stage of the relationship. Yet as this paper argues, the progress of Romania's integration with and accession to the EU owes as much to factors extraneous to the relationship than it does to Romanian efforts to meet the criteria laid down by the EU. The argument is sustained by an examination of the political dynamics of the broader processes of the EU's relations with the countries of Central and Eastern Europe and of EU enlargement. As the paper notes, Romania has benefited from the EU's initially hesitant and later comprehensive approach to the development of relations with the CEE countries and eastern enlargement as well as a coupling of Romania with Bulgaria and the impact of geo-strategic developments on EU decisions concerning the future of European integration.

Public opinion

Public opinion polls in Romania indicate 70% of the population are in favour of accession to the European Union. However, the rest of the EU's population has a less positive view of Romania's accession, with an approval rate of only 45% (Eurobarometer poll).

Effect on the future direction of the EU

Romania's strategic geopolitical location will influence the EU's policy towards its relations with all of Eastern Europe, the Middle East, Turkey, and

Asia. In the Southeast European Cooperative Initiative (SECI), Romania has an opportunity to demonstrate its leadership in the region.

The objective of joining the EU has also influenced Romania's regional relations. As a result, Romania has imposed visa regimes on a number of states, including Russia, Ukraine, Belarus, Serbia, Montenegro, Turkey and Moldova.

Officials consider Romania to be both a part of Central Europe and a part of SEE. This reflects the Romanian government's dual ambitions today of strengthening Romania's chances of Euro-Atlantic integration while also being seen as a leader and a zone of stability and democracy in its immediate neighborhood.

Notes

[1] Oli Rehn, European Enlargement Commissioner. Sources: http://www.rompres.ro/ (accessed April 20, 2006).

[2] Martin J. Dedman, *The Origins and Development of the European Union 1945 – '95 (a history of European integration)*, Routledge, UK, 1996.

[3] Wolfram Kaiser, *European Union enlargement: a comparative history*, Routledge, UK, 2004.

[4] Melanie H. Ram, Ph.D., *Sub-regional Cooperation and European Integration: Romania's Delicate Balance*, 2001.

[5] Several data about this movement can be searched on: http://www.christusrex. org/ www2/ gypsies.net/.

[6] Florian Colceag, *Romanian – European integration, Section 3 European integration programs* on http://www.austega.com/florin/ROMANIA.htm.

[7] David Phinnemore, *And We'd like to thank...: Romania's Integration into the EU, 1989-2007*, Queen's University Belfast School of Politics and International Studies Belfast United Kingdom.

Résumé

Le dispositif roumain d'intégration européenne a été imbriqué dans un système institutionnel et administratif particulier, celui de la Roumanie, afin de coordonner le processus de préparation de l'adhésion de celle-ci à l'UE. Son activité se rapporte donc au processus de l'élargissement de l'Union européenne et aux étapes parcourues par la Roumanie dans ce cadre, une présentation du fonctionnement du dispositif ne pouvant pas faire abstraction des évolutions de ces processus.

Costs and Benefits of Romania's Accession and Integration to the European Union

Aurel PIȚURCĂ
Cătălina GEORGESCU

The new statute Romania acquires on January 1st, 2007, as Member State of the European Union, raises the issue of the costs and benefits of the accession. The problem of the evaluation of the costs and benefits of the accession did not represent a major preoccupation of state politics or of the Candidate Countries' governments, including the Romanian one. On the contrary, these countries have oriented their efforts particularly towards accomplishing the criteria of accession. Consequently, the majority of the budgetary resources have been oriented towards supporting the reforms expected in the political, economic, institutional, administrative domains. In this circumstance, the scientific research was the one who suffered the most as the lack of financial resources has made it imposible for the research to perform and support vast and detailed studies in the manner requested by the identification and evaluation of the costs and benefits. Equally true is that the achievement of the object of the accession has determined the Candidate Countries to give less importance to the costs-benefits issue. Moreover, even if they would have had this phenomenon in sight, it had been deficiently dealt with, by considering that the accession is the solution to solving their political, economic and security problems and consequently that the benefits would exceed the costs of the acession.

During this phase of preparations, the dynamics of the changes that occurred at European level, the complexity and difficulty of performing the criteria of the accession, the lack of information on a fix and certain date for the accession have made it difficult for the knowledge of the costs and benefits to be precisely estimated, with no practical use, but only informative and even useless, since all efforts aimed at a sole purpose, that of obtaining the accession.

The political discourses have only aimed at creating a state of mind that was favorable to the accession, at mobilizing all material, human, institutional resources in order to meet the criteria of the accession. Neither the former, nor the present government have embarked upon concrete and practical measures to inform and communicate with the unions, the business environment, the employers, the academic environment, the population on both the theme of the accession and of the integration.

It is the citizen who lacks the knowledge and information on this issue and it is also the citizen who is practically going to be integrated, who will set this complex process into motion and will bear the greatest part of the burden of the accession and integration. In return, the academic literature from the Member States of the European Union is rich in studies, analysis and simulations regarding the problems of the enlargement of the Union, of the effects of the migration of the labour force, of the economic and racial pressures raised by the latter, of the costs and benefits of the Union and of the accessing countries[1]. In Romania, too, the issue of the accession has given birth to numerous political, especially economic, but also juridical, institutional, cultural approaches and opinions[2].

In what the issue of analysing the problem of evaluating the costs and benefits is concerned, one must distinguish between the costs and benefits of the pre-accession process and the ones of the proper integration. Most of the papers and studies published in our country have particularly aimed at analysing the costs and benefits for the pre-accession period and only in a smaller extent and only briefly regarding the period after January 1st, 2007. The approach and the reality are totally different in the two moments pertaining to this proces. The status of Member State of the European Union totally changes the issue of costs and benefits, the relation between these two components but also the efforts made both by Romania and the European Union in order to sustain the costs of the acession.

If in the pre-acession period the support coming from the part of the European Union was of a smaller extent, as one aimed at testing both Romania's effort potential and capacity, Romania's status as Member State of the European Union completely changes the question. In its struggle for integration, Romania will receive substantial logistical, economic, managerial support; will receive models of economic and social politics from the European Union.

Not all Member States of the European Union have paid the same amount of costs for the accession and integration, but the costs are directly proportional to the gaps that sepparate them from the developed countries of the Union. Romania's costs of joining the European Union have been high because they have imposed the reform of the whole institutional, political but mostly economic system. All these have aimed at organizing and assuring the consistence of the Romanian social system to the one of the European Union. It was but normal that in the pre-accession period the costs to be high as they were in fact the costs of the transition from the centralised economy to the market economy, from the communist system to the democratic one.

The question of the costs after January 1st, 2007, that is the so-called costs of integration, must be approached in a realistic and lucid manner. The costs will be high at least for the first years; this was the case in fact with the majority of the Member States such as Iceland, Spain, and Portugal. However there are some elements that have to be mentioned. Notwithstanding the fact that Romania will still pay the price of transition, of the gaps that sepparate it from the developed countries of the Union, our country will no longer be alone in this effort. Moreover, the assessments argue for the substantial benefits that are to appear after 2009. This time the implementation of reforms will be aimed at accelerating and ending the transition.

Although a political option, Romania's accession to the European Union was the

sole rational and beneficial option for the future. Not joining the European Union would have cost Romania much more than it does right now. However, not the costs are so important, but the consequences, the isolation, our country being cast away from the democratic and developed world, the possibility to endanger its political, economic, maybe even national recognition; these aspects would have removed our country from the perimeter of the civilized world.

Knowing the costs and benefits of integration becomes a necessity after January 1st, 2007, an essential coordinate of state politics. This knowledge on the costs and benefits has as starting point the determining role these aspects share in drawing the national economic politics, the social policies and the decisions regarding the future growth. Knowing the domains, the sectors that will have most to suffer from the integration, one will be able to identify and make the arrangements to reduce and outrun the negative effects. In return, the benefit-producing domains and sectors will be stimulated through decisions and political measures and encouraged to become as profitable and as efficient as possible.

The evaluation of the costs and benefits of the accession and integration must not be perceived as a strictly mathematical relation and all the less a commercial one, but one must bear in mind Romania's new status as Member State of the European Union, the advantages that result from it, the new stimulating social, economic, political framework in which our country will evolve, the security and respect our country will benefit from. On medium but mostly long term, all the states that integrated to the European Union enjoyed economic growth and went through processes of modernization and re-technologization, which in turn also led to social prosperity. Spain, Portugal, Greece, but mostly Iceland, are eloquent examples.

In many cases of the social life the effects of integration cannot even be measured; one cannot speak of the costs-benefits relation but of the mutations determined by the integration, the transformations within some domains, sectors, as is the case at the level of politics, culture, human counscience, attitudes and behaviour. These mutations, changes are necessary, being determined by the new status and framework, in which Romania will develop, will enter a new, superior stage of growth.

The first domain of the social life to receive the impact of the accession is the political one. As a matter of fact, the political sphere was a domain which suffered changes in the pre-accession period also, being the one that prepared the accession and which is entrusted the mission to further lead the so-called process of integration.

The transformations that both the political and economic domain will suffer after the accession refer to a direct and indirect impact. At the political level the direct impact consists in: "*the prevalence of the Community law over the national law; the direct aplicability of Community legislation; modifications of the constitution and of the constitutional statute of the national MP; the representation and participation to the Community decision-making process*"[3]. The immediate consequences of the direct impact would consist in "*the re-orientation of foreign policy, including that of commercial diplomacy; the modification of the means of production and putting into practice the governmental policies; the emergence of new models for representing the interests at the level of society*"[4].

The pressure and impact to which the political realm is put to endure in Romania and Bulgaria, as the states of the last wave of enlargement, are due to the fact that the present enlargement was especially based on political decisions, while in the previous states the enlargement was based either on economic grounds, or was linked to the powerful economic potential, as was the case with the accession of the United Kingdom, of Denmark, or was linked to reducing the competition made to the European Union, or strengthening the economic force of the European Union, as was the case with the accession of the third wave made up by Austria, Sweden and Finland.

The importance of the political decisions for the accession of Romania and Bulgaria is clearly expressed by the European Commissioner on Enlargement, Gunther Verheugen "*the enlargement of the European Union is an irreversible process. We shall not permit that Europe be divided on political, ideological or other criteria. No matter if the new states that join cannot entirely fulfill the economic criteria; however, the political criterion must stand at superior parameters.*"[5]

The impact of the accession to the European Union on the Romanian economy, the transformations which this country will suffer are different from those the present Member States of the European Union dealt with. In a nutshell, these refer to: "*the bann of barriers on commercial exchange; the application of Community provisions in what concerns the competition (with visible effects on the business environment); the implementation of the PAC instruments in agriculture; the access to the structural funds.*"[6]

In their turn, these changes will generate significant mutations to the economic system, which are to lead to: "*the re-orientation of the commercial flows (trade creation and trade diversion), the industrial and agricultural re-structuration; joining the convergence criteria for the European Monetary Union (Maastricht).*"[7]

The implementation of the Community norms and policies, the transformation that will occur in the political-institutional, economic, cultural and social domains will generate costs. Both Romania and Bulgaria have paid a part of their costs in the pre-accession period, these being in a great extent linked to fulfilling the criteria for the accession. However, the greatest part of the costs will appear with the date of the accession, January 1st, 2007.

The main costs Romania will have to put up with, as a consequence of gaining the status of Member State of the European Union, may be grouped as follows:

1. Costs related to the quality of Member State of the European Union. They consist in the payment of the contribution to the Community budget and the participation to the institutions of the Union. In the pre-accession period, too, Romania paid contributions under the form of co-financing, as a consequence of its participation to the cultural programs or PHARE, SAPARD, ISPA, Leonardo da Vinci, Socrates.

2. Costs for adapting to the European norms and policies (*acquis communautaire*). These costs deal with the creation or modification of the institutional framework for the implementation of these norms and policies, for the formation and training of the human personnel necessary to the new structures, for assuming the Community objectives of economic policies.

The costs may vary depending on the development level and the changes that are operated in that specific domain and

also on the period of time. In a short period of time necessary to the achievement of the common objective of both Romania and the European Union, it is but normal for the costs pertaining to the two partners to be higher.

3. Costs related to the respect and implementation of the standards defined through the European norms and policies. These costs are determined by the necessity to bring the domains, sectors, policies of the Romanian social life to the level of the European Community ones, that is, to the fulfillment and abiding of the *acquis communautaire*. This type of costs may point to the institutional system of public authority and also to the one from state or private micro-economic level.

4. Costs related to the modernization of the Romanian economy in order to reach the standards of competitiveness and efficiency of the European Union and to handle the competition from within the Union. These costs will be the highest and for a longer period of time. These costs are generated by the existing gaps between the standards of the Romanian economy and the ones of the Member States of the Union. The greatest part of these costs is related to the modernization of the capacities of production, that is, the ones related to the growth in the technological level, of the quality of the products and of the achieved services.

The fulfillment of the standards of the functioning market economy, the reduction of the differences from the Community economy have imposed the existence of some costs in this area, in fact the greatest costs, even from the pre-accession period.

5. During the process of integration to the Union, there will also appear some indirect costs related to the preparation of the personnel from the logistic and financial compartments in order to apply the Community legislation, to change the accountant system. Also, this category includes the costs related to the respect of the occupational health and security norms as imposed by the European Union. During the European integration of the Romanian society process will be both winners and losers.

The winners will be recruited from the companies that are already involved in the relations with the European Union. For them the integration will represent an opportunity, a favourable framework for prosperity. The greatest gains will be on the part of the European multinational companies that operate on the market. They possess the necessary financial resources to absorb the costs of the integration, a vast experience and the necessary knowledge to function within the European Union. The elimination of customs and tarrifs barriers will render the products of these companies more competitive and more attractive.

During the complex process of the accession and later of the integration to the European Union there will also be losers. They will be recruited from the small and medium-sized companies, be they public, private of family-owned. The damages will be determined by the lack of financial resources necessary to cope with the costs of the integration and of modernization, because of the lack, especially in the first part, of the knowledge and experience demanded by the new economic framework, but mostly because of the competition from the part of the great European companies. The state is able to support the small and medium size companies through the system of subsidies, by supporting a part of the costs related to the environment protection and

the training of the personnel, the promotion of exports, through exemptions from and postponing of the payment of taxes etc.

Although there is only a small period of time that sepparates us from the date of January 1st, 2007, that is, the date of the accession, one can claim that the Romanian society, the economic agents, the population are not prepared enough for the accession and integration. There is a huge crisis of information and communication among the authorities, the losers, the unions, and the population in what concerns the integration of the new system of work of the European Union and especially in what concerns its costs. According to a study made by the European Association of Trade and Industry Chambers, only 4 % of the Romanian companies own complete information on the *acquis communautaire* and only half of them are prepared to apply the Community legislation[8].

It is true that neither the state, nor the government are to be integrated in the Union, but the population, the economic agents; however, they must be informed on the costs and benefits of the accession, on the new mechanism of work, on the new legislation, norms and this fact was not accomplished at all, or was accomplished only in a small extent.

Legitimately, one questions oneself on who will bear the costs of the integration? The answer is a suggestive one: the Romanian society through the state budget, the economic agents and the population, the latter in a double hypostasis, that of the direct impact through the increase of prices, the possibility of losing their jobs, the increase in the spending on the training of the labour force and the situation of tax-payers through the increase in the taxes etc.

However, it is true that were it not for the accession, Romania would not have the prospect of forming a modern society in its true sense, economically, politically and democratically developed without assuming its costs. All the more we need to assume the costs if we desire to reach the level and wealth of the Member States of the European Union. The costs of the accession are mostly the costs of the change imposed by the tranzition from the centralized economy to the functioning market economy. No one was the author of these costs, but mostly we are responsible for them and also we have to surpass them. The costs of the accession must be known and permanently defined, but in close connection to the benefits as well.

Besides the costs generated by the acession and integration to the European Union, the Romanian society must expect to processes of limmitation, discrimination of the activity and authority of some institutions. These aspects do not characterize Romania only, but are phenomena that are common to all societies from the Member States of the European Union and also at global level.

In his paper *Globalizarea şi problemele globale* (*Globalization and global problems*), prof.univ.dr. Ioan Bari speaks of public deficits that appear as a consequence of the process of globalization. The European Union is itself a regional globalization and thus its Member States are subjected to limitations, discriminations at national institutional level in what concerns their functionality and authority. As a consequence, the social policies have to suffer. They have to be harmonized, put in accordance to those of the Union. The national state must abandon some social protection measures. Moreover, the state is unlikely to deliver its own social policy, but the latter must fit within the

Community limits and dimensions. The effects of the integration will also have repercussions on the labor force, on its degree of training. The competitiveness, the new technologies introduced in the process of production will determine the growth of the level of qualification of the labor force and thus of spending. In this new situation the state will be able only to assure a general training of the labor force, at a medium level; the superior training of the labor force will become the task of the individual, supported in a certain extent by the economic agents.

Nevertheless, the market of the labor force will also change its structure, as the unqualified or poorly qualified labor force will be removed from it, thus giving birth to a lack of harmony between the level of qualification of the labor force and the jobs offered which will require higher and higher qualifications. One must not exclude the circulation of the labor force from some of the Member States of the European Union to Romania, a fact which has already began to become reality. In their turn, the European Community companies which will be active in Romania, as a consequence to the notable technologies and technical installations they have at their disposal, will require a more and more trained labor force; should they not find it here, they will bring it from other places from within the Union.

Another social problem will be that of the correlation of the age of retirement from Romania to the one from the Member States of the Union, a process now being implemented. The increase in the duration of the activity, the intensity to which the labor force is put to, will determine the increase in the spending related to its maintenance and recovery, which will obviously become the responsibility of the citizen. They will be added to the continuous training of the labor force; in Romania one will discuss about a process of continuous training and formation of labor force, about an increase in the spending necessary in order to maintain it at a high physical and intellectual capacity ready to face the new social demands.

Also, in the Romanian society, a slow, but continuous process will be produced, a process of transferring some state attributes and prerogatives of social policy to the level of local authorities, but mostly to the individual. The national state will gradually reduce its attributions in the field of social policy; the limitation will be imposed by the European Union but also by the enlargement of the local autonomy and the increase in the responsibility and obligations of the citizen. The old paternalist state will gradually lose competences in what concerns the social issues. From a national issue, the social policies will gain a European character.

Romania's accession and integration to the European Union will also generate changes within the content of democracy. In what democracy is concerned, one will realize a contradictory action. Romania's participation through its representatives to the decision-making institutional structures of the European Union determines an enlargement of social political democracy. At the same time, through the constraint and implementation of the legislation of the Union, through the harmonization of the Constitution with the European one of a Community economic policy one can argue that this is a process of restriction, of limitation of democracy. Moreover, a limitation of the power and authority of the national parliament occurs; its activity must be correlated to the one of the European Community Parliament. In many cases, its activity will be formal, that is, it has to notify the decisions to the Union institutions. It will lose or reduce its

values; its policy will become a little less credible. Referring to this aspect of the reduction of democracy but from the point of view of globalization, *Ioan Bari* argues "*the more the international and supranational level gains more importance for the government of the world, the more the power of the national parliaments decreases and the democratic deficit grows*"[9].

Romania's accession to the European Union on January 1st, 2007 and, later on, its integration, will also have an impact on its economic policy. In this case one can also mention both the positive and negative effects. Both will have as starting point the necessity of the alignment of the Romanian economic policy to the Community norms and standards. Viewed as a whole, the positive effects are multiple and dominant. However, one can highlight some less favorable aspects. The alignment to the Community economic policy reduces, limits the possibility of the national state to perform an economic policy of its own, its objectives and duties will always be *"filtered"* and harmonized by the European Union. The prices' alignment of the raw materials and energy can also be restrictive aspects to the national economic policy. The liberalization of the trade with the European Union will negatively affect some Romanian industrial branches: in this sense, the chemical industry would explode.

The European Union reality clearly shows that all the preceding enlargements, on the long term, have brought costs but especially benefits, advantages. The latter cannot always be quantified in cash or in kind, but when one speaks about benefits, one must also have in view the positive effects that are generated and brought about by the accession and integration, the new opportunity and social framework in which the Romanian society will move and evolve, its increased security.

The benefits and advantages of both Romania's accession and integration to the European Union can be structured as follows:

1. Benefits derived from the Status of Member State of the European Union. This type of benefits will appear after January 1st, 2007, that is after Romania's accession and integration. They derive from our country's participation to the structures and institutions of the Union, to the economic and monetary market. It brings political and economic national security to Romania, economic growth in order to assure its prosperity and social progress.

2. Benefits of political nature. These can be followed on many levels. The quality of Member State of the European Union will lead to the increase of Romania's respect and political influence in international relations. The possibility that our country influence the future of Europe and its own also increases through its participation to the decision-making structures and institutions of the European Union. At the same time, the consolidation of Romania's relations, positions with third countries also takes place.

In what the home affairs are concerned, the accession will bring the increase of political stability, the consolidation of the democratic system and its connection to the Community one, the increase in the safety of both its citizens and borders.

3. The acceleration of reforms and the support of the transition of the Romanian society towards the functioning and efficient market economy. In this sense, Romania will receive the managerial and technical assistance from the European Union with the purpose of drawing up the economic,

national policies, will offer the possibility to acquire Community objectives and policies or social-economic models of development from some of the Member States. The benefits will originate from the shortening and ending of the transition period.

One must add that the reform issue and the support of the transition have constituted an important preoccupation for Romania even from the pre-accession period, as the successes from this domain have been both arguments and conditions for the acceptance of the accession.

4. Benefits of economic financial nature. These are the most and refer to a wide and diverse sphere of issues. As a whole, these constitute in:

- Romania's access to the structural and cohesion funds. During the first three years of post-integration Romania will receive financial packages having the value of € 8893 million and its budgetary effort will be of € 5663 million[10].
- The increase in the flows of foreign investments in Romania. The main direction will be from the European Union towards Romania. This fact is also in direct relation to the improvement of the Romanian business environment, a process began even from the pre-accession period.
- The free access of Romanian products, services, capitals, labor force on the single market of the Union.
- The transfer of modern technologies, devices and installations and also of the structural development funds. This process will be accompanied by the increase in the training and in the level of qualification of the labor force and of productivity, a process with positive effects on the level and quality of life of the citizen.
- The growth of new structures of production which would allow the fabrication of finite products with greater added value and superior quality, according to the European Union standards.
- The facilitation of the access to programs, trade and the circulation of the labor force. During the post-accession first three years, some of the Member States of the European Union can contingent the volume and structure of the labor force received.
- Gradually, the growth of the level of integration of the Romanian social-economic system to the European one will occur.
- The growth of efficiency and competitiveness of the Romanian economy.

