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Directeur de la publication : Dr. Michel LABORI – Docteur d'Etat en science économique et Agrégé d'histoire, ancien Professeur Jean Monnet, Université de Besançon (France)

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Mouvement Européen
France
Nord

219 bis, bd de la Liberté, BP 1134, 59 012 Lille Cedex,
Tél. : 03 20 52 72 89, Fax : 03 20 97 73 60, E-mail: mouveuropeen@wanadoo.fr
http://www.mouvement-europeen.org/section/

4 Place de Valois – 75001 Paris, Tel. 0033142605241,
E-mail: courriel@confrontations.fr
www.confrontations.fr

Confrontations
Association d'Intellectuels Chrétiens

UNIVERSITATEA
Petru Maior
TÂRGU-MURES

Târgu-Mureş, str. Nicolae Iorga, nr. 1, cod 540088, jud. Mureş, România,
Tel./fax: +40 265 262275, E-mail: rectorat@upm.ro, www.upm.ro

Université Catholique de Lille
Tel. 0320159688,
E-mail: international@icl-lille.fr
www.univ-catholille.fr

Université Catholique de Lille

FACULTÉ
LIBRE DE
DROIT

Institute Catholique de Toulouse
31 Rue de la Fonderie BP31068 Toulouse Cedex 7
Tél: 05 61 36 81 22 Fax: 05 61 36 81 37
E-mail: secr.univ2@ict-toulouse.asso.fr

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EDITORIAL

DR. MICHEL LABORI

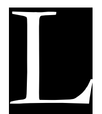
a revue scientifique „L'Europe unie" a été initiée en France en 2007 et les numéros 3-4 de janvier 2010 sont la preuve de sa pérennité. Sa notoriété est renforcée avec le partenariat de la Faculté Libre de Droit de Toulouse.

Ce numéro est dans la tradition des précédents et se caractérise par sa diversité thématique dans le domaine des études européennes. Il traite de l'actualité avec les élections européennes de 2009, des priorités actuelles comme le développement durable ou la régionalisation en Roumanie, de la sécurité avec la P.E.S.D. et le terrorisme, des relations extérieures, sans oublier les aspects juridiques et économiques.

Je tiens à saluer la collaboration de la Faculté des études européennes Babeş-Bolyai de Cluj-Napoca, qui étend notre influence en Roumanie et je remercie les universitaires qui ont participé aux quatre numéros.

L'Union européenne et la gestion du risque terroriste
(Quelques réflexions suite à l'arrêt Kadi du 3 septembre 2008)

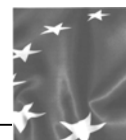
Dr. IOANNIS PANOUSSIS
Maître de conférences à la Faculté Libre de Droit de Lille (),
Assesseur au Doyen chargé des Relations Internationales



a lutte contre les menaces terroristes est devenue, depuis la guerre en Afghanistan et les événements du 11 septembre 2001, une des principales préoccupations de certaines organisations internationales, dont l'ONU et l'UE, et des Etats membres de la Communauté internationale – en particulier ceux qui sont engagés sur les différents fronts militaires. De nombreuses mesures, tant nationales qu'internationales, ont été en ce sens adoptées pour lutter contre les risques terroristes. Ces mesures restrictives visant des personnes soupçonnées de soutenir le terrorisme ont pris des formes diverses, telles que l'inscription sur des « listes noires », le gel des actifs et des avoirs, des détentions « préventives », des expulsions etc.

Le dispositif mis en place au niveau communautaire pour lutter contre les personnes soupçonnées de faire partie ou de soutenir les réseaux terroristes repose actuellement sur le Règlement (CE) n° 881/2002 du Conseil, du 27 mai 2002, instituant certaines mesures restrictives spécifiques à l'encontre de certaines personnes et entités liées à Oussama ben Laden, au réseau Al-Qaïda et aux Taliban, et abrogeant le règlement (CE) n° 467/2001 (JO L 139, p. 9). Ce règlement qui transpose en réalité la résolution 1333 du 19 décembre 2000 adoptée par le Conseil de sécurité des Nations Unies a pour effet de placer sur « liste noire » certaines personnes et certaines organisations considérées comme proches d'Al-Qaïda et de procéder au gel de leurs fonds et actifs financiers[1].

[1] Le point 8 de cette résolution précise que le Conseil de sécurité « *Décide que tous les États prendront de nouvelles mesures pour : …*



Les textes adoptés dans le cadre communautaire sont à l'origine d'un abondant contentieux devant le TPICE[1] et ont, plus récemment, justifié l'intervention de la CJCE afin de clarifier l'étendue des compétences des institutions communautaires dans la lutte anti-terroriste et la compatibilité des mesures envisagées avec les droits de l'Homme. Il s'agit de l'affaire *Yassin Abdullah Kadi et Al Barakaat International Foundation c/ Conseil et Commission*[2]. Les requérants, dont les biens et actifs financiers avaient été gelés, effectuaient un pourvoi devant la CJCE contre un célèbre jugement du TPICE portant sur la légalité du règlement n° 881/2002 du Conseil[3]. Selon les requérants, ce dernier violait, entre autres, certains de leurs droits les plus fondamentaux et en particulier certaines garanties juridictionnelles et leur droit à la propriété ; c'est la raison pour laquelle ils en demandaient l'annulation, l'estimant contraire aux principes généraux du droit communautaire.

Cette affaire est particulièrement intéressante sous plusieurs angles et nous éclaire sur ce que peut et ne peut pas faire l'Union européenne en matière de lutte anti-terroriste. Elle offre l'occasion d'étudier le fondement juridique justifiant une action dans le cadre du premier pilier communautaire en matière de lutte anti-terroriste (I), les relations qu'entretiennent l'ordre juridique communautaire et les résolutions du Conseil de sécurité des Nations Unies (II) et les droits et garanties offerts aux individus soupçonnés de participer ou de soutenir des réseaux terroristes (III).

I. EN CE QUI CONCERNE LA COMPÉTENCE DES INSTITUTIONS COMMUNAUTAIRES EN MATIÈRE DE LUTTE ANTI-TERRORISTE

Sans pour autant analyser en détail le raisonnement de la Cour de Luxembourg sur cet aspect très technique, cet arrêt est l'occasion de répondre à une interrogation légitime des personnes confrontées à l'application du règlement 881/2002 du Conseil. A raison de la structure en piliers de l'Union européenne, la logique voudrait en effet que la lutte anti-terroriste ne relève que du deuxième pilier et éventuellement du troisième pilier de l'UE, à savoir la PESC et la CPJP. Comment expliquer alors que les institutions communautaires se soient fondées sur le premier pilier pour adopter le règlement contesté ? Il est évident qu'à moins de trouver un fondement juridique exceptionnel, aucune des compétences accordées aux Communautés ne justifie une action dans le cadre du TCE.

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c) Geler sans retard les fonds et autres actifs financiers d'Usama bin Laden et des individus et entités qui lui sont associés, tels qu'identifiés par le Comité, y compris l'organisation Al-Qaida, et les fonds tirés de biens appartenant à Usama bin Laden et aux individus et entités qui lui sont associés ou contrôlés directement ou indirectement par eux, et veiller à ce que ni les fonds et autres ressources financières en question, ni tous autres fonds ou ressources financières ne soient mis à la disposition ou utilisés directement ou indirectement au bénéfice d'Usama bin Laden, de ses associés ou de toute entité leur appartenant ou contrôlée directement ou indirectement par eux, y compris l'organisation Al-Qaida, que ce soit par leurs nationaux ou par toute autre personne se trouvant sur leur territoire, et prie le Comité de tenir, sur la base des informations communiquées par les États et les organisations régionales, une liste à jour des individus et entités que le Comité a identifiés comme étant associés à Usama bin Laden, y compris l'organisation Al-Qaida ».

Le « Comité » dont il est question est le « Comité des sanctions », organe spécifique ayant pour compétence de concevoir des sanctions « intelligentes » contre les personnes physiques ou morales soutenant le terrorisme international.

[1] Le dernier arrêt rendu dans ce domaine est TPICE, 11 juin 2009, aff. T-318/01, *Othman / Conseil et Commission*. Parmi les arrêts les plus connus rendus par la TPICE ces deux dernières années sur ce sujet on peut aussi citer TPICE, 23 octobre 2008, aff. T-256/07, *People's Mojahedin Organization of Iran c/ Conseil* ; TPICE, 3 avril 2008, aff. T-229/04, *PKK c/ Conseil* ; TPICE, 3 avril 2008, aff. T-253/04, *Kongra-Gel et a. c/ Conseil* ; TPICE, 11 juillet 2007, aff. T-327/03, *Al Aqsa c/ Conseil* ; TPICE, 11 juillet 2007, aff. T-47/03, *Sison c/ Conseil*.

[2] CJCE, arrêt du 3 septembre 2008, aff. jointes C-402/05P et C-415/05P, *Yassin Abdullah Kadi et Al Barakaat International Foundation c/ Conseil et Commission*

[3] TPICE, 21 sept. 2005, aff. T-315/01, *Kadi c/ Conseil et Commission* : Rec. CJCE 2005, II, p. 3649 et TPICE, 21 sept. 2005, aff. T-306/01, *Yusuf et Al Barakaat International Foundation c/ Conseil et Commission* : Rec. CJCE 2005, II, p. 3533.

Pour comprendre cette question, il faut revenir sur l'historique de l'adoption des mesures communautaires restrictives. Suite à l'adoption par le Conseil de sécurité des Nations Unies, sur le fondement du chapitre VII de la Charte des NU, de la résolution 1333 de 2000, les Etats membres de l'UE ont décidé d'adopter la position commune 2002/402/PESC permettant de « transposer » cette résolution sur le sol des Etats membres de l'UE. Les institutions communautaires compétentes ont ensuite adopté un règlement qui avait vocation à rendre effective cette position commune. La question juridique qui se pose est celle de savoir comment s'opère le lien entre une position commune adoptée dans le cadre de la PESC et un règlement communautaire adopté dans le cadre du premier pilier. Les dispositions ayant été invoquées et retenues comme base légale devant le Tribunal de première instance sont les articles 60[1], 301[2] et 308[3] TCE combinés. Ces articles permettraient, selon le TPICE, d'établir un pont entre le deuxième et le premier pilier. Cette position est partiellement partagée par la Cour de Justice ; mais cette dernière insiste sur une erreur de droit du tribunal qui doit être rectifiée.

A la lecture des articles 60 et 301 du TCE, on s'aperçoit assez facilement que ces derniers ne visent pas les personnes physiques et morales. Il est clairement fait mention des relations entretenues avec les Etats tiers. C'est pour cette raison que l'article 308, appelé aussi « clause de flexibilité », est appelé à la rescousse par le juge communautaire. C'est cette dernière disposition qui permet justement d'adopter des mesures restrictives pouvant toucher les personnes physiques ou morales. Ceci étant, alors même que le tribunal de première instance estime que l'article 308 permet de prendre en compte *les objets* de l'Union – et donc des trois piliers –, la Cour insiste sur le fait que seuls *les objets de la Communauté* sont visés, optant ainsi pour une vision restrictive de cette disposition. Il reste alors à démontrer que ces mesures restrictives adoptées dans le cadre de la lutte anti-terroriste touchent à une des compétences attribuées à la Communauté, ce qui est loin d'être chose aisée et ce qui donne lieu à un considérant obscure jouant avec les termes d'*objet* et d'*objectif* de la Communauté. La Cour affirme en effet que : « *l'objectif poursuivi par le règlement litigieux peut être rattaché à l'un des objets de la Communauté au sens de l'article 308 CE, de sorte que l'adoption de ce règlement n'a pas constitué une méconnaissance du domaine des*

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[1] L'article 60 précise que : « *1. Si, dans les cas envisagés à l'article 301, une action de la Communauté est jugée nécessaire, le Conseil, conformément à la procédure prévue à l'article 301, peut prendre, à l'égard des pays tiers concernés, les mesures urgentes nécessaires en ce qui concerne les mouvements de capitaux et les paiements.*
2. Sans préjudice de l'article 297 et aussi longtemps que le Conseil n'a pas pris de mesures conformément au paragraphe 1, un État membre peut, pour des raisons politiques graves et pour des motifs d'urgence, prendre des mesures unilatérales contre un pays tiers concernant les mouvements de capitaux et les paiements. La Commission et les autres États membres sont informés de ces mesures au plus tard le jour de leur entrée en vigueur.
Le Conseil, statuant à la majorité qualifiée sur proposition de la Commission, peut décider que l'État membre concerné doit modifier ou abolir les mesures en question. Le président du Conseil informe le Parlement européen des décisions prises par le Conseil ».

[2] L'article 301 énonce que : « *Lorsqu'une position commune ou une action commune adoptées en vertu des dispositions du traité sur l'Union européenne relatives à la politique étrangère et de sécurité commune prévoient une action de la Communauté visant à interrompre ou à réduire, en tout ou en partie, les relations économiques avec un ou plusieurs pays tiers, le Conseil, statuant à la majorité qualifiée sur proposition de la Commission, prend les mesures urgentes nécessaires* ».

[3] L'article 308 quant à lui prévoit que « *Si une action de la Communauté apparaît nécessaire pour réaliser, dans le fonctionnement du marché commun, l'un des objets de la Communauté, sans que le présent traité ait prévu les pouvoirs d'action requis à cet effet, le Conseil, statuant à l'unanimité sur proposition de la Commission et après consultation du Parlement européen, prend les dispositions appropriées* ».

compétences de la Communauté tel que celui-ci résulte du cadre général que constitue l'ensemble des dispositions du traité CE.

En effet, les articles 60 CE et 301 CE, en ce qu'ils prévoient une compétence communautaire pour imposer des mesures restrictives de nature économique afin de mettre en œuvre des actions décidées dans le cadre de la PESC, sont l'expression d'un objectif implicite et sous-jacent, à savoir celui de rendre possible l'adoption de telles mesures par l'utilisation efficace d'un instrument communautaire.

Cet objectif peut être considéré comme constituant un objet de la Communauté au sens de l'article 308 CE »[1].

Il est assez intéressant de remarquer que le résultat obtenu est exactement le même que la solution proposée par le TPICE dans son jugement. De toute évidence, « le jeu de mots » de la CJCE est de nature, à notre sens, à révéler une certaine fragilité dans le raisonnement juridique proposé. A n'en pas douter, cette vision restrictive de l'article 308 TCE est aussi à l'origine d'un pouvoir poussé d'interprétation que s'arroge le juge européen pour rendre effective l'action des Communautés dans le domaine de la lutte anti-terroriste.

Quoi qu'il en soit, et quel que soit le sentiment que peut inspirer cet extrait, le point essentiel à retenir est que la Communauté et donc les institutions communautaires peuvent adopter des mesures restrictives aux droits et libertés des personnes physiques ou morales pour les besoins de la lutte anti-terroriste, et ce, dans le cadre du premier pilier. La frontière entre les piliers de l'UE n'est donc pas étanche, ce qui est rassurant au regard de cette problématique essentielle qu'est le terrorisme moderne.

Cet arrêt, au-delà de cet aspect technique essentiel, était surtout attendu par la doctrine sur la question des relations entretenues entre la résolution « transposée » du Conseil de sécurité et l'ordre juridique communautaire. Existe-t-il un quelconque lien d' « allégeance » entre les résolutions adoptées sur le fondement du Chapitre VII de la Charte des NU et le droit communautaire, comme semble l'indiquer le TPICE ou, au contraire, le droit communautaire garde-t-il son autonomie ? C'est une question essentielle qui détermine en effet l'étendue de la compétence des organes juridictionnels communautaires dans le cadre du contrôle de légalité.

II. EN CE QUI CONCERNE LA LÉGALITÉ DU RÈGLEMENT DE « TRANSPOSITION » DE LA RÉSOLUTION DU CONSEIL DE SÉCURITÉ AU REGARD DE LA HIÉRARCHIE DES NORMES COMMUNAUTAIRES

Une fois la compétence de la Communauté établie pour adopter les mesures restrictives, la Cour devait se prononcer sur la possibilité de contrôler la légalité de l'acte communautaire transposant la résolution 1333/2000 du Conseil de sécurité des Nations Unies agissant en vertu du Chapitre VII de la Charte de San Francisco. Cette question, particulièrement intéressante, avait provoqué un vif émoi, comme l'atteste la réaction de l'ancien Président de la CIJ Guillaume suite au jugement du TPICE[2], car elle soulevait des problématiques essentielles en droit international (primauté et contrôle éventuel des résolutions adoptées par le Conseil de sécurité des NU). La Cour, à la différence du TPICE, s'est prononcée de manière assez « diplomatique » sur cette question.

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[1] §§225-227 de l'arrêt.

[2] Guillaume G., « *Jus cogens* et souveraineté », *Mélanges en l'honneur de Jean-Pierre Puissochet*, Pedone, 2008, p.134. Ces arrêts ont fait l'objet de nombreux commentaires allant dans le même sens que les observations du juge Guillaume. Voir, par exemple, Simon D. et Mariatte F., « Le Tribunal de première instance des Communautés : Professeur de droit international ? », *Europe*, 2005, étude 12 ou encore Jacqué J. P., « Le tribunal de première instance face aux décisions du Conseil de sécurité : « Merci Monsieur le Professeur » », *L'Europe des libertés*, janvier 2006, n° 19.

Le Tribunal estimait en effet que les instances communautaires n'avaient pas le droit de contrôler la légalité du règlement de transposition, car cela reviendrait à contrôler la résolution elle-même. Il instaurait ainsi une sorte de théorie de la « résolution-écran » qui empêchait de prendre en compte le droit primaire dans le contrôle de la légalité communautaire instauré par l'article 230 TCE. La résolution du Conseil de sécurité s'interposait entre le règlement et le droit primaire et faisait donc barrage à tout contrôle éventuel du juge européen. La raison de cette position tenait, selon le Tribunal, à la valeur hiérarchiquement supérieure des résolutions du Conseil de sécurité en droit international[1]. La seule compétence, très contestable, que s'attribuait le Tribunal était celle de s'assurer que la résolution en question respectait le *jus cogens*[2], s'érigeant ainsi en juridiction internationale garante de l'ordre juridique international !

La Cour de Luxembourg se démarque de cette position controversée en affirmant que, même si elle n'a pas compétence pour contrôler les résolutions du Conseil de sécurité – y compris au regard des normes de *jus cogens* –, les mesures communautaires qui les transposent doivent, quant à elles, obéir à la légalité communautaire dictée par la hiérarchie des normes propre à cet ordre juridique partiel. Même si on peut regretter le laconisme de la Cour, on peut néanmoins retenir une leçon essentielle de l'arrêt. L' « ordre constitutionnel européen » obéit à une logique qui lui est propre, il garde son autonomie par rapport au droit international[3] ; on instaure donc une vision dualiste[4] qui ne permet pas aux normes internationales – fussent-elles issues du Conseil de sécurité dans l'exercice de ses compétences au titre du Chapitre VII de la Charte des NU – d'immuniser devant les juridictions communautaires certains actes de droit dérivé au motif qu'ils transposent ces normes internationales[5]. A ce titre elle affirme qu' « *Une telle immunité juridictionnelle d'un acte communautaire tel que le règlement litigieux, en tant que corollaire du principe de primauté au plan du droit international des obligations issues de la charte des Nations unies, en particulier de celles relatives à la mise en œuvre des résolutions du Conseil de sécurité adoptées au titre du chapitre VII de cette charte, ne trouve par ailleurs aucun fondement dans le traité CE* ». Les actes communautaires de droit dérivé doivent par conséquent toujours respecter les normes qui leurs sont hiérarchiquement supérieures dans l'ordre juridique communautaire. Cela est, sans aucun doute, un gage de sécurité juridique dans le cadre de l'UE !

Cette position apparaît très logique s'agissant des pouvoirs des juridictions communautaires au regard des sources et normes internationales. Il semblait inconcevable qu'un organe de contrôle ayant une compétence spécifique s'exerçant dans le cadre d'un ordre juridique partiel puisse se prononcer sur la compatibilité des résolutions du Conseil de sécurité avec les normes de *jus cogens*[6]. Le juge communautaire n'a, en effet, qu'une compétence d'attribution se limitant dans

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[1] Cela repose sur l'article 103 de la Charte des NU en vertu duquel « *En cas de conflit entre les obligations des Membres des Nations Unies en vertu de la présente Charte et leurs obligations en vertu de tout autre accord international, les premières prévaudront* ».

[2] Au §226 de son arrêt le TPICE affirme que « *Le Tribunal est néanmoins habilité à contrôler, de manière incidente, la légalité des résolutions en cause du Conseil de sécurité au regard du jus cogens, entendu comme un ordre public international qui s'impose à tous les sujets du droit international, y compris les instances de l'ONU, et auquel il est impossible de déroger* ».

[3] Voir notamment en ce sens, Beulay M., « Les arrêts Kadi et Al Barakaat International foundation – Réaffirmation par la Cour de justice de l'autonomie de l'ordre juridique communautaire vis-à-vis du droit international », *RMCUE*, janvier 2009, n°524, p.32 ou encore Griller S., « International Law, Human Rights and the European Community's Autonomous Legal Order : Notes on the European Court of Justice Decision in Kadi », *European Constitutional law review*, 2008, p.528.