5. The accession and integration will produce benefits for the population as well. These will constitute of:

- The increase in and diversification of the number of jobs.
- The increased consumers' protection.
- The diversification and improvement of products and services offered to the population.
- The decrease of taxation through a more relaxed tax policy.
- The increase in the population's savings and investments.
- The enlargement of capital market, business development, of the private sector and the lessening of monopolistic policies through the increase in the competition.
- The access on the Community labor force market.
- The improvement of the standards and of the quality of life of the population, of health norms, the growth of the level of instruction and education, of civilization.
- Complex processes with constructive and multifunctional capacities, the accession and integration will produce important changes also at the level and within Romanian spirituality. There will

be changes in the system of values and appreciations, in the human conduct and activity, a new vision on politics, on the institutions and their functioning will appear. Also, changes will appear at the level of interpersonal and inter-ethnic relations. Within the latter the tension will diminish, the old dissensions and animosities will disappear because all people, no matter the ethnic background, will be European citizens.

Culture and spirituality will acquire new evolutions within the European Union. Besides the strengthening of national identity elements, it will be capable to include new elements pertaining to the culture of the Member States. The development of multi-culturalism will also be enhanced.

Furthermore, mutations will be produced within conscience and patriotism. There will appear and evolve a conscience and pride of belonging to the European Union, without it diminishing or covering the national ones. The attitude on work and on society in general will also suffer changes. There will also appear and evolve a new civilization with powerful European Community elements and values.

All in all, it is for the first time that Europe practically and precisely holds out its "hand" to Romania towards a modern development, within a union-like framework. It represents an opportunity that must not be lost but used at a maximum. It insures Romania's security, the development and consolidation of its democracy, the necessary economic growth to social and spiritual prosperity.

Notes

[1] The main framework of the Eastern enlargement of the European Union is analysed by J. Preston in the study *Enlargement and integration in the European Union*, London Rutledge Press, 1997.

[2] The authors highlight the following papers from all the noteworthy approaches on the problem of Romania's accession, of the costs and benefits of the integration: Institutul European din România, *Studii de impact II [Pre-accession Impact Studies II], Evaluarea costurilor şi beneficiilor aderării României la Uniunea Europeană*, Bucureşti, 2004. The Institute has published 12 studies on the issue of the integration; Iulia Zamfirescu, *Costuri şi beneficii ale aderării la Uniunea Europeană pentru ţările candidate din Europa Centrală şi de Est*, Institutul European din România, Bucureşti, 2001; *Fenomenul migraţionist din perspectiva aderării României la Uniunea Europeană*, Institutul European din România, Bucureşti, 2004; Emilian Dobrescu, *Integrarea economică*, Editura AII Oeconomică, Bucureşti, 2001, Ion Niţă, *Integrarea României în Uniunea Europeană*, Editura Lumina Lex, Bucureşti, 2005.

[3] Institutul European din România, *Studii de impact II*, Evaluarea costurilor şi beneficiilor aderării României la Uniunea Europeană, Bucureşti, 2004, p.142.

[4] *Ibidem.*

[5] Gunther Verheugen, Address in the European Parliament, *European Union Informative Bulletin*, Bruxelles, 2005.

[6] Insitutul European din România, *op. cit.*, p. 142.

[7] *Ibidem.*

[8] *Informative Bulletin of the European Association of Trade and Industry Chambers, Bucharest*, 2006, p.1.

[9] Ioan Bari, *Globalizarea şi problemele globale*, Editura Europa Economică, Bucureşti, 2001, p.62.

[10] Institutul European din România, *op. cit.*, p. 146.

Résumé

Cette étude analyse le problème des coûts et des bénéfices du processus d'adhésion et d'intégration de la Roumanie dans l'Union Européenne. On souligne à la fois les effets positifs et aussi bien que les effets négatifs de ce processus.

European Union's Common Policies

Cezar AVRAM
Roxana RADU

The concept of "common policies"

The European Union has a large economic project in the centre of its preoccupations. Certainly, the European Union cannot be a mere zone of free trade or a mere economic union, but it cannot tackle the European political project without concluding the European economic project. The European economic integration encourages the economic development through a series of important policies mainly having the aim of redistributing comparative and competitive advantages between countries, depending on each state's endowment with natural and demographic resources[1].

The aim of EEC, included in the treaty, was that of promoting a harmonious development of economic activities in the entire Community, a continuous and balanced extension, a higher stability, an accelerated raise of the standard of living and also laying the foundations of an ever closer union among the peoples of Europe "through building a common market and progressive harmonization of economic policies of Member States". So, "in the context of the search generated by the necessity of finding some new solutions for economic development but also for interests of political nature, secondarily followed, the three European Communities came into being"[2]: the European Coal and Steel Community – 1951, the European Atomic Energy Community and the European Economic Community - 1957.

The objectives included in the EEC Treaty were:

a) eliminating the customs taxes and quantitative restrictions at commodities' admittance and exit;
b) establishing a common customs tariff and a common commercial policy in the relation with other non-Member States;
c) abolition of all obstacles on the way of free movement of persons, services and capital between Member States;
d) common agricultural policy;
e) common transport policy;
f) establishing real competition conditions;
g) application of proceedings for coordinating the economic policies of Member States and preventing the lack of balance in the balances of payments;
h) harmonization of national legislations to the extent necessary for functioning of the common market;
i) founding a European Social Fund in order to improve the standard of living;
j) founding a European Bank of investments in order to encourage economic expansion;

k) association with states and territories from the outside of the Community.

Article 3 of the EEC Treaty stipulated that Community action had in view "the establishing of a common customs tariff and a common commercial policy toward non-member countries, setting-up a common agricultural policy and establishing a common transport policy".

The objectives of the EC having a progressive evolution in the course of time, there have been elaborated a series of new common policies: monetary policy, industrial policy, social policy, energy policy, research policy, fisheries policy, environmental policy, consumers' protection, foreign affairs etc. The construction of these common policies is explained by economic, social and political necessities at Community level, but also by the superiority, in efficiency terms, of some common actions in comparison with those achieved separately at the level of each Member State.

The notion of common policy is very ambiguous, this fact being reflected in the variety of expressions used for naming, practically, the same notion: "policy of the European Community", "common policy", "Community policy". Common policies "constitute, as a matter of fact, fields in which, in virtue of a transfer of competences from national level to Community level, consented to by Member States, Community institutions interfere in a direct and decisive way, and the actions of Member States take place as group actions"[3].

The transfer of competences from national to Community level is limited depending on the stipulations of the treaties. The rules and policy established by the Community authorities in a certain field form a unified policy which is a substitute for national norms and policies. Some authors include also in the category of common policies those which are combined with national policies, the so-called "coordinated policies"[4] (for example, economic policy), while others make a clear distinction between the two categories.

The characteristic feature of the European construction consists in the fact that there is not a general assignment of competence, but there is specific competence, intentionally stipulated in the constitutive treaties of the EU, subsidiary competence, created through the documents of modifying the constitutive treaties and implicit competence, created by the Court of Justice in the activity of applying and interpreting the treaties' stipulations[5]. The recognition of implicit competence[6] on the basis of article 308 (ex-article 235) of EEC Treaty[7] gave rise to many juridical controversies due to the tendency of extending the Community competence at the expense of national competence[8]. The establishment of the principle of subsidiarity through the Maastricht Treaty was equivalent to the expansion of European Union's "implicit" or "subsidiary" competence. Actually, the turn of the balance is often with the Member State, and anyway, the balance is very flexible[9].

On the basis of the subsidiarity principle, the Union interferes in fields that do not belong to its exclusive competence only in case of and to the extent to which the expected objectives of the action cannot be achieved in a satisfactory manner by the Member States and, taking into consideration the dimensions and effects of the respective action, it can be better carried out at Community level[10]. In this case, the Community intervention responds to some necessity reasons. The control of observing this principle is the task of the legislator who has a large power of estimating its application and in case of its application being contested, the

Court of Justice will get an intimation after the respective act is adopted[11].

Although the principle of subsidiarity is a reverse federal principle, the EU still remains a political entity whose proximate species is the federation. People[12] say that the subsidiarity principle is a reverse federal principle because, in federal states (Germany, for example), the federation's competence is general and the competence of its members is secondary while, in the case of the EU, the competence of Member States is general and the one of the Union is secondary. The Union interferes only when the treaties confer on it certain competence in one sector or another.

Another possible definition of common policies could be that they are "forms of putting into practice the great principles of free movement and free competition and that their field of action concerns both the cases in which the Community is formally authorized to substitute Member States and those in which its action should limit itself to completing that of the Member States (coordinated policies)"[13].

This pragmatic approach does not fully correspond to reality because practice is extremely supple. Thus, although the Union is used to acting on its own in the frame of a common policy, it does not always choose to deprive the Member States of competence such as, for example, in the field of agricultural policy and transport policy. A fact that makes some authors think that in practice only three basic (origin) policies are real common policies: agricultural policy, transport policy and trade policy, among which only the latter is totally conducted by the Union. Therefore, in order to ensure a balance between theory and practice, people should make the difference between "common policies", characterized through a real transfer of competence in the Union's benefit, and "Community policies" which limit themselves to a mere integration of national policies[14].

Agricultural policy

Agriculture represents a sensitive sector to which public authorities gave a special attention in all countries for social and electoral reasons. Therefore, since the beginning of the 50's, a European arrangement of goods was planned but this project was not accomplished because of divergences of interest. The perspectives of developing a Common Market resumed this debate coming to the decision that this field of activity should be the subject of the Treaty of Rome of March 1957. Five essential objectives for Common Agricultural Policy (CAP) have been established: improving productivity in the agricultural sector; ensuring a reasonable standard of living for the producers; stabilizing foreign exchange by supplying agricultural products for domestic consumption from domestic sources rather than imports; ensuring the security of supply; stabilizing prices at levels reasonable for the consumer.

The content of the Treaty of Rome gave only the general direction to be followed in this field, the Commission having the function to submit to the Council proposals regarding the common organization of markets on the basis of the work of a Member States' Conference. It led to the Stressa (Italy) Reunion of July 1958 where the principal directions were set. In January 1962, a team of experts conducted by Sico Masholt (ex-minister of Dutch agriculture) laid the foundations of PAC after long and difficult negotiations.

Having in view the fact that in the Member States the situation had characteristics which had to be taken into account by the public authorities (numerous

and small dimensions exploitations, low productivity, an important part of the active population being engaged in the primary sector, average income per inhabitant being inferior to those from other fields of activity, the production being often unable to satisfy food necessities) and the authorities had to act with a view to orienting the development and modernization of structures, but also to regulating markets and ensuring incomes to farmers, CAP took inspiration from practices and models of organization available in France and Holland and replaced national mechanisms with a Community device.

The adopted system was based on a series of principles:

a) free movement of agricultural goods; by removing customs taxes and subventions and progressively adopting administrative, sanitary and veterinary norms, a unique space was created;
b) a common organization of market which substituted for national systems; the price for each product is only one and surpasses world price (in order to ensure a reasonable income for the producer) inside the EEC;
c) preference for Community goods; the consumption of products from Europe was promoted in comparison with the one of goods from outside the Union (the entrance to the Community market of exterior products is discouraged by imposing prohibitive taxes);
d) financial solidarity; guaranteed prices, export of surplus goods etc. which are registered in the European Orientation and Agricultural Guarantee Fund, created in 1962.

Prices are established annually and uniformly for every product by the Council of Ministers of Agriculture, at the Commission's proposal. Their fixing implies long negotiations and the system adopted (the mechanism of guaranteed prices) presents common characteristics, although it is differentiated on sectors: an orienting price which serves as theoretical reference; a floor price which is applied to imports at the entrance to EEC (in order to protect European production); an intervention price proper to a minimum guaranteed level (at which all legal organisms buy the surplus products in order to store or to destroy them).

Every year, beginning with April 1st, a common standard comes into force which is established depending on a series of parameters: the objective followed in the field of incomes, the evolution of costs and the level of EEC's goods supply. The absolute guarantee of prices is applied only to certain products such as wheat, but there are different degrees of protection depending on market organization for other goods (sugar, olive oil, rice, milk, beef etc.).

In the course of time, the Community effort materialized in special allowances for mountain regions, environment, disadvantaged regions and also in financing some investments in some regions of South Europe and Ireland. The CAP enabled the radical transformation of agriculture and its integration into the market economy, but the "productivist" model which inspired it knew also negative effects that led to hardly tolerable costs. However, the process of modernizing the European agriculture today is a sure fact. This evolution was, at the same time, accompanied by the considerable decrease of population working in this sector[15].

From the beginning, the establishment of the CAP has experienced technical difficulties and, little by little, led to basic lack of balances. From the beginning of the 80's, the finding of provisional solutions for limiting the lack of balance

was vital. Due to the persistence of this situation and at the intervention of the GATT, in 1992 the CAP was globally reexamined and, starting with 2000, important changes have been applied. Between 1986-1993 agriculture represented one of the essential fields of negotiations (Uruguay Round) which had in view a more intense liberalization of world trade of goods and services, limiting customs taxes and fighting against measures not concerning tariff. The reform which came into force in May 1992 was inspired by the proposals made by the Commission in the Green Paper in July 1985. The progressive drop in prices of surplus products with the aim of discouraging production, the compulsory annual abandonment of a part of cultivated field and the application of strategies of rural development with the aim of protecting the environment are only some of the principles of the new orientations.

The Reform of CAP (influenced by GATT) ensures a balance on the medium term between the mechanisms of Green Europe and the exactingness of international enlargement. At the beginning of the third millennium, new negotiations inside World Trade Organization (WTO which replaced GATT starting with 1995) are expected. The Council from Berlin (March 1999) made the decision to diminish the support prices and to reevaluate direct aids in order to maintain the incomes. The ministry Conference of Seattle, in December 1999 decided to cover agriculture multifunctionality, in other words the productive activity and, at the same time, environment protection[16].

In 2003, a new basic reform was made according to which CAP was adapted to the demand. The agricultural producers are no more paid only to produce food products. The preoccupations of consumers and contributors are entirely taken into consideration while the freedom of producing what was in demand on the market was granted to the farming producers coming from EU.

The aim declared by CAP is the maintenance of an economic, social and institutional sector, distinct, multifunctional and orientated towards family farms, with complex regulations for the entire EU. CAP is a defensive strategy, politically managed, of modernizing European agriculture.

Fishing policy

Fishing policy implies, in the first place, a common organization of market which has in view five elements:

- the principle of free access of any fisherman from EU to any Community water;
- the balanced exploitation of fish resources through a system of conservation and management;
- financial assistance for restructuring fish sector, on the one hand through European Social Fund (ESF) and European Fund for Rural Development (EFRD), on the other hand through a special program of supporting the regions dependent on fishing, having in view the motivating of work force;
- a marketing system;
- concluding agreements with non-Member States.

Economic and monetary policy.

The Large Single Market does not overlap the Economic Union, from the point of view of content and action field; as a stage, the former precedes and prepares the latter and, as structure, it integrates itself entirely into its area. The two concepts are therefore concentric socio-economic processes; one without the other is unimaginable; the idea as such results from and is strongly enhanced by

the condition of economic union's success, namely:

1. the existence of the unique market, with the four freedoms, harmonization of indirect fiscalities and elimination of financial frontiers;
2. a competition policy which has to strengthen market mechanisms;
3. common economic policies which have to strengthen social and economic cohesion of the Community;
4. the economic policies of Member States have to be coordinated.

In other words, the Economic Union includes the Large Single Market, together with its characteristics and mechanisms, and the Monetary Union, as a central and axial subsystem.

The Economic Union is, therefore, a construction of large dimensions, not necessary in the sense of a continuous enlargement, from six to twenty five members (and probably the number will increase in the future), but, most of all, in the respect of its content and development horizontally and vertically; it indicates a leap from trade integration to economic and political integration; it includes all the facts concerning market, free movement of goods, services, persons and capital, Community economic, monetary, financial and budgetary policies, also sectorial and regional, intergovernmental institutions and decisions, state policies coordination, intra and extra Community competition, strategy of economic development and increase in short, medium and long term etc.; only by analyzing all these aspects in their connection and dynamism, can we have an imagine, almost complete and real, of the complexity, importance and chances of consolidating and future development of the Economic Union.

Theorists and practitioners, Community dignitaries and common people, all of them or almost all of them sustain the idea that the Monetary Union represents the acme of European integration till now and, at the same time, the premise, the condition and the intimate competence of its future acceleration: "From the point of view of economic policy, the abandonment of the monetary sovereignty caused the increase, in the matter of their importance, of financial policies which have to be coordinated to a much greater extent in order to play an efficient stabilizing part when confronted with events or situations which could take place in different countries and, in a long term, to a real harmonization of national economic systems"[17].

Economic stability is the basis of monetary stability; monetary stability is, in its turn, a barometer of quality and economic stability.

The European Monetary System is a construction, a monetary device which refers to a tighter connection of national currencies of Member States in order to come to a common currency; its structure includes four central pillars:

1. ECU, as a unity of central reference, embryo of common currency;
2. a mechanism of exchange and intervention which has to ensure the accomplishment of a common monetary discipline;
3. a mechanism of support and credit, constituted in order to help Member States to integrate themselves and respect the common monetary discipline;
4. a European Fund of Monetary Cooperation, the germ of the future common monetary institution.

The introduction of EURO into the international monetary system represents the most important measure of economic policy adopted after World War II, according to most western analysts.

Till now, USD played a central part in the world financial and trade transactions

but the economic zone inside which EURO functions is that of the greatest economic bloc in the entire world. Europe will hold key position from a monetary and, further, economic point of view. Inside a globalized world economy with interdependent economies, the impact of EURO will also spread over some markets of non-Member States with economic and monetary influences. The international currency role of EURO depends on whether it will be used as transaction currency between non-Member States.

Social policy

The efforts meant to accomplish the internal market also included the human and social dimension of struggling against social dumping. The Treaty of Maastricht established the European Social Fund in order to "increase the possibilities of work employment on internal market", contributing to rising the standard of living. The Fund aims "to promote, inside the Community, the employment possibilities, geographical and vocational mobility of the labor force and also to facilitate the adaptation to industrial changes and production systems' evolution, especially through vocational training and job retraining"[18].

Taking the entire responsibility for the content of education and the organization of the educational system, Community's action aims at:

- the development of the European dimension in education through learning and spreading the languages of Member States;
- the academic recognition of diplomas and periods of studies;
- promoting the cooperation between institutes of education;
- achieving the exchange of information and experience about common elements of education systems from Member States;
- supporting the development of distance education.

2000 Agenda proposed also the reform of social insurance system by providing pensions, health insurance, attendance insurance, social assistance, social protection of the unemployed in EU, social protection of disabled people and social integration of children with special needs or disabilities.

European social policy is based on two instruments: European Social Fund and Social Chart which sets forth twelve fundamental rights of workers and promotes equal chances for men and women. The budget of European social policy allocates almost 90% to the European Social Fund which contributes to the financing of geographical and vocational mobility, struggle against long term unemployment, introducing the young people into the world of jobs, changing the production system, ensuring the protection of health at work, financing the development and structural adjusting of low populated regions.

European Commission included the social and social assistance measures into the Social Charter in December 1989 and elaborated the White Chart in 1994 in order to apply some methods of reducing unemployment inside EU in order to achieve social union. The White Chart contains the chapters: "development, competition capacity and employment of work force".

In the matter of safety and social protection of the unemployed, the Green Chart stipulates directions of action for guaranteeing social protection and improving vocational education and training, aiming at a higher mobility.

The 2000 Agenda also includes Community programs for the integration of the disabled:

- HELIOS II – measures for the functional rehabilitation of the disabled, their social and economic integration, individual and complete guiding of their social life;
- HORIZON – regards the integration of the disabled into the work market;
- TIDE – is a program for the aged persons in order to offer them new chances and perspectives of integration in social life.

The EU's social policy primarily deals with issues related to employment, including measures to ensure the free movement of labor and measures to protect the quality of work and life, promotion of equal treatment and insurance of a minimum social protection inside the Community space. With this aim in view ESF was created, a series of Community programs and juridical norms of the Maastricht Treaty which complete the national legislations.

The aim of social policy is defined in article 117 par. 1 from the Maastricht Treaty as follows: "Member States agree on the necessity of promoting improved work conditions and a high standard of living for workers so that their harmonization could be possible while the perfecting is maintained".

The means of putting into practice this aim are stipulated in article 117 par. 2: the development of social policy will result from the functioning of common market which will encourage the harmonization of social systems and also from the procedures stipulated by the Treaty and from the alignment of norms established by law, regulations or administrative action.

The conclusion that results after studying the text of the Treaty is that, although the development of social policy will result, among others, from the functioning of common market (as a basic economic element), both aspects, the economic and the social one, are however equally important concerning the objective of the entire Community action - that of ensuring the promotion of economic and social progress[19]. According to the approach of an author[20], social policy should more correctly be called "social regulation" because it consists of programs that balance economic efficiency with concerns for the quality of life and does not intend to replace welfare programs in Member States.

The first means of achieving the aim of social policy – common market functioning – also includes the functioning of the common market of work through the free movement of workers. With this aim in view, there must be taken into consideration the free forces which influence this market at the level of work conditions, namely the employers' and workers' organizations, collective negotiations carried on by these organizations within social dialogue as well as the pressure over the content of governmental measures in the social field.

The social dimension of the Community Home Market imposed the setting-up of a social dialogue between social partners reunited at EU level. The concept of "social dialogue" was introduced by the Single European Act in 1985 and it signifies the fact that social partners have to participate in the achievement of Home Market and the materialization of its social dimension.

The second means of achieving the social policy aim - the procedures stipulated by the Treaty - refers to the procedures concerning the coordination of economic policies by the Council and other competence in the economic field which have to be used in such a way that the general stipulations of the treaty and especially the improvement of the standard

and quality of living should be observed. In this matter, the Commission has the attribution, according to article 118, to promote a close cooperation between Member States in the field in debate, especially in the domains concerning:

- the use of work force;
- right to work and work conditions;
- basic and advanced vocational training;
- social security;
- the prevention of work accidents and professional diseases;
- the right of association and the right to collective bargaining between employers and workers.

With this aim in view, the Commission, acting in close cooperation with Member States, will do research and formulate notices and resort to consultations both over the questions issued at national level and those which are of interest for international organizations. The Commission can also formulate recommendations.

The third means – the alignment of norms established by law, regulations or administrative action – is an application of the general stipulations of article 100-102 of the Treaty to the specific field of social policy. The differences between national legislations can appear especially in the field of social security and can generate important lack of balance of competition due to financial expenses in certain fields. They are also liable to affect the stability and functioning of common market of work through the advantages and disadvantages some national legislations could lead to[21]. In order to avoid this kind of negative effects, numerous measures of harmonization of social legislations and policies have been adopted in different fields such as social security regime, work and wage conditions, work hygiene and security, dwelling policy.

The Commission is the institution centrally involved in social policy. The General Directorate for Employment, Social Affairs and Educations (DGV) drafts legislative proposals and influential studies, such as the annual series *Employment in Europe*.

The Council has been much less interested in and much less receptive to questions of social policy than the Commission. Similarly, the European Council only occasionally takes a position on social policy, such as at its meeting in Madrid in December 1995 when it declared: "jobs creation has been the main social, economic and political objective of the EU and its Member States' ".

The European Parliament is "an advocate of social policy"[22] whose role has been strengthened by the Treaty on EU. Within the European Parliament, the group of the Party of European Socialists and the group of the European People's Party (Christian-Democrats) frequently cooperate in support of social policy goals. The social partners are also important social policy actors. Under the terms of the Treaty on EU and an earlier agreement to establish a social dialogue, they have a quasi-official or corporatist role in elaborating social policy.

Concerning the relation between enlargement and social field, the Council considered that EU must constantly take into consideration the efforts of candidate states with a view to adaptating and transforming their social systems and also putting into practice a convergence process in accomplishing progress. Therefore, EU must take into consideration both the fact that these states confront with a major problem of adaptation and changing their systems and the fact that they face, as well as Member States, similar problems or identical problems. In this context, says the Council, it must be taken into consideration the perspective of enlargement in social policy fields on the whole.

Trade policy

In July 1968 a customs union between Member States was established so that, instead of a mere zone of free exchange, EU had in view a larger objective: besides total elimination of due taxes, of quantitative and normative restrictions, a common external tariff (TEC) is applicable today and, in addition, the complete free movement of goods inside Union's territory, whatever their provenance may be.

The main objective of common trade policy was the establishment of a custom union and a common custom tariff, fact that required that exclusive competence in the field of trade policy should be granted to EU. The customs union has not been totally accomplished because technical problems are still unsolved but, nevertheless, the Economic and Monetary Union is on its way of success, no matter the existent obstacles.

EU has consequently major objectives in the field of trade policy:

- complete elimination of customs tariffs, quantitative and normative restrictions between Member States;
- adoption of a common external tariff;
- existence of a complete free movement of goods on the Union's territory, whatever their origin may be.

Competition policy

Removing all obstacles is not sufficient for guaranteeing a real competition. This implies also the adoption of some regulations for avoiding the excesses (disloyal agreements, abuses encouraged by a dominant position, accumulations). Starting with the foundation of the Common Market in 1957, there were imposed rules in order to prevent disloyal competition. Their application advanced in relation with the national and international economic context, some new dispositions being added to the first ones, for example in the field of associations. Today, the regulations are pragmatically applied, in order to facilitate the integration of national economies. Today, there is an authentic coordination with national competition policies which act through the agency of the harmonization tendency of the in-force laws existent in this field in Member States, by the direct application of article 85 and 86 in EU Member States etc.

The aim of competition policy is that of ensuring a free undistorted competition, which is to promote the free movement of goods and prevent the introduction of certain restrictions regarding common market functioning which can affect trade between Member States and the general interest of companies and consumers.

Transport policy

Transports are a sector of economy with a remarkable influence over all the other economic sectors which can be influenced through tariff policies, discriminatory practices or state intervention policy that could affect the competition frame[23], a reason why Title IV from the Third Part of the Treaty of Rome (article 74-84) is completely dedicated to the Community transport policy. Common transport policy implies the establishment of some common rules applicable to international transports, having as a departure and destination point the territory of a Member State or crossing the territory of one or more Member States; the establishment of admittance conditions to national transports of a Member State for non-resident carriers and measures for the improvement of transport security.

Common foreign and security policy

European political integration "encompasses the non economic aspects of European integration, ranging from the EU

institutional structure to foreign and security policy"[24].

After signing the Treaties of Rome, the European construction focused especially on economic aspects, political cooperation in the field of international relations being often a taboo subject[25]. The accession of European states to NATO (1949) determined sovereignty limitation in the matter of defense[26], setting European troupes under American command. This transfer of sovereignty to NATO set many obstacles on the way of building an European defense policy because "it is difficult to transfer to Europe something that is already owned by NATO"[27]. For this reason, the problems of security and defense were initially excluded from the cooperation field.

Starting with the Single European Act (1986), the Member States declared themselves ready for coordinating their positions concerning "the political and economic aspects of security", but the first reference to the question of security and defense was made in the Treaty of Maastricht, only in very vague words, trying to come to a compromise between the supporters of defense inside NATO and the supporters of building a European identity of defense. In accordance with the same treaty, the Common Foreign and Security Policy (CFSP) represents one of the EU pillars, together with the European Community, Justice and Home Affairs. The Maastricht Treaty established many connections between EU and Western European Union (WEU), a cooperation organization in the field of security and defense created in 1948, elevating WEU to the rank of a "constituent part of EU development" but with its own institutional autonomy. Not even the Maastricht Treaty does include more explicit references to the Common Defense Policy.

The argument in favor of building a European political union was strengthened by the revelation of Europe's weakness during the Gulf War (1990-1991): "The Gulf crisis is not only double. It is subdivided into so many national crises as countries participant or non-participant in the coalition. The Gulf conflict represents a crisis for France, as well as it is for Great Britain, Saudi Arabia, Egypt or Germany..."[28]. The European Community intended to adopt a common position concerning the Gulf War and to act collectively regarding the civil war in ex-Yugoslavia, but these attempts failed, reflecting the divergences between the interests of Member States[29].

The disappointment caused by this failure and the awareness of the military and political deficit of Europe led to the reorganization of Europe's program of political integration: "Kosovo turned out to be a catalyzing element in a new transatlantic negotiation and for a larger autonomy of Europe, reflected in the shape of a "common foreign relations and security policy" as well as "European identity of security and defense" or "the European pillar" of NATO[30]. Thus, at the European Council in Helsinki (December 1999), EU Member States decided to develop their military capacities and construct new political and military structures in order to endow the Union with an autonomous capacity to decide and, where and to the extent to which NATO is not involved in, to launch and lead military operations under its own command in case of some international crises[31]. Even if all NATO Member States admitted the necessity for the Europeans to own military capacities independent from the USA contribution for the purpose of promoting common foreign and security policy of EU, the idea of building European army was rejected because of

the fear that this idea could lead to the creation of a pure European alliance and the discrimination of European states which are NATO members but not also EU members, and also to the doubling of the duties and allocating of resources by NATO and EU[32]. The development of Defense and Security European Identity (DSEI) inside NATO and the application of the principle of building a European force "separable, but not separated", asserted at the North-Atlantic Council in Berlin (June 1996) are meant to avoid these problems.

CFSP has five precise objectives: EU's strengthening, defense of common basic values of all Member States, peace defense, development of international cooperation, preserving fundamental freedoms through the respect of human rights, state of law and democracy.

Industrial policy

Although it has not been specially stipulated in the initial treaties, there are several Community policies on industrial objectives. The Treaty of Maastricht admitted the importance of this policy in the accomplishment of the Great Single Market.

Industrial policy takes into consideration the following aspects:

- accelerating the rhythm of industry adaptation to structural changes;
- encouraging a medium propitious to initiative and development of companies from the inside of the Union and especially to small and medium-sized enterprises;
- encouraging a medium favorable for cooperation between enterprises;
- encouraging a better exploitation of the industrial potentialities of innovation, research and technological development policies.

Regional policy

This necessary policy has been and still is belatedly applied although it implies the reduction of socio-economic differences between various regions of EU. Starting with 1988, there are six prioritary objectives concerning regional policy:

- promoting development and structural improvement of poorly developed zones (FEDER);
- accomplishment of vocational retraining in such zones or regions;
- contributions to rural zones development;
- helping the poorly populated arctic regions;
- preventing long term unemployment;
- facilitating professional integration of the young people.

The entire program of this field is still in the beginning and needs some coercitive measures in order to be achieved.

Cultural policy

Starting with the Treaty on the European Union (TEU), culture has been included in the competence of the European Community which support and complete the actions of Member States in the following domains:

- improving knowledge and disseminating the culture and history of European people;
- preserving and saving the cultural patrimony of European importance;
- non-trade cultural exchanges;
- artistic and literary creation, including the one from the audio-visual sector.

Inside the Union, there are a series of programs of vocational training to whom 1% from the Community budget is allocated: ERASMUS - a program through which a European network of cooperation between universities (exchanges of professors, students, grants) is created; COMETT – a program meant to strengthened the cooperation between

universities and companies; LINGUA - a program meant to diminish the linguistic barriers between Europeans; DELTA and EUROPECHET – programs pointing to top technologies (IT, data banks, satellite network); SOCRATES and LEONARDO – (the second one for the Eastern European countries too) – programs through which the cooperation between European universities is encouraged, between those ones and companies, programs which give to vocational training a European dimension. The present cultural policy demonstrates that EU does not wish and "neither can afford to import political cultures without the risk of creating well-known disproportions". People think that, considering the aspect of "culture as a way of life", resulted from society organization, politics and, under the impact of present tendencies of internationalization, globalization and leveling, "a European culture and a Europe of cultures have the same interest".

Cultural policy does not involve the harmonization of national cultural policies. Nevertheless, taking into consideration Europe's common cultural inheritance, "the necessity of a Community contribution to the development of national cultures"[33] was revealed. Therefore, the Union will contribute to the development of Member States' cultures, respecting their national and regional diversity and emphasizing their common cultural inheritance. At the same time, the Union and Member States will encourage the cooperation with non-member countries and with international organizations with competence in the field of culture, especially with the Council of Europe.

Environmental policy

Stipulated in 1972, the European environmental policy was present in the Single European Act of 1987, on the basis of the following principles: preventive action, taking into consideration the environmental requirements inside other Community policies. The Treaty of Maastricht extended the competence of the European Parliament conceming environment through the agency of some co-decisional procedures.

The seriousness and the extension of pollution phenomena at world level, the depreciation of life resources led to the establishment of a common policy concerning the environment which has the following principal goals:

- preserving, protection and amelioration of environment quality;
- protection of human health;
- cautious and rational use of natural resources;
- promoting international measures meant to face regional or world environmental problems.

The environmental policy is based on the next guiding principles:

a) the principle of prevention and preventive action which involves common actions of various states if it is considered to be worth of (quasi) universal, global application;
b) the principle of rectification, according to which environmental damage should as priority be rectified at the source, removing the damages "in situ" and as much as possible restoring the environment to its former condition;
c) the principle of the polluter-payer which stipulates the responsibility of the polluter whose obligation is to pay for the damages until the restoring of the environment to its previous condition;
d) the principle of integrating the demands in the sphere of environment inside the process of elaborating and putting into practice of other Union policies.

According to 2000 Agenda, the environmental policy primarily deals with

the energy sector. Through its programs of action, the Commission stipulates the decrease of the energy consumption, the use of renewable energy, atomic energy and taking over the responsibilities both at Community and national level. The Community programs SAFE II (1996-2000), ALTENER (1998-2000), SYNERGIE (1998), THERMIE (1995-1998) stipulated the protection of environment, the improvement of competition capacity, the protection of sea space, finding some technologies for the ecological draining of some regions affected by pollution. In candidate states from Central and Eastern Europe the program PHARE is functioning and for CSI, the program TACIS. The Community program LIFE concerning the development of environmental law in the EU has in view priority measures and technical aids, wood protection, pollution prevention and protection against natural disasters.

An eloquent example of preoccupation in the field of environmental protection is the decision of some EU Member States to give up nuclear energy for good (Sweden, Germany, Italy, Switzerland), even if the percentage of nuclear energy in the production of electricity is high enough (France 78%, Belgium 60%, Sweden 46%, Switzerland 40%, Germany 35%, Great Britain, Spain and Finland 30%).

Research and technological development policy. Starting with 1986, different research projects financed by EEC are regrouped in frame-programs for five years which have a series of priorities:

- ESPRIT (technology of information);
- RACE (technology of communications);
- environment;
- wine science and technologies;
- energy technologies;
- controlled nuclear safety and security.

Stipulated in the Single European Act (SEA), this policy was adopted and developed in the Treaty of Maastricht. The general objective of this policy consists in consolidating the scientifical and technological bases of Union's industries and encouraging them to become more competitive on international level through the following means: encouraging enterprises, including the small and medium-sized ones, and also research centers and universities in their activities of research and technological development; supporting their efforts of cooperation through the maximum exploitation of internal market potentialities, access to national public contracts, establishing common standards, taking into consideration the existence of diverging national standards; removing juridical and financial obstacles in the way of cooperation between the research centers and enterprises (legal monopolies, problems related to patents). The common research policy joins the national efforts, concentrating on certain strategical sectors for Europe's future.

Consumer policy

The principal objective of this policy is the consumer protection against false publicity, protection accomplished through the recognition of five basic rights stipulated by different Community norms (regulations, directives, decisions, resolutions): right to protection of economic interests; right to health and security protection; right to equity law of damages; right to representation and participation in the process of making the decisions of general interest for the consumers; right to education and information concerning consumer protection in connection to which the insertion of consumer education in education programs is promoted.

Trans-European networks policy

This policy is meant to promote the establishment and development of trans-

European networks in the sectors of transport infrastructure, telecommunications and energy in order to allow Union's citizens, economic operators, regional and local collectivities to completely benefit from the advantages resulting from the creation of a space without frontiers. Inside a system of open and competitive markets, the Union's action envisages the encouragement of interconnection and reciprocal functioning of national networks, also the access to these networks; the necessity to link the island, enclave and periphery regions with the central regions of EU is also taken into consideration.

Notes

[1] See *The Treaty on European Union*, Lucretius Publishing House, Bucharest, 1997; Gheorghe Pârvu, *The Economy of European Relations*, Universitaria Publishing House, Craiova, 2002; Nicolae Păun, *The History of the European Construction*, European Studies Foundation, 1999; Octav Bibere, *The European Union between Actual and Virtual Fact*, All Publishing House, Bucharest, 1999, p. 56; Charles Zorgbibe, *The European Construction. Past, Present, Future*, Trei Publishing House, Bucharest, 1998, p. 67.

[2] Augustin Fuerea, *European Union's Institutions*, Juridical Universe Publishing House, Bucharest, 2002, p. 18.

[3] Andrei Popescu, *Community policies*, in the revue "Labor Relations" nr. 5/2000, p. 58.

[4] These policies give, to a great extent, to Member States the competence to decide over certain fields, forcing them to coordinate their policies in order to accomplish certain common objectives.

[5] Bianca Predescu, Ion Predescu, Aristide Roibu, *The principle of subsidiarity*, Official Journal Publishing House, Bucharest, 2001, p. 21.

[6] The implicit competence is given to the Community to the extent of its necessity for the performing of some competence stipulated on purpose and for the accomplishment of some Community objectives established by the treaties.

[7] Article 308 allows the enlargement of Community competence in the case in which "a Community action appears as necessary for the accomplishment, in the frame of common market functioning, of one of the Community's objectives although the present treaty should have stipulated a power of action imposed by this effect".

[8] See also Pierre le Mire, *Droit de l'Union Européenne et politiques communes*, Dalloz, Paris, 2001, p. 247-253; Marianne Dony, *Droit de la Communauté et de l'Union Européenne*, Éditions de l'Université de Bruxelles, 2001, p. 97-100.

[9] Maurice Croisat, Jean-Louis Quermonne, *L'Europe et le fédéralisme*, 2 édition, Montchrestien, E.J.A., Paris, 1999, p. 97.

[10] According to article 5 (ex-article 3 B) of the Maastricht Treaty.

[11] C. Boutayeb, *Dictionnaire juridique des Communautées européennes*, PUF, 1993, p. 1033-1034.

[12] See Valentin Constantin, *Open Subjects about the European Integration*, http://studint.ong.ro.

[13] Pierre le Mire, *cited work*, p. 250.

[14] *Ibidem*, p. 251.

[15] In the Europe of the Fifthteen, agriculture supplies job for only one unemployed person from 15, in comparison with the situation in 1960 when the proportion was from 1 to 5, in the same countries.

[16] Petit Yves, Loyat Jacques, *La politique agricole commune (PAC)*, La Documentation française, Paris 1999.

[17] Romano Prodi, *A vision about Europe*, Polirom Publishing House, Bucharest, 2001, p. 13.

[18] Article 123 [146] of the Maastricht Treaty.

[19] Octavian Manolache, *Community Law*, All Beck Publishing House, Bucharest, 1995, p. 241.

[20] Giandomenico Majone, *The European Community Between Social Policy and Social Regulation*, Journal of Common Market Studies 3, no. 2 (June), 1993, p. 168, cited in Desmond Dinan, *Encyclopedia of the European Union*, MACMILLAN, 2000, p. 425.

[21] Octavian Manolache, *cited work*, p. 241-242.

[22] Desmond Dinan, *cited work*, p. 426.

[23] Octavian Manolache, *cited work*, p. 281.

[24] Desmond Dinan, *Encyclopedia of The European Union*, MACMILLAN, 2000, p. 219.

[25] See also Luciana-Alexandra Ghică (coord.), *Encyclopedia of The European Union*, Meronia Publishing House, Bucharest, 2005, p. 163.
[26] Hugues Portelli, *Les régimes politiques européens*, Librairie Générale Française, 1994, p. 160-162.
[27] *Ibidem*, p. 161.
[28] Jean-Louis Dufour, *International Crisis. From Beijing (1900) to Kosovo (1999)*, Corint Publishing House, Bucharest, 2002, p. 195.
[29] See also Elizabeth Pond, *The Rebirth of Europe*, Pandora-M Publishing House, Târgovişte, 2003, p. 76-81.
[30] *Ibidem*, p. 204.
[31] Marianne Dony, *Droit de la Communauté et de l'Union européenne*, Éditions de l'Université de Bruxelles, 2001, p. 283.
[32] Petre Anghel, *European Institutions and Negotiation Techniques in the Process of Integration*, http: //www.unibuc.ro/eBooks /StiintePOL/anghel/8.htm.
[33] Octavian Manolache, *cited work*, p. 249.

Résumé

Le terme de "politique commune" n'est utilisé qu'à l'article trois du Traité de Rome et n'apparaît pas dans les textes institutifs de l'Union Européenne. En revanche, l'expression fait l'objet d'une utilisation généralisée dans la pratique communautaire et il est exceptionnel qu'une action importante conduite par la Communauté ne soit pas présentée sous cet intitulé. L'ambiguïté se reflète d'ailleurs parfaitement dans la pratique communautaire de par la variété des expressions utilisées concomitamment, comme "politiques communautaires", "politiques de la Communauté" ou "actions" ou "interventions" de la Communauté".

The Application of Community Law Norms in the European States Legislation

Gheorghe COSTACHE
Mihail SIMION

1. Prolusion

Starting from the fact that community law has as fundamental source the community and its paramount importance as a common instrument for the European States, we should notice that community law is not an external law or a foreign law for these countries.

Taking into consideration that there are no models or precedents, we think that, as community law represents a special and unique juridical order, the relationship between community law and the legislation of an European state is unprecedented, too, *na sui generis*, being explored by means of some factors that will reveal us the real state of affairs. These factors are: the segregation of responsibilities between European Community and its states, direct effect, direct application and supremacy of community law and the principle of subsidiarity.

Yet, we may take into account that community law becomes part of the national juridical order[1].

Community law is specific to every state, but community law is superior to national legislation because it contains normative texts.

From another point of view, the influences of a law system upon another are converse so that there are doctrinal controversies and most particularly about the practical condition belonging to the two law systems.

It is obvious that community law has more power of penetration into the national legislation, as seen from the following:

- Community law norm has the status of positive law in the internal order of a country: *instant applicability*.
- Community law norm creates rights and obligations to private persons: *instant applicability*.
- Community law norm prevails over the national legislation: *priority*[2].

2. The relationship between International Law and National Law

In accordance with international law, every state, that is a member of an international community, has to observe the content of the international law and its application, bringing about a right implementation by the authorised agency, no matter if it is a legislative, juridical or administrative one.

Observance of the international law can bring a country to book for something in front of an international judge, because that state flouts the international law.

Nevertheless, the international law norm does not mention anything about this compulsoriness, there are no specific

references in the international law articles to the procedures stipulated in the pacts signed by two states concerning the way that a national legislation becomes compatible with international law.

So every European state has to find a way to implement international law and national law in a harmonious way so that every country has the possibility to have its own interpretation and practice as far as the international law is concerned.

The way that international law influences national legislation is considered from two points of view:

- monist vision;
- dualist vision.

2. 1. On the Monist Vision

This vision is visible especially in Italy and Germany and its representatives are D. Anzilatti and H. Triepel, respectively.

The monist vision says that there is a subordination relationship between two law systems – national and international, which is very important for the current purpose.

The monist view is based on the unity of the juridical requisition, which means that it forecloses the continuity between international law and national law.

Therefore, international norm applies immediately without being integrated or transformed into the internal legislation of a state[3].

In this context, we can state that international norms are recorded in the regulation that must be applied by the national law court, without creating any national norms that make it applicable.

3. The Relationship between Community Law Norms and National Legislation of the Members

Community law, as an institution that derives from the power of the pacts signed by two states, considers the relation between the Member States as significant, allowing for the international law and the national legislation.

Generally, the community law is applied starting from the monistic vision and every state has to observe this principle.

European Law Court emphasizes that the monist point of view derives from the structure of the community, from the international law system.

Community law system, especially due to the fact that it contains laws regulating the functioning of institutions, cannot function only from a monistic point of view, which is the single principle that is compatible with this system of integration: "through the creation of a community without any limits of time, having its own obligations, its own personality, its own juridical capacity…and real judiciary authority which derives from the limitation of the competition and from a transfer of obligations between the members to the community, which have been limited their own sovereignty, in some districts, in order to create a law which can be applicable to all the members of the community."[4]

The CEE treaty has a specific juridical order so that a pact has to be applied in those states which are members of the community, thus bearing specific consequences:

a) community law has no need for other formulation or adaptation in order to be applied in a state;
b) community norms are observed in those states which are members of the community;
c) community norms are incumbent and they must be observed by national law courts;

Accordingly, community norms have the following characteristics:

a) they have instant applicability;

b) they have direct applicability;
c) they prevail over the national legislation.

4. On The Instant Applicability of the Community Norms

The diversity of national doctrines and concepts of the Member States has generated different debates about the dualist or the monist features of the applicability of the community law.