[4] La position de la Cour est particulièrement claire sur ce point puisqu'elle affirme que « *Par ailleurs, un éventuel arrêt d'une juridiction communautaire par lequel il serait décidé qu'un acte communautaire visant à mettre en œuvre une telle résolution est contraire à une norme supérieure relevant de l'ordre juridique communautaire n'impliquerait pas une remise en cause de la primauté de cette résolution au plan du droit international* ». Il y a deux ordres juridiques bien séparés, le deuxième – partiel – ayant sa pleine autonomie par rapport au premier.

[5] Voir, sur ce point, le commentaire de Simon D. et Rigaux A., « Les jugements des pouvoirs dans les affaires Kadi et Al Barakaat : smart sanctions pour le Tribunal de première instance ? », *Europe*, n°11, novembre 2008, §§ 11 et suiv.

[6] Par un considérant bref mais efficace le juge de Luxembourg affirme au §287 de son arrêt qu' « *il n'incombe donc pas au juge communautaire, dans le cadre de la compétence exclusive que prévoit l'article 220 CE, de contrôler la légalité d'une telle résolution adoptée par cet organe international, ce contrôle fût-il limité à l'examen de la compatibilité de cette résolution avec le jus cogens* ».

le cadre du contrôle de légalité prévu à l'article 230 TCE à l'examen de la compatibilité du droit dérivé avec le droit primaire.

Cette solution est, de surcroît, particulièrement sage. Elle reste en cohérence avec la position mise en avant depuis l'arrêt *Costa c/ ENEL* et l'affirmation selon laquelle à la différence des traités internationaux classiques, le TCE crée un ordre juridique propre intégré dans celui des Etats membres[1]. Il obéit donc à sa propre logique qui impose un contrôle du droit dérivé au regard des normes qui lui sont supérieures ; c'est ce qui justifie l'affirmation de la Cour en vertu de laquelle « *il découle de l'ensemble de ces éléments que les obligations qu'impose un accord international ne sauraient avoir pour effet de porter atteinte aux principes constitutionnels du traité CE, au nombre desquels figure le principe selon lequel tous les actes communautaires doivent respecter les droits fondamentaux, ce respect constituant une condition de leur légalité qu'il incombe à la Cour de contrôler dans le cadre du système complet de voies de recours qu'établit ce traité* »[2] .

Il restait donc à régler un dernier point. Le règlement de « transposition » respectait-il la légalité communautaire et plus particulièrement les droits des personnes visées par les listes noires et garantis par les principes généraux du droit communautaire ?

III. En ce qui concerne la compatibilité des mesures restrictives avec les droits des personnes visées

Sur la question spécifique de la compatibilité des mesures anti-terroristes avec les droits de l'Homme, cet arrêt est fondamental. La lutte contre le terrorisme ne justifie pas toujours, selon le juge communautaire, le risque de violation des droits de l'Homme qu'encourent les personnes placées sur cette « liste noire ». Cela ne signifie pas que l'UE et les Etats membres n'ont pas le droit de prendre des mesures anti-terroristes considérées comme nécessaires, mais que, lorsque des motifs de sécurité nationale imposent l'adoption de telles mesures, elles doivent être accompagnées d'un certain nombre de garanties spécifiques[3].

La Cour se penche essentiellement en l'espèce sur le respect de deux droits et garanties individuels. Dans un premier temps, elle rappelle dans cet arrêt que la protection des droits de l'Homme, et des garanties juridictionnelles en particulier, font partie des principes généraux du droit communautaire – il est d'ailleurs intéressant de relever l'aisance avec laquelle la CJCE intègre dans ses sources d'inspiration, non seulement la CEDH, mais aussi la Charte des droits fondamentaux, alors même que ce texte ne revêt toujours pas de force juridique obligatoire[4] –. Les règlements communautaires doivent donc, peu importe l'objectif poursuivi, respecter les garanties fondamentales des personnes. En l'occurrence, les requérants auraient dû disposer de moyens leur permettant de connaître les motifs de leur inscription sur liste noire afin de pouvoir, par la suite, contester l'acte communautaire y procédant. L'opacité qui accompagnait ces mesures restrictives, ainsi que le manque d'information au sujet de leur inclusion dans la liste, les ont privés de la possibilité d'être entendus par un organe indépendant et de prétendre à un recours

[1] CJCE, arrêt du 15 juillet 1964, aff. 6-64, *M. Flaminio Costa c/ ENEL*, rec. de la jurisprudence de la Cour, 1964, p. 1141

[2] Cf. §285 de l'arrêt.

[3] On rejoint sur ce point la position retenue par la Cour européenne des droits de l'Homme à l'encontre des Etats ayant mis en place une législation restrictive pour les droits des personnes. Voir, sur ce point, CEDH, arrêt du 19 février 2009, *A et autres c/ Royaume Uni*.

[4] Cf., à propos du droit à une protection juridictionnelle effective, §335 de l'arrêt où la Cour affirme que « *selon une jurisprudence constante, le principe de protection juridictionnelle effective constitue un principe général du droit communautaire, qui découle des traditions constitutionnelles communes aux États membres et qui a été consacré par les articles 6 et 13 de la CEDH, ce principe ayant d'ailleurs été réaffirmé à l'article 47 de la charte des droits fondamentaux de l'Union européenne, proclamée le 7 décembre 2000 à Nice* ».

effectif, aucune procédure spécifique n'étant envisagée pour contester ces actes. Ceci étant, et en cela l'arrêt est vraiment réaliste, le respect des garanties procédurales peut subir des aménagements, dus notamment à l'impératif de préservation de la sécurité nationale. Les droits procéduraux accordés aux personnes ne sont pas absolus. La Cour insiste sur le fait qu'il n'est nul besoin de communiquer toutes les informations aux personnes suspectées de complicité de terrorisme et que cela soit concomitant à l'inscription sur la liste noire. Le juge européen admet que les mesures restrictives doivent présenter un effet de surprise pour être efficaces[1]. De plus, certaines informations liées à des aspects sensibles de la politique de lutte anti-terroriste ne peuvent être délivrées aux requérants[2]. Cela n'est pas en soi incompatible avec le respect des droits de l'Homme, à condition que les personnes concernées aient la possibilité de contester par la suite leur inscription sur cette liste sur la base d'informations suffisantes délivrées par les organes communautaires[3].

Concernant dans un deuxième temps les allégations selon lesquelles le gel des fonds porte atteinte au droit de propriété de M. Kadi, la Cour rappelle qu'il est de jurisprudence constante que ce droit fait partie des principes généraux du droit communautaire. Ce droit n'est cependant pas absolu. Il peut subir des restrictions à condition qu'elles soient proportionnées au but poursuivi. La Cour de Luxembourg énonce alors clairement que la lutte anti-terroriste est un objectif fondamental pouvant justifier de telles restrictions. L'intérêt général justifie aisément une atteinte à l'intérêt individuel de M. Kadi. De telles atteintes doivent, en revanche, être accompagnées de garanties procédurales empêchant l'arbitraire. Or, *le règlement litigieux a été adopté sans fournir à ce dernier aucune garantie lui permettant d'exposer sa cause aux autorités compétentes, et ce dans une situation dans laquelle la restriction de ses droits de propriété doit être qualifiée de considérable, eu égard à la portée générale et à la durée effective des mesures restrictives dont il fait l'objet*[4].

On ne peut que saluer ce raisonnement logique et cohérent qui admet que des restrictions à l'exercice du droit sont possibles, à condition qu'elles ne vident pas le droit en question de sa substance. Si la lutte anti-terroriste est un objectif prioritaire, elle ne doit pas pour autant aboutir à une négation totale des droits de l'individu.

Pour finir, un dernier point mérite notre attention. La Cour de Justice, alors même qu'elle constate l'incompatibilité du règlement communautaire avec les principes généraux relatifs aux droits de l'Homme, ne prononce pas une annulation immédiate des mesures litigieuses. Pour ne pas réduire à néant les efforts des institutions de l'UE dans la lutte anti-terroriste, elle prononce une annulation à effet différé. Elle justifie sa position en expliquant que « *l'annulation, dans cette mesure, du règlement litigieux avec effet immédiat serait susceptible de porter une atteinte sérieuse et irréversible à l'efficacité des mesures restrictives qu'impose ce règlement et que la Communauté se doit de mettre en œuvre, dès lors que, dans l'intervalle précédant son éventuel remplacement par un nouveau règlement, M. Kadi et Al Barakaat pourraient prendre des mesures visant à éviter que des mesures de gel de fonds puissent encore leur être appliquées* »[5]. En limitant ainsi dans le temps les effets de l'arrêt, elle octroie aux institutions compétentes un délai de trois mois pour rectifier les dispositions litigieuses. Un nouveau règlement modifié a ainsi été adopté le 28 novembre 2008[6].

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[1] Cf., §340 de l'arrêt et CJCE, arrêt du 11 octobre 2007, aff. C-117/06, *Möllendorf et Möllendorf-Niehuus*, §63.

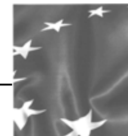
[2] Cf., §342 de l'arrêt. Il est intéressant de noter sur ce point que plusieurs pays anglo-saxons pratiquent le système de la communication des informations confidentielles à des avocats spéciaux ; cette pratique, tolérée depuis des années, a été expressément validée par la Cour européenne des droits de l'Homme dans son arrêt récent *A et autres c/ Royaume Uni*, précité.

[3] La CJCE, par référence à l'arrêt CEDH du 15 novembre 1996, *Chahal c/ Royaume Uni*, affirme qu'il faut en effet rechercher un juste équilibre qui sera soumis au contrôle du juge international. Cf. §344 de l'arrêt.

[4] Cf., §369 de l'arrêt.

[5] Voir sur ce point, §373 de l'arrêt et les commentaires de Simon D. et Rigaux A., précité, §§27-29.

[6] Règlement (CE) n°1190/2008 de la Commission du 28 novembre 2008 modifiant pour la cent et unième fois le règlement (CE) no 881/2002 du Conseil instituant certaines mesures restrictives spécifiques à l'encontre



The Future Common Security and Defence Policy. Can the Treaty of Lisbon Strengthen the Authority of the European Union in this Field?

DR. GEORGIANA CICEO

Lecturer at the Faculty of European Studies Babeș-Bolyai University in Cluj-Napoca

Europe's security responsibilities increased significantly after the end of the Cold War. As a consequence of the Bosnian war and the later crises in the Balkans, it became clear that the EU countries could no longer afford the luxury of attempting to solve the continents' security problems in isolation from one another. Security coupled with defence paved then smoothly its way on the agenda of the European Union. As such it was a "new policy child that had to get its feet on the ground very quickly"[1]. The catalyst for the launching of this new project served the historic meeting of December 1998 from St. Malo between Europe's two biggest military powers[2]. It triggered a sea-change in political attitudes and led the EU leaders to declare six months later that the Union „must have the capacity of autonomous action backed by credible military forces"[3]. Today, just over ten years later, most of the institutions necessary for carrying out the security and defence tasks are already at work and still the European Union is rather shy in undertaking such responsibilities. The present article sets its aim in exploring the extent to which the new by no means constitutional but still reform Treaty of Lisbon will be able to strengthen the authority of the European Union in a very sensitive and highly important area for its respectability as an effective actor on the world stage.

THE LAUNCHING OF THE EUROPEAN SECURITY AND DEFENCE POLICY (ESDP)

On the occasion of the Helsinki European summit of December 1999, new institutions had already been created in order to allow the European Union to cope with the challenges in the field of security and defence, although the treaty framework had not yet been amended in order to include the new policy realm[4]. Contrary to the general expectations that these

de certaines personnes et entités liées à Oussama ben Laden, au réseau Al-Qaïda et aux Taliban.

[1] ***, „The strengths and weaknesses of the European security & defence policy", Policy Dossier: Security and Defence in: *Europe's World*, no. 6/2007, p. 97.

[2] On the process set into motion by the summit in St. Malo see J. Howorth, „Britain, France and the European Defence Initiative" in: *Survival*, vol. 42, no. 2, 2000, p. 33-55, A. Deighton, "The Military-Security Pool: Towards a New Security Regime for Europe" in: *International Spectator*, vol. 30, no. 4, 2000, p. 41-54, J. Roper, "Keynote Article: Two Cheers for Mr. Blair? The Political Realities of European Defence Cooperation" in: *Journal of Common Market Studies*, vol. 38, Annual Review, 2000, p. 7-23.

[3] *Presidency Conclusions of the Cologne European Council* (3-4 June 1999), Addendum III: European Council Declaration on Strengthening the Common European Policy on Security and Defence [http://www.consilium.europa.eu/uedocs/cmsUpload/Cologne%20European%20Council-Presidency%20conclusions.pdf] 22 January 2009.

[4] *Presidency Conclusions of the Helsinki European Council* (10-11 December 1999), Addendum IV: Presidency Reports to the Helsinki European Council on „Strengthening the Common European Policy on Security and Defence" and on

developments would be reinforced by the Treaty of Nice, the latter failed to come up with appropriate solutions due to the much higher importance attached at that time by the Member States to the institutional reform in view of the forthcoming enlargement. The Treaty only managed to bring into the legal framework of the European Union the newly created institutions.

Since then, the new policy has picked up speed. A European Security Strategy (ESS)[1] was adopted in the attempt to lay the future political objectives of the new policy, only to be followed just one year later by a new Headline Goals 2010 (HG-2010)[2]. The Union spawned also around the globe within the past few years, in spite of the reluctance shown by most of its members in dealing with these issues, an ever-increasing number of security-related missions in peace-keeping, police training, rule of law, civilian administration, civil protection, observation, defence or border security[3]. Most of these missions were modest in scale but could not have been achieved without an underlying political process. They needed planning, required a considerable amount of money and would have been inconceivable in the absence of a clear mandate generated collectively by the European Union. Moreover, they have indicated that the Union is able to provide military support to its diplomacy and wants to be regarded as a reliable and accountable partner as far as international peace and security are concerned. However, it is important to stress within this context the European preference for non-coercive measures, as Europeans have traditionally tended to tackle security challenges by means of 'effective multilateralism' under the ultimate authority of the United Nations, rather than by military methods. The latter were regarded as deemed to be used only as a last resort and in addition to other peaceful, diplomatic, political, economic and humanitarian resources[4].

COULD THE TREATY OF LISBON CONTRIBUTE TO THE EMANCIPATION OF THE EUROPEAN UNION IN TERMS OF SECURITY AND DEFENCE?

The following section is trying to analyze the most relevant contributions made by the Treaty of Lisbon in terms of strengthening the European Union's capabilities against the ambitions it set in the European Union Strategy (ESS), Headline Goal 2010 and the Civilian Headline Goal 2010[5]. These documents lay down the intention of the European Union to become ready to

„Non-military Crisis Management of the European Union" [http://www.consilium.europa.eu/uedocs/cmsUpload/Helsinki%20
European%20Council-Presidency%20conclusions.pdf] 22 January 2009.

[1] See *A Secure Europe in a Better World: European Security Strategy*, Brussels, 12 December 2003 on [http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf] 22 January 2009.

[2] *Headline Goal 2010* (HG-2010) replaced the *Helsinki Headline Goal 2003* adopted in December 1999, whose aims proved to be too ambitious to be met by 2003. See *Headline Goal 2010,* approved by the General Affairs and External Relations Council on 17 May 2004, endorsed by the European Council of 17 and 18 June 2004 on [http://www.consilium.europa.eu/uedocs/cmsUpload/2010%20Headline%20Goal.pdf] 22 January 2009.

[3] Out of the 23 missions launched up to now, 13 are still under way. See *Overview of the missions and operations of the European Union*, December 2009, on
[http://www.consilium.europa.eu/uedocs/cmsUpload/mapENdecember09.pdf] 04 December 2009.

[4] This preference is even more evident when we set it against the security strategy of the Bush Administration, which assigns a far greater role to military power. See A.J.K. Bailes, „The EU and a ‚better world': what role for the European Security and Defence Policy?" in: *International Affairs*, vol. 84, no. 1, 2008, p. 118. See also R. Kagan, *Of Paradise and Power: America and Europe in the New World Order*, New York: Vintage Books, 2004, p. 19-27, 42-55, 65-66 and Spiegel Interview with R. Kagan in: *Der Spiegel*, no. 44/27.10.2008, p. 129.

[5] According to HG-2010, the EU will have to be able to deploy at high readiness credible and coherent force packages in response to a given crisis. These force packages are based on the battlegroups concept. The ambition for the EU is to be capable of deploying 60 000 troops within 60 days for a major operation, of planning and conducting simultaneously a series of operations and missions, of varying scope: two major stabilization and reconstruction operations, with a suitable civilian component, supported by up to 10 000 troops for at least two years; two rapid-

"share in the responsibility for global security" and to "make a contribution to security and stability in a ring of well-governed countries around Europe and in the world". This means that the civilian and military framework that enables the European Union to assume these responsibilities has to be constantly updated in order to make it capable of dealing with the multifaceted nature of the new threats. Especially in those policy domains connected with the use of force, Europe's capacity to act as a unit has been traditionally perceived as the weakest and least developed. Seen from this perspective, the Treaty of Lisbon attempts to primarily lay the institutional and organizational foundations for building the necessary capabilities that will support an effective external action. These provisions are to be found in the Title V of the Treaty on the European Union[1] – *General provisions on the Union's external action and specific provisions on the Common Foreign and Security Policy*. According to article 42(1) TUE, "*the common security and defence policy shall be an integral part of the common foreign and security policy*". So from the very beginning it is clear that in order to add weight to the actions in this field the former European Security and Defence Policy will be upgraded to the status of a common policy - the Common Security and Defence Policy (CSDP).

response operations of limited duration using, *inter alia* ,EU battle groups; an emergency operation for the evacuation of European nationals (in less than ten days); a maritime or air surveillance/interdiction mission; a civilian-military humanitarian assistance operation lasting up to 90 days; around a dozen ESDP civilian missions of varying formats, including in rapid-response situations, together with a major mission (possibly up to 3000 experts) which could remain operaton for several years. As far as decision making is concerned, the EU's aim is to be able to take the decision to launch an operation within five days from the approval of the Crisis Management Concept by the Council. With regard to deployment, the ambiton set forth by the document is for the EU to be able to start to implement the mission on the ground no later than 10 days after the moment when the decision to launch the operation was taken. For its operations and missions, the European Union makes use, "in an appropriate manner and in accordance with its procedures", of the resources and capabilities of Member States, of the European Union and, if appropriate for its military operations, of NATO. See Council of the European Union, *Declaration on Strengthening Capabilities*, Brussels, 11 December 2008 [http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/esdp/104676.pdf] 22 January 2009.

[1] The Treaty of Lisbon will amend the Treaty on the European Union (TEU) and the Treaty on the European Community (TEC) rebaptized from now on as the Treaty on the Functioning of the European Union (TFEU).

Purposes

The purpose of the Common Security and Defence Policy will be to "*provide the Union with an operational capacity drawing on civilian and military assets*" (article 42 (1)). It will seek the "*progressive framing of a common Union defence policy*" that "*will lead to a common defence, when the European Council, acting unanimously, so decides*" (article 42 (2)). For sure the Treaty of Lisbon was meant to better reflect the nature of the existent ESDP missions. From this perspective, the Petersberg tasks[1] will be from now on enriched in order to include "*disarmament operations, military advice and assistance tasks, peace making and post conflict stabilization, conflict prevention, post-conflict stabilization missions*" (article 43). What is also important to be mentioned is the fact that this policy will have to contribute to the fight against terrorism, including "*by supporting third countries in combating terrorism in their territories*". All this panoply of tasks tends to reinforce the image of Europe as a normative actor in world politics with distinct purposes and methods[2]. They tend to emphasize the European Union's role as a civilian power, while paving the way for an increased presence in terms of military matters. However, when looked upon from the perspective of the wider goals set for the CFSP in the Lisbon Treaty as well as in the other above-mentioned documents, they rather create the impression of a 'purpose-deficit', due to their insufficient elaboration, even vagueness, and lack of coherence and compatibility[3]. They cannot contribute to the definition of a 'European interest' as opposed to convergent national interests[4]. In the absence of a sense of a pan-European purpose, it is to be expected that this policy realm will remain at least for the foreseeable future "feeble, fragmented and contested"[5].

Coherence

'Coherence', also known as 'consistency' has acquired a special meaning in the context of EU foreign-policy making[6]. It deals with the attempt made by national governments to draw their institutions and procedures closer in order to improve their collective performance. The Treaty of Lisbon emphasizes in several of its parts the need for increased coherence in the realm of security and defence. Hence, article 21(3) stipulates that "*the Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect*". At their turn, the states commit themselves to "*reinforce and develop their mutual political solidarity*" and "*to avoid any action that goes contrary to the interests of the European Union or is susceptible to harm either its efficiency or its cohesion in international relations*" (article 24(3)).