If we take French legislation as an example – see the Constitution of France – we notice that "diplomatic treaties which are approved on a regular basis and which are printed have the status of laws, without any other legislative disposal that are necessary for their approval".

Hence, the approved treaties become part of the national juridical order of a state just because they are approved, without any written disposal in the national legislation.

But in states such as Germany, Italy, Belgium etc. the legislative situation is rather different.

The Law Court, with its jurisprudence, has balanced out the dualist visions, emphasizing that the approved treaties go directly into the national juridical order of a state without any written disposal in national legislation.

The Law Court of Italy stated that "in order for the juridical equality and security to be abided by, approved treaties are integrated directly into the national juridical order of a state without any written disposal in national legislation so that there is no other doubt or incertitude."

In conclusion there is an instant applicability of the community norms within the European Community because international treaties have been introduced into the national legislation by constitutional articles, which means that the community norms will be applied instantly.

Once the European Constitution has been ratified, there instant applicability of the community norms becomes a constitutional law principle.

In the Romanian Constitution it is stipulated that: "…as a result of our European integration the approved treaties go directly into the national juridical order of the state without any written disposal in national legislation."

5. On The Direct Applicability of the Community Law

There are many debates related to the direct applicability of the community law among specialists, but the Law Court stated: "it can be denied that an international treaty can represent, for both sides, common legislation that implies rights and obligations for particular persons that can be tried by any national law court".

Consequently, it is recognised that a treaty has the capacity and the force to have direct effects on the Member States.

To sum up, we can say that community law is applied directly because there are no other national legislative articles that make possible the direct applicability of the community law.

6. The Priority Principle of the Community Law

The two principles of direct applicability and instant applicability have a strong impact, which must be solved out favourably for all the parties involved. Nevertheless, the fundamental principle of prevalence of the international law should be the same for the all states. There are many differences in the way that a state considers the best solution for the contradiction between the international law and the national one.

For this reason, the European Law Court has decided that the community law

prevails over any problems or articles that derive from the national legislation.

It is easy to understand that if the priority principle of the community law is not observed, there is no reason for the community law to exist – the realisation of the European Community depends on the applicability of the community law in those states that are members of the community.

In this respect, Romanian Constitution ratified in 2003 agrees on this integrative point of view in Article 148, Lines 1 and 2.

7. Conclusions about the Relationship between International Law and National Law

Analysing these aspects of the community law as well as the features of the two law systems we can conclude that:

a) the substitution of the national law with the international law, in some situations, which means a transfer between some competencies of the national law, which can be partial or total, (we can have as an example the unique customs duty in Europe).
b) the consonance of the national law with the international law, which means that we should have laws that take into consideration the community objectives;
c) the coordination of the national law with the international law, which means that the national law has the same effects as the international law;
d) the co-existence of the national law with the international law, which means that the national law can be abided by at the same time with the international law[5].

Our study makes us understand why the community law prevail over the national law and what are the consequences, the rights and the obligations of a Member State which must simultaneously pursue its own interests and the community ones.

Notes

[1] Cairns, Walter, *Introducere în legislaţia Uniunii Europene*, Editura Universal Dalsi, Bucureşti, 2001, p. 98.
[2] Filipescu, I., Fuerea, A., *Drept instituţional comunitar european*, Editura Actami, Bucureşti, 1994, p. 35.
[3] *Ibidem*, p. 35-36.
[4] *Ibidem.*
[5] *Ibidem*, p. 60-70.

Résumé

Cet article est une approche théorique du rapport entre les normes du droit communautaire et celles des législations nationales. On discute les opinions générales concernant le rapport droit international-droit national (les théories monistes et dualistes), les particularités du droit communautaire, son application directe et immédiate et sa priorité dans les états membres de l'UE.

Human Rights Policies in the EU

Alina DODOCIOIU

1. Milestones in the Integration of Human Rights and Democratic Principles into the Legal Order of the EU

Since the Treaty of Rome establishing the European Communities in 1957, the European integration has been founded upon and defined by universal principles of liberty and democracy, respect for the rule of law, human rights and fundamental freedoms.

However, it was more than three decades after the Treaty of Rome that the EU took a considerable step in integrating human rights and democratic principles into its external policies with the entry into force in November 1993 of the Treaty on European Union (TEU). The Treaty sets the development and consolidation of "democracy and the rule of law, and respect for human rights and fundamental freedoms" as an objective of the EU's Common Foreign and Security Policy. It also stipulates that the Community policy in the sphere of development cooperation must contribute to developing and consolidating democracy and the rule of law, and the respect of human rights and fundamental freedoms.

Article 6 of the Treaty on European Union (TEU) is the key provision as far as fundamental rights are concerned. It states that:

1. The Union is founded on the principle of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to the Member States.
2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4th, 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.
3. The Union shall respect the national identities of its Member States.
4. The Union shall provide itself the means necessary to attain its objectives and carry through its policies.

The Treaty of Amsterdam – which came into force on May 1st, 1999 – clarifies Article 6 (ex Article F of TEU) by stating unequivocally that the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States. It also introduced a mechanism to sanction serious and persistent breaches of human rights by the EU Member States. This mechanism was further reinforced by the Treaty of Nice, concluded in December 2000.

Moreover, the Treaty of Nice

stipulated that the objectives of developing and consolidating democracy and the rule of law and of respecting human rights and fundamental freedoms are pursued also in the field of economic, financial and technical cooperation with third countries (Art. 181 bis). As a result, the pursuit of human rights has become a transversal objective of all of the EU's external activities.

TEU stipulates that any European State which respects the principles set out in Article 6 (1) may apply to become a member of the Union. In addition, Candidate Countries have to demonstrate that they effectively ensure the protection of the human rights of their citizens in compliance with the Copenhagen criteria against which applications for EU membership are assessed. The fulfillment of the Copenhagen criteria is a precondition for opening accession negotiations.

EU membership criteria are pursued by Art. 49 (1) of the Treaty on European Union: "Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members."

Conditions for EU membership – the Copenhagen criteria. In June 1993, the Copenhagen European Council recognized the right of the countries of central and Eastern Europe to join the European Union when they have fulfilled three criteria:

- political: stable institutions guaranteeing democracy, the rule of law, human rights and respect for minorities;
- economic: a functioning market economy;
- incorporation of the Community acquis: adherence to the various political, economic and monetary aims of the European Union.

The *Charter of Fundamental Rights of the European Union*, proclaimed in Nice in December 2000, sets out in a single text, for the first time in the European Union's history, the whole range of civil, political, economic and social rights of European citizens and all persons residing in the EU. The provisions of this Charter are addressed to the institutions of the Union and apply to the Member States when they are implementing Union law. The Commission's action in the field of external relations is guided by compliance with the rights and principles contained in the Charter.

2. Promotion of Human Rights and Democratization in External Relations

The EU draws on a wide-range of tools to promote human rights and democratization objectives in external relations. Some of these tools are instruments of traditional diplomacy and foreign policy, such as declarations, demarches (through diplomatic representations to third countries), as well as resolutions and interventions within the United Nations framework. In addition, the EU promotes human rights and democratization through various co-operation and assistance programs it implements with third countries and through the political dialogues that it conducts with them. In doing so it uses a specific legal basis, a "human rights clause" that is incorporated in nearly all EU agreements with third countries, as an essential element.

The *2001 Communication – COM(2001) 252 (May 2001)* from the Commission to the Council and the European Parliament identifies three priority areas where the Commission can promote human rights and democratization effectively:

1. promotion of coherent and consistent

policies in support of human rights and democratization,
2. placing a higher priority on human rights and democratization in the European Union's relations with third countries and taking a more pro-active approach, in particular by using the opportunities offered by political dialogue, trade and external assistance,
3. adopting a more strategic approach to the European Initiative for Democracy and Human Rights (EIDHR), matching programs and projects in the field with EU commitments on human rights and democracy.

3. Human Rights and Democracy as an Objective of Common Foreign and Security Policy

In the framework of its Common Foreign and Security Policy, the EU has forged a range of tools to promote human rights and democratization. Among these, specific guidelines have been designed and adopted to serve as a framework for protecting and promoting human rights in third countries and to be able to take swift common action wherever necessary, such as officially approaching a third country with a demarche on a specific case of human rights violation. They allow the taking of rapid and coherent action at EU level when individuals in third countries are in danger and an EU intervention is warranted.

The EU has a number of instruments at its disposal to promote human rights in third countries. These include six EU Guidelines on Human Rights on issues of particular importance to EU member states, which have been adopted by the Council since 1998. These Guidelines cover the death penalty (adopted 1998), European Union guidelines on human rights dialogues (2001), torture and other cruel, inhuman or degrading treatment or punishment (2001), children and armed conflict (2003), human rights defenders (2004) and promotion of International Humanitarian Law (2005).

Key EU Human Rights Instruments

- *Common strategies* aim to set objectives and increase the effectiveness of EU actions through enhancing the overall coherence of the Union's policy.
- *Common positions* define the approach of the Union to a particular matter of general interest of a geographic or thematic nature; Member States must ensure that their national policies conform.
- *Joint actions* address specific situations where action by the Union is required. Appointments of EU Special Representatives to contribute to peace settlements and post-conflict reconstruction in a number of regions or countries in the world are considered in this category.

Example: On May 13th, 2004, the EU adopted a Joint Action providing EU support to the establishment of and Integrated Police Unit (IPU) in the Democratic Republic of Congo (DRC).

- *Démarches and declarations* are usually carried out in a confidential manner, either in "Troika" format or by the Presidency of the EU. In addition, the EU can make public declarations calling upon a government or other parties to respect human rights. The EU made human-rights related demarches and declarations to more than 60 countries in the year between July 1st, 2004, and June 30th, 2005.

Example: Although the death penalty has not been imposed for some years in the Caribbean, there is increasing pressure on some islands for it to be carried out. An EU demarche was carried out in Barbados in February 2005 and Trinidad and Tobago in June of the same year when it seemed that executions were imminent.

- *Conflict prevention and crisis*

management operations carried out by the European Union within the framework of the European Security and Defense Policy (ESDP).

Example: The EU Rule of Law Mission in Georgia was deployed to assist the Georgian government in the developing of a strategy to guide the criminal justice reform process. The mission terminated on July 15th, 2005.

- *Dialogue and consultations with third countries.*

Extract from Guidelines on Human Rights Dialogues (2001): "The EU will ensure that the issue of human rights, democracy and the rule of law will be included in all future meetings and discussions with third countries and at all levels…"

- *Human Rights Clause* in Agreements with Third Countries.
- *Guidelines on EU policy towards third countries on specific human rights themes.*
- *EU actions at international and regional human rights fora* (the United Nations, the Council of Europe, the Organization for Security and Co-operation in Europe).
- *EU election observation* missions, the first of which was carried out in Russia in 1993, provide independent, comprehensive assessments of the conduct of elections in transition and post-conflict countries. Since 2000, the EU has deployed missions to observe roughly 40 elections around the world.
- *Project funding*, particularly through the *European Initiative for Demo-cratization and Human Rights (EIDHR)*

4. Human rights at the Forefront of EU Development Cooperation

The EU is the biggest donor in the world, accounting for 55% of development assistance, 20% of which is managed by the Commission. The Commission's proposal of July 13th, 2005 for a new EU Development Policy aims at reducing poverty in line with the Millennium Development Goals and highlights the importance of the promotion of good governance, human rights and democracy. This "European Consensus" would provide, for the first time in 50 years of development co-operation, a common framework of objectives, values and principles that the Union – all 25 Member States and the Commission – supports and promotes as a global player and as a global partner.

"European Consensus" article 13: EU partnership and dialogue with third countries will promote common values of: respect for human rights, fundamental freedoms, peace, democracy, good governance, gender equality, the rule of law, solidarity and justice.

The new development policy strategy reflects changed circumstances since the previous strategy was published in November 2000: the stronger consensus on the Millennium Development Goals, the security context after the terrorist attacks on September 11th and the increased impact of globalization.

5. Human Rights Dialogues and Consultations

Human rights are addressed within the political dialogue that the European Union conducts with third countries or regional groups, in the framework of the Common Foreign and Security Policy (CSFP). In addition, the European Union has engaged in dedicated human rights dialogues with a number of countries.

Human Rights dialogues take place at a variety of levels: with China and Iran, the EU conducts at the level of senior human rights officials highly structured dialogues focusing exclusively on human rights. This type of dialogue has so far only been used with countries with which

the European Community had no agreement and/or where the agreement contained not yet a human rights clause. With many other third countries, human rights dialogues are held at a local level or in the framework of the agreements the EU has with these countries. For instance, detailed consultations take place with African, Caribbean and Pacific (ACP) states in the context of the Cotonou Agreement.

Following endorsement at the EU-Russia Summit in November 2004, the EU and Russia have started to hold consultations on human rights on a regular, semi-annual basis. Both sides have agreed that the consultations are an important part of overall EU-Russia relations.

Regular consultations on human rights issues are also held with countries such as the United States of America, Canada, Japan, Australia or New Zealand. These take the form of six-monthly meetings of experts, in the run up to key human rights meetings at the United Nations.

In general, the human rights dialogues aim at seeking information about the human rights situation in the country concerned, expressing EU concerns about the country's human rights record and identifying practical steps to improve it, in particular through co-operation projects, and discussing questions of mutual interest and enhancing co-operation on human rights in multinational fora such as the United Nations. Moreover, human rights dialogues can at an early stage identify problems likely to lead to conflicts in the future. They can also be useful in exposing governments to international human rights standards and EU practices.

6. Human Rights Clause in Agreements with Third Countries

Since 1995, all association agreements as well as partnership and cooperation agreements with third countries contain a clause stipulating that human rights are an essential element in the relations between the parties. There are now more than 120 such agreements. In the event that those principles are breached, the EU may take certain measures, ranging from a refusal to grant visas to senior government members to the freezing of assets held in EU countries. The human rights clause also offers the ultimate possibility of suspending the agreement. However, the principal rationale for the clause is to form a positive basis for advancing human rights in third countries through dialogue and persuasion. In other words, the preference is to use positive action rather than penalties.

The pivotal role of human rights is particularly evident in the Cotonou Agreement – the trade and aid pact which links the Union with 78 developing countries in Africa, the Caribbean and Pacific (the ACP group). If any of these countries fail to respect human rights, trade concessions can be suspended and aid programs reduced or curtailed. The Union believes that poverty reduction, the main objective of its overseas development policy, will only be achieved in a democratic structure.

7. Mainstreaming Human Rights and Democratization

Mainstreaming is the process of integrating human rights and democratization issues into all aspects of EU policy decision-making and implementation, including trade and external assistance. European institutions are deeply committed to the mainstreaming of human rights. The European Commission outlined a series of concrete proposals to this effect in its Communication on *The EU's role in promoting human rights and democracy in third countries - COM(2001) 252 (May 2001)* of May 2001.

For example, the Commission's

Country Strategy Papers (CSPs), which are designed to set out a comprehensive overview of important issues in the EU's relations with specific third countries, and provide the background for external assistance to those countries, include an assessment of the situation of human rights and democratization. This assessment must in turn be an integral element of the assistance strategies adopted, with regular reviews providing the opportunity for expanding and refining references to human rights.

Likewise, the European Commission uses its bilateral and regional cooperation programs to advance good governance, the rule of law and democratization and human rights co-operation. This has allowed for example to support electoral commissions, reforms of the judiciary, advancing the rights of women and children or working with national human rights institutions.

In the framework of the European Neighborhood Policy, the Commission is committed to ensuring that human rights and democratization issues are fully taken into account in the political chapters of the Action Plans, to be jointly drawn with the Union's Eastern and Southern neighbors.

8. Future Challenges

The existing framework as described above provides the basis for efficient promotion of human rights and democratization in the external relations of the European Union. The multitude of instruments available together with the economic and political weight of the Union makes it possible for it to take a leading role in the promotion of human rights and democratic values in the world. Considering that all the political institutions of the EU as well as the Member States play an active role in the promotion of human rights, one of the key challenges consists of further improving the co-ordination and co-operation between these, and between the different EU policies and actions.

Another main challenge, the mainstreaming of the promotion of human rights and democratic values in all policies and actions of the European Union in its relations with third countries, will be continued and made more effective. Alongside the human rights and democratization issues of a more general nature, special attention is increasingly paid to the rights of the child, women's rights and the rights of indigenous peoples.

9. Funding Activities to Promote Human Rights and Democratization

Established upon the initiative of the European Parliament in 1994, the main aim of the European Initiative for Democracy and Human Rights (EIDHR) is to promote human rights, democracy and conflict prevention in third countries by funding activities pursuing these goals. In 2004, the EIDHR funded projects worth more than 100 million euros in 32 countries around the world.

Résumé

Les droits de l'homme constituent la pierre de foundation de la politique étrangère de l'Union Européenne. Dans les dialogues politiques qu'elle entretient avec les les états tiers, dans les accords internationaux qu'elle conclut, dans coopération et dans ses actions multilatérales, l'Union Europénne cherche à soutenir l'universalité et l'indivisibilité des droits de l'homme. La protection des droits de l'homme, aussi bien que le soutien de la démocratie pluraliste et des garanties effectives de l'état de droit se trouvent parmi les buts essentiels de l'Union.

Europe and the Inter-Religious Dialogue

Anca Parmena OLIMID

European integration is, without any doubt, one of the major events of international life, implying an exam of the meeting – in mentalities and events – between Orthodoxy and Catholicism. Practically, one might wonder whether, following the collapse of Leninism and Communism, there is a new state of spirit, a new mentality, as characteristic feature of the European space. In the first paragraph of the *Centesimus annus* Encyclical *(1991)*, he notices the similarities between the late 19th century society and the late 20th century society.

The pope notices the change in the society, making the Church to adapt to the new reforms: "*Once aroused the wish for new things, which has been agitating the states for a long time now, it was expected to witness the pass of the thirst for changes from the political domain to the next door sphere of the economy. Indeed, the ongoing progress of the industry, the total renovation of its methods, the modification of the relations between employers and workers, the concentration of the wealth in the hands of a small number of people while the crowd stands in filth, the development of the self of workers and, as a consequence, the stronger unity between the latter, added with the corruption of morals, all the above has lead to the burst of the conflict"*.

As religion of the entire Europe, Christianity could have been the cohesion factor for the whole continent, the bond of a community of both clergymen and laymen. Maybe for a while Christianity has managed to respond to this challenge, but this same religion, far from drawing people together, has become a disagreement factor.

For a long period of time, still, thinking of the Church as the State, Catholicism has been a theocracy in the manner of the ancient Eastern theocracies, by the ideal which placed the clergymen above the laymen. 19th century Europe thus became the image of a religiously split continent, economically and politically divided.

A special situation is to be found in the former Soviet territory, which best has known to theorize the relation Church-State. In considering the relation Church-State in the former Communist state, authors use theories and concepts concerning the dysfunctional individual, being encouraged by the self-image of the Communist world humanity offered by Alexandr Zinoviev and Mikhail Heller: the portrait of the *homo sovieticus*, this individual thought of as the product of the meeting between ideology and state power and for which socialism will eventually become a social-democracy of providential consonance. They reduce their specificity

to a social moral of the egalitarian type, and the distrust towards West and the Catholic Church has become the leitmotif of the speeches of some ecclesiastic authorities, only coming to reinforce the national identity.

Socialism has its own vision on this general opinion concerning the *homo sovieticus*. Drawing near to morals, it gives up the sky and changes its providential project with a project solely based on the theory of the rational ego.

Thus, a natural step has been initiated, with the wish to contribute to the understanding of the European spirituality characterizing the 2000's, by reconstructing the significance of the national and territorial transformations, but most of all of the cultural and religious ones.

The current tendency of the European society is to find here too the *right measure* (le juste milieu): polls show that the late 20th and early 21st centuries European man believes more and more less in God, they break the traditional religious bonds with the latter, and they become themselves the measure of all things, the center of the moral universe. Thus, the new tendency fights the millenary ideas of the Church and arguments its theory on two general characteristics: a *theoretical* one, which sees the human being denying its relation with the divine axle, and a *practical* one, which substitutes the divine, excludes the presence of God which no longer corresponds to the new tendencies of the cultural and political world. The consequence of this orientation is the spiritual crisis of Christianity, of individual's wish to discover spiritual freedom, to create a postulated culture, solely centered on the rational ego.

Establishing the influence domains of religion with society, one therefore admits the catalytic function of faith in the public European space: coming down from the ecumenical sphere of the Church to reality, to the contemporary world, a new, "rational" theory arises. What is more interesting is that one witnesses the actualization of some rationalism which destroys the interior integrality, man's personal relation with God, some rationalism opposed to the irrationalism of faith; maybe this explains why, for example, Russia cannot be compatible with the West.

The result of this breakup between the human being and the divine axle is the new human society, characterized by a complex of juxtapositions of distinct individualities, where everybody grows alienated from the rest and what for one individual is the purpose, for another one may become the means. Thus everything becomes trade and mediation.

Under the sign of this religious and national isolation, European society is in search of values, unable to mobilize its energies and with a completely reverse effect related to the State in general (leaving men under the pressure of a "fatal guilt", an "unbearable burden" which, in the absence of the religious spirit – becomes more involved – collapses even more, into the "self disgust"). A solution to this discussion could be the cultural identification and the future planning inside the historical references. How is this identity motivated? Considering the concretely historical situation of the Russian society, one will most certainly notice the socialization tendency and, by extension, the communitarian emotion.

The modern principle of the church-state separation has not been aggressive in Eastern Europe. Moreover, religious tolerance and freedom have been the premises for the completion of the Orthodox Church as state institution. Along modern history, Orthodoxy has

kept the religious traditions, has organized the moral and ethnical life of the nation and of the patrimony. On the background of these general remarks, today there is the interest in the aesthetic attachment of religious expression of Orthodoxy (representing the stage of the strongest dispute between Protestantism and Orthodoxy).

The strong bond between the Church and the nation of Orthodoxy is based on the principle which gives the Orthodox Church the character of national Church, meaning that every nation, even if not constituted in an independent state, has: a *national language* as the cult language lead by its synod, its Church of a *national clergy*, an *ecumenical Patriarchy,* and relations imposed by *canons.*

The Doctrine of the Orthodox Church concerning its relation with the state thus excludes the possibility of a conflict started by the Church. In fact, the evolution of the Orthodox Church has known no major conflicts started by the church, because its evolved relations with the state are circumscribed to the situation in the Byzantine Empire, meaning *State Church.*

If the Orthodox Church has a strong bond with the nation, the Catholic Church has a rather international or supranational character; the explanation for this has the following arguments: no matter the place or time, the religious service is in Latin; hierarchically and organizationally, the Catholic Church does not have a marked national character. The Catholic theologian Brunetiere used to say that Catholicism has always conceived, developed and promoted religion as being social, thus wanting to justify the involvement of the Catholic Church in the worldly stuff. A general and official, recognized and generally accepted notion has arrived in Catholicism only late, under the influence of Protestantism. This is why, practically, the Catholic clergy is joined to the Christian-social Protestantism in what concerns the interpretation of the priest's political activity.

In this context, there is a course trying to establish an associative democracy viable to the spiritual realities of current Christianity. This position tries to settle a way between the poles represented by the *state* and the *individuals*; it reaffirms the primordial character of Christian group identity and considers the organization of the Church as essential feature of contemporary society. These changes have generated a new conception on society and state and have influenced the evolution of the relations between public authority and confessional institutions. This latter problem concerns politics and neglects exactly what is specifically religious, meaning faith, with all its consequences on the existence and behavior of believers.

From the theological point of view, leaving the importance of the magisterium aside, the visions of Orthodox and Western theologies are not significantly different: the *"dogma"* (the belief doctrine formulated in a synodal way, by which the Church recognizes the full content and Orthodox development of the apostolic learning, transmitted either by written tradition, or by oral one) is the natural sequel of the learning of the Holy Bible and of Tradition.

Moreover, both the Orthodox Church and the Roman-Catholic Church have the same fundamental principles concerning the formulation of the belief learning, meaning they are both based on the Revelation transmitted by the Church. Any dogma comes from the source of the Revelation which consists of two parts: the Holy Bible and the Holy Tradition. The authority of the texts of the dogmas, meaning the decisions of the seven

ecumenical synods, bears the seal of the Church infallibility and has a normative character. This is where the delimitation line between the Orthodox tradition and the Catholic tradition is to be found; the difference is that, whereas the Orthodox theology, in the process of the Revelation transmission, emphasizes the bright evidence of the *Holy Spirit*, the Catholic theology emphasizes the presence of the *Church* and of its *Magisterium*, as guardian of the Holy Tradition. Otherwise, the only conflict reason to alienate the East from the West is the *papal primacy*, as it has been defined and formulated by the Vatican Council. The lack of balance is in the fear of the East that the evolution of the papal institution and, most of all, the progressive growth of its authority in the Western Church menaces to break the Episcopal balance which, in Eastern vision, is fundamental and definitive for the Church.

In the vision of Orthodox theology, the conceiving of the dogma is the exclusive attribute of the episcopate reunited in a synod. The synod conceives and legitimizes thus the existence and makes compulsory decisions for all its believers which, at the moment of its reunion, must believe that, by the reunion of an Episcopal college, indeed a Synod has been formed and the Truth has been stated. The East has thus imputed to the West the creation of a new dogma ("conception immaculata" and "Pope's infallibility"), because it was not a doctrine comprised in the Holy Bible and Tradition, but it was only followed by the private Roman Church. In Orthodox theology there is only one recognized infallibility, that of the Truth and the Spirit is the one making the Truth become obvious for the Church.

Reuniting all the above in order to build an intuitive representation of the current spiritual space, what one gets is the following algorithm: a parallel process of producing some doctrinal justifications and constructions, at the border of freedom of conscience with spiritual unity, according to the post-Communist transition and to the process of European integration.

Restricting it even more, the presence of this spiritual unity is explained by the Europeanization of the world, by the export of historical forms and contents. Within the new conjuncture, thus, one might mention the pretensions of the modern man grown free of any obligations in front of God.

After all, man's domination gives him the illusion of substituting God, destroying the spiritual community and transforming it in an atomist society, a volunteer association of limited interest, and each one with a distinct universe. This is the spring of the resistance of Catholicism which opposes, in the love community of the Church, its external authority to spiritual freedom.

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Résumé

L'univers chrétien de l'Europe n'est plus un monde d'authentiques chrétiens. On a subi de graves assauts provoquant un retour au paganisme qui a coupé le christianisme de sa base biblique. On se pose la question: l'Europe est-elle été aujourd'hui vraiment chrétienne? L'article envisage l'état du christianisme en Europe, spécialement la relation entre l'Orthodoxisme et le Catholicisme, en présentant l'origine de l'héritage chrétien de celle-ci.

The European Union and the Fight against Racism and Intolerance. A Monography on the European Monitoring Centre on Racism and Xenophobia

Cătălina Maria GEORGESCU

1. INTRODUCTION

At a general level the subsequent study is designed to give an overview on the vast problematic of human rights policies in the European Union. At a more specific level, the present study is primarily intended both for the specialised public and for the public at large as a rather detailed means of information, combined with a synthetic interpretation of the functions and activity of the European Monitoring Centre on Racism and Xenophobia. Since the European Monitoring Centre has not been the object of comprehensive studies and its activity has been rather unknown to the wider public, the purpose of this paper is to deal with the Centre through a monographic perspective. It aims at presenting the Centre's cooperation to other national and international mechanisms and institutions so as to get a glimpse of the liaisons and synergies in the European effort to promote human rights. Another purpose of this study is to present the activity of the Centre in the domain of racism and xenophobia and to show how or whether its studies, conclusions, opinions and recommendations have been influencing European Union policies on human rights.

Consequently the study aims at answering the question of whether the work of the European Monitoring Centre through its activity of research, of issuing diverse publications and formulating opinions and recommendations had been translated in the creation and implementation of human rights policies at the level of both the EU and its Member States. Moreover, a second question, equally valuable and absolutely surprising, is whether the present European Monitoring Centre through its current mandate has enough power to address the issues of racism and xenophobia. Furthermore, the study wonders whether some particular competences that are currently absent from the mandate of the Centre should be added. Thus the study seeks to identify the challenges in the activity of the Centre and to articulate the necessity of a re-thinking of the mandate of the Centre.

In this sense, and allowing for the fact that an exhaustive and strictly specialised study could hardly be included within the limits of such a restricted volume, the study is structured as follows. Besides the present brief introductory statements and the general conclusions and specific recommendations in the last part of the paper, the bulk of the present study is divided into four parts. The first part deals

with the historical background in which the Centre was created. The second part presents establishment of the European Monitoring Centre, by presenting its legal basis, its organization and structure. The third part presents the activity of the Centre. Finally the fourth part is characterised by a different approach. It deals with the challenges the Centre has to face in its activity because of the difficulties of applying the anti-discrimination legislation in the EU Member States and of the consequent disparities in the availability of information regarding minorities or ethnic groups.

2. HISTORICAL BACKGROUND

As it is specified in the Treaty for the establishment of a Constitution for Europe, *"the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to the Member States. The right to equality before the law and the protection of all persons against discrimination is essential to the proper functioning of democratic societies"*[1]. Racism, intolerance and racial discrimination as well as equality before the law appear to be top-priority issues on the human rights agenda of the European Union officials[2]. The European Parliament, the European Commission, the Council of Europe and either non-governmental organisations such as Amnesty International and Human Rights Watch have all produced utile reports in order to raise the awareness at the perils which float over the human rights[3].

The stakes were that high and the necessity to raise the awareness of the public so crucial, that the EU Member States styled 1997 as the "European Year against Racism"[4]. "*The defence of human rights and fundamental freedoms, core values of the European integration project, cannot be separated from the rejection of racism. Indeed, the struggle against racism is a constituent element of the European identity.*"[5] Still, "despite the many international initiatives against racism and xenophobia launched in recent years (…) some sections of the population continue to hold racist and xenophobic views which sometimes even find expression in insults and violent attacks which leave the victim with psychological and physical injuries and permanent disabilities and in some cases even result in their death."[6]

Following the same course of action, in June the same year the European Council proposed a Regulation for the establishment of a European Monitoring Centre on Racism and Xenophobia. The events of 1997 were preceded and prepared by several pledges emanating from the European institutions: the European Parliament Report of 1986 on the Rise of Fascism and Racism in Europe, which was succeeded shortly by a Joint Declaration against Racism and Xenophobia by the Council, the European Parliament and the Commission. Moreover June 1997 was also the momentum of the signing of the Treaty of Amsterdam[7] which stipulated *inter alia* against the discrimination on grounds of race, ethnicity, belief and religion[8].

Two European Council Directives stand at the basis of those anti-discrimination stipulations. These directives are the Racial Equality Directive and the Employment Equality Directive. Article 13 Directives, as they are sometimes styled, guarantee a common minimum level of protection to all citizens of the Union against all forms of discrimination. The purpose of the Directives is also manifested in strengthening the power of the articles of the national legislation

regarding equality and non-discrimination. It is only through legislation that effective positive results can be reached. Thus the two Directives are essential instruments in shaping the desired attitude and behavior.

3. ORGANIZATION, MANDATE AND STRUCTURE

The European Union Monitoring Centre on Racism and Xenophobia (EUMC) functions on Council Directive No. 1035/1997 on 2 June 1997. The EUMC is an independent body of the European Union and has its headquarters in Vienna. It was officially active one year later, in July 1998.

The EUMC is a monitoring organism whose role is to signal and give advice on the margin of racism and xenophobia issues. The most important components of the Centre and who are in fact the decision-making and supervision bodies are the Management Board and the Executive Board. The distribution of powers between the administrative / management board and the executive director is laid down by Council Regulation (EC) No. 1035/97 of 2 June 1997 establishing EUMC and is stipulated in its rules of procedure.

3.1. THE MANAGEMENT BOARD

The **Management Board**'s membership is laid down by the regulation establishing the agency. The Vienna-based European Monitoring Center on Racism and Xenophobia was established by Council Regulation (EC) No 1035/97 of 2 June 1997[9]. EUMC started its activities in 1998. The Board includes representatives from the administrations of Member States and a representative of the European Commission, the European Parliament and the Council of Europe. They are all independent experts[10] in the fields of human rights, racist, xenophobic and anti-Semitic phenomena. The Council of Europe representative is a member of the ECRI named by the Secretary-General of the Council of Europe. *"The Secretary-General of the Council of Europe shall appoint an independent person from among the Members of the ECRI to serve on the Centre's Management Board, together with a deputy."*[11] This measure is taken for the sake of close cooperation between the two institutions, the EUMC and the ECRI and is evidence of the liaisons existing in the European Communities landscape.

The **Management Board**[12] is entrusted the function of decision-making necessary for the operation of the EUMC. Article 8, paragraph 4 of the Council Regulation (EC) No 1035/97 states that the Management Board determines the EUMC's annual Work Programme, adopts the Annual Report and its conclusions, adopts the annual budget, appoints the Centre's Director, approves the accounts and gives the Director discharge.The Board meets in three sessions per year as follows: the first meeting is on March, 9-10, the second meeting is on June, 29-30 and the final meeting of the year is on October, 21-22. The current Management Board is the third since the establishment of the Centre. Since the accession of the 10 new Member States to the EU, the number of the Management Board members increased. It is presently composed of 28 Members and Deputy Members who enjoy a three year mandate (2004-2007) renewable once. Since 2004 Romania, as well as Bulgaria and Turkey, has had the chance of sending observers to take part in the meetings of the Management Board. Being a non-Member State of the EU, Romania has no right to vote in the Management Board. Moreover, the work of the Romanian observer consists in concluding informative reports towards

the Romanian Ministry of Foreign Affairs following each working session. However, the Romanian observer has the right to speak, to formulate opinions at the three annual sessions of the Management Board.

3.2. THE EXECUTIVE BOARD

The **Executive Board** supervises the work of the Center, monitors the preparation and execution of programs and prepares the meetings of the Management Board with the assistance of the Center's Director. It is composed of the Chairman of the Management Board, the Vice-Chairman and a maximum of three other members of the Management Board, including the persons appointed by the Council of Europe and the European Commission representative. While the Management Board elects the Chairman, the Vice-Chairman and one of the three members of the Executive Board, the other two members enjoy non-elected functions and are in fact the representatives of the Council of Europe and of the European Commission.

3.3. THE DIRECTOR

The Director is the Center's legal representative and top official. The proposals for this function are laid down by the European Commission. Still it is the Management Board who appoints him/her on a four year renewable mandate. It is the Director's duty to lay down the objectives of the Centre and to watch over their future development. The Director is responsible before the Management Board, since it is the Management Board who appoints him/her. The Director's further role is to participate in the sessions of both the Management and the Executive Board. **Dr Beate Winkler** was appointed Director of the Centre on 29 May 1998, took up her position on 16 July 1998. Her extraordinary capacity to manage her tasks and to steer the activities of the Centre in the right direction granted her the extension of her mandate.

It stands in the duty of the Commission's Financial Controller to supervise the commitment and payment of the EUMC's expenditure and recovery of revenues[13]. The financial procedures conclude with the adoption of internal financial provisions by the Management Board after receiving the expert opinion of the Commission and of the Court of Auditors. Prior to these measures the Management Board has to discharge the Director for the implementation of the **budget**.

4. ACTIVITY OF THE EUMC

This part presents the activity of the Centre with due regard to both current priorities and the activity of the recent years, the establishment and activity of the European Racism and Xenophobia Information Network (RAXEN) which represents the Centre's most important tool in data collection and dissemination, the themes approached in the Centre's Annual Reports and in its different publications. Another important element dealt with in this section is represented by the Centre's active cooperation and liaisons with different national and international organizations.

The purposes of the European Union Monitoring Centre on Racism and Xenophobia (EUMC) are centered at providing the European Union institutions and the Member States with comparable, reliable and effective data and information on racism and xenophobia and with studying these phenomena by emphasising the general trends, their causes and consequences in their manifestation.

The activity of the EUMC is concentrated on the following fields: first, it deals with the monitorisation of the phenomena of racism, xenophobia,

Islamophobia and anti-Semitism through the collection, record and analysis of information from the Member States. Second, the Centre is entrusted the mission to coordinate and develope the European Racism and Xenophobia Information Network – RAXEN. Third, the Centre aims at the improvement of comparability, reliability and objectivity of data and information at the level of the EU, as it represents one of the major challenges affecting the work of the EUMC. Fourth, the EUMC prepares opinions, recommendations and conclusions for the entire EU and its Member States. Finally, the EUMC is entrusted with the task of establishing instruments to supervise the exchange and spread of information to EU institutions, Member States, national and international organisations and the wider public[14].

In accomplishing its tasks the EUMC has in view the following priorities: the development of the current European Information Network – RAXEN, the organisation of European and national round tables, the gathering of documentation resources, the identification of key issues to deal with in its publications, the initiation of research studies, the organisation of networks of knowledge, the delivery its conclusions, recommendations and expert opinions, the publication of Annual Reports and to function in the field of public relations[15].

The EUMC cooperates with the directorates-general of the European Commission. The cooperation between these bodies is not only at the level of administration, finances and budget, but also in what concerns the exchange and spread of information relating to the actions against racism and xenophobia. Also, the EUMC works in close relation to the European Parliament, the Committee of the Regions and private foundations. In its activity the EUMC also cooperates with other international institutions, especially with the United Nations High Commissioner for Human Rights, the United Nations High Commissioner for Refugees, the Council of Europe and the Organisation for Security and Cooperation in Europe – OSCE.

5. CHALLENGES

One of the most serious challenges to the implementation of human rights policies is that the EUMC, as a key actor in the process of monitorisation in the field of discrimination and intolerance, lacks inquiry powers. It is this absence of investigative powers on behalf of the Centre or on behalf of any other body of the EU that might hinder an effective policy in the field of human rights. The most effective organisations are those that transcend a simple monitorisation and enjoy a mandate to futher analyse the manner of implementation of the international decisions and to penalize the lateness or absence of transposition of the adopted decisions. In other words the EUMC does not posess the capacity of conducting formal investigations of possible discrimination. Thus, the reason for this absence of investigative powers may be perceived as a lack of political will both from the part of the Member States and the European Union.

In what the transposition of the EU decisions and recommendations into the national legislation is concerned, it might appear that the main concern of the Member States was to follow their own particular interests. However, in the process of the establishment of the new Human Rights Agency on the basis of the current Centre and more precisely at the meeting of the Management Board of June 29/30, 2006, the proposals for its new mandate had priority on the agenda. Thus, possible

transformations in this sense are likely to appear.

The problem is that not all Member States have made efforts to ensure their meeting the deadline of the transposition successfully. This stands at the origin of one of the major challenges to the EUMC work related to the o*bjectivity, reliability and comparability of the data collected.* These challenges result from the differences in definition, concepts, terminology, methodology and culture which are genuine belongings to each Member State and which should have been solved in part with the transposition of the two Directives in the national legislation.

Currently, neither the EUMC, nor the EU Agency on Fundamental Rights as it was proposed, do not posess "complaint resolution mechanisms". In other words, their mandate lacks the competence to independently counsel or give legal advice to victims of discrimination, or to assist them in any way possible. In addition, the establishment of conflict resolution mechanisms does not appear among its tasks, nor does making legal representation at the request of victims of discrimination or on the EUMC's own initiative or any complaint recording mechanisms. As it has previously been mentioned, these mechanisms must be searched for at national level. Also, in the case of legal representation these mechanisms must be searched for both at national level of the judiciary system and at the level of the European Court of Human Rights.

All in all the EUMC does not enjoy legal representation capacity or a function of assistance to targets of discrimination since its mandate consists in dealing with the issues of racism and xenophobia from a broader level, by searching for trends and general issues and not by analysing individual instances. The national authorities have alone settled the discriminatory matters that can be solved at national level through fines or sentence. However, there are matters that exceed national borders and turn into international racist incidents as was the case of the caricatures published in the Dannish newspaper Jyllands-Posten in September 2005 which portrayed the prophet Muhammad in an insulting manner. The newspaper argued that it "printed the cartoons as a test of whether Muslim fundamentalists had begun affecting the freedom of expression in Denmark."[16] The case of the cartoons is not singular and things could evolve in a negative scenario starting from this type of incidents. In case of international forms of discrimination there is no body that could act so as to investigate the incident and to demand a fine or other form of punitive measures.

Notwithstanding the fact the EUMC monitors the implementation of the two Equal Treatment Directives mentioned earlier and presents its conclusions and recommendations to the EU and its Member States, it has no competence to fine the lateness of implementation, nor can it investigate or fine the individual cases of infringement of the anti-discrimination legislation. In addition, the EUMC does not make recommentations to the individual Member State, although in its studies it identifies the specific problems in the national legislation based on the reports of the RAXEN National Focal Points. Its recommendations are addressed to the EU as a whole and to its Member States and not to the state *per se.*

These challenges are further increased by the absence of an identical policy and by differences in the institutional level of combating discrimination in the Member States. Thus it is very difficult to promote a unitary policy of human rights since the EU Member States do not possess the

identical common instruments to defend them.

6. CONCLUSIONS AND RECOMMENDATIONS

The European Commission has presented its interest to expand the scope and powers of the EUMC in Vienna. It would eventually become a monitoring agency with increased monitoring jurisdiction so as to cover all human rights pertaining to Community law. This was styled as an improvement of the actual institutional model. However, the fact that the Commission wishes to extend the mandate of the Centre so that it will become a Human Rights Agency is double-edged. On the one hand, with the above challenges which threaten the present formula, the question of extending the Centre's mandate to comprise the whole bulk of human rights seems idealistic. As it has been pointed above, the EUMC has been facing a great deal of problems regarding its capacity to collect reliable and comparable data because of the shortcomings in the national informational and juridical systems. These problems have been doubled with the accession of the ten new Member States.

The fact that, except for Malta and Cyprus, the remaining eight new Members had all been former communist countries with a great deal of prohibition on human rights does also increase the challenges. Consequently it is denoted the fact that the Centre lacks the necessary national institutional support to perform its activity. Moreover, an extension on the mandate would undoubtely be translated into an increased need in logistical support. On the other hand the new Agency would need extended powers, expertise and a great deal of legal competences to help the European Union in shaping human rights policies. This cannot be accomplished without a fundamental re-shape of the European Union attitude in this field. It is essential for the European Union to have a sound human rights policy.

Should these challenges remain unanswered, they will gradually turn into real hindrance to the effectiveness of the EUMC's activity. The Centre's interest in coping with racism and xenophobia has been manifest. A new perspective unfolds as it remains to be seen how, or better said whether, the European Union will translate this interest of the EUMC, the huge volume of research, the years of hard work, the great expertise which has resulted in miscelaneous conclusions, opinions and recommendations of the Centre, into a sound policy regarding human rights.

Notes

[1] Convenția Europeană, *Proiect de Tratat de instituire a unei Constituții pentru Europa*, Luxembourg, Oficiul pentru Publicații al Comunităților Europene, 2003, p. 55. The Constitutional Treaty for Europe was adopted by the European Council in June 2004 in Brussels.

[2] Information on legal issues available at: http://eumc.eu.int/eumc/index.php?fuseaction= content.dsp_cat_content&catid= 3e7eeae26e6d3.

[3] It is the case with the Communication from the Commission entitled An Action Plan against Racism Doc. COM (1998) 183 final (March 25th, 1998); the European Parliament's Annual Report on Human Rights Throught the World facing the period 1995-1996 and the Union's Human Rights Policy Doc. A4-0400/96 (Nov 28th, 1996), the European Parliament's Annual Report on Respect for Human Rights in the EU in 1994, Doc. A4-0223/96 (July 1st, 1996), the European Parliament's Annual Report on the Respect for Human Rights in 1996, Doc. A4 0034/98 (Jan 28th, 1998, Human Rights Watch World Report 1998, Amnesty International Annual Report 1998.

[4] http://europa.eu.int/comm/employment _social/fundamental_rights/public/arcreyar _en.htm#up.

[5] Communication from the Commission on Racism, Xenophobia and Anti-Semitism and Proposal for a Council Decision Designating 1997 as European Year against Racism, COM (95) 653.

[6] Porvisional minute of the Resolution on Racism, Xenophobia and Anti-Semitism and the Results of the Year against Racism –1997, B4-0108

[7] The Amsterdam Treaty was agreed on 17 June and signed on 2 October 1997. It entered into force on 1 May 1999. See the original version and comments at: http://europa.eu.int/scadplus/leg/en/lvb/a10 000.htm

[8] Art. 13 (the former Article 12) of the Amsterdam Treaty banns discrimination based on nationality and allows the Council to fight discrimination on grounds of sex, race, ethnic origin, religion or belief, disability, age or sexual orientation. See the comments at: http://europa.eu.int /scadplus /leg/en/lvb/a10000.htm.

[9] Council Regulation (EC) 1035/97 establishing the EUMC.

[10] This implies autonomy of each member from his/her country's government conferred by their qualities of "independent experts" or "persons with appropriate experience in the field of human rights and analysis of racist, xenophobic and anti-Semitic phenomena". This condition is stipulated in Article 8, paragraph 1 of the Council Regulation (EC) No 1035/97.