However, the Treaty also allows a certain degree of flexibility in implementing decisions. The mutual defence clause and the solidarity clause are important innovations that promote fundamental principles of the European Union: solidarity with and assistance to other Member States. If the defence clause echoes the defence clause of the Western European Union, the

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[1] The Petersberger repertoire of missions that might be undertaken by the European Union in crisis management situations includes humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking. They were included in the Petersberger Western European Union Declaration from 1993 and inherited as such in the Treaty on the European Union as amended by the Treaty of Amsterdam.

[2] See I. Manners, „Normative power Europe reconsidered: beyond the crossroads" in: *Journal of European PublicPolicy*, vol. 13, no. 2, 2006, p. 182-199.

[3] U. Krotz, „Momentum and Impediments: Why Europe Won't Emerge as a Full Political Actor on the World Stage Soon" in: *Journal of Common Market Studies*, vol. 47, no. 3, 2009, p. 568.

[4] See M. Smith, „The framing of European foreign and security policy: towards a post-modern policy framework?" in: *Journal of European Public Policy*, vol. 10, no.4, 2003, p. 565.

[5] U. Krotz, „Momentum and Impediments...", p. 568.

[6] S. Nuttal, „Coherence and constituency" in: C. Hill and M. Smith, *International Relations and the European Union*, New York: Oxford University Press, 2005, p. 92.

solidarity clause represents a new legal mechanism of assistance between Member States when one of them is the victim of a terrorist attack, natural or man-made disaster. As far as the mutual defence clause as defined in article 42(7) is concerned, its provisions are somehow watered down by the condition that any commitments and cooperation in this respect will have to be consistent with those of NATO and will not prejudice the security and defence policy of neutral Member States. With regard to the solidarity clause, participation maintains a voluntary character, as according to article 31(1), a Member State may *decide to abstain from voting on an initiative* in this respect.

At the same time, the Treaty extends the scope of 'enhanced cooperation' to the field of defence and security. The newly created instrument of 'permanent structured cooperation' is meant to bring a certain degree of flexibility to the new policy domain, as unlike the former 'enhanced cooperation'; it does not require a threshold of members to proceed. This flexibility cannot be weighed up though in absolute terms, as the participation in any form of 'permanent structured cooperation' is permanent (although withdrawal is possible), its content is fixed, its construction structured and its performance evaluated by a specialized body – the European Defence Agency (Article 42(6) and Protocol no. 10 to the Treaty). That is why the 'permanent structured cooperation' can be better regarded as an institutional means for overcoming a potential political blockage[1].

Institutional arrangements

The Lisbon Treaty reinforces the intergovernmental nature of security decision making. Institutionally speaking, the Treaty of Lisbon strengthens the role of the European Council in matters concerning foreign policy and the security and defence policy (see articles 24, 31 and 42). The European Council defines and implements the foreign and security policy of the Union as a whole. At the same time, the Council will "*frame the common foreign and security policy and take the decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council*" (article 26). This means that, just like in the case of the CFSP, the field of security and defence will also be marked by a "trade-off between the benefits of increased bargaining power and the costs of compromise among heterogeneous interests"[2]. Nevertheless, a number of innovations aimed at rationalizing the European Union's institutional architecture are expected to have certain, but still to be evaluated, impact on the common security and defence: a new president of the European Council, a new High Representative for Foreign Affairs and Security Policy and a new external service. What appears to be obvious is the fact that the attempt to accommodate the intergovernmental impulses steaming from the Council with the community ones sent by the Commission will not be fully attained as the High Representative for Foreign Affairs and Security Policy will find itself under the tight scrutiny of both institutions, which basically means that the 'intrinsic dualism' that has characterized the security policy up to now will be maintained in a new form[3].

If the Commission is barely mentioned in the dispositions concerning the CFSP as a whole, the European Parliament is to be consulted regularly on the "*main aspects and the basic choices of the common foreign and security policy and the common security and defence policy*" and kept informed on how these policies evolve. Moreover, the High Representative for Foreign Affairs and Security Policy "*shall ensure that the views of the European Parliament are duly taken into consideration*" (article 36).

[1] See also A. Missiroli, *The Impact of the Lisbon Treaty on ESDP*, Brussels, European Parliament: Directorate General External Policies of the Union, 2008, p. 15.

[2] This means that the probability of aggregating a common decision is higher when the benefits of the compromise exceed its costs. See J.A. Frieden, „One Europe, One Vote?" in: *European Union Politics*, vol. 5, no. 2, 2004, p. 274.

[3] See also W. Wessels and F. Bopp, „The Institutional Architecture of CFSP after the Lisbon Treaty – Constitutional breakthrough or challenges ahead?" in: *CHALLENGE Liberty and Security*, Research Paper No. 10, June 2008, p. 29.

It is obvious that none of these provisions has the capacity to transform Parliament into a central institution for the CSDP. Nevertheless, the authority of the Parliament is likely to increase indirectly by means of its revised participation to the budgetary procedure.

Decision-making

Both the European Council and the Council of Ministers are supposed to take decisions unanimously (see articles 24, 31 and 42), which basically means that each Member State has the possibility to block an initiative that works against its own interests. However, qualified majority voting will make inroads into the sphere of security in at least two very important points, namely the establishment of a permanent structured cooperation (article 46(2)) and the launching of start-up financing from the Union budget for a defence policy mission (article 41(3)). What is extremely important is that qualified majority voting will remain the basic rule for any procedural decision.

The Lisbon Treaty also maintains the rule of constructive abstention for those Member States that are unwilling to go ahead with a certain decision. They have to make a formal declaration in this respect, and, as a consequence, they cannot be obliged to put into practice the decision and are exempted from any financial contribution for its implementation. Also, in the cases of decision-making on the basis of qualified majority voting, there is a possibility to use an 'emergency brake' for "vital and stated reasons of national policy" (article 31(2)).

Strengthening of military capabilities

The Lisbon Treaty also deals with one of the most challenging purposes of the ESDP, namely the strengthening of its own military capabilities, which is now regarded as vital for the European ambition of adding hard power to its already prominent soft power. It is by now widely accepted that the European Union does not suffer from a lack of material resources, but from the inability to unite its diplomatic and military potential[1]. That is why even before the Constitutional Treaty or the subsequent reform Treaty of Lisbon were able to come into force, "an intergovernmental agency in the field of defence capabilities development, research, acquisition and armaments"[2] was established. With the Lisbon Treaty, the European Defence Agency (EDA) has been inserted into the legal framework of the CSDP, thus reinforceing the leading role that the Member States want to assign to it in pushing forward the development of the EU's operational capabilities and of the EU as a military actor. According to article 46, its main role is to "*contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States and to promote harmonization of operational needs and adoption of effective, compatible procurement methods*".

Nevertheless, the most important problems that confront the Member States in matters related to their military capabilities – the insufficient amount of money available for defence, the limited interoperability and the fragmentation of the European defence market – have not been addressed. Moreover, the intergovernmental character of EDA will be maintained, although it is obvious that in the absence of a real autonomy of the Member States to carry out the most basic tasks associated with independent institutions, EDA remains a toothless institution, unable to steer the Member States' participation in ESDP missions or to get the Member States to live up to their pledges on capabilities and resources[3].

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[1] P. Gordon, „Europe's uncommon foreign policy" in: *International Security*, vol. 22, no.1, p. 75.

[2] Council of the European Union, Joint Action 2004/551/CFSPof 12 July 2004 on the establishment of the European Defence Agency, Official Journal of the European Union L245/17 July 2004.

[3] A. Menon, „Empowering paradise? The ESDP at ten" in: *International Affairs*, vol. 85, no. 2, 2009, p. 238.

CONCLUSIONS

All these changes introduced by the Lisbon Treaty indicate greater willingness by the Member States to develop a 'military arm' of the European Union. The European Security and Defence Policy is updated and offered a new juridical framework so that new forms of cooperation and flexibility can be taken into consideration. However, the provisions of the Treaty do not show any desire to push the new policy towards a more integrationist approach. Notwithstanding the intense debates on the importance of enhancing the effectiveness of the security and defence policy by means of adopting a community oriented approach towards it, either by expanding qualified majority voting in the process of decision-making[1] or by pooling the sovereignty of the Member States in ways similar to those chosen for other public policies[2] it is obvious from the above-mentioned discussion that the Treaty of Lisbon was not meant to give significant impetus in this direction. So the basis for agreement remains intergovernmental, whereas commitments would not necessarily be immediately or ever matched with appropriately guaranteed capabilities subject to European command or control.

In spite of the significant accumulation of institutional capacity at the European level, a number of factors and forces fuelled by a pervasive aversion to increased defence spending and a widespread dislike of increasing the centralizing power of Brussels will keep foreign and security policy frail and fractured. If we add to this the absence of a common purpose, it is to be expected that a "fully grown high-politics actor Europe" will not arise on the world stage any time soon[3].

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[3] U. Krotz, „Momentum and Impediments...", p. 570.

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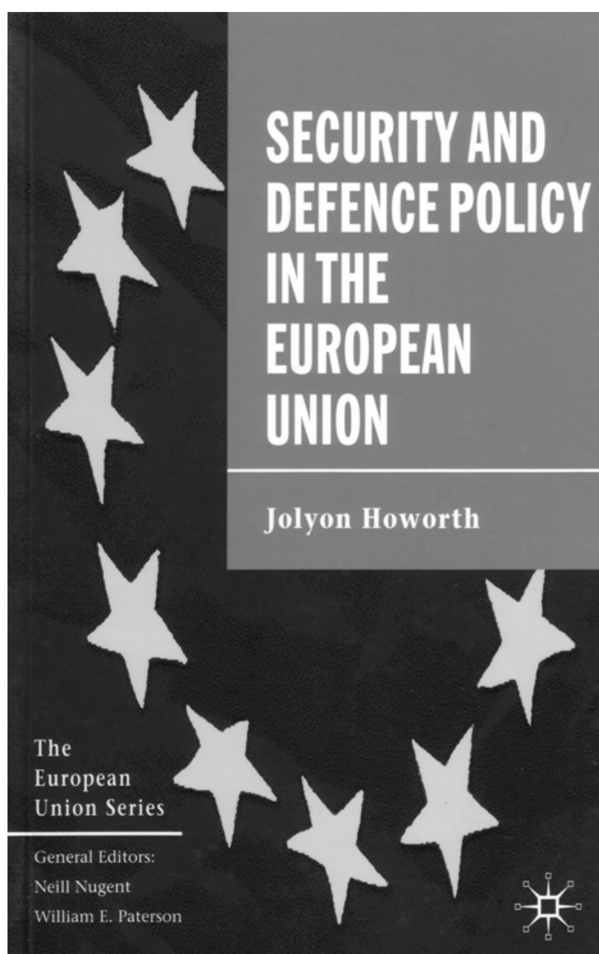

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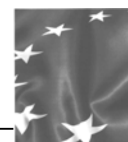


Les élections européennes de 2009

Dr. MICHEL LABORI
Maître de conférences, IEP Lille

Les élections européennes des 4-7 juin 2009 sont importantes puisqu'elles sont les premières de l'Union européenne des 27 et qu'elles concernent 380 millions d'électeurs. Elles n'ont pas suscité l'intérêt des citoyens européens puisque la baisse de la participation se poursuit malgré la présence des 12 nouveaux Etats membres, dont dix avaient déjà voté en 2004. Elles ont confirmé la domination des forces politiques de droite et de centre droit qui prévaut depuis la fin de la décennie 1990. Le faible engouement des citoyens traduit l'insuffisance de la prise de conscience européenne de la population, les défauts de communication de la Commission et les effets de la crise économique.

LE MODE D'ELECTION DU PARLEMENT EUROPEEN

Le parlement européen est élu au suffrage universel direct depuis 1979. La répartition des sièges par Etat membre se fait proportionnellement à la population. Les pays peu peuplés sont mieux représentés. Un député luxembourgeois est l'élu par 70 000 habitants et un député allemand est le représentant de 83 000 habitants. Les élections ont lieu tous les cinq ans. Un mode de scrutin unique et une élection le même jour seraient l'idéal, mais les gouvernements n'y sont pas favorables. Le mode de scrutin est laissé à la libre appréciation de chaque Etat membre, mais trois règles communes doivent être respectées.

- la zone électorale nationale peut être subdivisée en plusieurs circonscriptions à condition de ne pas remettre en cause la proportionnalité du système ;
- l'élection se fait à la représentation proportionnelle selon la règle de la plus forte moyenne ;
- la répartition des sièges s'effectue entre les listes ayant obtenu au moins 5 % des suffrages exprimés.

Certains États pratiquent la liste ouverte en laissant aux électeurs la possibilité d'indiquer une préférence pour un ou plusieurs candidats sur la liste (Irlande, Belgique, Pays-Bas, Autriche, Slovénie, Italie, Grèce, Bulgarie, Slovaquie, Lituanie, Luxembourg, Malte, Finlande, Suède, Danemark). Le vote est obligatoire en Belgique, au Luxembourg, à Chypre et en Grèce.

L'âge du vote est de18 ans dans tous les pays à l'exception de l'Autriche où il est fixé à 16 ans. L'âge de l'éligibilité est compris entre 18 ans (Espagne, Hongrie, etc.…) et 25 ans (Grèce et Chypre).

Les électeurs européens ont élu 736 députés conformément au traité de Nice. Le parlement 2004-2009 avait 785 députés. L'adoption du Traité de Lisbonne fait passer le nombre de députés à 751 à partir de 2014.

Répartition des sièges du parlement européen pour les élections européennes de 2009

Etat membre	2008	2009 Nice	*Lis-bonne*	Etat membre	2008	2009 Nice	*Lis-bonne*	Etat membre	2008	2009 Nice	*Lis-bonne*
Allemagne	99	99	96	Rép.Tchèque	24	22	22	Slovaquie	14	13	13
France	78	72	74	Grèce	24	22	22	Irlande	13	12	12
Italie	78	72	73	Hongrie	24	22	22	Lituanie	13	12	12
Royaume-Uni	78	72	73	Portugal	24	22	22	Lettonie	9	8	9
Espagne	54	50	54	Suède	19	18	20	Slovénie	7	7	8
Pologne	54	50	51	Autriche	18	17	19	Chypre	6	6	6
Roumanie	35	33	33	Bulgarie	18	17	18	Estonie	6	6	6
Pays-Bas	27	25	26	Finlande	14	13	13	Luxembourg	6	6	6
Belgique	24	22	22	Danemark	14	13	13	Malte	5	5	6
								Total	**785**	**736**	**751**

LES ELECTIONS EUROPEENNES DE JUIN 2009

La participation

Elle poursuit son recul. Elle est passée de 62 % (1979) à 45.5 %

1979	62 %	1994	56,7 %
1984	59 %	1999	49,5 %
1989	58,4 %	2004	45,5 %

La participation au vote des citoyens des dix nouveaux pays adhérents en 2004 n'a pas modifié la tendance.

En 2009, la participation a encore baissé avec 43,2 %. Il y a une différence notable entre les pays de l'ancienne U.E. des 15 et les nouveaux états membres. 52 % des électeurs se sont déplacés dans l'Ouest de l'Europe avec une progression de près de 3 %. La participation a été de 38 % dans les pays d'Europe centrale et orientale et dans les îles de Chypre et de Malte. Elle est en progrès de 11 points. D'une manière générale, l'ancienneté de l'appartenance à l'U.E. explique ces différences.

Dans l'U.E. des 15, les pays au vote obligatoire (Belgique et Luxembourg) ont des taux normaux, proches de 90 %. La participation se maintient en Allemagne (43.3 %), en Finlande et en Espagne au niveau de 2004. Elle progresse nettement au Danemark (59,5 %, + 11,7 %) et en Suède (45,5 %, + 7,7 %). Elle chute en Italie (66,5 %, - 6,6 %), malgré des élections locales tenues le même jour. Elle recule de façon moins nette au Royaume-Uni, aux Pays Bas, au Portugal et en France (40,6 %, -2,5 %).

La faible participation dans les PECO s'explique par la crise de la démocratie participative qui est ressentie aux élections nationales, législatives et présidentielles. La crise économique et

financière a renforcé cette tendance. Les sondages d'opinion montrent que la population reste attachée à l'idée européenne.

Pays d'Europe Centrale et Orientale

	Taux de participation (en %)	Evolution 2004 – 2009 (en %)
Lettonie	52,6	+ 11,2
Estonie	43,9	+ 17,2
Lituanie	20,9	- 27,5
Pologne	24,6	+ 3,6
Slovaquie	19,6	+ 2,7
République Tchèque	28,2	0
Slovénie	28,0	- 0,4
Hongrie	36,3	- 2,1

L'effondrement lituanien est dû à un troisième scrutin en 8 mois (octobre 2008 : législatives, mai 2009 : présidentielles). Le vote électronique en Estonie (15 % des votes) a contribué à la progression. Le vote de la communauté russophone explique les progrès en Lettonie alors qu'elle ne vote pas aux autres élections nationales. Les écarts sont peu significatifs dans les autres pays.

Malte a le record du civisme avec 78,8 %, alors que Chypre chute de 11,8 % avec 59,4 %.

Les pays adhérents de 2007 (Bulgarie et Roumanie) ont des comportements différents. La Bulgarie avec 37,7 % progresse de 9 points par rapport aux élections de 2007. La Roumanie n'a qu'une participation de 21,6 %, qui est plus faible qu'en 2007.

Les résultats

L'Union européenne a voté nettement pour les partis de droite et de centre droit qui sont au pouvoir dans 18 pays sur 27.

8 États membres gouvernés par la gauche ont donné la préférence aux forces de droite (Autriche, Hongrie, Espagne, Bulgarie, Slovénie, Royaume-Uni, Chypre, Portugal). La Slovaquie est l'unique pays gouverné à gauche où celle-ci l'emporte.

La droite est sanctionnée dans cinq états qu'elle gouverne (Grèce, Malte, Danemark, Suède et Estonie). Elle y est devancée par les sociaux-démocrates. Elle arrive en tête dans onze pays où elle est au pouvoir (Allemagne, France, Finlande, Italie, Pays-Bas, Luxembourg, Pologne, Irlande, République Tchèque, Lituanie et Belgique).

L'extrême gauche obtient des résultats médiocres (Die LINFE en Allemagne: 7,5 %, Front de gauche en France: 6 %)

Les résultats des partis écologistes ancrés à gauche ne compensant pas les pertes des partis sociaux- démocrates. Les verts progressent surtout en France avec 16,3% des voix. Ils se maintiennent en Allemagne et aux Pays-Bas et reculent surtout en Autriche.

L'extrême droite effectue une percée qu'il faut relativiser. Elle est en effet limitée : huit pays où elle dépasse-10%

Belgique	28,5 %	Hongrie	14,7 %
Pays-Bas	17,0 %	Finlande	14,0 %
Autriche	17,4 %	Danemark	14,8 %
Italie	10,2 %	Bulgarie	12,0 %

Elle progresse au Royaume-Uni (8,3%) et obtient deux sièges. Ses résultats sont notables en Roumanie (8,6 % pour le parti de la « Grande Roumanie »).

Les résultats des partis eurosceptiques sont en recul sauf au Royaume-Uni et en Autriche. Le parti pour l'indépendance du Royaume-Uni (UKIP), favorable au retrait du Royaume-Uni de l'Union, se classe au deuxième rang (16%). Il maintient son niveau de 2004 et devance les travaillistes.

L'irlandais Declan GANLEY, fondateur de l'organisation LIBERTAS, a présenté des listes dans tous les pays. Il n'obtient qu'un seul élu en France (Philippe de Villiers), alors qu'il escomptait 100 élus.

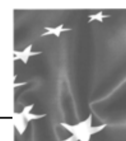
Le nouveau parlement européen (2009-2014)

Parti populaire européen (PPE)	265 sièges
Alliance progressiste des socialistes des démocrates au Parlement européen (S et D)	184 sièges
Groupe alliance des démocrates et libéraux pour l'Europe (ADLE)	84 sièges
Groupe des verts, alliance libre européenne (Vert / ALE)	55 sièges
Groupe des conservateurs et des réformateurs européens (ECR)	54 sièges
Gauche unitaire, Gauche verte nordique	35 sièges
Groupe Europe libertés démocratie (ELD)	32 sièges
Non inscrits	27 sièges
	736 sièges

Le succès de la droite s'explique par sa réponse à la crise qui a été appréciée par les citoyens. Les gouvernements ont réagi en creusant les déficits publics, en sauvant le système bancaire par des plans de relance. Les partis de droite et de centre-droit sont perçus comme étant plus crédibles que les sociaux-démocrates incapables de se positionner face au libéralisme économique.

La défection des conservateurs britanniques affaiblit le parti populaire européen qui aurait approché la majorité absolue avec 321 députés. Une grande alliance de droite PPE, ADLE et ECR est inconcevable. ADLE est proeuropéenne et ECR est eurosceptique.

ADLE peut être exigeante pour constituer une alliance ave le PPE qui aurait la majorité absolue. Il est fort probable que le parlement européen restera fidèle à sa culture du compromis entre le PPE et les sociaux-démocrates.