[11] Agreement between the European Community and the Council of Europe, Appendix I, Council Decision of 21 December 1998 (1999/132/EC)

[12] On 28-29 June 2005 Ms. Anastasia Crickley has been appointed Chair of the Management Board, being the third Chairperson following Jean Kahn and Bob Purkiss and the first woman to be elected in that function.

[13] Idem, paragraph 8.

[14] EUMC Annual Report 2002, Part I, p. 3.

[15] The agenda of the EUMC as was presented in the study Racism and Cultural Diversity in the Mass Media. An overview of research and examples of good practice in the EU Member States, 1995-2000.

[16] For pictures of the cartoons visit the website: http://blog.newspaperindex.com /2005/12/10/un-to-investigate-jyllands-pşosten-racism/

Résumé

Cette étude représente une monographie de l'Observatoire Européen des Phénomènes Racistes et Xénophobes (EUMC) de Vienne, établi sur la base de la Directive du Conseil No. 1035/1997 et qui a commencé ses activités en 1998. Ses buts sont centrés sur la présentation des dates comparables, certes et utiles aux institutions de l'Union Européenne et aux états membres et sur l'étude de ces phénomènes en suivant les tendances générales, leurs causes et leur conséquences de leur manifestation. L'activité de l'EUMC est concentrée sur les suivant domaines: premièrement, elle porte sur l'observation des phénomènes racistes, xénophobes, islamophobes et antisémites par la collection, l'enregistrement et l'analyse des informations fournies par les états membres. Deuxièmement, l'Observatoire est chargé à coordonner et développer le Réseau Européen d'Information sur le Racisme et la Xénophobie (RAXEN). Troisièmement, l'Observatoire se propose l'amélioration de la comparabilité, de la certitude et de l'objectivité des dates et des informations au niveau européen, care elle représente un de défis majeures qui affectent le travail de l'EUMC. Quatriemement, l'EUMC prépare des opinions, des recommandations et des conclusions pour toute l'UE et pour ses états membres. Finalement, l'EUMC est chargé à établir les instruments pour superviser l'échange et la diffusion des informations aux institutions de l'UE, aux états membres, aux organisations nationales et internationales et au grand public (EUMC Annual Report 2002, Part I, p. 3).

VAT Harmonization in European Union

Anişoara BĂBĂLĂU

1. General notions

In Roman Dacia, taxes were generally of two types: direct taxes and indirect taxes.

Indirect taxes brought incomes in the treasury of the state. This category included: tax on slaves releasing[1], tax on inheritances[2], tax on selling slaves[3] or other products.

Customs taxes were an income source. These were requested for the circulation of products and journeys at passing border between the customs circumscription and as special tax to pas products, town entrances if using the main means of communication. The amount of the tax was of 2% and was collected at the customs resorts fixed by the authorities.

The monopoles are situated in the category of indirect income. The salt mines and the pastures are leased to leaseholders, that formed a self unit *(conductors pascuit et salinarum*).

Just like salt mines and pastures, iron mines were also leased to leaseholders; in exchange, the gold ones were in the property of the state.

Mines continued to maintain the importance as income sources during the period of feudalism and even later. From this cause, a systematic regulation of their organization and exploitation was introduced. This way, in Banat, *mountain offices* and a *mountains captain* have been founded, and the state reserved the monopoly of mines exploitation.

In the period that came after the foundation of a modern Romanian state, the fiscal system knew a new organization becoming a constitutive part of the larger organism of public finances[4].

The main income sources are represented by taxes and levies, including the indirect ones, to which monopolies (over tobacco, salt, alcoholic drinks) and fines will be added.

Indirect taxes (named also consumption taxes) have been individualized through a series of taxes, like: taxes on petroleum products, sugar, glucoses, taxes on tobacco and salt (if they were not state monopoly), tax on spirits, tax on luxury, sales figure and others, customs being sometimes introduced in this category. For example, in 1882, indirect taxes had a gravity of 44,04% from the total of the budget, meanwhile direct taxes were of only 30,97%, the rest belonging to other incomes.

At present, in the developing countries, the contribution of the indirect taxes at the formation of the income of the state is smaller than the one of the direct taxes. In exchange, in developed countries, the importance was on reverse, the direct taxes having a determinant position.

The relatively reduced cost of collecting consumption taxes, the increased

efficaciousness of income and fortune taxes, a weaker development of the economy are reasons that inclined the balance in favor of the option for indirect taxes in the case of countries situated in process of development.

Indirect taxes will be received, generally, over service performances and goods delivery. Tax quotes differs from one period to another and from one state to another. These are not differentiated depending on the personal financial situation of those who require service performances or buy goods that make the object of indirect taxes.

So that, indirect taxes affects most of all the ones that realizes smaller incomes. So, these taxes, even if are paid at the state budget by the income payers (tradesmen, services performers), they will be supported by consumers, as they are included in the selling price of the goods of the service performances. As a result, indirect taxes affect the real incomes, not the nominal ones and determine a decreasing of buying power of the tax payer.

The amount of indirect taxes at the state budget is connected to production and consumption, in the sense that this growth once with increasing production and implicit of consumption.

The main forms of indirect taxes are: *value added tax and the excise as consumption tax, incomes on fiscal monopolies and customs taxes, etc.*

2. Value added tax. Definition and characteristics

Value added tax is a modern procedure of taxation, that replaced, in Romania, the tax on goods circulation and removed the cascade taxation of goods and products, that supposes a multiple taxation (that is tax to tax) of the same products in rapport with the way of production of their destination.

As a tax due to state budget, value added tax will be characterized through the following[5]:

- it is *unique* in the sense that the level of the tax supported by the final consumer is the same, no matter the previous operations and the stage he can be found in;
- is *neuter*, that is will be paid by all beneficiaries of the products and services;
- is transparent, in the sense that each tax payer knows, commonly, value added tax through its activity and the afferent taxation;
- generally, will be applied only in the country where will be given service or will be consumed goods.

From everything shown above and from the legal regulations, it results that value added tax is an important and safer income source at the state budget, easy to be collected and used, sometimes, as a support instrument or for giving some economical – social phenomena.

3. Harmonization of VAT in European Union

Value added tax will be calculated, generally, by applying tax rate either on added value of each stage of the economical circuit (as a difference between sales and buying of the same economical stage), or on the selling price of that stage, obtaining this way tax on the selling price, from which will be deducted the tax that is afferent to the selling price from the future stage. The difference represents value added tax that is afferent to that stage.

Value added tax was introduced in France, starting with year 1954. At the beginning were aimed the selling – buying operations, then the immobile ones (1963) and from year 1968 was extinguished on service performances. Ulterior, this

taxation system was imposed in other countries, especially from Europe.

So that, with a directive of the European Union from 1967 was established the necessity of adopting value added tax by all member states, and through Directive VI of the Council of U.E. no. 77/388/CEE from 17 May 1977 was foreseen the need for harmonization of the legislation between member states, as well as associated countries. This way, have been adopted communitarian juridical norms to realize a *uniform position* of value added tax, where we can find: VAT application sphere; operations submitted to taxation, taxation basis, regime of the taxation quotes, subjects of the taxation, operations exempted of VAT, regime of deductions, place of taxations. Communitarian norms leave, at the level of member states the possibility to establish in an exact way some measures shown above. For example, in connection with the level of the taxation quotes is foreseen a standard quote (that can not be smaller than 15%), and member states have established different levels, in this sense.

This way, in Luxembourg we can observe the most reduced quote – of 15%, in Germany and Spain – 16% and in Denmark and Sweden the highest quote of 25%.

Starting the formation of the unique market (from 01.01.1993) determined passing to a *VAT transitory system* as a result of control abolition for goods transit and services in member states of UE.

Forming a unique market means that for a product and service that circulates between two members states should be applied a fiscal regime that is identical with the one applied to products of native products. This supposes the harmonization of taxation quotes; on the contrary, would be favored the states with low quotes, through the tendency of productive investments that are greater on their territory.

Regarding VAT application, will be imposed the renunciation to the principle of destination[6] in favor of the origin principle[7] , that is VAT will be collected at the state budget where goods will be produced and not in the state of consumption. The application of the origin principle should be followed by the adoption of a correction mechanism that should prevent the apparition of some obvious disproportions between the volumes of enchasing from VAT at the budget of member states, in comparison with the amounts enchased as a result of applying some different quotes and the destination principle.

At present, member states have different opinions regarding the application of the origin principle, but were pronounced for a transition system, characterized by[8]:

- further application of the destination principle, and the principle of origin will remain an objective to be fulfilled for the future fiscal harmonization;
- reinforcement of the effort to practice the same taxation quotes in all member states.

In this sense, the European Commission made several proposals of using only two quotes: a standard one (between 15% and 25%) and a reduced one at the minimum level of 5%;

- renunciation at the fiscal; control realized between borders at member states, that determined VAT enchasing and depositing at the state budget by the companies that make exportation, where these have the office.

This way was renounced at the VAT enchasing at border for imported products.

- simplifying the national legislations regarding VAT system. This objective will be realized, even at the level of

our country, as a result of adopting the Fiscal Code.

4. VAT introduction in Romania

In our county, value added tax was introduced through O.G., no. 3/1992, published in M.O. no. 200/17 august 1992.

The introduction of value added tax realized an important and necessary fiscal norm for the existing economical – social conditions.

For the moment, represents an efficient instrument to stimulate exports and diminishing imports, to encourage investments.

Ulterior, the legislation regarding value added tax; the ordinance as well as the methodological norms have been modified and republished several times. Initially, was mentioned a unique rate of 18% to which will be added rate 0 for exportations and a number of exemptions.

The insufficient fiscal apparatus and the need for resources to the state budget imposed modifications through which was reduced the number of exemptions. From 1st January 1995 was introduced a rate of 9% for goods and services exempted until that moment, and since 1988, were increased the rates from 18% and 9% to 22% and respectively 11%.

The legislative frame of VAT was complex, being completed with an order issued by Ministry of Public Finances and decisions of the central Commission for unitary applying of the legal provisions in the field of indirect taxes. Ulterior, these have been abrogated and introduced in the content of the republished ordinance.

The legislation regarding VAT suffered modification through the normative documents regarding other fields (Education Law, Law of state budget etc).

By adopting the Fiscal Code was made a step forward, important enough, in dismissing the controversies that appeared between the economical agents, fiscal organs and trial authorities (generated by the branchy legislation adopted until that moment).

Notes

[1] Represented 5% from the value of the released slave and was paid by him.
[2] Also represented 5% from the value of the inheritances.
[3] Was received in a percent of 5% from the slaves' price.
[4] 1% from the costs of the products.
[5] Dumitru Firoiu and collaborators, History of Romanian Law, vo. I /2, EDP, Bucharest, 1987, pag. 115.
[6] Annual deduction regarding excises will be submitted by all tax payers.
[7] Until 30th April of the following year to the one that will be reported.
[8] Constantin Tufan, Ioan Tempea, *Tax ape valoarea adaugata in Romania*, Ed. ALL BECK, Bucarest, p. 10 and following.

Résumé

La taxe sur la valeur ajoutée est un procédé fiscal moderne. On la calcule, d'habitude, en appliquant le quota d'impôt soit à la valeur ajoutée du chaque stade du circuit économique (comme difference entre les ventes et les achats éfectués dans chaque stade économique), soit au prix de vente du stade respectif, obtenant ainsi la taxe sur le prix de vente, d'où on déduit la texe afférente au prix de vente du stade précédent. La différence représente la taxe sur la valeur ajoutée afférente au stade respectif.

Le commencement de la création du marché unique a déterminé le passage à un système transitoire de TVA, suite de la suppression du contrôle sur la circulation des marchandises et des services entre les états membres de l'UE. Acela suppose l'harmonisation des quotas d\impôt; sinon, les états qui pratiques de moindres quotas, par la tendance des investitions plus productives sur leur territoire.

Approach to Categorization and Labelling of Qualitative Data

Adela IONESCU
Mihai-Radu COSTESCU

1. Introduction.

Miles and Huberman [5] suggested a categorization which splits research approaches into interpretive and social anthropology.

With respect to social anthropology, one of the most desirable approaches to analyzing qualitative data is pattern matching. But, although human beings are believed to be especially good at pattern matching and categorization, the reasoning behind human categorizations is often unclear. In addition, the human ability to categorize and recognize patterns breaks down as data sets grows in size. Therefore, the use and importance of computer-aided methods for the management, coding, and retrieving of qualitative data have increased.

For the categorization of qualitative data, several approaches are available, including factor analysis [6] and cluster analysis [1]. However, even within cluster analysis, it is not always clear why one cluster analytic solution should be selected over another. When categorizing qualitative data, the lack of reasoning behind such categorizations is several orders of magnitude more problematic due to inherent human cognition factors.

The problem of assessing the content of qualitative categories is of great importance. This work consists of the desire of developing a reproducible representation of artifacts (documents, interview data, survey data) on one hand, and, on the other hand, an approach to labeling that representation in a way that would reduce (as much as possible) the problems of human interpretation of the data, and allow the application of quantitative techniques based on cardinal (rather than nominal or ordinal) data. This approach is the so-called *latent categorization method* (LCM), which would offer another tool for better interpret an objective reality.

2. Modeling and Processing

2.1. Data Selection and Preparation

The work starts by defining a corpus as a collection of artifacts. For simplicity, it is supposed that the artifacts are all written in the same language and that they have a common discourse domain. Interviews, documents or other textual sources of interest will be referred to as *artifacts*.

The approach is based on *latent semantic indexing* (LSI), which has the roots in information retrieval research. The

output of LSI is a numerical representation of the artifacts in the context of the terms in use. Thus, it latently captures the semantics of the artifacts numerically, permitting them to be indexed and retrieved.

In general, the terms employed in the paragraphs can be incorporated into an analysis system in ways ranging from a simple term-index approach to sophisticated techniques that require determining the part of the speech (POS) in an attempt to infer the essence of the text [2]. LSI begins by treating each paragraph as a bag of words without structure. That is, LSI discards all POS information. A small number of words, however, referred to as "stop words" occur in a disproportionate amount in the text; these stop words are discarded. Having little or no meaning when taken out of the context, these words serve to provide structure to the sentence. These words thus have little value as indexes into artifacts because they are poor discriminators.

A second set of words is also identified. These words are not intrinsic to the domain of discourse. For example, in interviews, people in a company may frequently refer to other people in the company. This set o words is also discarded, just as the stop words. For convenience, both set of words are merged and removed from the text.

The next step in data preparation is to "stem" the remaining words to avoid multiple forms of a word represented in the artifact table. The various stemming algorithms can be divided into four types: a) affix removal; b) successor; c) table lookup; d) N-gram. The most popular is the stemming algorithm proposed by Porter [7], which approaches the task by suffix removal.

2.2. Weighting of artifacts

At this step, a set of stemmed words obtained from the paragraphs and the set of paragraphs themselves are obtained. These sets serve as the starting point for representing and manipulating the text. A corpus of *d* artifacts (documents, paragraphs) containing *t* stemmed words (terms) is represented as a *t X d* term-frequency matrix **A.** This data structure is a vector-space model. Each term of **A**, a_{ij}, is initially the count (term frequency, *tf*) of term (stemmed word) *i* in paragraph (artifact) *j*.

The artifacts may be of unequal length. Therefore, in the interest of reducing the effects of artifact length variation, the artifact under consideration will be a paragraph. Of course, there may be variance among the number of paragraphs in each artifact, but if each paragraph expresses a single concept, then it will serve as level of granularity. Therefore, paragraphs should be a natural level of analysis, giving the need to categorize single thoughts in a larger context.

The stemmed words occur with varying frequencies. Two extreme examples are: a) a term that appears in only one paragraph and b) a term that appears the same number of times in each paragraph. Zipf demonstrated (1949) that the rank-frequency distribution of the terms in a corpus can be closely approximated by the equation

$$(1)\ F(t_r) = C / r^{\alpha},$$

of term *t* where *r* is frequency rank of term *t*, $C \approx 0.1$ and $\alpha \approx 1$. Mandelbrot [4] generalized this type of phenomenon as fractals. Due to this variability, we weighted the a_{ij}.

There is a variety of term-weighting in use, dating back to the year 1957 and continuing with the works of Salton and

Buckley [8]. In general, the researchers consider global effects (*g*; as representing the importance of term across all artifacts), local effects (*l*; as representing the importance of the term relative to other terms in the artifact), and normalization (*n*; as forcing the length of each column to be 1). Thus, for the i-th term in the j-th artifact, we have

$$(2)\quad a_{ij} = l_{ij} g_i n$$

The most commonly used weighting scheme is *term-frequency inverse document-frequency* (TFIDF) [3]. In TFIDF the local weight, the local weight, l_{ij}, is the term-frequency tf_{ij} (the number of times a stemmed word appears in an artifact). The global weight, g_i, is the inverse artifact frequency:

$$(3)\quad idf_i = \log\left(nDocs / nDocs_i \right)$$

where *nDocs* is the number of artifacts in the corpus, and $nDocs_i$ is the number of artifacts in which the term *i* appears. The lengths are normalized to 1. So the elements of **A** are computed by

(4)

$$a_{ij} = tf_{ij} * \log\left(nArtifacts / nArtifacts_i \right)$$

3. Numeric transformation

Since much less than 1% of the elements of **A** are nonzero, **A** is a sparse matrix. Generally, we have

$$(5)\quad t \geq d,\ rank A \leq \min(t, d)$$

For simplicity we assume that $t>d$ and *rank A=d*. We can use singular value decomposition to separate **A** into three matrices, **U**, **S**, **V** so that

$$(6)\quad \mathbf{A} = \mathbf{U}\mathbf{S}\mathbf{V}^T$$

U and **V** are orthogonal matrices, and S is a diagonal matrix containing the singular values of **A** in decreasing size. **U** contains left-singular vectors of **A**, and **V** contains the right-singular vectors. The columns of **U** form a basis for the row space of **A**, and the columns of **V** form a basis for the column space of **A**.

In practice, the matrix **A** is approximated with $\mathbf{A}_k$ by choosing the first k singular values and the corresponding vectors from **U** and **V**. It means that

$$(7)\quad \mathbf{A}_k = \mathbf{U}_k \mathbf{S}_k \mathbf{V}_k^T$$

where **U** is *t x k*, **V** is *d x k*, and **S** is *k x k*. The question of what value to select for *k* is still a subject of research. Most researchers use a value between 100 and 300.

Thus, the result of using LSI is a representation of the initial text data (the corpus), in a k-dimensional space such that the essence of original paragraphs has been extracted "latently".

The content of the corpus is modeled by geometric relationships between the artifact vectors (columns of $\mathbf{A}_k$). The paragraphs and the terms are both represented in the same k-dimensional space. With the transformation from raw text to a complete numeric representation, the appropriate analysis may be applied to the transformed data.

4. Further aims

After preprocessing and data preparing, the immediate aim is the *statistical processing*.

This involves performing a cluster analysis on the right-singular vectors, $\mathbf{V}_k$, weighted by the singular values, $\mathbf{S}_k$. As criterion for clustering we shall use the squared Euclidian distance. At each step of the algorithm, terms are added to clusters n such a way as to minimize the increase in the distance. For example, for a set of n cases, there results n-1 fusions as the cases are successively grouped into large clusters. There are n clusters at time 0, and one when the process terminates.

After this target is accomplished, a new development will allow in-depth analysis of the results from the cluster analysis.

Abstract

As text databases become available to researchers, the limits to human cognition are rapidly reached. Focusing on examining objective realities, this paper introduces the latent categorization method, a novel new research method for analysis of large and midsize data sets. Based on extracting knowledge from existing representative data, it is a widespread method in social sciences, in sociological methodology, giving new techniques in the interpretive research of a discourse.

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Integration of Romanian commodity and stock exchange on the European and world stock market

Gheorghe BICĂ
Mădălina CONSTANTINESCU

Integration of European stock markets

We hoped that introducing the Euro on the market will speed up the process of creating of a market of pan-European capital. But, though the birth of the Euro leaded to the harmonization of some procedures in the field and even to fusions between some stocks, the Euro area remains behind the American market from the point of view of the degree of the integration of the capital market.

§ **Euronext**

Euronext is the concretisation of an older project to reunite the Stock Exchanges from Paris (SBF), Brussels (BXS) and Amsterdam (AEX), setting out from the stock exchanges preoccupations to come in the anticipation of their clients' requests. On the 22nd September 2000 Euronex was officially founded, being for the first time in the world when three stock exchanges from different countries have fused. The result is an integrated market, the society initially resulted from the fusion of the three stock exchanges offering the frame organised for the negotiation of the shares and a market for derived titles and for merchandises. The idea that the fusion has been realised on the field of the passing to the Euro unique currency is also significant. At the moment, the Euronext market acts successfully, supplying international services for the *cash* market regulated and the markets of derivatives from Belgium, France, Great Britain (derivatives), Holland and Portugal.

Ideas of integration of the European stock exchanges date for years, but the existence of the unique currency facilitated and intensified this step. The unique Euro currency gave a huge increase potential to the European capital market and opened the path to new integrations. It is understandable that accords or fusions can take place also between stock exchanges from countries with different currency, but the advantage is obvious in the case of the existence of the same currency on the markets in question. On all the markets implied in the fusion (Amsterdam, Brussels, Lisbon and Paris, although different countries) the transactions are realised with the same currency, Euro.

The realised fusion, as the interest for other such fusions on the European continent can be explained by the preoccupations to counterbalance the dominant position held on the exchange field by the USA. Comparing to the American market, the European capital markets are still fragmented – each of them with its own system of transactions

and of discount and with its own regulations; it misses a pan-European dimension, requested by the international investors. For them, primordial operation criteria are: the liquidity, the reduction of the capital cost, and a system of transactions and discount integrated at a European level.

From its very beginning, in 2000, Euronext contributed to the consolidation of financial markets, integrating European local markets to offer the users a unique market, extremely efficient and liquid. After the initial fusion of the stock exchanges from Amsterdam, Brussels and Paris, Euronext acquired the London platform for the derivates LIFFE market and has fused with the Portuguese stock exchange in 2002. Implementing the horizontal market model of Euronext was projected to generate synergy by the incorporation of the actives and of the financial power of each local market, which proved that the best way of fusion of European stock exchanges is to apply the global vision at a local level. This unique mode of Euronext was implemented on every Euronext market, covering the technological integration, the reorganisation of the trans-border activities, the harmonization of the market rules and a regulated frame.

The IT integration could be completed in 2004 when after the migration plan of four years, have resulted the IT platforms harmonised for *cash* transactions (NSC) derivatives (LIFFE CONNECT®) and *clearing*. As a result, each participant to the market has a single access point for transaction.

Another important step for the deeper integration of the European stock markets was the relation inside the structure IT of Euronext, which was made in 2005, by creating Atos Euronext Market Solutions, and services IT between Euronext and Atos Origin, which is the global supplier in the field of services technology on the capital market[1].

At present, 1.259 societies share on the Euronext, from which 966 come from the basic markets of Euronext (Belgium, Portugal and Holland). The rest of 293 companies listed are registered on other stock exchanges and have chosen Euronext as being the first European market for the increase of their capital[2]. Euronext regulated the transactions in five European countries and offers transaction services on five continents, being the second great stock of derivatives in Europe, from the point of view of the transactional volume, and the second great stock exchange in the world concerning the value of transactions daily processed.

The advantages of the fusion are for every party directly implied (both for the operators and the quoted societies and for the investors) are: **a.** the operators will have the advantage to operate with a system of negotiation and liquidation completely integrated, modern and reliable, which will permit also economies calculated to 50 millions Euro per year; **b.** from the point of view of investors, they will benefit by an increase of the liquidity and of the transparency, a unique regulatory frame, beyond the advantage already existent of the quotation in a single currency on more markets. As a variety of the offer, we should note the hope that the new market will attract more foreign societies (other than the Belgian, Dutch or French ones); **c.** for the societies quoted on the new market, the advantages result from a unification of the regulations and an enlargement of the basis of potential investors, beyond the horizon of the national market – having access at the other countries economies – an increase of the liquidity, as the perspectives of reduction of the capital cost.

Although it is a sole society, Euronext operates in territory using the existing infrastructure anterior in the four centres of origin: Paris, Brussels, Amsterdam and Lisbon. The market was conceived for the transaction on different sub-segments, of a great variety of primary titles, derivates and merchandises. The division of the titles on the share market on three segments is suggestive: *blue chips*, *high tech* shares (of the societies oriented on high technology) and shares of "traditional" societies (M. Prime). If two of the Euronext market segments are enclosed in a natural way in the architecture of every stock market – *Top Stocks* concentrating the most 100 liquid societies from the three stock markets (Amsterdam, Brussels and Paris), with the greatest capitalization and *M. Prime* offering the organised frame of transaction for societies with a capitalization and liquidity more reduced – *The Next Economy*, the third segment, was created with a special configuration. The existence of one segment of market, The Next Economy, created on the basis of a sectorial repartition of the emitters is remarkable. Here are quoted societies activating in domains as the informational technology (IT), telecommunications, electronics, Internet, electronic commerce, bio-technologies and medical equipment.

In our opinion, Euronext officials have wanted to recreate the success of the NASDAQ at a European level. It is known that a lot of the titles of success from the NASDAQ market pertain to the inspired field named by Euronext "The Next Economy", in fact the future domains. The initiative comes not only to support the investors, which search such investments, but especially to support the societies from these sectors, of the emitters in search of new financial sources with bearable costs. The orientation towards the M. Prime segment is also praiseworthy. A lot of the little societies are quoted here, but in the process of development. At least as a number, these represent the majority of the societies quoted and they represent a preoccupation for the officials of the stock exchange. For each country little and middle enterprises represent one of the developing sources. If such societies are quoted in other countries on market segments, on Euronext they will be transactioned in the same frame, beneficing from the advantages of modern transactional technologies.

In fact, although Euronext exists and functions successfully, the process of integration has not ended. There is a pre-established calendar, with the "migration" steps, from the transactional systems specific to the three markets, to a shorter one. After the fusion step – on a juridical plan – between the three markets, the transaction from the transactional systems of the shares on the three markets to the common system, *NSC Euronext* occurred (in the period 1st of May 2000 – 1st of July 2001) and the passing from the systems of own discount to *Clearing 21* (1st of January 2001 –4th term of 2001). The third phase, yet undefined from the point of view of the rolling of the period, will presume to renounce to the systems used for transaction and discount in the case of derivate titles to pass to a common platform.

The process of integration of the stock markets has also an unseen face. Beyond procedures, regulations accepted from more markets, of the quotation of titles after the same rules, we also have to take into consideration the *back-office* part. Euronext is an excellent example in this sense, being the first step towards a unique European stock market and maybe towards a global integrated market. The success of the integrated market in its

whole can depend on an integrated landing concerning all the specific operations of the market.

The *back-office* integration has in view the discount (clearing), liquidation and custody procedures. For a market as the stock one, where the main word is "standardisation", the diversification is not favourable. In this sense, it is obvious that more discounting or custody a little benefit, if not prejudicial to progress in the direction of global transactions. Even more, in this domain, the greatest economies can be realised, in the form of costs reductions – in the benefice of the participants to the market. That is why the idea of introducing into the Euronext frames a single clearing centre on the already existent French infrastructure – where the most efficient house of clearing in Europe is believed to function– is expected to get to the decrease in the costs.

§ **International Exchanges (iX)**

The stock exchanges in London, *London Stock Exchange* and in Frankfurt, *Deutsche Börse* were announcing, after almost two years of negotiations, at the middle of 2000, the intension to fuse in order to create the biggest European stock exchange. On April 28th, 2000 the Surveillance Council of the Deutsche Börse has approved the fusion, and on May 2nd, 2000, the same decision was taken by the Surveillance Council of London Stock Exchange. The effective fusion was to be realised in the fall of 2000, having as a result a market with a capitalization of over 4.000 billions dollars, which would have concentrated 53% of Europe's transactions.

The denomination, suggestively chosen, iX, *International Exchanges*, suggested the international vocation of the new market so created. As a matter of fact, the intentions for extending – by integration – did not stop here. In this sense, two European stock markets, of lower dimensions, Madrid and Milan have been contacted, for the realisation of some alliances and these gave their accord, and the next step planed was the incorporation of the market on term Eurex, result of an anterior fusion between the markets on term Deutsche Termin Börse and its equivalent from Zurich. Also from America, NASDAQ was interested in the collaboration with the European alliance, trough NASDAQ Europe, although in this regard, at a given moment the German party had some doubts, considering that, as a result of the joining in, NASDAQ could have the dominant position, and Deutsche Börse would lose its position as European leader.

The fusion's details were already established from the month of May 2000: it was decided that the headquarters would be in London, the president would be Werner Seifert – the president of the Director Committee of the Deutsche Börse – and the vice-president would be Don Cruickshank – the president of the London stock exchange. And so, the system of transaction was prepared, being chosen the one of the German market, the Xetra system, considered extremely efficient. However, the fusion plans were postponed when, at the beginning of September 2000, London Stock Exchange was submitted to a hostile offer of taking over by the Swedish group OM Gruppen, the main stockholder of the stock exchange in Stockholm.

Although the future alliance was under question, the partner stock exchanges have manifested their support for the London stock exchange. The main stockholders of the Italian Stock Exchange SpA, three important Italian banks were even willing to finance a potential contra-offer of acquisition realised by London Stock

Exchange in co-operation with the other three stock exchanges. At the middle of November, London Stock Exchange gained and the idea of integration remained up to present without finalisation. Immediately the NASDAQ president, John Ililley became interested in a possible alliance with the London Stock Exchange, arguing: "There is a deep logics of business for a NASDAQ – LSE alliance. In mobile European transactions a revolution is about to start, the basis being little offers and transactions. We dominate in both domains". The idea of the fusion was not entirely abandoned. In the case of success of the project, a disadvantage to the competition represented by Euronext should be the fact that London maintains itself outside the area of Euro – as it happens to Swiss, outside the EU; therefore there will be used two different currencies of transaction on the market of primary titles (Euro and pound sterling) and two for the market of derivate titles (Euro and Swiss franc).

A second notable difference – a handicap in our opinion – is relied to the idea of separation in space (geographic) of the segmented areas of the market: it was planned that the transaction of titles pertaining to the *high-tech* domain to be realised only in Frankfurt. In the case of Euronext market, from Paris, Amsterdam or Brussels, exactly the same titles can be negotiated. As a matter of fact, this was the idea in the case of a global market, and Euronext is believed to be such a starting point.

§ **Eurex**

Eurex is a society of shares commonly created by the *Deutsche Börse AG* and the *Swiss Exchange AG* to offer a market of negotiation of the derivate titles. Benefiting of a negotiation platform and electronic liquidation, conceived as an integrated system, at present Eurex is able to offer operative and qualitative services to the participants and at a low transactional cost.

The market was *Financial Futures Exchange* (SOFFEX), on his occasion implementing new specific products for negotiation effectively created by the *Deutsche Termin Börse* (DTB) fusion with the *Swiss Options*. After signing the contract the two founders of the intentional letter from December 13th, 1996, stock exchanges, the procedures of operational and technical fusion were started off, followed by the introduction of the negotiation and liquidation platform, common firstly to the members of DTB and then to those of SOFFEX, so that 1998 represented the year of assertion of the Eurex market. The first steps to a global market of the derivates were already made. The international cooperation of the new founded Eurex begins with the suggestively named *Euro Alliance:* the cooperation between the two markets from Paris dedicated to the transaction of derivate titles (MONEP and MATIF). The agreement signed in February 1998 appointed the final term for the realisation of a common, unique platform of negotiation and liquidation for January 2002. The architecture of 2002's market permitted the access to a decentralised and liquid market to the members of the entire world.

The progress of the market – that became an international leader on the market of derivate titles – can be relied also from the introduction of Euro. With the "birth" of the Euro one resented the need of a single pan-European liquid market for the derivate titles. Eurotex created a global decentralised market for its clients. The number of members of the stock exchanges increased to 414, members coming from 16 countries and

covering important European locations (Amsterdam, Helsinki, Paris, London, Madrid) and not only (Chicago, New York, Tokyo, Hong Kong and Sidney), being able to offer a set of standardised products, varied, liquid and available to an international scale.

On 9th of April 1999 it was signed an alliance with HEX, *Helsinki Exchanges Group Ltd*., followed by the introduction of the HEX products from September 27th, 1999, and on October 1st , 1999, another alliance is signed, with CBOT, *Chicago Board of Trade*. The concretisation of the new trans-Atlantic alliance, announced for the middle of 2000, was believed to be a common platform of negotiation, in the sense of offering new opportunities of negotiation to the members of the two stock exchanges.

The advantages of a market of great dimensions, where the offer and the request of titles are focused – Eurex case – are for the investors and for the members (operators). Among the notable advantages of the investors in the new context, one can notice: the facility of the access to the new market, due to the great number of members of the market; the varied scale of derivate stock products offered to transaction; the large liquidity of the market, that can be explained by the bigger and bigger number of attracted participants; the reduction of cost of the transactions, stimulated from the increase in the volume of transactions; the reduction – initial and permanent – for the derivate products of second degree (for example options on *futures*); the access on different markets, other than Eurex, as a result of the collaboration accords signed (for example with HEX). To avoid a reduction of the liquidity, determined by the transaction of the same stock product on two markets, some products of HEX will be negotiated only on Eurex. The members of HEX, who also became members of Eurex can offer to their clients access not only to the Eurex market, but also to the HEX market.

From the members' point of view (intermediate of the market) the advantages of an extending market, hinting globalization, are related to: the possibility of making transactions in an integrated, standardised system, capable to attract a larger number of investors; reducing the negotiation and liquidation costs, as a result of the use of the integrated electronic platform.

§ **European regional stock integration**. Remarkable is a beginning regarding the Central-European regional stock integration which is a closure of the stock exchanges markets from Poland, Slovakia, Slovenia and Hungary. These have commonly created a stock index suggestively named CESI – *Central European Stock Index*, a few years ago. CESI is an index for the elite societies (64 societies), carefully selected from the five participant Central European countries. This fact is also demonstrated by the different participation of the shares from the 5 countries, which is far from being equal – for example, from Slovenia only 4 shares were selected in the structure of index, having a 4,32% share from its total capitalization. At present the perspectives of the extension of the collaboration are not certain, as beyond this first step, of creating the common index, such intentions have not been manifested in the last few years.

§ **Integration of stock markets from other developed countries**. The success of Euronext had consequences on the stock exchanges, at least under the form of the contacts for the possible collaborations, some of them being of

great size. As an answer to the new pan-European stock exchange, on the American continent it sprang up the idea of an international stock exchange, opened 24/7. And the president of Euronext, Jean-François Theodor "was claiming ", in his opening discourse from the 22nd September 2000 in Amsterdam, with the occasion of the inauguration of the market, the honour of being the central starting point of the project of the global stock exchange, declaring themselves opened to new alliances. *The collaboration between New York Stock Exchange, Australian Stock Exchange, Tokyo Stock Exchange, Mexico Stock Exchange, and Sao Paolo Stock Exchange* would lead to the creation of a new market that should cover the greatest part of the globe. The estimated stock capitalization would overpass 20,000 billion USD, meaning over 60% of the world stock capitalization. As in the Euronext case, the access of the investors to the wanted titles is intended to be realised through national stock exchanges. Signs of some evolutions in the direction of the integration of markets also come from *fusions intentions or acquisitions in the stock exchange.* There is an older intention of NASDAQ to buy EASDAQ and of *Toronto Stock Exchange* to buy *Canadian Venture Exchange.*

§ **The integration of European stock exchanges and the globalization of the financial markets.** Euronext interferes in a sector that has suffered important transformations in 2005, to world and global level. Among the major changes figure the harsh competence due to the globalization of the financial markets and market operations, the apparition of informational and communication technology (TIC), and the consolidation of banks and of market actors, the so-called carrying out services of investments. Concurrent politics sustained from the financial sector lead the stock exchanges to the adoption of some innovative products, to the penetration of new markets and the beginning of new partnerships.

In Europe, the consolidation of the OMX group, born from the fusion of OM Gruppen and HEX, together with the Copenhagen Stock Exchange was realised at the beginning of 2005. Even more, the negotiations that took place in 2005 for the acquisition of LSE by Euronext, Deutsche Börse and the Australian Bank Macquarie, continued also during 2006. The Macquarie Bank launched a buy offer to LSE in the middle of December 2005, and in February 2006 it withdrawn its offer. Britain Commission of Competition approved the engagements of Euronext for the accomplishment of the conditions defined in advance, useful for the eventual fusion with LSE. In the middle of March 2006, NASDAQ Inc. announced the offer of buying LSE, but then it also withdrawn its respective offer. 2007 will represent, without any doubt, the year of the consolidation of the stock sector, due to these future events that will take place under the stock auspices.

Competition on the European commodity exchanges strengthened after launching NYMEX (New York Mercantile Exchange) Europe, in Dublin and then in London. NYMEX Europe, launched by NYMEX in the middle of September 2005, is in competition with ICE Futures (ex IPE – International Petroleum Exchange), that replaced the negotiation mechanism with an entire electronic one, in April 2005. In USA, an impressive number of fundamental changes had an important impact on the financial markets in 2005. On the shares' market, the harsh competition leaded to a better consolidation. Two big stock exchanges have acquired electronic networks of communication,

creating so efficient negotiation platforms: Archipelago was acquired by the NYSE Group Inc., and INET by NASDAQ (that had already acquired Brut in 2004). Other examples of the evolution of the stock exchanges are: Boston Stock Exchange (BOX), Citigroup, CSFB, Fidelity and Lehman Brothers which launched in 2005 Boston Equities Exchange.

Intercontinental Exchange (ICE) and Chicago Board of Trade (CBOT) introduced the private sector of derivates on the stock exchange market, while Chicago Board Options Exchange (CBOE) announced that the transformation of the societies of stock exchange had been approved by the Administration Council. On the other side, Eurex US engaged itself in negotiations for a partnership with more American stock exchanges in order to develop its activities in the USA. At the beginning of March 2006, NYSE Group, Inc. was admitted to quote on NYSE. The competition intensified in the Middle Orient, where Dubai Holding and NYMEX announced the forming of Dubai Mercantile Exchange (DME), a co-society whose mission is to found the first market on term of the energy. Anyhow, in the Middle East, Dubai International Financial Exchange (DIFX) is operational since September 2005. Its objective is to impose itself as the first share-market situated between the Western Europe and Eastern Asia. DIFX uses the electronic platform of negotiations supplied by de Atos Euronext Market Solutions.

The end of 2005 marked the appliance of the Directives regarding the Prospect and regarding the Abuses of market (that were hinting at the guarantee of a bigger integrity of the markets and the facilitation of the investments and of the transactional offers in Europe), process that was accomplished by the most part of the member states of the European Union. During 2005, the European Commission recommended the appliance of the measures foreseen in the MiFID Directive regarding the markets of financial instruments and trough the Directive regarding the Transparency that should be finalised during the year 2006. It is possible that greater competitions between market operators result from the Directive MiFID, which authorises the financial institutions to execute the past orders of extern clients on the markets regulated trough the negotiation system of the multinationals and, on the other hand, permits the internalization of the executing of the orders by the investment societies. This directive establishes a harmonised framework for the regulated European markets, fact that will probably favour their recognition outside the European Union, especially in the USA.

Notes

[1] See http.www.aems.net.

[2] http.www.Euronext.com/en/Euronextinfo.

Résumé

Conformément aux prévisions du Plan Européen d'action pour les services financiers, la création d'un marché financier unique a continué pendant 2005, ayant comme objectif de favorise le développement d'un marché unique pour les services financiers, conduisant vers une compétition plus forte entre les acteurs.

Les échanges introduits par les Directives MiFiD et Transparence créent une situation équitable pour les contracteurs concurrents et représentent à la fois des opportunités commerciales et des pressions supplémentaires pour les opérateurs du marché.

Goods

As in Article 1, Protocol no. 1 of The European Convention on Human Rights

Andra BREZNICEANU

A short visit to the official Hudoc portal of the European Court of Human Rights discloses the fact that out of the 148 applications referred to this court by Romanian citizens the amendable and against the Romanian state, near half intermediate on art. 6 of the European Convention on Human Rights, respectively "the title to an equitable lawsuit" and on art.1 of Protocol 1 of this Convention, that is "the title to property".

The legal basis to these actions is stated in Protocol 1, Art. 1 of the European Convention on Human Rights: "*Any natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*"

The complexity of the ownership right, the defective legislative framework, fright in front of the authority generated by the consequences of deriving from the lawsuit of "restitutio in integrum" after the Romanian Revolution of 1989, jurisprudence of the Supreme Court as standard for the inferior drove to assault of The European Convention for Human Rights with complaints of Romanian citizens, as the last hope for fair justice.

The issue of the preservation of the ownership right, one of the fundamental human rights, is no news to the European Convention on Human Rights since the same happened in Greece time ago. Moreover, ownership regulations brought up vivid discussions between the members of the European Convention: see Additional Protocol 1, Art.1 from the European Convention on Human Rights and Fundamental Liberties of 1950, adopted by Romania in 1994, Law 30.

Reading through the history of the ownership right we can prove that divergent economic interests and the reticence of the countries regarding the warranty of this essential human right drove to a vague, imprecise and too general framework.. However, due to the Court's intransigence and assuming the consequences of the sentences passed to the states who infringed this right, now we can say that the ownership right is more and more applied and warranted and that it is also applied in new situations that were not specified at the moment of initial elaboration.

Understanding of Article 1 has developed two different directions:

- Text organization in order to discover a verification mechanism for the observance of warranty as stated in art.1.
- Rights area identification, altogether with time-related changes, aiming at increasing the number of situations in which one can invoke warranty as "*any person has the right of ownership and ownership preservation*"

CEDO jurisprudence and its doctrine concluded that the notion of "good", as stated in the Protocol, refers to autonomous and is not limited by the property/ownership of the corporal goods. Strasbourg officials continuously avoided to exactly identify the very narrow edge of ownership right not to compromise and not to limit the possibility of the gradual enlargement of its meaning taking into account an extensive interpretation of the only stipulation from the Convention that is dealing with the application of this right in the economic environment. The doctrine considers that the ownership right is the core of all protected human rights, but there is also an area located at the borders that we hope one day will be protected by article 1 of the Additional Protocol.

The terms used in the Convention, the original terms in French and the English translation also, could mislead one into a restrictive interpretation of the concept of ownership: such a good, the usage of the goods, the ownership.

The Court extended the notion of ownership, including the notion of "patrimonial value" as a sum of interests resulting from economic relations and actions a person could perform (effectively and lawfully). In this respect, Marcks *versus* Belgium can be considered pathfinders. By finding the right solution this case marks the intention of the Court to accept the notion of "ownership" in a broader sense, pushing this concept far from the area of the traditional law, the notion of ownership being closer to the one recognized in the international law, a rightful branch in which *«good»* is considered as being any good acquired.

There is just one important limitation regarding the protection offered by Art. 1 of the Protocol: the protection is intended only for current, existing goods and consequently, this does not in any way warrant the future goods, such as goods acquired through inheritance or other future goods. This limit is perfectly well-grounded: only existing goods are warranted by the Convention. The courtyard states that the ownership right, and not the right to ownership, is protected.

The consequences of the ideas mentioned above, the law types and the notion of "goods" can be interpreted as follows:

A. Real Rights: real-estates and other goods. We offer only a short overview on real-estates and other goods due to the fact that this engendered an amount of discussions in different Commissions in Wiggins *versus* Great Britain: the Court concluding against the argument of the compliant of the British Government of which Art.1 of the Protocol refers merely as normal goods.

The jurisprudence offers a series of cases in which real-estates and other goods constitute the object of litigations between the states and citizens: see, for instance AGOSI *versus* Great Britain (1986); Vasilescu *versus* Romania (1998); Greek Refinery Stran and Stratis Andreatis *versus* Greece (1994); Brumărescu *versus* Romania (1998 and 1999).

The Court considers that we are in the possession of goods in the sense of the Convention and when the object of the case is:

a. A real law is defined through the benefit servitudes and through an annual rent.
b. A law with its origin exclusive a contract, law of *emfiteoza* – non-existent right in the civil Roman law - consisting of goods being rented for a long period of time (between 20 and 99 years). The example therefore serves the category: the situation which in Great Britain infringed the ownership right of a rented good, permitting abusively the good to be purchased by the lodgers.

The adhesion to the Convention of a big number of ex-communist countries and the recognition of its jurisdiction enabled the Court to expand, tint and we confirm (insignificant at that moment in the area of the restitutions) its jurisprudence. A standard in this area is the case Brumărescu *versus* Romania[1].

B. Legal Rights resulting from definitive, irrevocable judiciary decision. A different interest, at least regarding the interaction with the judicial Romanian system, lies in the law recognized by a definitive, irrevocable decision what is worth goods, both for the Convention and for the jurisprudence of the Court which usually is quite numerous and varied. Vasilescu *vs*. Romania[2] follows the same rules.