Think tanks for the promotion of a European public space

MIRUNA ANDREEA BALOSIN, PhD Student
Faculty of European Studies, Babeş Bolyai University, Cluj-Napoca

Abstract: *The establishment of think tanks urges the creation of a space in the political and academic world; a space that creates networks throughout Europe and contacts among researchers and national decision makers of different member states. These structures have a certain impact on the problem of the democratic deficit. They play an important role in informing the grand public and they have an impact on the formation of a participative democracy, a potential base for future European civic flamboyance. The idea of an effective European public space is at a baby step stage. Think tanks should be considered as the indispensable actors for its blooming.*
Keywords: *think tanks, European public space, decision making, legitimacy, democratic deficit*

For a long time, both the political and academic debates have focused on issues of territorial representation, the division of powers, and guaranteeing the individual rights of citizens. Now representation and legitimacy are central topics in the EU's current debate. According to Goehring[1], "it is evident that different types of representation and participation have to be combined and reinforced in order to build a strong enlarged, legitimate, and political Union".

Scholars argue predominantly that interest groups develop two kinds of legitimacy: input and output legitimacy. The former concerns the democratic decision-making at the European level, so that greater involvement of citizens and interested groups can provide higher legitimacy to the system. The output legitimacy regards the EU's general competence in dealing with its ability to achieve the citizens' goals and to solve their problems. It can raise both their confidence in the institutions and the accountability of the latter vis-à-vis the citizens themselves[2]. Interest groups add up to the *natural constituency* of the Commission and Parliament, on the other hand they promote European integration as they persuade national governments to consent to wider EU competences and they contribute to legitimize the EU in the eyes of the citizens.

Interest groups play the role of replacing the lacking European-wide political representation. European political groups do not always successfully represent the different European problems and in some cases, they do not even notice them, because they are too far from the grassroots. Interest groups, on the contrary, especially euro think tanks, trade federations and European associations, can truly bring European priorities to the awareness of the EU institutions.

Today's debates are focused on think tanks, their role in European policy making, their position vis-à-vis civil society, and the types of partnerships they could form, amongst themselves or with other organizations, to best reach out to Europe's citizens.

Think tanks are a "crucial link between academic research and policy makers of the highest level. This position, and their interdisciplinary nature, makes them ideal laboratories for new ideas, including European Union policy proposals. They are also able to promote debates on

[1]. Goehring, R., "Interest Representation and Legitimacy in the European Union: The New Quest for Civil Society Formation", in: Warleigh, A. and Fairbrass, J., (Eds.), *Influence and Interests in the European Union: the New Politics of Persuasion and Advocacy*. London, Europa Publications, 2002, p. 134.
[2]. With regard to the distinction between input and output legitimacy, see Bouwen, Pieter, "Corporate Lobbying in the European Union: Towards a Theory of Access", Firenze, EUI Working Paper SPS, No. 5, 2001.

topics of general European interest, and, by linking up research centres across the continent, can bring an invaluable European dimension, and benefit to the work they carry out"[1].

Think tanks aspire to motivate European civil society; they can offer the European citizen a range of choices and visions, and with the support of the Commission and its active citizenship programme, they can involve, mobilize, and help citizens participate in shaping alternative and constantly evolving views of Europe and the integration process.

Can think tanks contribute to the emergence of a European public space? The values, objectives and projects of these organizations enable them to create a connection between European institutions and citizens. Can European think tanks bring out to the institutions and politicians the ideas of the citizens? The questions may surprise. The think tank is often seen as a social actor capable of fighting efficiently against exclusion, and not as an engine-element for democracy. It is an element of counter-power; it becomes visible when struggling with the failures or weaknesses of the state or protesting against different administrative actions. In other words, if we share the opinion of Dominique Wolton[2], that political communication is the vector of democratic debate, think tanks, through their public critique, are the animators. Moreover, these associations are also actors contributing to the definition of the general interest and of the institutions that carry it.

The absence of a European public space has not stopped certain actors from developing political actions in favour of European construction. Among these, figure European instances and think tanks. For these actors, social Europe and political Europe are complementary and inseparable.

In the academic literature, the notion of think tank gained the status of a very slippery term, a so-called umbrella term, meaning different things to different people. It is exactly the vague character of the definition that has transformed think tanks into a fashion in the Western and post-communist political environment[3]. How can we define a think tank? The most common definition describes a think tank as a permanent organization, specialized in finding solutions or viable alternatives to public policies. These kinds of organizations are not responsible for the government's activities and decisions. Maintaining the independence of research, without taking into consideration personal interests, is one of their strongest points. The final purpose of think tanks is to contribute to the common good.

Think tanks are increasingly important players in the "political landscape" of the EU's capital, Brussels. Their presence is growing in terms of both numbers and size, as more established institutions expand their activities. These think tanks range from large mainstream institutions like the European Policy Centre (EPC), the Centre for European Policy Studies (CEPS) and Friends of Europe to smaller ones like Centre for the New Europe and the European Enterprise Institute[4].

The primary motive for establishing think tanks in Brussels is to influence the thinking among EU policy-makers and therefore, EU decision-making. Due to the nature of their operations, which includes countless publications, panel debates and workshops, their impact is mostly indirect and hard to measure. However, the rapid increase in these activities and the money involved would suggest it is considered highly worthwhile.

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[1]. "CONSULTATION FORUM on the Future Programme for Active European Citizenship 2007-2013. Synthesis Report", February 2005, available on http://ec.europa.eu/citizenship/pdf/doc481_en.pdf [accessed 20.11.2009], p. 15.

[2]. Wolton, D., *La dernière utopie*, Paris, Flammarion, 1993.

[3]. Stone, Diane, *Capturing the Political Imagination: Think tanks and the Policy Process*, London, Frank Cass, 1996, p. 40.

[4]. Corporate Europe Observatory, "Transparency unthinkable? Financial secrecy common among EU think tanks", July 2005, available on http://archive.corporateeurope.org/thinktanksurvey.html [accessed 20.11.2009]

This rise could be interpreted as think tanks filling part of the vacuum that exists because of low citizen involvement in the decision-making of EU institutions. Yet, while think tanks could contribute to the emergence of genuine pan-European public debate, there is clearly the risk that they create a pseudo-debate that does not reach beyond EU officials, diplomats, parliamentarians and professional lobbyists within the Brussels bubble[1].

It is interesting to put into perspective the missions assigned to think tanks for creating a common public space. This role can install a new form of democratic exercise inside of EU, giving Europeans the possibility to participate in the elaboration of such a space. We can ask ourselves if think tanks can build a relation between citizens and institutions by offering to the first the capacity to explain their demands and to the second, the assurance of diffusing their political decisions to the European people. The ambition is gaining the power to introduce new subjects on the political agenda.

First, think tanks are places of innovative ideas, of advice for political decision-makers. At the EU level, these qualities are developed by a proven support for European construction and a continuous intervention around the decision-making process, especially around the Commission.

Think tanks want to encourage better cooperation in politics, contribute to finding the necessary reforms, and participate in the development of the European future; they have the duty to enlarge the debate and to represent the general interest. This hypothesis is developed by Guillaume Soulez[2], who speaks more generally about a vocation of associations to be connected with the general interest issue. In his opinion, the framework of national public space can be surpassed only through this formation.

A part of think tanks' actions is dedicated to the democratization of the political debate. These actions are marking the civil society and are aimed at disseminating information on European matters for attracting a maximum of citizens. In consequence, this mission is above the political spheres of decision by targeting the citizens, and beyond national political spaces. Think tanks take very seriously their role of interface between the common institutions and an emerging civil society. They want to create strong connections and to increase the citizens' awareness and commitment.

The consultation of think tanks in Europe does not represent an integrative behaviour in the decision-making process like in the United States. But we must bear in mind that the Commission has developed a strategy of open and participative political consultation, taking into account that the ideas of think tanks are much more important because they allow one part of the civil society to be heard and feel active. The influence of think tanks in the decision-making process enlarges the field of actors contributing to the formulation of European integration.

The different national think tanks specialized in European matters participate in the creation of a European civil society of transnational networks, transforming the European space into a communicational space, to use Habermas' terms. Meetings and international partnerships are more important because each think tank brings knowledge of its national field, as well as cultural, political, and administrative specificities. The cooperation represents a benefit to the work of each think tank concerned. Contacts are made through exchange of ideas, the creation of common forums, or the direct investment in a think tank by one of its homologues. More and denser networks are organized within the EU after the simple criterion of specializing in European issues or after a more selective criterion of political orientation. Some European networks are part of a worldwide network of research institutes.

The European public space is in a process of emergence, even if it is, for the moment, limited to the simple contact between researchers and political actors. The creation of this space

[1]. Idem

[2]. Soulez, Guillaume, "Europe: un espace public en archipel", in Dacheux, Eric (dir.), *L'Europe qui se construit – Réflexions sur l'espace public européen,* Saint-Etienne, Publications de l'université de Saint-Etienne, 2003.

is one of the purposes of the European think tanks who want to contribute to the emergence of such a space by promoting a democratic European project and by diffusing its accomplishments via the internet and media.

Cooperation among political actors, media, and think tanks is still fragile and badly defined, in spite of the visible interdependence. Think tanks have the ability to mobilize the national media by using suitable communication approaches for each state. They can reinforce the commission's visibility by spreading its messages without being directly tied to the institutional discourse. On the other hand, they need subventions given by the European institutions in order to survive and develop. A positive collaboration among think tanks, media, and political decision-makers can help to promote the image of the Union to the Europeans. Every actor legitimizes the actions of the other at different levels: the participation of think tanks gives them the advantage of legitimacy before European decisions; by their interaction with the European institutions, think tanks legitimize their existence.

The development of a veritable European public space demands the true integration of the civil society in political debates and the decision-making process. At the level of citizens, this public space must give access, allow individuals to group around projects, and play a role in the political debate in accordance with their merits, their pertinence. Think tanks are recognized for their contribution to the democratic exercise at the European level, acting as facilitators of ideas. They assume the role of creating a debate between the grand public, experts and institutions and the importance of their actions in this field.

In other words, the think tank can become the democratic place to install a public space allowing the development of a political community[1]. Think tanks propose new feasible realities, because they militate for a more democratic Europe. Think tanks can have a fundamental role in European construction for the following reasons. Like other social organizations, think tanks are central actors in the national public space. Firstly, by construction, the think tank is an actor participating in the building of general interest. This participation is done through the bias of actions and communication, which in our democracies occur in the public space. Think tanks are civil society organisms that, extrapolating the opinion of Habermas, are capable of constituting autonomous public spaces that feed the central public space. This avoids the sclerosis of the latter and allows maintaining a counter-power against all the power of the state[2].

The national and local think tanks, members of European networks, constitute mediators among the different non-trusting organizations of the civil society, interpolate the public opinion and the political powers on European issues, and brand a critical pro-European vision in a mediated space, tending to consider the European debate pro or against European construction.

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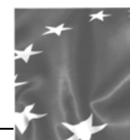

„Multilevel Governance" en pratique: considérations sur l'organisation régionale de la Roumanie

Dr. SIMION COSTEA
Professeur Jean Monnet à l'Université „Petru Maior" de Târgu-Mureş et conseiller au Parlement Européen

1. LA POLITIQUE RÉGIONALE ET L'ORGANISATION RÉGIONALE

Le développement régional de la Roumanie constitue l'un des objectifs assumés par l'État roumain en qualité d'État membre de l'Union européenne. L'objectif principal de la politique du développement régional (dénommée aussi la politique régionale ou la politique de cohésion) est la diminution des décalages économiques et sociaux accumulés à la longue entre les différentes régions et zones du pays, la prévention de l'apparition de nouveaux déséquilibres et le soutien du développement durable de toutes les régions du pays.

La politique de cohésion (la politique régionale) de l'Union européenne est appliquée seulement aux États membres de l'UE et elle est fondée sur la solidarité financière entre ceux-ci, de sorte que les régions moins prospères et les groupes sociaux défavorisés bénéficient de fonds communautaires qui, ajoutés aux ressources propres, permettent le développement des projets. Les projets doivent contribuer à la croissance économique et à la récupération des décalages entre les régions.

Les fonds structurels financent des programmes multi-annuels fondés sur des stratégies de développement réalisées dans le cadre d'un partenariat entre les régions, les États de l'UE et la Commission européenne. Les stratégies suivent les lignes directrices tracées pour l'Union entière par l'exécutif communautaire. La responsabilité principale pour l'administration des fonds européens et pour les projets revient aux autorités nationales et régionales.

Pour la mise en oeuvre de la politique régionale, l'Union européenne sollicite la formation de régions. L'UE n'impose pas la formation d'un certain type de région, l'organisation territoriale entrant dans la compétence exclusive des États membres.

L'Union européenne opère avec la notion de région conçue comme entité avec un rôle statistique, sa fonction étant de coordonner des projets régionaux d'infrastructure, d'allouer les fonds de l'Union européenne pour le développement régional, d'interpréter et d'examiner des statistiques régionales.

2. LES RÉGIONS ACTUELLES DE DÉVELOPPEMENT

Dans le processus de préparation pour l'adhésion, la Roumanie a adopté des lois d'organisation régionale.[1]

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[1] La Loi no. 151/1998 sur l'organisation régionale de la Roumanie, 1998; La Loi no. 226/2001 sur l'approbation de l'Ordonnance d'urgence no. 268/2000 pour la modification et le complètement de la Loi no. 151/1998 sur le développement régional en Roumanie, 2001; La Loi no. 25/2001 sur l'administration publique locale, 2001; La Loi no. 315 / 28 juin 2004 sur le développement régional en Roumanie. Émetteur: Le Parlement. Publiée dans le Moniteur Officiel no. 577 du 29 juin 2004.

Du point de vue des obligations assumées par la Roumanie, l'organisation actuelle du territoire de la Roumanie, en huit régions de développement, est réalisée en conformité avec les négociations d'adhésion au 21ème Chapitre – « La politique régionale et la gestion des instruments structurels », finalisées au 23 septembre 2004.[1] Les engagements assumés par la partie roumaine et acceptés par l'Union européenne convergent au sens du maintient de l'actuelle configuration de l'organisation administrative territoriale interne jusqu'en 2013.

Dans le Document de Position complémentaire à ce chapitre de négociation, la Roumanie s'est engagée à « *maintenir l'actuelle classification NUTS dans la période de planification 2007-2013* » et « *pour assurer la stabilité de la classification NUTS, la Loi no. 315/2004 sur le développement régional en Roumanie rend officielle la composition des régions NUTS II par la précision des départements qui composent les régions* ».[2]

En 2006, la configuration actuelle des régions de développement de la Roumanie a été agréée entre les autorités nationales et EUROSTAT (l'Office de statistique de l'Union européenne), en considérant qu'elle correspondait, du point de vue statistique, aux critères du Règlement (CE) no. 1059/2003 sur l'institution d'une nomenclature commune des unités territoriales statistiques (NUTS).

Au niveau communautaire, la Classification NUTS prévue par le Règlement no. 1059/2003/CE sur l'institution d'une nomenclature des unités territoriales de statistique, établit, en fonction du nombre des habitants, les subdivisions / régions au niveau des États membres, à plusieurs paliers hiérarchiques:

NUTS I – un nombre minimal de 3.000.000 habitants;

NUTS II – un nombre minimal de 800.000 habitants;

NUTS III – un nombre minime de 150.000 d'habitants.

Conformément au Système européen NUTS („Nomenclature des Unités Territoriales Statistiques"), la Roumanie est organisée en huit régions (NUTS II, des groupes de départements) et 41 départements et le municipe de Bucarest (NUTS III).

Les régions de développement établies par le Règlement ne sont pas d'unités administratives territoriales et n'ont pas de personnalité juridique, leur fonction étant de coordonner des projets infrastructurels régionaux, d'allouer des fonds de l'Union européenne pour le développement régional et d'interpréter et d'examiner des statistiques régionales.

Les régions NUTS II, régions de dimensions moyennes d'un État membre, où s'encadrent aussi les huit régions de développement régional de la Roumanie, représentent le fondement du système pour le financement de la cohésion, étant à la fois l'unité d'analyse de la politique de cohésion ou de la politique régionale.

Dans les huit régions, on a développé et consolidé toutes les structures et les mécanismes spécifiques à l'administration décentralisée des fonds communautaires. Les huit régions de développement de la Roumanie possèdent vraiment une architecture institutionnelle appropriée : les conseils de développement régional, les agences de développement régional, les comités régionaux d'évaluation stratégique et corrélation.

Les régions de développement de la Roumanie, fondées sur le principe de la complémentarité des ressources et de l'association bénévole entre les départements, sont utilisées depuis plus de dix ans comme le cadre d'élaboration, de réalisation et d'évaluation des politiques de développement régional et de collection des données statistiques spécifiques, en conformité avec les dispositions communautaires.

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[1] L'Institut Européen de Roumanie, l'Etude no. 6, «Exigences spécifiques de la gestion des instruments structurels et ses implications pour la Roumanie ».

[2] Document de Position de la Roumanie – Chapitre 21 – La politique régionale et la coordination des instruments structurels, le 6 décembre 2001;

Dans la configuration actuelle, les huit régions sont donc convenues entre la Roumanie et l'UE et, pour la période 2007-2013, elles réalisent les objectifs assumés. À notre opinion, l'entier appareil d'État de la Roumanie doit se réformer pour la modernisation, l'efficacité, la débureaucratisation, la croissance de la capacité administrative et d'absorption des fonds européens, pour que les institutions de l'État soient plus proches du citoyen. Pour l'accomplissement de ces objectifs, la reconfiguration géographique des régions actuelles n'est pas nécessaire.

Nous considérons que si le Gouvernement modifiait, sous la pression des forces politiques, la configuration géographique des régions de développement avant la fin de la période de planification mentionnée, il créerait des problèmes significatifs pour la mise en oeuvre du Programme Opérationnel Régional 2007-2013, dont le budget est réparti aux régions de développement constituées en conformité avec la Loi no. 315/2004.

LES REGIONS DE DEVELOPPEMENT DE LA ROUMANIE

Région 1 Nord-Est; Région 2 Sud-Est; Région 3 Sud Muntenia; Région 4 Sud-Ouest Oltenia Région 5 Ouest; Région 6 Nord-Ouest; Région 7 Centre; Région 8 Bucureşti-Ilfov

Une éventuelle modification des régions statistiques nécessiterait une analyse sérieuse sur des critères multiples. On doit réaliser une évaluation solide sur l'impact d'une éventuelle modification, les coûts par comparaison avec les bénéfices réalisables pour la société roumaine. On doit considérer les risques financiers, amplifiés par l'incertitude législative inhérente à une telle transition et la diminution de la capacité administrative d'élaboration et de mise en oeuvre des projets.

D'autre part, la modification des éléments contenus dans la nomenclature européenne NUTS ne peut pas être réalisée seulement par l'intermédiaire de la législation interne. On doit y respecter les procédures imposées par le Règlement CE no. 1059/2003, à savoir: la notification à EUROSTAT, qui va informer la Commission européenne, institution qui décidera sur les éventuelles propositions faites, dans ce sens, auprès du Conseil et du Parlement européen.

Nous considérons qu'une modification de l'organisation territoriale actuelle en huit régions de développement, n'est pas opportune et nécessaire, du point de vue statistique, en l'absence d'une analyse substantielle de son impact.

D'ailleurs, l'un des principes fondamentaux, réitéré par la Commission européenne par la Communication COM (2007) 287 est de maintenir la stabilité de la nomenclature NUTS, les modifications de la nomenclature étant limitées à une fréquence d'au moins trois années. Une exception est permise seulement dans le cas d'une réorganisation administrative complète dans un État membre.

3. La régionalisation en tant que stratégie administrative

Dans le domaine de la politique régionale, il n'y a pas un schéma ou un modèle de réforme régionale pour les pays candidats ou membres, donc pour la Roumanie non plus. Il n'a jamais été la question *« d'imposer un modèle unique de gouvernement territorial dans les nouveaux États membres, mais il y a eu des opinions différentes en ce qui concerne l'opportunité de la décentralisation et de la consolidation du niveau intermédiaire (régional)* ».[1]

La formule courante des régions de développement maintient les départements comme unités administratives territoriales de l'État roumain. Mais le paradigme régional pourrait supposer à l'avenir la disparition ou non des départements en tant que niveau intermédiaire d'organisation administrative territoriale et leur substitution par la région. L'évolution de l'organisation régionale implique l'appropriation d'une option adéquate pour la société roumaine. On analysera ici les options espagnole et française.

Un choix possible est la régionalisation politique, selon le modèle espagnol, qui peut produire des effets similaires au fédéralisme: l'apparition des entités quasi fédérales, découpées selon des identités ethniques et culturelles, entités avec une autonomie constitutionnelle et qui puissent élargir la sphère de leurs prérogatives pour adopter des normes à puissance de loi, valides sur le territoire de la région respective, plurilinguisme consacré par la constitution. Des variantes de ce type de régionalisation, asymétriques, sont les autonomies ethniques de l'Italie (la minorité allemande de Tyrol), de la Finlande (la minorité suédoise), de la Grande Bretagne (l'Écosse, l'Irlande du Nord en certaines périodes), la Belgique (la communauté flamande) etc. On peut constater que, en pratique, ce type de régionalisation n'a pas mis fin aux tensions interethniques et aux tendances séparatistes ethniques, qui se manifestent avec intensité en Catalaunie, Pays Basque, Écosse, Irlande du Nord, Flandre etc.