C. Legitimate hope which can result from revocable decision. A type of future goods is now the concern of the jurisprudence of the Court, which interests results from judiciary revocable decision. All the Romanian causes except those in which the claimants do not have a definitive, irrevocable, agreeable decision from the national instances, were rejected by the Court on the reason of goods absence. This is the case of Linder and Hammermayer *vs.* Romania[3].

D. Future goods/legitimate hope to obtain goods. Regarding this category of goods, The Court confronted with contradictory debates on legislation, practices and political interests.

The European Committee agreed back in the '70s: *"The hope to see reborn the old ownership right, is since many years impossible to be exercised as it should be, can not be considered as a good in the sense art. 1 from the Protocol*[4] *was seriously different from the Protocol regulations that aim «the protection against the confiscations, as those cases carried in progress in the states with totalitarian systems, is an elemental bastion to fight for the human* right"[5] .

Foreseeing the assault of possible actions that were expected to the Court after 1989 (the year of revolutions in The Eastern Europe), from claimants – victims of nationalization and expropriation from ex-communist states, as well as under the pressure of reluctant states as well as the competency of the Court[6], the latter was bound to consider the absence of property with certain limitations. As normal consequence of the presented facts, The Court decided that the request regarding the violations of the ownership rights before the Convention shall be rejected as inappropriate «ratione temporis». At the same time the Court declined its competence regarding the way in which the former socialist states apprehended or refused to restore the property. Pursuant to art. 6 from the Convention, the Court felt entitled to bring in to an equitable lawsuit in the case of legislation and the procedures of the states for the recognition of the ownership.

In this line of approach, let us consider the Aurelia Constandache *vs*. Romania case, when The Court contested the violation of the ownership because the decision of non-restoration was made on the basis of correct procedures.

E. Economic interests: The decision Beyeler *vs.* Italy[7]**.** Taking into account the case of the ownership of Van Gogh – the Garden painting of an American which bought the object through a middleman, without enabling the Italian state to exercise its right. The Committee agreed upon the conclusions of the Italian authorities: the claimant had never acquired a real right on the goods. On the other hand, the Court reiterated the idea that the notion of goods, in the sense of the Protocol has an autonomous agreement and does not limit its decision only on the property corporal appurtenance as traditionalists considered, but also on rights and interests that are considered patrimonial goods and which are protected by the article no.1.

F. Rights resulting from social politics: The decision Muller *vs.* Austria[8]**.** The Court decided that the goods originating in social national systems (pensions, supplementary allowances granted by the national social retirement system) cannot be considered goods in the sense defined by the Protocol.

G. Rights resulting from the exertion of professions: Van Marle *vs.* Holland[9]**.** The initial acceptance of the item is related to the exertion of professions and it is considered already acquired by law: through the temporary character of the profession, the Court re-considered matters so that the professional irretrievable hopes are now goods in sense of the Protocol.

H. Rights result from the exploitation of a license or permit: Tre Traktoren[10]**.** This category drove to unprecedented jurisprudential development, the Court stated that the licenses granted to the state for an activity represent goods in the sense of the Protocol.

The last four categories of goods in the sense of Art. 1 from Protocol 1 do not generate (from the juridical system point of view) any system implication, these not being the object of individual amendable requests against Romania so that they are not the subject of this article. Through its legislation and jurisprudence, the Court carried out an entire campaign aiming to conquer the ownership notion, but at the same time accepting a large edged area susceptible to be protected – The Protocol, Art. 1.

Notes

[1] Brumarescu *vs.* Romania decision, October 28, 1999, published in the *Monitorul oficial* (Official bulletin), 414/2000.

[2] Vasilescu *vs.* Romania decision, May 22, 1998, published in *Monitorul oficial*, 637/199.

[3] Linder and Hammermayer *vs.* Romania, December 3, 2002, application no. 35671/1997

[4] XYZ *vs.* Germany decision, October 4, 1977, application no.7855-7657/1976.

[5] *Recueil des travaux préparatoires*, vol. 7, p. 137.

[6] Bulgaria expressed its opinion that art.1 from the Protocol does not include the foreigner's right to gain land.

[7] Beyeler *vs.* Italy, January 5, 2000 – application no. 33202/1996.

[8] Muller *vs.* Austria , The Committee Raport, October 1, 1975, request no. 5849/1972

[9] Van Marle *vs.* Holland, Iune 26, 1986, request no. 8543/1979

[10] TreTraKtorer Decision, Iuly 7, 1989, request no. 10873/1984

Résumé

Le droit de propriété est un des droits fondamentaux de l'homme. Cet article le discute en partant du texte de la Convention Européenne des Droits de L'Homme et des arrêts les plus importants des dernières années.

The Principle of Separation of Powers within the State, a Fundamental Element of the Rule of Law

Radu RIZA

The separation of powers within the state is considered to be a condition of the existence of the rule of law.

The problem of the separation of powers within the state was clearly expressed for the first time by John Locke, his preoccupation beginning with the practical necessity of modeling the force of the state powers.

Locke[1] considered that there are three powers within a state: the legislative power, the executive power and the confederative power. He does not distinguish a judicial power, considering that this depends on the legislative power; but he remarks four functions of the state, among which one is the jurisdictional power. As far as the confederative power is concerned, he defines it as being: a power that we can call natural, because it corresponds to a faculty that each man naturally owns, before he enters society. This power embodies the right of peace and war, that of forming leagues and alliances and that of carrying out all kinds of negotiations with persons or communities foreign to the state.

The necessity of assuring the freedom of the individual in front of the powers, determined Montesquieu to reassume the theme of separation of powers within the state and to propose the reciprocal control of powers as a solution, by which the individual freedom to be defended.

More precisely, in the paper *L'Esprit des lois*, Montesquieu shows that the state powers are: „the legislative power, the executive power of works that depend on the *jus gentium* (law of nations) and the executive power of those who depend on the civil law", meaning the legislative power, the executive power and the judicial power, these powers being defined concerning the functions of the state.

In Montesquieu's[2] conception, each power should have been assigned to an organ or to an independent system of organs, such as each organ or system of organs to carry out its activities within the limits of the state function that corresponds to the power that owned it; thus a reciprocal control of the three powers of the state was practically realized and the abuses were avoided.

Practically, in the conception of the French thinker, the cumulus of powers was excluded.

Along with the events of the French revolution (1789) one extended the conception according to which, each power is a „part of the sovereignty, the representatives gaining from the nation, by delegation, the legislative power, the executive power and the judicial one, which they exercise without the

interference of the other powers and without the possibility of action on them, in a discrete, sovereign way ".

This way of understanding the principle of separation of powers within the state as an absolute, rough delimitation of the legislative, the executive and the judicial power is no longer of present interest.

Considering the fact that in the specialized literature[3] it was shown that the powers mentioned in the principle of separation of powers within the state are nothing more than „component forms of the unique power of the state" (forms also known as *public powers*), it can been assumed that the principle of separation of powers within the state, as basic principle of a real democratic political regime, refers to the separation of powers as stately activities, the powers being separated by the fact that they take place separately, distinct to one another, each owning its specific. Still, between the public powers there also exist bounds from an organizational and functional point of view.

On an organizational perspective the bound is given by the fact that some state organs take part to the constitution of others (for example the Parliament approves the competence of the Government); and on a functional perspective the bound refers to collaborations like: the constitutionality of the laws voted by the Parliament is controlled by the Constitutional Court or that of the Government can be analysed by the Parliament.

The modern form of the principle of separation of powers within the state assumes[4] for the public authorities that the functions that concern them would be parted, means of collaboration and mutual control would be instituted, all these in the environment of a real, authentic autonomy.

The enrollment of the principle of separation of powers within the state in the Constitution appeared only in the XVIIIth and XIXth centuries, and even then, very rarely.

Nowadays, the principle results implicitly, in most cases, by constitutions, rarely being explicitly enrolled.

As far as the appliance of this principle in our country is concerned, it is necessary to mention that[5] until the Organic Rules, considering the political situation of the Romanian Countries, it was impossible to talk about the existence of powers within the state in any regime, as the ruler of the state at that time was holding in his hands the entire power and was using it unlimitedly.

In the project of constituting Moldavia, in 1822, the principle of separation of powers was vaguely shaped, more precisely distinguishing the legislative power from the executive one. The Organic Rules confusingly presented the separation of powers within the state. The Constitution from 1866 proclaimed the sovereignty of the nation as a single origin of the social power and split the social power in three public powers: executive, legislative and judicial, principles that have been also taken over by the Constitution from 1923.

A regression was recorded by the Constitution from 1938, by which it was stipulated that „the king is the head of the state", „the legislative power is exercised by the King through the National Representative composed by the Senate and the Assembly of Deputies and was sanctioning the principle of the king's irresponsibility" („Neither courthouses nor the Parliament or any other individual or public authority can call in to justice the sovereign").

Starting with the Constitution of the 13th of April 1948, as a consequence of

the fact that Romania became a state with a totalitarian political regime, the principle of separation of powers within the state remained only a formal aspect.

The rule of law was restored in Romania through the Constitution's approval by referendum on December 8th, 1991. As a consequence, as it is shown in art. 2 of the Fundamental Law, the *Romanian people* is the unique owner of power. The Romanian Constitution, avoiding the word „separation" as it could conduct to a rigid and exclusivist interpretation, assigns „balance" or „collaboration of state powers".

In the third title – Public authorities – of the Constitution, the existing powers are assigned such as:

- chapter I – The Parliament (art. 58-79) refers to the legislative power, more precisely the Parliament is the country's unique legislative authority;
- chapter II – The President of Romania (art. 80-100) and chapter III – The Government – refer to the executive;
- chapter IV – The Judicial Authority (art.123-129) assigns the judicial power.

According to the Constitution, those three powers, although separated, collaborate, relations of collaboration between the Parliament and the Executive being established as follows:

- The Parliament receives the President's oath;
- The Parliament can prolong the President's mandate in case of war or catastrophe (art. 83);
- The Parliament can decide to accuse the chief of state for high treason (art. 84);
- The Parliament receives the President's messages (art. 89);
- The Parliament ratifies the international treaties made by the chief of state (according to art. 91);
- The Parliament approves the declaration of the chief of state on the partial or general mobilization of the army forces (art.92);
- The Parliament proclaims the establishment of the state of siege or emergency (art.93);
- The Parliament can suspend the President of Romania from his/her function, in case of committing very serious facts by which he/she violated the stipulations of the Constitution;
- The Parliament establishes the emoluments and all other rights of the chief of state;
- The Parliament gives the vote of confidence to the Government's list and program;
- The Parliament can demand information and documents to the Government (art. 110); questions are formulated and interpellations are addressed by senators and deputies;
- According to art. 108, the Parliament rules on the political responsibility of the Government, owning the ability of demanding penal inquisition of the Government's members;
- The Parliament abilitates the Government to issue ordinances in fields that do not concern the organic laws, according to art. 114 from the Constitution (legislative declaration);
- The quality of member of Parliament is compatible to that of member of the Government;
- The President of Romania promulgates the laws, being capable of asking for their re-examination one single time;
- The President can dissolve the Parliament according to the conditions stipulated in art. 89;
- The Government has legislative initiative (art. 73);
- The Government can demand the adoption, in an emergency procedure, of the legislative projects and

propositions;
- The Government can engage its responsibility before the Parliament on a certain program, on a general political declaration or a project of law (art. 113); all these being considered as approved if the Government is not dismissed;
- based on and concerning, the execution of a law, the Government can issue decisions or other documents of normative nature.

A fact that underlines the idea that between the Government and the Parliament relationships of collaboration function, is the existence of the Decision of the Government of Romania no.180 from 1998, decision that concerns the establishment, organization and functioning of the Department for Relations with the Parliament.

This department belongs to the structure of the working staff of the Government, subordinated to the prime-minister and it assures the well-functioning of the relations between the Government and the Parliament on the dialogue aspect as well as on the aspect of promoting the legislative initiative of the Government and legislative delegation granded by the Parliament to the Government. The department is ruled by a minister that issues orders in exercising its attributions.

The Department for relations with the Parliament collaborates, in exercising its attributions, with all ministers and all other specialized organs subordinated to the Government. Practically, this department assures the connection between the Government and the members of Parliament, the institutions of the civil society and the mass-media.

As far as the relations between the legislative power and the judicial one are concerned, one must underline that the constitutional principle established by art.123 of the Romanian Constitution, according to which „the judges are independent and they subordinate to the law", does not exclude the existence of relations between the two powers, as the fact that the organization and functioning of the judicial instances is realized according to law (art.72 alin.3 letter h; art.125, art.128 from the Constitution), so the Parliament is the one that establishes *de jure* the competences and procedures for the judicial instances. There are also interferences between the executive and the judicial power.

Thus, by means of art.124 and art.133 of the Constitution, judges and public prosecutors are named by the President of Romania.

Notes

[1] Dan Claudiu Danisor, *Constitutional Law and public institutions*, Ed.Stiintifica, Bucharest, 1977, p. 173.

[2] Montesquieu, *L'Ésprit des lois*, Classiques Garnier, Paris, 1955, Book XI, chapter VI.

[3] Dan Claudiu Danisor, *op. cit*., p. 274.

[4] Iulian Nedelcu, *Elements of the administrative and constitutional contentious in a rule of law*, Ed.Europa, Craiova, 1997, p. 43.

[5] Dumitru Brezoianu, *Romanian administrative law*, Ed. Lucretius, Bucharest, 1977, p. 5.

Résumé

Sans les éléments fondamentaux, un état de droit ne peut pas survivre, indifféremment de la nature des relations qu'il a avec d'autres états, et du niveau de son propre économie, si le principe de la séparation des pouvoirs dans l'état n'est pas respecté. On y expose les éléments de l'état, dans diverses périodes de la définition et du renforcement de ceux-ci, et dans diverses régions, avec les conceptes parus dès le début jusqu'à présent.

Degressive Proportionality or Progressive Disproportionality?

A Brief Comment on the European Elections

Mihai GHIȚULESCU

Although all the three founding Treaties had provided for the idea of direct universal election of the Parliamentary Assembly, in the next decades its members were designated by the national Parliaments in accordance to their own procedures. No action was taken until 1974 when the European leaders came to an agreement, at the Paris Summit. The first official decision in this matter was the *Act Concerning the Election of the Representatives of the Assembly by Direct Universal Suffrage*, adopted by the Council in 1976[1]. This Act determined the general terms of the European elections, but it did not create a common electoral system. The Member States remained free to decide their electoral procedures. If most of them choosed the a PR system it was just because they were using it in the national elections.

In 1992, the Maastricht Treaty stated that a „uniform procedure" must be adopted, but the Council, in spite of various discussions, was enable to agree on it. The Treaty of Amsterdam replaced the idea of „uniform procedure" with the more realistic one of „common principles"[2].

Twenty-six years after the first Act, in 2002, a Council Decision amended it, establishing that „In each Member State members of the European Parliament shall be elected on the basis of proportional representation, using the list system or the single transferable vote"[3]. We must notice that only two countries (Malta and Ireland) and Northern Ireland use the Single Transferable Vote (every voter list the candidates in the order of his preference).

This decision came into force in a moment when even the conservative UK has already joined (in 1997/1999) the majority of the Member States in the use of a form of PR system.

Although the 2002 Decision introduced the general principle of proportional representation, it did not eliminate all the sources of disproportionality. First, as Arend Lijphart noticed, „we will register a significant degree of disproportionality as a result of the over-representation of the small states and of the under-representation of the big ones in the European Parliament"[4]. The number of seats allocated to each country is decided on the basis of the principle of „degressive proportionality" but there is no precise formula and countries may negociate the number of their MEPs; the consent of all governments is allways necessary for a change. The total number of seats must not exceed 750, but exceptions may be temporarily accepted. For instance, in 2004, after the accession of the 10 new members, the number raised for a short time to 788[5] and, since January 1st, 2007, to 785, because of the 35 Romanian and 18 Bulgarian MEPs – designated by the national Parliaments.

Country	Population %	Seats %	Disproportionality
Germany	17.7	13.5	- 4.20
France	13.6	10.7	- 2.90
United Kingdom	12.9	10.7	- 2.20
Italy	12.6	10.7	- 1.90
Spain	9.7	7.4	- 2.30
Poland	8.2	7.4	- 0.80
Netherlands	3.5	3.7	0.20
Greece	2.4	3.3	0.90
Portugal	2.3	3.3	1.00
Belgium	2.24	3.3	0.96
Czech Republic	2.2	3.3	1.10
Hungary	2.16	3.3	1.14
Sweden	1.94	2.7	0.76
Austria	1.76	2.5	0.74
Slovakia	1.17	1.9	0.73
Denmark	1.16	1.9	0.74
Finland	1.13	1.9	0.77
Ireland	0.9	1.8	0.90
Lithuania	0.77	1.8	1.03
Latvia	0.49	1.2	0.71
Slovenia	0.43	0.95	0.52
Estonia	0.29	0.8	0.51
Cyprus	0.18	0.8	0.62
Luxembourg	0.1	0.8	0.70
Malta	0.09	0.7	0.61

We do not yet have any special method to measure the general disproportionality of the EU's electoral system, but what we can do instead is to adapt the Gallagher Index (least squares index). It generally represent the square root of half the sum of the squares of the difference betwen the percent of votes and the percent of seats of each party[6]. We must replace parties with countries, percent of votes with percent of population and we must suppose a completely utopian turnout of 100% for each country. In this case, the Index will be 5,13, but, because of our special way of calculating, we cannot compare it with other countries' results.

Another source of disproportionality in all RP systems is the electoral threshold.

The 2002 Decision allows for the Member States to apply a certain threshold but it must not exceed 5%. For example, France and Germany use a 5% threshold, Austria and Sweden, only 4%. Actually, countries copy their own provisions for national elections, with on exception: Belgium, which does not use a threshold for the European elections, although it uses one at national level. Most of the new Member States adopted formal 5% or 4% thresholds[7].

Finally, a third major problem is the number of electoral constituencies of each country. This may create a „natural" or „implied" threshold, different from the „formal" one. „Natural thresholds" vary betwen EU's countries because of the different number of representatives to be

elected in each of them and also of the different definition of the constituencies[8]. The relation betwen the „natural" thereshold and the medium magnitude of the constituency (the medium number of seats allocated in a constituency) is described by the formula: T = 75% / (M+1)[9].

Only 5 (Belgium, France, Ireland, Italy and the United Kingdom) of 25 „old" Member States are divided in constituencies. The remaining 20 have nationwide electoral districts. Germany, Finland and Poland represent particular cases. In Germany and in Finland, political parties may present list or candidates either at national or electoral district level (in Germany the electoral districts are the *Lander*). In Poland, they may have lists only at a district level, but seats are allocated at national level only[10]. That is why we will consider here all three as single electoral areas.

Country	Seats	Constituencies	„Natural" threshold (%)
Germany	99	1	0,75
France*	78	8	6,97
United Kingdom**	78	12	10,00
Italy***	78	5	4,52
Spain	54	1	1,17
Poland	54	1	1,17
Netherlands	27	1	2,68
Greece	24	1	3,00
Portugal	24	1	3,00
Belgium****	24	3	8,33
Czech Republic	24	1	3,00
Hungary	24	1	3,00
Sweden	19	1	3,75
Austria	18	1	3,95
Slovakia	14	1	5,00
Denmark	14	1	5,00
Finland	14	1	5,00
Ireland*****	13	4	17,65
Lithuania	13	1	5,35
Latvia	9	1	7,5
Slovenia	7	1	9,38
Estonia	6	1	10,71
Cyprus	6	1	10,71
Luxembourg	6	1	10,71
Malta	5	1	12,5

* France abandoned the single electoral district after the 2002 Decision and before the 2004 elections. Now, there are 7 continental constituencies plus one for the Overseas Territories. The present system is less proportional than the old one.

** The UK abandoned the 84 single member constituencies in 1999. Now there are 9 English districts plus Wales, Scotland and Northern Ireland (3 seats elected by STV).

*** 4 continental districts (North-East, North-West, Central and Southern) plus one for the islands.

**** 3 districts divided ethnically (Dutch, French and German).

***** Capital plus other 3.

We must notice that in 11 of the 25 countries the implied threshold is higher than the formal one, but in 2 cases (France and Lithuania) the difference is insignificant. The causes for this situation are the great number of constituencies (UK), the small number of seats (Latvia, Slovenia, Estonia, Cyprus, Luxembourg, Malta) or the combination of these two (Ireland). For the small states, the over-representation reduces their interior disproportionality but increases the general disproportionality of the Union.

We can very simply calculate the natural threshold for the whole EU (T=3,98), but we consider it completely irrelevant. Because of the significant diferences betwen particular thresholds it is nothing but a simple number.

EU's „electoral system" seems very strange if we compare it with the different national systems, but we always must think of its institutional nature – „not an IGO, not yet a state" – and of its purpose to „combine in one of the legislative chambers the principles of proportional representation [of the citizens – M.G.] and of equal representation of the nations…"[11].

Notes

[1] See „European Parliament: Elections to a Supranational Body", in http://www. ace project.org/ace-en/topics/es/esy/esy_ep and „The election of the members of the European Parliament", in http://www.ena. lu/mce.cfm.

[2] Wilhelm Lehmann, „The European Parliament: electoral procedures", in: http://www.europarl. europa.net/facts/.

[3] „European Parliament…".

[4] Arend Lijphart, *Modele ale democraţiei. Forme de guvernare şi funcţionare în treizeci şi şase de ţări*, Polirom, Iaşi, 2000, p. 59.

[5] See http://en.wikipedia.org/wiki /European_ Parliament#Constituencies.

[6] $G^2 = 1/2\sum (v_i - s_i)^2$. See Lijphart, *op. cit.*, p. 154 and also „Gallagher Index" in http://en.wikipedia.org/wiki/Gallagher_Index.

[7] See „European Parliament…" and Wilhelm Lehmann, *op. cit.*

[8] „European Parliament…".

[9] Lijphart, *op. cit.*, p. 150.

[10] Wilhelm Lehmann, *op. cit.* and http://en. wikipedia.org/wiki/European_Parliament_C onstituency.

[11] Lijphart, *op. cit.*, p. 59.

Résumé

L'Union Européenne n'a pas encore un système électoral commun. Bien que le principe de la représentation proportionnelle soit imposé par une décision du Conseil de 2002, les états membres gardent encore le droit de décider eux-mêmes sur bien des détails essentiels. Cette diversité mène à un effet contraire à celui désiré: la disproportionnalité. *Dans cet article on analyse ses principales causes: (1) le nombre des sièges de chaque pays; (2) le seuil électoral; (3) le nombre et le découpage des circonscriptions.*