Ce modèle se trouve en contradiction avec la tradition de la Roumanie, d'État national unitaire. D'autre part, une éventuelle adoption de ce modèle pourrait créer de nouvelles difficultés en Roumanie, produites par les discordances de développement économique entre les différentes zones historiques et pourrait exacerber les tendances d'isolation, d'enclavisation et de séparatisme ethnique. Bien sûr, la Roumanie respecte et garantit aux standards européens les droits des personnes qui appartiennent aux minorités nationales, une idée que nous soutenons totalement. Mais l'option de la régionalisation sur des critères ethnoculturels ne s'inscrit pas parmi ces droits ; par contre, elle représente une politique à l'égard de laquelle la majorité de la population exprime de sérieuses réserves.

Les autorités législatives de l'État roumain ont fermement rejeté, en 2004 et 2005, la proposition législative - initiée par un sénateur (actuellement député dans le Parlement européen) au nom d'une structure associative hongroise intitulée « Le Conseil National des Szeklers » –

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[1] Keating, Michael, *„Regionalisation in Central and Eastern Europe: The Diffusion of a Western Model?"*, dans Keating, Michael et Hughes, James (coord.), *The Political Economy of Regionalism*, Ed. Frank Cass, 1997, p.51.

d'instituer, strictement sur le critère ethnique hongrois, une région autonome avec un statut spécial – « La contrée des Szeklers » – qui réunit des zones géographiques (2 départements) habitées prépondéremment par des citoyens d'ethnie hongroise, avec des institutions parallèles à celles de l'État roumain, douées avec des attributions de puissance publique. Les motifs de la rejection ont été d'ordre constitutionnel, la Roumanie étant un État national, unitaire et indivisible. Il faut mentionner que la population en Transylvanie est en majorité d'ethnie roumaine (sauf les 2 départements mentionnés).

Une bonne option peut être la régionalisation comme stratégie administrative, privée de dimensions politiques, selon la formule française d'après 1982, qui s'encadre dans le paradigme de l'État unitaire décentralisé. Ce type de région n'institue pas un autogouvernement politique, impliquant seulement l'élection des conseils régionaux et d'un président de conseil régional. La décentralisation administrative, la création d'organismes responsables devant la communauté, la capacité des institutions d'adopter des décisions plus proches de la communauté locale constituent des éléments de la régionalisation administrative, explorés déjà dans plusieurs paliers de la vie publique de l'espace roumain. Nous considérons que l'évolution dans cette direction, vers l'application conséquente du principe de la subsidiarité, vers la décentralisation, l'autonomie locale, l'organisation régionale comme stratégie administrative, devrait continuer en même temps que le maintien du caractère d'État national unitaire indivisible prévu par la Constitution de la Roumanie. Le développement des structures régionales du pays doit se réaliser pour l'accomplissement des objectifs de la politique régionale de l'UE (en spécial, la gestion efficiente des fonds européens destinés à la Roumanie) et pour le rapprochement des institutions de l'État du citoyen.

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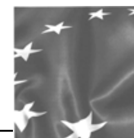

Governance and Community Acquis in Practice: Aspects of the transposition of Directive 2003/98/EC on the reuse of public sector information into Romanian Law

Dr. EMILIA LUCIA CĂTANĂ
Chargée du cours - Université "Dimitrie Cantemir" de Târgu-Mureș

Abstract

At the community level, Directive 2003/98/EC on the reuse of public sector information was enacted in order to institute the regulation framework for correct, proportionate and non-discriminating conditions on the reuse of European Union public sector information, for both commercial and non-commercial purposes.

Law no. 109/2007 regulates the legal framework for the reuse of documents possessed by public institutions, which have been created during their own public activity and which can subsequently be used for commercial and non-commercial purposes, and it is not enforceable on means of mass information.

Although Law no. 109/2007 on the reuse of information from public institutions represents a transposition of Directive 2003/98/EC into Romanian law, which is revealed by legally defining "reuse" as the use of documents from public institutions by legal persons or private individuals, for commercial or non-commercial purposes, enactment of Law no. 109/2007 generated controversial reactions from both civil society and the European Commission, which triggered the modification and completion of the law in 2008.

The research conducted places emphasis on the European context of Law no. 109/2007 enactment, on the reuse of information from public institutions, highlighting controversies regarding the transposition into Romanian Law of Directive no. 2003/98/EC, as well as debates that gave rise to legislative suggestions with regard to the provisions in force of Law no. 109/2007, modified and completed by Law no. 213/2008.

1. EUROPEAN LEGAL FRAMEWORK OF THE REUSE OF INFORMATION FROM PUBLIC INSTITUTIONS

Accurate understanding of the "reuse" of public information from institutions implies a double approach when analyzing this concept: firstly, from the perspective of openness, free access to public interest information principles, which constitute the premises for the reuse of public information from institutions at the European level; secondly, from the perspective of community regulations in this field of law, with reference to Directive no. 2003/98/EC on reuse of public sector information.

1.1. The openness principle was introduced by the Maastricht Treaty in 1993, in order to consolidate the democratic character of the institutions. In accordance with the Treaty, conferences of member states' government representatives summoned at Rome on 15 December 1990 to enact modifications made on the Treaty establishing the European Economic Community in view of achieving political union and the final stages of economic and monetary union, and of those summoned at Brussels on 3 February 1992 to operate the necessary changes to the Treaties establishing the European Coal and Steel Community, and the European Atomic Energy Community consequent to the changes made on the Treaty establishing the European Economic Community, have enacted a series of declarations, among which of interest to us is the Declaration on the Right of Access to Information. According to this, "transparency in the

decision-making process consolidates the democratic character of institutions and public confidence in administration. Consequently, the Conference recommends that the Commission should address the Council by 1993 at the latest, with a report on the measures taken to increase public access to information from institutions".

The European Union Council and the European Commission have subsequently enacted a Code of conduct regarding public access to documents in their possession as a supplementary essential aspect of communicating with institutions and notification policy.

Providing more information and communicating more efficiently are pre-requisites for generating a sense of belonging to Europe. The purpose needs to be the creation of a translational space where citizens of different countries may debate their understanding of the important European Union problems. This will help lawmakers to be in contact with the European public opinion and it could guide them in identifying European projects that mobilize public support.

The White Paper on European Governance[1] makes distinct references to the openness principle, defined in the following terms: "Institutions need to work in a more open way. Together with member states, they have to communicate actively on the European Union's activity and the decisions it makes. Accessible language, understandable for the public opinion needs to be used. This is highly important for improving trust in public institutions."

According to the Paper, making the Union function in a more open manner implies people's access to genuine information on European problems; institutions and Member States need to communicate with the public on European matters in a more active manner; information must be presented according to local needs and preoccupations and be made available in all the official languages, unless the Union desires to exclude part of its population – a difficulty that will become more acute in the context of EU expansion. For this purpose, communication technology with the public plays an important part.

In agreement with the definition given to the "openness" concept by the White Paper of European Governance, the Organization for Economic Cooperation and Development (OECD)[2] defines the openness principle as the right to be heard and to participate in public decision-making.

The access to information mentioned by the European Commission as a component of the openness principle in good European governance is presented in European legal doctrine in a similar manner. This approach sees the right to information as a condition for public participation in the decision-making process, monitoring government and the private sector[3] activity, which includes the right to search for information, to access it, and to be provided with it[4].

Moreover, we note that the first legislative document that grants the freedom of information was issued by the Swedish Rikstag (Parliament) in 1766. The Law on access to public documents provides that official documents "shall be immediately placed at the disposal of whoever makes a demand, upon request, and free of charge"[5].

Furthermore, research on Great Britain's experience in this field led to the identification of statements in specialty literature regarding the Citizen's Charter, launched in Great Britain in 1991. It is a 10 year programme aimed at elevating public service norms and increasing its responsiveness to the users' needs and desires. The Charter was based on six principles:

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[1] *European Governance. A White Paper*, COM (2001) 428 final, 25 July 2001, Brussels.

[2] OECD, *Regulatory Reform in Italy, Government Capacity to Assure High Quality Regulation,* OECD Publications, 2001, p.33.

[3] A.C. Kiss, D. Shelton, *Manual of European Environmental Law*, Cambridge University Press, 1997, p.73.

[4] idem, p.74.

[5] See W. Madsen, *Handbook of Personal Data Protection*, London, Macmillan Publishers, New York: Stockton Press, 1992.

normalization, information and transparency, choice and consultancy, courtesy and consideration, retrieval, as well as cost-effectiveness. In 2000, the "Freedom of Information Act" was enacted, which includes distinct regulations in the field of free access to information from public institutions, of information exempted from free access (such as that concerning national security or defence, personal data, etc.), of amendments made to the 1998 Law regarding data protection etc.[1]

Romania enacted Law no. 544/2001 regarding free access to public interest information[2], which represents the fundamental legal framework in the field of free unrestricted access to any public interest information act, and also an important manifestation of the right to information granted by the Romanian Constitution.

1.2. If free access to public interest information represents a first stage corresponding to *obtaining* public interest information, then regulation of the modality to use this information can be identified as a second distinct stage, that of the *reuse* of information from public institutions.

With regard to the reuse of information from public institutions at the European level, Directive no. 2003/98/EC was enacted, establishing a minimal set of norms on the reuse and practical means to facilitate the reuse of existent documents that belong to public sector bodies of member states. The directive institutes the regulation framework of correct, proportionate and non-discriminating conditions for the reuse of public information possessed by European Union public sector bodies[3]. The premises for the enactment of this community document were the important differences among norms and practices of member states regarding the use of public sector information, which created obstacles in the way towards valorising the entire economic potential of this document's key-resource. Thus, minimal harmonization of national norms and practices regarding the reuse of public sector documents was necessary.

Legal literature emphasises on the importance of re-using information in public institutions for commercial purposes, that is, by the private sector[4]. This aspect had preoccupied the European Commission prior to the enactment of Directive no 2003/98/CE. Thus, in October 2001 the European Commission issued a communication on the reuse and exploitation of public sector information for commercial purposes, and in January 2002 the Commission published another document, through which it indicated a series of legal instruments that could facilitate the exploitation of public sector information (DG Information Society Working Document, Towards a European Union Framework for the exploitation of public sector information). In June 2002, the Commission presented to the European Parliament a European directive proposal on the reuse and exploitation of public sector information (EC 2002), which underwent a series of amendments, before becoming the present Directive no. 2003/98/EC, in November 2003.

Nevertheless, we point out that Directive no. 2003/98/EC is aimed at the reuse of public information from institutions for both commercial and non-commercial purposes, being guided

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[1] For details, see M.Turle, *Freedom of Information Manual*, Sweet & Maxwell, London, 2005.

[2] Law no 544/2001 concerning free access to public interest information, published in the Official Gazette of Romania, Part I, no. 663 of 23 October 2001, legal act modified and completed by Law no. 371/2006, Law no. 380/2006, Law no. 188/2007; moreover, by Government Decision no. 123/2002 Methodological Norms for the enforcement of Law no. 544/2001 were enacted, whilst by Government Decision no. 878/2005 public access to information on the environment was regulated..

[3] M. Dekkers, F. Polman, R. Velde, M. De Vries, *Measuring European Public Sector Information Resources - Final Report of Study on Exploitation of public sector information – benchmarking of EU framework conditions*, 2006, p.11, available at http://ec.europa.eu, accessed on 10 September 2009.

[4]See C. Prins, *Access to Public Sector Information: In Need of Constitutional Recognition?,* in G. Aichholzer, H. Burkert, (eds.), "Public Sector Information in the Digital Age. Between Markets, Public Management and Citizens' Rights", Edward Elgar Publishing, 2004, pp. 48-69; also see D.C. Dragoș, B. Neamțu, *Reusing Public Sector Information – Policy Choices and Experiences in some of the Member States with an emphasis on the Case of Romania*, in "European Integration Online Papers", vol. 13, 4:2009, http:/eiop.or.at/eiop/texte/2009-004a.htm, accessed on 23 September 2009.

by the following general principle: "Member States guarantee that when reuse of public sector bodies documents is allowed, the respective documents are reused for commercial or non-commercial purposes on grounds of conditions provided by chapters III and IV. If this is possible, documents shall be made available in electronic format." At the same time, the Directive defines the "reuse" concept as "the use of public sector bodies' documents" by legal persons or private individuals, for commercial and non-commercial purposes that are different from the initial purpose for which they have been issued."(art. 2 point 4).

2. Controversies on the transposition of Directive no. 2003/98/EC into Romanian Law

Law no. 109/2007 regulates the legal framework of the reuse of documents possessed by public institutions, which the latter have created during public activities and which can subsequently be used for commercial or non-commercial purposes, and it is not enforceable by means of mass information. This legal act represents the transposition of Directive no. 2003/98/EC into Romanian Law, although the definition of "reuse" in it is "the use of documents possessed by public institutions by legal persons or private individuals, for commercial or non-commercial purposes" (art. 4 letter c), and the enactment of Law no. 109/2007 generated controversial reactions from both civil society and the European Commission, which determined the modification and completion of the law in 2008.

Thus, from the very motivations behind the bylaw on the modification of Law no. 109/2007 on the reuse of information from public institutions, it was observed that in the letter of 16 July 2007 addressed to the Ministry of Communication and Information Technology[1], the European Commission drew attention to some inadvertences between certain provisions of Directive no. 2003/98/EC and the manner in which these have been transposed into Law no. 109/2007; these inadvertences should have been rectified in order to avoid the activation of the procedure for incorrect transposition of community acquis. The main inadvertences observed by the European Commission referred to the following aspects:

[1] Ministry of Communication and Information Society in the current government structure.

- Inclusion of public institutions in the sphere of the "third party" concept, in art. 4 letter e. of the Law, was not in concordance with the intent of the European lawmaker to allow for reuse of information from public institutions, including information that was the intellectual property of public institutions; this lack of concordance necessitated exclusion of public institutions from the sphere of the "third party" concept, as the law had initially provided;

- Directive provisions referring to the non-discriminating character of conditions enforced for the reuse of documents have not been taken over, thus making it necessary to take these provisions over in a new paragraph of art. 5 that instituted the non-discriminating character of information reuse;

- art. 6 paragraph 2 of the law was not perfectly compatible with the Directive requirements, which claim for a 20 days' term for resolving cases to be calculated from the moment the solicitation is filed with the department responsible with handling it;

- The way art. 11 paragraph 2 of the Directive was taken over by the law is defective and may lead to the granting of some exclusive rights, including the situation when these are not necessary for supplying a public interest service.

Moreover, the law in its initial form gave public institutions the right to levy taxes for the reuse of documents for commercial purposes, which generated unfavourable reactions from the civil society and the press ever since the project was initiated[1].

Firstly, we can notice that Romanian law in its initial form was contrary to the statutory right to information, stipulated in art. 31 (1) of the Romanian Constitution, which states that "the right of the people to access any public interest information cannot be restricted", and seriously prejudiced the transparency process in the activity of public institutions.

On the other hand, Law no. 107/2007 contravened the provisions of Law no. 544/2001 concerning free access to public interest information, which sets no costs whatsoever for using this information.

These aspects lead to the enactment of Law no. 213/2008 for the modification of Law no. 109/2007 on the reuse of information from public institutions, whose regulations provide a remedy for the initial shortcomings of Law no. 109/2007 pinpointed by the European Commission and the civil society.

3. REGULATION SPHERE AND PROCEDURES OF REUSE OF INFORMATION FROM PUBLIC INSTITUTIONS IN ACCORDANCE WITH LAW NO. 109/2007, MODIFIED AND COMPLETED BY LAW NO. 213/2008

3.1. Provisions of the modified and completed Law no. 109/2007 use the phrase "public institution" to refer to:

- any authority of the central or local public administration;
- any public institution of general or local interest, either autonomous or subordinated to or controlled by the public authority;
- any legal person, other than those previously mentioned, which has been established in order to carry out public interest activities without commercial character, and currently in one of the following situations: financed from public funds, subordinated to or controlled by a public authority or institution, or when more than half of the members of its

[1] APADOR-CH protest of 27 April 2006 against the way government transposed the Directive of the European Parliament and of the Council on the reuse of public sector information - www.apador.org, accessed on 24 September 2009; Pro Democrația Association is against the enactment of the bylaw on the reuse of public interest information - www.apd.ro, accessed on 24 September 2009; Jurnalul Național, 25 April 2006; Ziua, 22 April 2006.

administration council / governing or supervising body are appointed by a public institution or authority.

What becomes prominent with regard to the abovementioned legal provisions is the fact that by taking a comparative look at Law no. 109/2007 and Law no. 544/2001 one will notice an essential change as far as the will of the law-maker is concerned; and this will is expressed in the legal document that defines a public institution in Law no. 109/2007. Thus, whereas Law no. 544/2001 distinguishes between public authorities and public institutions[1], Law no. 109/2007 incorporates the authority of the local or central public administration into the concept of "public institution".

Consequently, the desire of the lawmaker to enhance the enforcement sphere of the "public institution" concept becomes manifest, and in our opinion it represents a new form of manifestation of the openness principle in relation to the civil society, explained in the motivations behind Law no. 213/1998 that mention the enforceability of the law on "public sector" information in general.

The fact that the lawmaker intends to make its will manifest itself is obvious in the re-published Framework-Law on Local Public Administration no. 215/2001, which distinguishes in a totally different manner between local public administration authorities and public institutions, subordinating the latter to local public administration authorities[2] (art. 19); however, specialty doctrine demonstrates that "public institutions are hierarchically subordinated to their founding authority, which shall be endowed with training power and control power over the first"[3].

On the other hand, if the general norm included in art. 2 of Law no. 109/2007 provides that the object of this law is the reuse of "documents possessed and created by public institutions in the course of their activity" (art. 2), the same legal document limits the domain of reuse, for documents that are the intellectual property of a third party.

Furthermore, the use of documents for the personal information of private individuals or legal persons, or in journalistic activities, or the exchange of information among public institutions as a consequence of fulfilling public tasks are not considered to be reuse of information (art. 4 letter c, second thesis of Law no. 109/2007).

3.2. Procedurally, claims for the reuse of documents are filed in writing, either on paper or in electronic format when the public institution concerned possesses the necessary technical equipment. Claims must include details on the public institution where the document is filed, the information requested so that the public institution is able to identify the documents, the personal identification data of the claimer, the address where the answer to the claim is to be sent, and the purposes the requested information will serve.

Claims for the reuse of documents are to be answered within 20 working days by the department designated to handle such claims; waivers are accepted only in the case of high

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[1] For exemplification, we quote the following provision of Law no. 544/2001, with subsequent modifications and completions: "the term *public authority or institution* refers to any public authority or institution that uses or manages public financial resources, or any state-owned enterprise, national company or any other company subordinated to a local or central public authority, with the Romanian state or an administrative-territorial unit being sole or majority shareholders" (art. 2 letter a. of Law no. 544/2001); "Providing citizens with access to public interest information is the responsibility of public *authorities and institutions,* and it is done ex officio or upon request by the public relations department, or the public servant designated for this purpose." (art. 3 of Law no. 544/2001).

[2] For example, art. 19 of Law no. 215/2001 provides the following: "In the administrative-territorial units where the number of national minorities citizens exceeds 20% of the number of inhabitants, *local public administration authorities, and public institutions in their subordination, as well as Deconcentrated Public Services* ensure that their mother tongue is used for communication with these citizens, in accordance with the provisions of the Constitution, of this law, and of the international treaties that Romania is part of." ; we mention that the public authorities are specifically enumerated and regulated in Title III of the re-published Romanian Constitution, and Law no. 215/2001,.

[3] E.Bălan, *Instituții de drept public*, All Beck Publishing House, Bucharest, 2003, p.63; also see, E. Bălan, *Instituții administrative*, C.H. Beck Publishing House, Bucharest, 2008.

complexity claims, when the initial 20 days notice may be extended for 20 more working days, with preliminary notification within 15 working days. These terms differ from the terms provided by Law no. 544/2001 on the free access to public interest information, and what makes these differences even more striking is the fact that the 20 days notice of Law no. 109/2007 is taken over by Directive no. 2003/98/EC.

Given the differentiated regulation of procedural terms in the two normative acts, and the provisions of Directive no. 2003/98/CE, we consider that in the context of similar regulations for free access to public interest information and those for the reuse of information from public institutions, reanalysis by the lawmaker of the present procedural terms provided in Law no. 544/2001 would be pertinent; and taking over of the 20 and 15 working days notice provided in Law no. 109/2007 in this normative act would be desirable. We believe that by materializing this proposition, free access to public interest information would not suffer any limitation, but would facilitate free access, as public authorities and institutions provide citizens with a reasonable analysis and answer term, and useless litigation or reanalysis is thus avoided. Practice supports this opinion by drawing attention to the authorities' impossible attempt to follow the procedural terms currently in force in the field of free access to public interest information.

One of the deficiencies of Law no. 109/2007 that we believe needs adjustment is the fact that up to the present, no specific regulations regarding free of charge access to re-usable information have been include in the Law, although Law no. 213/2008 removed the possibility for public institutions to establish taxes for commercial purposes document reuse services. There is only the provision included in art. 8 paragraph 1 thesis I of the law, which specifies that a claim for information reuse implies making copies of public institution documents, whose costs are to be covered by the petitioner.

Another aspect to be considered is the fact that incomes collected from copying public documents from institutions go to the state budget. We express our disagreement with this legal provision based on the fact that the initial costs for these services are entirely covered by the respective public institution (by means of staff, material and technical means). Therefore, it is obvious that the payment of these services should become part of that public institution's budget, and not the state budget (especially in the case of local public administration authorities, whose activity is based on the principle of financial autonomy).

Furthermore, we note that according to the provisions of Law nr. 109/2007, modified and completed, public institutions must ensure conditions to facilitate access to documents available for reuse, especially by issuing lists and directories – in the case of electronic means-, with the most important documents available for reuse, by appointing contact persons and indicating information points. This legal provision is part of the general legal framework on the obligation to provide public information and services in electronic form[1].

In the field of electronic public information and services, Romania still needs to develop public policies concerning the use of electronic means by the citizens. Research[2] on this topic, based on the indicators of EUROSTAT -European Community Statistics Service- on good government revealed that in the case of indicator "Openness and participation", sub-indicator "Use of the *e*Government system by citizens", in 2006, Romania was on the last position among the member states of the European Union. Although this percentage was higher in 2007 in comparison to 2006, growing from 3% to 5%, the increase is insufficient to match the level of the other member states of the European Union (30% in 2007).

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[1] In Romania this obligation is regulated by Law no. 161/2003 – Title II, published in the Official Gazette of Romania, Part I, no. 279 of 21 April 2003, with subsequent modifications and completions.

[2] See, E. L. Cătană*, Principiile bunei guvernări. Evoluții europene și studii comparative*, Universul Juridic Publishing House, Bucharest, 2009, p.264

4. CONCLUSIONS

If free access to public interest information is part of a first stage that corresponds to obtaining public interest information, regulating the modality to use this information is of real interest, and it can be identified as a distinct second stage, that of reusing public institutions information.

With regard to the reuse of public institutions information at a European level, Directive no. 2003/98/EC was enacted, which was transposed in our country by Law no. 109/2007 with subsequent modifications and additions; this act defines "reuse" as the use of documents possessed by public institutions by legal persons or private individuals, for commercial or non-commercial purposes.

This study was aimed at researching the European context in which Law no. 109/2007 regarding the reuse of public institutions was sanctioned, emphasizing controversies concerning the transposition of Directive no. 2003/98/EC into Romanian law, legislative comments and propositions for Law no. 109/2007 provisions that are still in force, but modified and added by Law no. 213/2008.

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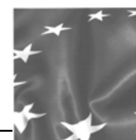
Les fondements économiques du développement durable

Dr. ERIC OLSZAK
Faculté Libre de Droit, C3RDet IDDR
Université Catholique de Lille, Chercheur associé au CLERSE

INTRODUCTION GÉNÉRALE

La parution du rapport BRUNDTLAND (1987), il y a plus de 20 ans, a contribué à modifier sensiblement la perception du concept de croissance économique jusque là principalement orienté vers une approche quantitative en introduisant la notion de développement durable, traduction française de «sustainable development». En effet, le développement durable repose sur trois piliers essentiels : l'efficacité économique, la prudence écologique et l'équité sociale. En outre, il implique également de répondre aux besoins du présent sans compromettre la capacité des générations futures de répondre aux leurs.

A travers cette approche, on peut estimer qu'au moins deux des trois composantes laissent apparaître des considérations à la fois qualitatives et sociétales, la prudence écologique incitant les entreprises à limiter les effets de leurs activités productives sur l'écosystème et l'équité sociale, en replaçant l'être humain au cœur du développement.



Dans le même temps, le concept de développement durable peut être appréhendé par plusieurs champs disciplinaires, l'économie naturellement mais aussi le droit, la sociologie, les sciences politiques et les sciences dites « dures » comme les sciences de la vie et de la matière. L'ensemble de ces disciplines permettent de répondre à de multiples questions qui prédominent notamment lors de la mise en pratique par les institutions publiques et par les entreprises des principes du développement durable. Par exemple, la déclinaison au niveau local des agendas 21, qui regroupent une multitude d'actions visant à promouvoir un développement plus harmonisé, repose en grande partie sur une volonté politique des élus en place. Ces mêmes élus fondant leurs actions sur le cadre législatif en vigueur en matière de gestion des collectivités locales, en même temps qu'ils veillent à améliorer le bien-être de leurs électeurs.

Face au foisonnement de multiples disciplines, on peut se demander quelle est la place tenue par l'économie dans la mise en œuvre du développement durable ? On doit admettre que le poids de l'économie reste prédominant car on oublie trop souvent que le concept du développement durable repose en tout premier lieu sur le développement économique et la création de richesse bien qu'il essaye de mieux prendre en compte l'environnement dans les décisions économiques.

Comprendre les fondements économiques du développement durable nous oblige à nous interroger au préalable sur la place tenue par l'environnement naturel dans l'analyse économique des origines jusqu'au milieu des années 1980. Dans un deuxième temps, cela nous conduit à analyser les initiatives prises par les instances supranationales jusqu'à l'apparition du concept en 1987. Pour finir, nous examinerons ses modalités d'application durant les deux dernières décennies.

1. La prise en compte de l'environnement dans les théories économiques : des origines jusqu'au milieu des années 1980

Bien que l'apparition du terme « environnement » dans l'analyse économique ne date que de quelques décennies (ABDELMAKI, MUNDLER, 1997), il serait erroné de penser que ce concept si important ne fit pas l'objet d'une attention particulière dès la genèse de la pensée économique ; simplement, le terme « environnement » chez les premiers théoriciens fut remplacé par un terme plus large de sens en même temps que plus neutre, celui de « nature ».

1.1 La prise en compte de l'environnement par la théorie économique : des physiocrates aux néoclassiques

La nature a fait ainsi l'objet d'un traitement privilégié chez les préclassiques, en l'occurrence l'école physiocratique (QUESNAY, 1758) qui considère que seule la nature est créatrice de richesses et que les agriculteurs sont les seuls qui restent susceptibles d'augmenter le produit brut et donc la croissance économique. Ce sont les physiocrates qui vont également être les premiers à introduire un débat encore actuel et qui consiste à mesurer l'impact des activités économiques sur la biodiversité.

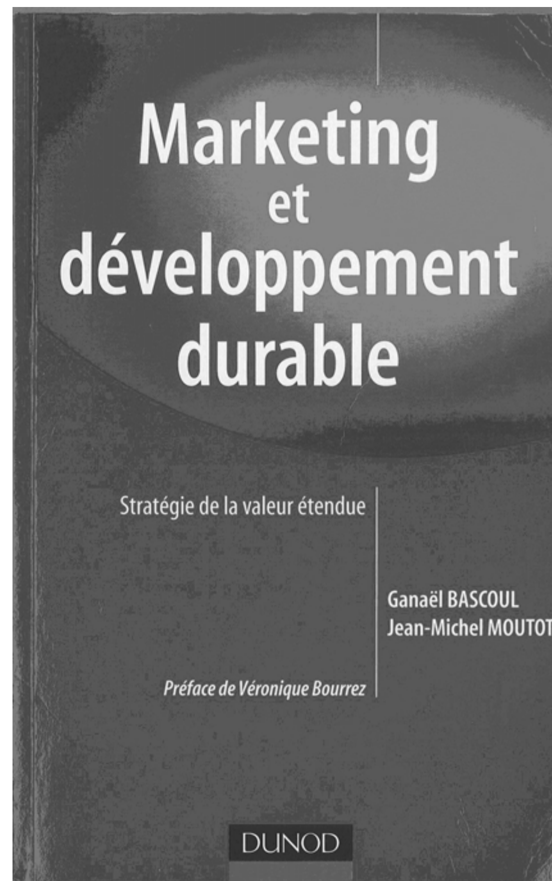
En effet, sous l'impulsion de Pierre POIVRE (1797), nommé en commissaire intendant à l'Ile Maurice, les idées physiocratiques qui ne recevaient alors que peu d'échos en France vont être mises en œuvre sur cette île. A ce titre, POIVRE, dans son « Discours à l'assemblée des habitants de l'Ile de France » (l'ancien nom de l'Ile Maurice !) mettra en évidence les incohérences du développement local matérialisées par une destruction des ressources émanant des exploitants pour leur propre profit ne laissant à leurs successeurs que des terres arides, en même temps qu'ils altéraient durablement l'écosystème local. Cet exemple est édifiant, il nous montre que deux siècles avant la disparition de la mer d'Aral et la destruction d'une partie non négligeable de la

forêt amazonienne, l'être humain pouvait adopter dans certains cas des pratiques de développement non-durable où l'économie s'opposait déjà à l'écologie !.

Si l'on peut admettre que les physiocrates sont les premiers économistes de l'environnement ou de la nature, c'est avec l'école classique que ces questions vont connaître un tournant décisif et un essor important. En effet, le développement de l'analyse classique, dès 1776 avec Adam SMITH et ses successeurs, mettra l'accent sur le principe de l' « État stationnaire ». Celui-ci se traduit sur le long terme par l'arrêt de l'accumulation de richesses et donc par celui de la croissance. A ce titre, les contributions de MALTHUS et de RICARDO sont édifiantes.

Celle de MALTHUS (1803) d'abord, lorsqu'il énonce dans son *Principe de population*, le fait que la population du Globe évolue en suivant une progression géométrique, alors que les richesses naturelles n'évoluent quant à elles qu'en suivant une progression arithmétique, l'auteur aboutit à la conclusion que l'humanité s'achemine inéluctablement vers une famine généralisée. Ces conclusions seront reprises deux siècles plus tard par les membres du Club de Rome sur lequel nous reviendrons plus tard.

L'approche ricardienne pour sa part (RICARDO, 1817), bien que moins « sombre » que l'approche malthusienne, se focalise principalement sur la notion d'état stationnaire. RICARDO s'appuie sur la théorie de la rente différentielle, qui implique qu'en réponse à l'augmentation de la population et, par conséquent, de ses besoins alimentaires, on finisse par mettre en culture des terres moins fertiles et qui nécessitent une affectation plus importante de moyens matériels et ainsi une augmentation des coûts de production. La richesse d'une nation dépendant essentiellement de la répartition des revenus entre les différentes catégories de la population, il apparaît que la mise en culture de terres moins fertiles finit par aboutir d'abord à une augmentation de la rente pour les propriétaires fonciers. Ensuite, si l'on se situe d'un point de vue des salariés, il transparaît que leur salaire finira par augmenter également, même s'il se situe par ailleurs à un niveau juste susceptible de leur assurer un minimum de subsistance, à cause de l'augmentation du prix du blé qui entre dans la fabrication de certains aliments de base.



Les capitalistes pour leur part finiront par constater une diminution de leur profit et par toute une série de réactions en chaînes, cela finira par aboutir à un ralentissement de l'investissement et à un ralentissement de la production et aboutir à un état stationnaire. Les conclusions de RICARDO préfigureront d'une certaine manière certaines conclusions du Club de Rome concernant l'évolution probable de la croissance sur le long terme.

Si l'analyse classique nous conduit à nous interroger très tôt sur l'évolution des activités productives de la planète, le courant néoclassique pour sa part amplifie notre réflexion sur certains problèmes spécifiques liés au fonctionnement d'une économie moderne. A cet égard, il nous faut retenir la contribution de quatre auteurs, JEVONS, MARSHALL, PIGOU et COASE.

La contribution de JEVONS (1865), à la prise en compte de l'environnement dans la sphère productive, trouve sa source dans un ouvrage consacré au problème de l'exploitation des mines de charbon et intitulé « *The Coal question* ». Dans cet ouvrage, l'auteur considère que le charbon constitue l'énergie motrice de la puissance anglaise de la seconde moitié du dix-neuvième siècle. Malheureusement, cette source d'énergie s'épuise progressivement du fait de l'exploitation intensive destinée à faire face aux besoins énergétiques toujours croissant liés au développement.

La théorie néoclassique s'étoffant au cours des décennies, les travaux d'Alfred MARSHALL, auteur considéré aujourd'hui encore comme la cheville ouvrière de l'école de Cambridge, vont introduire un nouvel élément dans la compréhension de l'économie de l'environnement. En effet, dans un ouvrage essentiel intitulé *« Principes d'économie politique »*, MARSHALL (1890) met en évidence le principe d' « externalités » qu'il définit comme l'existence de phénomènes qui se produisent du fait de l'interdépendance des agents sans que le marché fasse payer ou rétribuer les conséquences de ces effets. Ainsi, une usine chimique située au voisinage d'une zone urbaine et qui relâche dans l'atmosphère des composants toxiques provoque de fait un effet externe négatif.

Cette notion d'effets externes négatifs, matérialisée par la pollution, constitue une étape essentielle dans la prise en compte des phénomènes environnementaux et, par extension, de son impact économique. L'un des successeurs de MARSHALL au sein de l'école de Cambridge, PIGOU (1920), dans un ouvrage qui fera date *« The Economics of Welfare »*, va reprendre les travaux précurseurs de son illustre prédécesseur, en lui donnant un contenu plus scientifique en même temps qu'il s'attachera à trouver des solutions aux problèmes des externalités. PIGOU estime que les atteintes au bien-être d'autrui liées à une quelconque activité productive doivent être compensées par la mise en place d'une taxe qui permettrait de prendre en compte ce dommage, en rétribuant la victime de cette pollution. On voit apparaître ainsi pour la première fois le principe du pollueur payeur (le PPP), concept qui sera repris à de multiples reprises dans la littérature contemporaine en économie de l'environnement et qui fait l'objet aujourd'hui encore de sérieuses controverses. On peut se référer pour l'occasion aux travaux de DE JOUVENEL (1970), PEARCE (1976) et DALY (1984), qui ont contribué à enrichir le débat sur ces questions. Bien que l'analyse de PIGOU fasse l'objet de critiques, notamment en raison de son support théorique reposant toujours sur un modèle de concurrence pure et parfaite, elle contribue cependant à une meilleure compréhension de la notion de « coût social » et de l'intervention de l'Etat à travers le mécanisme de taxation et de redistribution.

Si l'analyse de PIGOU a suscité de nombreux commentaires de la part d'économistes situés sur des courants opposés à l'école néoclassique, l'une des critiques majeures émane de sa propre famille matérialisée par l'approche « coasienne ».

COASE (1960), dans son ouvrage *« The Problem of Social Cost »*, remet en cause le caractère systématique de l'intervention publique, en permettant aux effets externes de revenir au marché. Son idée essentielle est de permettre que des négociations se mettent en place librement entre les « victimes de pollutions » et les « pollueurs ». D'inspiration ultralibérale, en droite ligne des disciples de l'école de Chicago comme HAYEK, COASE va contester la notion « pigouvienne » de coût social, en considérant que c'est l'intérêt de l'ensemble des individus qui doit être pris en compte et non pas uniquement celui des victimes de l'externalité négative. Dans cette optique, il convient d'instaurer une négociation directe entre les pollueurs et les victimes jusqu'à ce qu'il se produise une entente au niveau de la pollution acceptable. Pour illustrer cet exemple, on peut prendre en considération deux entreprises, A et B, qui produisent chacune un bien quelconque et sont situées dans le cas présent à côté d'une rivière. Il apparaît que l'entreprise A pollue la rivière au détriment de l'entreprise B. Dans l'exemple présent, deux cas de figure peuvent être recensés, dans le premier cas, l'entreprise A détient les droits de propriétés sur l'usage de la rivière et alors l'entreprise B doit payer l'entreprise A pour que celle-ci accepte de diminuer ses rejets. B aura

intérêt à procéder de la sorte tant que le coût que constitue pour elle ce paiement sera inférieur au coût du dommage qu'elle subit du fait de la pollution. Pour sa part, A aura intérêt à accepter le paiement de B tant que l'avantage ainsi octroyé sera supérieur au coût correspondant à la mise en place d'un procédé de dépollution. Le deuxième cas de figure fait de l'entreprise B la détentrice des droits de propriété sur la rivière et alors, c'est l'entreprise A qui doit payer B pour l'utiliser. Ainsi, A doit comparer le coût que ce paiement induit et le coût qu'elle supporterait pour mettre en place un procédé de dépollution. De son côté, B comparera le gain provenant du paiement de A et le coût induit par la pollution de A. Le point commun de ces deux situations est d'aboutir à un accord entre les deux entreprises quand les coûts marginaux de réduction de la pollution supportés par le pollueur seront couverts, dans le premier cas, par le consentement marginal à payer de B et dans le second par son consentement marginal à recevoir.

En conclusion, COASE montre que l'égalisation des dispositions marginales à payer des parties en présence permet d'atteindre une allocation optimale des ressources, ce que la littérature économique retient comme étant le « théorème de COASE ».

De nombreux travaux se sont appuyés sur l'approche « coasienne », en développant plus spécifiquement la théorie des droits de propriété, qui stipule que ce ne sont pas les biens eux-mêmes qui importent, mais que ce sont les droits de propriétés qui sont affectés à ces biens qui demeurent l'élément essentiel. De cette approche découle le raisonnement suivant : les facteurs de production (capital et travail) ne sont pas uniquement des ressources productives, mais représentent aussi des droits d'usage. Ainsi, l'utilisation de ces dernières entraînant une pollution implique que l'on peut ainsi les replacer dans la sphère marchande. DALES (1968) sera le premier à développer l'idée qu'il puisse exister un « marché des droits à polluer » où se rencontre l'achat et la vente de « permis à polluer ». Ce principe a fait depuis l'objet d'application concrète au niveau international, d'abord aux Etats-Unis dans les années 70 avec, l'adoption par le Congrès du *Clean Air Act* et, depuis le 1 er Janvier 2005, au sein de l'Union européenne.

1.2 Les remises en cause des théories néoclassiques

Si la théorie néoclassique a essayé d'intégrer la sphère environnementale dans l'analyse économique avec toutes les limites d'usage que l'on peut mettre en évidence (modèle de concurrence pure et parfaite, échange marchand s'appliquant de manière indifférenciée à tous les biens, etc.), elle a aussi constitué le vivier de multiples critiques qui ont privilégié une autre approche de la prise en compte de l'environnement. Ces multiples approches nous permettent de mieux comprendre l'apparition du concept de «développement durable » dans les années 80 et son originalité par rapport à la pensée dominante de l'époque.

Dans cette optique, on peut mettre en évidence quatre formes de contestation du modèle standard, matérialisées respectivement par : les travaux du Club de Rome, l'écodéveloppement, l'éconoénergétique et la décroissance.

Les travaux du Club de Rome, organisme créé en 1968 par l'industriel italien PECCEI, marquent incontestablement une rupture avec les théories dominantes keynésiennes, comme néoclassiques tournées résolument vers une croissance d'abord quantitative et peu respectueuses dans les décennies d'après guerre des conséquences des activités industrielles.

Il convient de revenir sur la contribution du Club de Rome en matière d'économie de l'environnement. Au début des années 70, cette organisation qui regroupe des experts issus du milieu industriel et universitaire s'engage dans une démarche prospective visant à mesurer l'impact des activités économiques d'une société capitaliste alors en pleine croissance sur l'environnement global et plus particulièrement sur l'évolution des richesses disponibles. A ce titre, on commande un rapport au MIT à l'équipe du professeur FORRESTER (1971), qui étudie la dynamique des systèmes économiques, au sein de cette équipe. Le professeur MEADOWS (1972) va se pencher sur la question et il fait paraître un ouvrage qui va occasionner des

polémiques ; cet ouvrage s'intitule « Halte à la croissance » et ses conclusions sont absolument terrifiantes. Ainsi, on peut mettre en évidence trois éléments importants résultant de cette étude :

- A l'horizon 2015, la population de la planète atteindrait 15 milliards d'individus ;
- A l'horizon 2010, il y aurait une grave pénurie de matières premières, notamment un épuisement des ressources en pétrole et en charbon ;
- A l'horizon 2010, le monde connaîtrait des pollutions majeures et globales.

L'idée principale tirée de ce rapport revient à dire qu'il faut d'urgence mettre un frein à la croissance, donnant naissance à l'époque au concept de « croissance zéro ». L'apparition de la crise économique en 1973 et les réactions parfois violentes du milieu scientifique dans les années qui ont suivi la parution de ce rapport, notamment celle de SAUVY (1973) sur l'aspect démographique et celle de FREEMAN (1981) sur la méthodologie utilisée, ont réduit considérablement l'impact de ces travaux sur les politiques économiques qui auraient pu en résulter.

La deuxième critique du modèle néoclassique de base est l'œuvre de SACHS (1980), qui apparaît en quelques sortes comme le père fondateur du concept d'« écodéveloppement », qui ne rejette pas la croissance en tant que telle, mais qui l'imagine sous une forme beaucoup plus qualitative. Cette nouvelle forme de croissance doit favoriser d'abord le progrès social en même temps qu'elle doit promouvoir une gestion « raisonnable » des ressources et de la biodiversité. Initialement destiné aux pays en voie de développement, l'application de ce concept a fait l'objet d'une extension au sein des pays développés, en considérant que chaque zone doit choisir son mode de développement en utilisant des techniques appropriées au contexte économique et social. Beaucoup d'observateurs considèrent aujourd'hui que l'écodéveloppement est le concept précurseur du développement durable.

Une troisième contribution ayant favorisé ultérieurement l'apparition du développement durable est celle de l'écoénergétique, encore appelé « ingénierie écologique », VIVIEN (1994). Ce concept résulte en grande partie des travaux des frères Eugène et Howard ODUM (1971) qui dans leurs deux ouvrages respectifs mettent l'accent sur les menaces que fait peser la croissance sur l'avenir de l'humanité en même temps que sur les défis à relever par les individus pour y remédier. Privilégiant, comme FORRESTER et MEADOWS, une approche systémique globale, l'écoénergétique s'appuie sur le principe de « thermodynamique », qui donne à l'énergie des propriétés de mesurabilité, d'additivité et de convertibilité et ainsi des caractéristiques comptables. Pour Howard ODUM, l'écologie obéit à un principe de maximisation sous contrainte où l'énergie est le principal vecteur d'un écosystème.

La quatrième et dernière forme de contestation du modèle néoclassique trouve sa source dans les travaux de GEORGESCU-ROEGEN (1979), qui dans son ouvrage *« The Entropy Law and the Economic Process »* fait référence également à la thermodynamique, en insistant tout particulièrement sur la loi de l'entropie, qui apparaît comme essentielle dans le processus précité. Dans cette optique, l'économie confrontée à cette loi de l'entropie voit diminuer progressivement et inéluctablement l'énergie, les activités productives conduisent à transformer de l'énergie et des matières premières en déchets de manière irréversible. L'état stationnaire est alors impossible et seule la décroissance est souhaitable.

2. L'INTERVENTION DES INSTANCES SUPRANATIONALES DANS LE DÉBAT ENVIRONNEMENTAL

Comme nous l'avons souligné précédemment, la prise en compte de la sphère environnementale dans l'analyse économique apparaît déjà fort ancienne et a suscité de très nombreux travaux et débats. Toutefois, l'apparition du concept du « développement durable » ne peut faire l'impasse sur le rôle important joué par les instances supranationales depuis le début des années

70, le concept lui-même étant l'émanation de la principale instance qu'est l'ONU. Il convient donc de s'interroger sur les différentes initiatives qui ont foisonné jusqu'au milieu des années 80.

2.1 La conférence des Nations-Unies sur l'environnement

La même année que la publication du rapport MEADOWS, en Juin 1972 plus exactement, a lieu à Stockholm, la première conférence des Nations-Unies sur l'environnement sous la direction de Maurice STRONG. Celle-ci réunit 110 pays durant 15 jours, mais seulement deux chefs d'Etat furent présents à cette réunion, témoignant à l'époque du peu d'intérêt des dirigeants pour cette problématique. En outre, certaines nations avaient accepté de participer à cette rencontre seulement si la protection de l'environnement ne s'accompagnerait pas de mesures limitant la croissance. Avec le recul, on ne peut que constater que peu de mesures concrètes furent prises à cette époque, chaque Etat demeurant soucieux d'agir comme bon lui semble en matière environnementale, un peu à la manière des Etats-Unis actuellement !. Une autre difficulté apparaissait alors au grand jour, celui d'une déresponsabilisation des Etats face aux problèmes de pollution, chacun étant persuadé que ce sont les autres qui polluent, PAULET (2005). Néanmoins, plus d'une centaine de résolutions furent adoptées et l'on utilisa pour la première fois l'expression « environnement humain » en même temps que l'on considère désormais que la protection et l'amélioration de l'environnement sont un devoir pour tous les gouvernements. A cette occasion, on décide la création du Programme des Nations-Unies pour l'environnement (PNUE), chargé en tout premier lieu de surveiller l'évolution de la pollution et les dégradations dans le monde.

2.2 La conférence sur le climat de 1979 et la mise en place des protocoles

Parallèlement aux problématiques spécifiques à l'environnement, les instances supranationales se sont penchées également sur les problèmes liés au dérèglement climatique, comme étant l'une des multiples conséquences du développement des activités productives intenses depuis plus d'un siècle. L'air étant considéré en théorie comme un bien public « pur » dans la mesure où on peut lui affecter le principe de non rivalité et de non exclusivité, KINDELBERGER (1986). Dans ces conditions, la dégradation de sa qualité ne peut faire l'objet que d'une action internationale. Ainsi, en 1979, l'ONU décide de réunir une première conférence sur le climat à Genève. Cette conférence débouche d'abord en 1985 sur l'élaboration de la convention pour la protection de la couche d'ozone, convention signée à Vienne. Deux années plus tard, en 1987, les Etats signent le protocole de Montréal, où les signataires s'engagent pour la première fois à cesser la production de chlorofluorocarbones (CFC). C'est face à l'évolution de ce contexte mondial et d'une prise de conscience de la gravité de la situation en matière de dégradation de l'environnement que le concept du développement durable va apparaître.

3. LE CONCEPT DU DÉVELOPPEMENT DURABLE : DÉFINITION ET MISE EN ŒUVRE

Le terme de « développement durable », traduction anglaise de « sustainable development » est apparu pour la première fois en 1980 dans le rapport conjoint du WWF, de l'UICN et du PNUE sur « *la stratégie mondiale pour la conservation* », qui relie « conservation des ressources » et développement, et place cette réflexion à l'échelle planétaire. A partir de 1983, l'ONU met en place une Commission mondiale sur l'environnement et le développement. Cette commission présidée par Madame BRUNDTLAND, premier ministre de Norvège à l'époque va entendre les avis de nombreux experts pendant plus de 3 ans et finit par rendre un rapport intitulé en français *« Notre futur commun »*, donnant naissance au concept élaboré de développement durable, BRUNEL (2004).

3.1 Le développement durable : définition et aspects économiques

Le développement durable, tel qu'il apparaît dans le rapport BRUNDTLAND (1987) repose sur deux piliers essentiels : une vision intergénérationnelle du développement et un élargissement du concept de capital.

Concernant la vision intergénérationnelle, le rapport stipule que le développement durable détermine « la capacité à répondre aux besoins des générations présentes sans compromettre celle des générations futures à satisfaire les leurs ». Ce premier pilier introduit une rupture nette avec l'approche économique courante qui fait de la préférence pour le présent l'élément dominant du comportement du consommateur.

Si l'on s'intéresse à présent à la notion de capital, le rapport BRUNDTLAND opte résolument pour une vision élargie du capital ; ainsi, le capital n'est plus uniquement économique, mais il s'étend aux ressources naturelles avec de fait, l'existence d'un capital écologique et pour terminer un capital d' « équité sociale » qui dépend de l'accès aux richesses et de son mode de répartition. Cette notion élargie du capital repose en fait sur les trois dimensions associées traditionnellement au développement durable : l'efficacité économique, la prudence écologique et l'équité sociale.

3.2 La mise en pratique du développement durable depuis 1987

Le concept de développement durable, à l'inverse du rapport MEADOWS de 1972, n'a pas suscité beaucoup d'échos lors de sa publication, restant souvent connu d'un cercle restreint de diplomates et d'universitaires sensibilisés à ces questions. Pourtant, dès 1988, les choses vont évoluer assez rapidement avec la création du GIEC (Groupe intergouvernemental d'experts sur l'évaluation), suite à l'initiative conjointe de l'ONU et de l'Organisation météorologique mondiale. Cet organisme publie régulièrement des rapports où il met l'accent notamment sur les dangers d'un réchauffement climatique trop important à la fin du 21ème siècle, avec notamment pour conséquence une élévation importante du niveau des océans. Les travaux du GIEC apparaissent totalement en phase avec la volonté de promouvoir l'idée du développement durable. A cet égard, ils conduisent les gouvernements à prendre conscience du caractère urgent de mettre en place des actions visant à réduire les émissions à moyen terme de gaz à effets de serre responsables en grande partie du réchauffement climatique. Il faudra attendre cependant 1992 pour voir la mise en place d'actions concrètes au niveau des différents Etats, suite au Sommet de Rio. En effet, en Juin 2002 se réunissent à Rio de Janeiro 172 Etats, pour ce que l'on appellera plus tard le « Sommet de la Terre ». À cette occasion, 27 principes sont adoptés, dont le plus important stipule que « Les êtres humains sont au centre des préoccupations relatives au développement durable. Ils ont droit à une vie saine et productive en harmonie avec la nature ». A l'occasion de ce sommet, deux conventions internationales y sont signées : une convention cadre sur les changements climatiques et une autre sur la biodiversité, tandis que l'on adopte dans le même temps un programme d'action (Action 21) qui doit se décliner en Agenda 21 dans chaque pays signataire.

Suite à ce sommet, les Etats vont de manière différente mettre en place ces agendas à la fois au niveau national et le plus souvent à des niveaux locaux en s'efforçant à chaque fois d'impliquer le plus d'acteurs possibles (citoyens, associations et aussi les entreprises).

En 1997 a lieu à Kyoto une conférence internationale qui fait suite au Sommet de Rio et qui a pour cadre les changements climatiques. A cette occasion, on signe un protocole qui fixe des objectifs chiffrés, où chaque Etat s'engage à réduire leurs émissions de CO2 et des principaux gaz à effet de serre sur la période 2008-2012. Ce protocole n'entrera en vigueur qu'en 2005, suite à sa ratification par la Russie, alors que dans le même temps, les Etats-Unis et l'Australie refusent toujours de l'appliquer !

Le principe d'organiser de grandes conférences est désormais lancé, avec respectivement l'organisation d'un deuxième sommet de la Terre à Johannesburg en 2002, destiné à faire le bilan 10 ans après la tenue du premier. A cette occasion, on précisera le rôle que peuvent jouer les entreprises dans la mise en œuvre du développement durable à travers la notion de « responsabilité sociale ».

Pour finir, on organise en 2007, à Bali, une nouvelle conférence sur le changement climatique destinée à réfléchir à l'après Kyoto ; celle-ci, à l'instar des dernières conférences, ne débouchera pas sur grand-chose de concret. Tout au plus, on laisse aux Etats-Unis, toujours réticentes à appliquer ce genre de protocole, de revenir à la table des négociations.

CONCLUSION

Le développement durable est un concept aujourd'hui largement répandu et utilisé parfois de manière maladroite ; pourtant, il constitue une véritable avancée dans la mesure où il s'efforce de concilier respect de l'environnement et développement économique. Il n'est en fait que le résultat de l'aboutissement d'un long processus de prise en compte de l'environnement par l'analyse économique.

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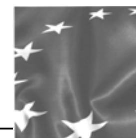

The Euro – A European and Global Currency

DRAGOŞ PĂUN
University Assistant, Phd Candidate, Faculty of Business, „Babeş-Bolyai" University Cluj-Napoca

The article presents the factors that make a currency international, and in what way these factors are relevant for the euro. After this introduction the international role is explained with an emphasis on the benefits of the decision. The article also compares the international role of the euro with the role of the United States Dollar, and explains why the euro has become a major currency in the world.

Under normal circumstances, a currency's position is limited to the area where it is issued. It becomes international when it has a considerable monetary role outside its jurisdiction, being used by foreign organisms. Factors that have contributed to the international status of the Euro currency are its stability and confidence in its future stability, the size and economic strength of the Euro space, and its international integration. Not least, the financial market size and openness of the Euro space are factors that have contributed to ranking the Euro in the second place as international currency[1]. We proceed to examine each of these factors. The role that the Euro plays, at an international level, can be categorized into investment currency, reserve currency, "anchor" currency, transaction and invoice currency[2].

Thus, the benefits involved by the international position of a currency are implicitly resources transfer equivalent to interest-free loans that are reverted to the money issuer, which are used and maintained outside the state of origin. Also, it increases the flexibility of macroeconomic policy because of the possibility of relying on its own currency to finance external payments deficit. Another advantage is the status and prestige involved by dominating the global market and the increased influence derived from the monetary dependence of other economic agents.

The option to utilize a certain currency, a detail that internationalizes its role, is set up on three levels. Primarily, in the initial phase of internationalization, the confidence in the currency value and the originating economic stability is a decisive factor. Secondly, an important attribute is the amount of liquidity which in turn is based on a large financial market, characterized by diversity and flexibility. Thirdly, the currency must be based on an extensive trading network that is to be widely accepted and transacted. Thus, the higher the volume of transactions taking place inside and with an economy, the greater will be the positive effect of amount increasing and cost reducing from using that currency. This is defined as the network effect and refers to the fact that the behaviour of a trader depends strategically on the practices adopted by other agents within the same network[3].

In discussions over a strong currency, it becomes visible the idea that it must acquire an international status. Some countries, instead, like Germany and Japan, intentionally discouraged the international role of the national currency, especially as a reserve currency, which suggests that this is not decisive[4]. Factors to be taken into account in this context are the impact on financial markets, prices of goods and monetary policy.

Financial benefits may come from two sources: the high volume of trade, which involves lower costs of transacting on foreign exchange, and financial markets. Since these factors imply

[1] Issing, Otmar (2008), *The Birth of the Euro*, Cambridge University Press, p. 177
[2] Mückl, Wolfgang, (Hrsg.) (2000), *Die Europäische Währungsunion*, Verlag Ferdinand Schöningh, Paderborn, p. 84
[3] Roy (2007), p. 105
[4] Portes, Richard (2000), *The role of the Euro in the world: past developments and future perspectives*, London Business School, (http://www.europarl.europa.eu/comparl/econ/pdf/emu/speeches/20001123/portes/default_en.pdf), p. 15

lower costs for goods, services and financial instruments, positive effects on the demand are taken into consideration. Secondly, currency emitting states that play the international part enjoy the benefits. Thus, companies from the country of origin of that currency, both public and private, which take loans, will enjoy lower financing costs due to international demand for their securities. Also, a state with an international currency has the ability to finance the state budget deficit with denominated bonds in its currency, given that other countries are receptive to accepting a large amount of debts with a low cost for the issuer. This "exorbitant privilege"[1] is considered one of the reasons why the current U.S. budget deficit has grown without being taken any coercive measures. Since this privilege destabilizes the financial discipline and allows the accumulation of financial imbalances, its importance is relative.

Besides the financial implications, the international role of a currency has a symbolic value, as a strong currency is seen as a manifestation of power[2]. Speaking about the Euro, the symbolism is relative, given that this was not the motivation for introducing a single currency. Euro, being a currency used by several states, involves a growing supranational awareness and contributes to the creation of a European identity.

The Euro was introduced to promote integration and economic welfare in the Member States. For this purpose, the mandate of the European System of Central Banks (Eurosystem) consists of maintaining stability in the Euro area. Regarding the international role of the Euro, the ECB takes a neutral position, judging that to encourage or disrupt the international status of the Euro in a direct way is neither feasible nor desirable. This role must be the result of market forces acting on the basis of economic and financial developments. The fact that ECB completes its duties in order to maintain price stability in the Euro area contributes indirectly to the use of Euro at an international level.

Another aspect of Euro's international role is its use in third countries, where it is appreciated for its purchase power. Residents of many developing countries with emerging markets and transition economies have a significant part of the financial values under the form of foreign currencies or in banks' foreign currency deposits. Data on Euro banknotes request, in this context, can be estimated only indirectly, with a slight degree of uncertainty. With the introduction of the single currency, monetary and financial institutions in the Eurozone have sent large quantities of Euro banknotes to destinations outside the Euro area. In the next period, these deliveries stabilized and were held under a seasonal pattern. In June 2005, the volume of Euro banknotes outside the Euro area reached 55 billion Euros[3]. This figure is probably an understatement, given that there are other transfer channels for the Euro, in this case tourism, money remittance and black market activities. The ECB Report of 2005 indicates that in Central and South-Eastern Europe, the amount of U.S. dollars in circulation dropped by 23% between 2003 and 2005, while the amount of Euro increased by almost 60%; currently a percentage of the population owns more Euros than U.S. dollars[4].

Formal sector contribution to the international use of foreign currency is to use it as an anchor currency or for the denomination of foreign reserves in that currency, or as an intervention currency. These three roles are related, and for the Euro, they indicate a geographical concentration in European countries which are not part of the Eurozone.

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[1] Freivalds, John (2009), *Is the Dollar's 'Exorbitant Privilege' as the Global Standard at Risk?*, World Trade Magazine, (http://www.worldtrademag.com/Articles/Column/BNP_GUID_9-5-2006_A_10000000000000497000)
[2] Mundell, R./ Zak, P. J. (2005) *International Monetary Policy After the Euro,* Edward Elgar Publishing Ltd., Cheltenham, U.K., (http://www.netlibrary.com/Reader/), p. 24
[3] Roy (2007), p. 73
[4] Review of the international role of the euro, European Central Bank (2005), p. 11, (http://www.ecb.int/pub/pdf/other/euro-international-role200512en.pdf)

Option for a particular currency as the anchor currency is important given that this involves a "spillover" effect of using the same currency for foreign reserves and as an intervention currency. The national currency reporting to another currency reduces costs and risks of using that currency, acting as an incentive for its internationalization.

It is noticed a geographic preference of states that report, partially or fully, to the Euro. Since December 2005, 40 of the 150 countries that are in the reporting system have used the Euro as a reference point, partially or fully as the anchor currency, and of these, 18 are located in Europe, and 14 belong to the CFA franc zone[1]. For countries not participating in ERM II, reporting to the Euro is a unilateral decision and does not imply any obligation of the Eurosystem. In exchange, for the countries participating in ERM II, reported currencies are maintained between the fluctuation lines previously determined, of 15%, around a predetermined parity between the Euro and the currencies in question. Two of the ERM II states, Latvia and Malta, established a smaller margin of just 1%, respectively 0, Malta adopting the single currency in January 2008.

Euro, as an anchor currency, was taken into consideration by two large emerging economies, Russia and China. Russia's currency is reported to a basket of currencies that includes the Euro. By December 2005, the proportion of Euro in that basket had risen to 35%, in accordance with the share of the Euro area in the Russian trade volume. China announced a change in the permanent currency regime, which was reported to a basket of currencies in July 2005, the Euro being included, but without specifying the proportion.[2]

In respect of using Euro as reserve, the concerned states will take into account several factors: the anchor currency, the direction of trade flows and usage of invoice currency, the denominated currency for loans, the diversification strategies to avoid risk, and political considerations. By analyzing states that use the Euro for reserves, it can be noticed a preference of developing countries which have Euro reserves up to 29%, compared to the developed ones, with only 21%. Similar to the case in which Euro is the anchor currency, there is a regional preference in favour of using Euro for reserves in countries of Eastern Europe. It is considered that Russia has one of the largest Euro denominated currency reserves. Therefore, one third of the volume of foreign currency reserves are in Euros, which reflects the ratio of commercial relations, thus, one third of all commercial transactions are conducted with the Euro area and 35% of the basket used as the anchor is reported to the Euro[3].

Some countries in South America own a significant part of their reserves in Euros, an option motivated by trade flows and financial ties with the Euro area. Oil exporting countries in the Middle East hold a small part of their reserves in Euros, though the idea of diversification is taken into account.

Euro's functions as an anchor and reserve currency are related to the intervention one. While few central banks disclose their intervention currency, authorities' claims reveal a preference for the Euro in European countries, which is consistent with the geographical distribution of the Euro in the field of trade and financial relations[4].

When the single currency was introduced, some analysts said the Euro had a significant potential to play an international role[5], so it was expected that the Euro would be received positively on the international scene, even if it had to demonstrate a certain level of stability, a

[1] Gulde, Anne Marie (Hrsg) (2008), *The CFA Franc Zone,* International Monetary Fund, p. 6

[2]Applied Economic and Financial research (2005), *Assessing the composition of the Chinese currency basket* (http://www.tac-financial.com/publ/yuan%20-%20200509.pdf)

[3] Roy (2007), p. 79

[4] Van Hagen, J. (1995), *Monetary and Fiscal Policy in an Integrated Europe,* Springer Verlag, Berlin, p. 202

[5] Issing, Otmar (2008), p. 177

condition made possible by the independent mandate of the ECB to maintain price stability with positive effects on currency stability.

Official use of an international currency is dictated by the private sector[1]. When the Euro appeared, the financial markets were fragmented, but the Euro has exerted the needed pressure to harmonize them. Also, in 1999 the Financial Services Action Plan[2] was introduced, a legislative programme with the sole purpose of removing impediments to the financial market integration, mostly completed in 2004.

In terms of exports outside the Euro area, their number was provided to 58% after the creation of EMU. This forecast was based on the invoice currency operations for EMU participating States in the 90s. In 2004, this figure was confirmed; the role of other currencies was taken by the Euro. The use of the single currency increased for imports, which still maintained lower compared to exports[3]. Although in the initial phase, the use of Euro in services was slow, its share in this area has gradually increased, simultaneously with the one in goods. The exception is Greece, where exports of services with Euro invoice currency are small, since most of them include maritime transport services, a sector where the dollar is traditionally used.

Among the states outside the Euro area, new EU members have intensified the use of the Euro as the invoice currency, its use exceeding the value of trade with the Euro area. It is expected that the new EU members make transactions in Euro, given that it will be used in the future for these countries; such transaction costs are borne by both states equally, meaning they are not exposed to fluctuations in national currencies. Outside Europe, the Euro is used as an invoice currency on the Asian markets, but its use remains unimportant.

Euro's performance in terms of exchange rate shows that the currency started from an initial value of $1.17, falling in mid-2000 to $0.83, and continuing until 2002 to a level below the euro-dollar parity. This situation changed in 2004, when the Euro reached $1.35, remaining above the dollar[4].

According to the ECB, the Euro's international role is characterized by regional dispersion[5]. The dollar has supremacy as the global transaction currency. This is due to the large size of the American economy and low transaction costs. The Dollar is the favourite currency also in invoice type operations, representing about half of the total global exports, in this way doubling the total U.S. exports. The German mark covered 15% before the single currency, a role taken over by the Euro after 1999[6].

By enlarging the European Union in 2004 and 2007, the new Member States compelled to adopt the Euro in the future, depending on their capacity to meet the convergence criteria set by the Maastricht Treaty, as follows: over a period of one year, the price stability reflected in the inflation rate must not exceed by 1.5% the average inflation rate of the three best performing countries. Secondly, the interest rate must not exceed by more than 2% the three best performing countries. When it comes to fiscal stability, the ratio of the annual government deficit to GDP must not exceed 3% and the ratio of gross government debt to GDP must not exceed 60% at the end of the preceding fiscal year. The exchange rate stability, by participating in ERM II for a period of two years, is also necessary, during which the currency of that state must fit in certain fluctuation margins.

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[1] European Central Bank, (2008), *The international role of the euro*, (http://www.ecb.int/pub/pdf/other/euro-international-role200807en.pdf)

[2] European Commission, *Financial Services Action Plan,* (http://ec.europa.eu/internal_market/finances/actionplan/index_en.htm)

[3] Roy (2007), p. 72

[4] Williamson, John, *The dollar/Euro exchange rate,* Économie internationale no. 100, 2004/4, p. 51 (http://www.cairn.info/revue-economie-internationale-2004-4-page-51.htm)

[5] Roy (2007), p. 106, ECB (2005), p.7

[6] Roy (2007), p. 107

In conclusion, when introducing the single currency, it was expected to occupy the second position internationally, after the dollar, which is a fact confirmed at present. Also, it surpassed the role played by the German mark in the 90s and in some sectors, the combined role of the replaced currencies. Its influence is most pronounced in the regions close to the Euro area as a geographical preference. Thus, predicting that the Euro is not destabilizing the dollar supremacy is correct[1], but that fact does not eliminate the idea that in the future the Euro may gain a position equal to the dollar. Consequently, some analysts suggest the establishment of an international monetary balance between Euro and dollar, in which each will own an equal share of 40% in a period of five to ten years, a hypothesis conditioned negatively by the massive devaluation of the American currency[2].

THE EURO IN THIRD WORLD COUNTRIES

The use of Euro in third world countries is done on two distinct levels: as the official currency by public authorities or by private persons, and therefore for private use. Developing countries build up a preference for the Euro due to several factors such as traditions, trade and economic aid relations[3]. So it can be concluded that the Euro's international role is growing and it is characterized by a regional breakdown of private and official use.

Internationally, the Euro acts as a means of payment, reserve and measurement unit. According to BIS and IMF[4] statistics, developing states indicate a preference for formal titles. The preference of developing countries for the Euro is a consequence of several factors such as shared history, trade, economic aid, and the devaluation of the dollar due to the massive U.S. external deficit[5].

In the colonial era, West and Central Africa countries took part in a system of monetary integration with the colonial powers. States under French influence set parity between the local CFA franc and the French franc, while states under English influence, with the British Pound. States under French influence maintained the arrangement after obtaining their independence, while in former British territories, it was removed. CFA States show a large experience with fixed exchange rate for a convertible currency and with regional integration, including regional preferential trade agreements[6].

Besides the colonial experience, maintaining a connection with the Euro in certain African countries, and the use of the Euro in French and Dutch departments, a relevant factor for Euro's greater internationalization is that the EU is the largest international aid donor and export partner of developing countries. But the group of developing countries is not homogeneous; the U.S. is the most important financial and economic partner for most countries in the Caribbean and Latin America, while Japan and Australia are partners for most developing countries in the Pacific. Instead, the EU is the largest partner for most Mediterranean states and sub-Saharan regions.

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[1] Sumual, David E., *Is it the end of U.S. dollar supremacy?*, The Jakarta Post, October 2003 (http://m.thejakartapost.com/news/2003/10/23/it-end-us-dollar-supremacy.html)

[2] Roy (2007), p. 79

[3] European Central Bank, *Review of the international role of the euro*, (http://www.ecb.int/pub/pdf/other/euro-international-role200807en.pdf), p. 46

[4] Roy (2007), p. 207

[5] Svensson, L., (2004), *The Euro Appreciation and ECB Monetary Policy*, Princeton University (http://www.princeton.edu/svensson/papers/ep402.pdf) , accessed April 2009

[6] Gulde, Anne Marie (Hrsg) (2008), p.6

With regard to trade, Europe gathers 43% of exports from African countries, while the U.S. only 19% and Asia 17%[1]. One of the aims of the EU is to contribute to an equitable integration of developing countries into the international trading system through the following strategies: participation in the WTO multilateral negotiations to promote the Doha development agenda, bilateral agreements with developing countries and autonomous measures, like the generalized system of preferences[2].

These measures indicate that the EU is an open economy to exports from developing countries; but facilitating market access is not a sufficient condition to contribute to the internationalization of the Euro in these countries, given that most transactions occur in dollars. For example, oil represents 80% of African exports to Europe, which is traded in dollars. So, inertia and tradition in international markets are factors that limit the extent of the Euro in transactions between the EU and developing countries.

In 2005, the EU provided 55% of the international development aid oriented to approximately 160 countries, territories and organizations and focused on global issues like: fighting poverty, promoting democracy, social equality, economic prosperity and environmental protection.

At the UN Conference on Financing for Development, in Monterrey, European countries pledged to work towards additional international aid in accordance with the agreement reached at the European Council meeting in Barcelona in 2002. According to the 2007-2013 Financial Perspectives Programme approved by the European Council in Brussels in 2005, the EU assumes the international role and decision to contribute to achieving the MDGs (Millennium Development Goals). Based on this commitment, the EU's external activities will be

[1] Roy (2007), p. 209
[2] Roy (2007), p. 209

funded annually in the period 2007-2013 with amounts of about 7000 million Euros, and another sum of 22000 million Euros will be awarded for the period of 2008-2013, according with the intergovernmental agreement: European Development Fund Framework for ACP States[1].

Despite this prevailing situation in international aid, this context does not have a relevant contribution to the internationalization of the Euro. This is due to the limited relevance of developing countries in terms of population and GDP.

CONCLUSIONS

In conclusion, the Euro may be outlined as a tool of European political integration, taking into account the achievement of economic integration. The next step in economic integration is the future enlargement of the EMU. The importance of the Euro is also relevant to other regions worldwide, the Euro becoming recognized as an international currency alongside the dollar.

Some of the future challenges for the Euro are the implementation of macroeconomic policy, the revision of the Stability and Growth Pact, EMU economic governance effectiveness, competitiveness, flexibility and the European social model[2].

The Eurobarometer shows that the Euro has become a symbol for EU citizens[3]. After the introduction of the Euro in 2002, the currency began to be perceived as part of European identity. Thus, a 2003 Eurobarometer study shows that 57% of Germans are unhappy with the introduction of the Euro, while in Italy the percentage is above the Eurozone average. In another Eurobarometer study on what the EU is for its citizens, the first ranked with 50% was the freedom of movement, followed by the Euro with 49%.

Relations between EMU and economic growth are complex and varied. We should distinguish between direct and indirect effects that overlap or affect each other. Since the period of time considered covers only 10 years, and economic growth is a process extended in time, further market research will empirically demonstrate the general phenomenon of economic growth. Some indicators, such as the decrease of transaction costs, have a positive effect, with 0,3-0,5% of the GDP Also, eliminating exchange rate risk advantaged investment and economic growth. Prognosis in 1997 was a growth in the Euro area, in the first 5 years, of up to 3%; in 2008, a study by Barell[4] identified a growing economic performance of about 2% in Germany, France, Italy, Belgium and The Netherlands. Future empirical studies are necessary to quantify the exact economic growth performance due to EMU.

In conclusion, EMU shows a stabilizing influence on budgetary discipline; the range of state budgetary consolidation process remains varied. In the EMU, there have been taken and implemented a series of institutional reforms such as the SGP.

The future role of the Euro depends on the mentioned functions as anchor, reserve, intervention, and exchange currency. A defining element is also the process of financial market integration into EMU and expanding the Euro by accepting new members into EMU, especially Britain, which would have a major importance.

The international role of the Euro also depends on economic performance evolution of the Eurozone compared to the US, the Eurozone should increase the economic growth rate by enhancing the flexibility from a structural point of view, as stipulated in the Lisbon agenda[5].

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[1] Roy (2007), p. 211
[2] Townsend (2007), p. 267
[3] Fishman, R./Messina, A. (2006), *The year of the Euro, The cultural, social and political import of Europe's common policy,* University of Notre Dame Presse, Indiana, p. 69
[4] Institut der deutschen Wirtschaft (2008), p. 61
[5] (http://www.esep.co.uk/03-info-lisbon-agenda.html)

Perception of a devaluation of the dollar against the Euro can foster greater international role of this single currency. This perception may be based on a U.S. economic downturn due to the decrease in consumption and demand, higher interest rates, growth of inflation and the worsening of the budget deficit situation.

ECB's mandate is to ensure internal stability of the single currency and this has set a positive trend in price stability. The ECB will continue its policy to refrain from encouraging or holding back the direct use of the Euro outside the Euro area. Hence, the Euro's international role will be decided by market forces.

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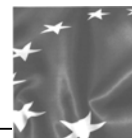

Management of European Funds. Romania's Path to Sustainability

ADRIAN-GABRIEL CORPĂDEAN
PhD Candidate
Faculty of European Studies, Babeş-Bolyai University, Cluj-Napoca
and
DENISA-GEORGIANA CĂLINA
Master Degree Student
Faculty of European Studies, Babeş-Bolyai University, Cluj-Napoca

Society and its development can be considered a lump sum of a large spectrum of projects. The Tower of Babel or the Egyptian Pyramids, in the ancient world, Edison's invention of the light bulb or the launching of Apollo are classical examples of remarkable achievements of mankind, emphasizing man's successful project management, throughout history. Basically, a project is understood as a way of working, a way of organizing people and managing various activities, in other words, a manner of organization and coordination of work, understood pragmatically. A project is a temporary endeavour undertaken to create a unique product, service, or result. The temporary nature of projects indicates a definite beginning and end. The end is reached when the project's objectives have been achieved or when the project is terminated because its objectives will not or cannot be met, or when the need for the project no longer exists.[1]

A project, regardless of its nature and purpose, implies a process of management, which practically leads to development and gradually transforms a project into a final product. Projects need management and interaction should be the binding element between two processes. Project management is, first of all, a science of planning, organizing and managing the available resources, so that the goals aimed at by a person, a company or a team can be achieved in an efficient manner. According to Dennis Lock, the purpose of project management is to prevent or predict as much as possible impediments and problems that may occur and to plan, organize and control the activities, necessary for the optimal achievement of the project[2].

The present study approaches the applicability of project management from a practical perspective. Project management is basically the axis of each kind of activity in modern society, in most organizations, regardless of their nature. The particular approach of project management discussed in this paper derives from the context of European Integration, more precisely; it lies in the Community's economic support for its members. The financial aid provided by the European Union to its member states is, in extenso, a complex, enormous project, which needs an appropriate process of management. The allocation of European funds to the individual member states consists of a sum of projects, belonging to the same global framework. Among the beneficiary countries of European funding, there are member states, in the case of which the processes of funds' absorption and insertion into the given state's economic reality and internal mechanisms is performed with great difficulty and considerable efforts. This was and still is experienced by Romania, known for the sinuous path towards the proper absorption of European funds. The authors of this paper believe that the absorption of structural funds is a particular case of project management, especially due to the fact that attracting these funds involves such a great risk for the country, and it is such an important endeavour. The process of obtaining these

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[1] A Guide to the Project Management Body of Knowledge, Fourth Edition, p. 362.
[2] Dennis Lock, 1996, p. 3.

funds implies a series of projects, whose fulfillment has various purposes and domains of application; it also implies a system of management for the projects and actors in order to be put into practice. Confronted with these organizational stages meant to be fulfilled for the efficient development of the management of projects for accessing structural funds, Romania also carries a great deal of pressure upon its shoulders- that of a prejudicial past, which is still widely felt. In order to regain the years lost with the framing of a system that had a considerably different perspective on economy, freedom and evolution, and in order to be recognized and accepted by the European Community as a healthy, prosperous, educated, free and dignified nation, the Integration of Romania ought to be perceived as a process that contributes to its economic growth. Hence, the country can become an active, productive and competitive actor on the internal market of the Union. Thus, the premises for the theme of this paper reside in the great pressure on Romania's shoulders to fill in the gaps, i.e. to compensate for its past-generated economic regression and to align itself to European standards. The binding element to the cohesion with the average of the Community's economic and social reality is provided by the structural funds, which are practically at the country's disposal. Accessible, yet not fully accessed… Romania's economy is known for its continuous struggle with multiple severe problems in obtaining European funds; coherent and unitary strategies are needed in managing structural funds, as there seems to have been reached a milestone in the absorption process. These gaps in the management of structural funds is the actual premise for the research question of this paper; the authors will try to identify the causes which have led to the current stage of fund absorption in Romania and thereafter, will suggest an option that could be taken into account for the achievement of sustainable project management in the field of European structural funds, and more.

The present paper will set forth, as follows, a concise ex-ante evaluation of Romania's situation in obtaining the European pre-absorption funds, and also an ex-post general analysis of the absorption of structural funds. Therefore, having considered the previously presented data, this study will show why the actual facts are related to the process of management, being a direct consequence of Romania's deficiencies at this level. The paper does not intend to attain a thorough, punctilious evaluation of the European funds management process in Romania; this essay is rather intended as an invitation to discussion. Henceforth, our paper merely highlights real facts and not pronouncements; it offers recommendations, and not success recipes.

Furthermore, the authors will discuss sustainable project management of European structural funds. The present paper aims to put forward the implications of the transitory context from European pre-absorption funds to structural funds and the difficulties encountered, for instance, by the states which entered the European Union in 2004 and 2007. The research will be carried out by means of analyzing the particular situation of Romania, in which case it can be argued whether transition towards accessing structural funds is at present a completed process or not. The reason for the investigation lies in the still fragile and perfectible stage in obtaining these funds, which has motivated the authors to seek the factors which have led to the current situation.

The focus will be on Romania's capacity to absorb the European funds, as directly related to the process of management. Together with programming and implementation, management is undoubtedly one of the essential factors which determine Romania's capacity to absorb structural funds.

The European Commission reported on Romania's hesitating and defective management of structural funds in 2008, subsequent to the identification of the highest number of irregularities and suspicions of fraud in the management of pre-absorption funds ever recorded[1]. Besides this problematic monetary issue, it is also a fact that in Romania, the management of European structural funds-based projects does not succeed in achieving its objectives, i.e. the funds available for Romania are not being properly accessed.

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[1] European Commission, Directorate - General for Economic and Financial Affairs - Convergence Report 2008, European Economy, 3/2008.

Hence, the research question of this paper tries to identify the causes for the inefficient project management in Romania, in the field of structural funds. Thereafter, having in view the position of the project manager as the leading figure for the design and development of projects, the authors will introduce their vision for the shaping of professional project managers, so as to successfully overcome the paradigm of the transitional context. Their recommendation will be based on pertinent, realistic arguments. The focus will be on the manager as the main actor in the matrix of the pre- and post-absorption processes of funds, as well as on his/her capacity to influence and (re)direct the course of project management. Then, the authors wish to present their own vision of a successful project manager and the patterns that should frame and define him/her.

With regard to the methodology used, we have conducted research on the majority of sources at hand, so as to have an overview of the quantitative indicators for the management case we are referring to. In this respect, we have analyzed the available information about the past and present situation of structural funds absorption in Romania. For instance, we have found statistic data in syntheses and reports of the European Commission. We have consulted the Fourth Report of the European Commission on Economic and Social Cohesion - *Growing Regions, growing Europe,* as well as studies of the European Institute in Romania. Romania's capacity to absorb European funds is a focus point of our paper; hence, we have searched for the sources that provide the required information. Thus, our paper has been documented by relying on the official documents issued by the European Commission we have previously mentioned, as well on articles found in specialized publications (see "EuROpeanul[1]", which can be found on the official Romanian Internet site for the management of European structural funds). A further concern of ours has been to draw the profile of a successful project manager, as well as to concentrate on the best options available, in order to create such managers. For this purpose, we have made a review of the specialized literature, thus gaining access to necessary information.

Our proposal for the creation of highly-skilled project managers is based on academic courses for master degrees. We have reached this conclusion owing to our condition of participants at the master programme we will refer to in this paper. Based on our direct involvement in the respective studies framework, we consider this first-hand experience as a qualitative indicator for the results of the management-related problem we have issued.

In order to understand and evaluate all the internal elements that have brought Romania to its current stage, it is essential to analyze the issue of funds from an integrationist point of view and compared to the situation of the other Central- and East-European states which joined the European Union in 2004 and 2007. The analysis is based on the statistics found on the main official Romanian Webpage related to European structural funds. The publication "EuROpeanul" provided the data needed to carry out the comparative study with the other member states.[2]

It seems that, despite some very optimistic foresights, the ten member states that joined the European Union in 2004 have encountered serious problems with the absorption of the European funds allocated for the period 2004-2006. As in the case of Romania, the first year following integration proved to be the most difficult in terms of accessing European funding. The abovementioned publication provides the position of international consultants in the matter, who took an optimistic view of the absorption rate of EU funds, their predictions having been far beyond the real capacity of the states. Practically speaking, according to the statistics of the Romanian National Bank[3], during the first

[1] Publication "EuROpeanul", article by: Mihaela Enache, *Irezistibila tentație a comparației*, ["The Iresistible Tentation of Comparison"], Year 3, Nr. 8, 17-23 December 2008, p. 2, at:
http://www.fonduri-structurale.ro/Document_Files//europeanul/00003623/ni6oe_euROpeanul8.pdf

[2] Further documentation can be accessed at the following Internet source:
http://www.fonduristructurale.ro/Document_Files//europeanul/00003623/ni6oe_euROpeanul8.pdf: Mihaela Enache, *Irezistibila tentație a comparației*, ["The Iresistible Tentation of Comparison"] in "EuROpeanul", Year 3, Nr. 8, 17-23 December 2008, p. 2.

[3] http://www.bnro.ro/Statistica-87.aspx.

post-integration year, the Central- and East-European countries recorded decreased absorption rates of European funds (the Czech Republic - 41,5 %, Poland - 42,8%, Slovakia- 41,6%, Hungary - 42,9%). There are complex causes for such a plight. As specialists have found, the difficulties are a consequence of the countries' lack of experience in the management of structural funds, but also of the apparently too high requirements of the European Commission.[1] Likewise, the reasons for the backwardness of these states would also be the low performance of the institutions responsible for the analysis and evaluation of projects, the excessive bureaucracy and the over-centralization of administration; further reasons lie in the slow process of training specialized personnel on the issue of structural funds[2] . Although the fund absorption process had a cumbersome start for Hungary, the Czech Republic and Poland managed to regain the integrationist pace; the benefits of European funding were experienced in a differentiated manner, depending on the distinguishing economic features of each state, Mihaela Enache informs in "EuROpeanul". In a way, the case of Poland is similar to that of Romania, as in both countries, agriculture has a significant share of the national economy. Polish farmers own vast areas of land and small farms, but their production is mostly meant for private consumption rather than for the market. As the Commission's evaluations show, in 2006 Poland improved the mechanisms of fund absorption, by spending 816 million euros. The national plan for rural development adopted by the Polish authorities has helped this state to enhance the profitability of the farms in deprived areas, develop specific agricultural-environmental schemes, and turn farms into viable agricultural units, meant to be competitive on the European market and in accordance with the Union's standards.

Studies of the European Commission's experts have shown that Hungary, during its first years after acceding to the European Union, also encountered great difficulties in terms of the ability to obtain European funds, indicates the Fourth Report of the European Commission on Economic and Social Cohesion. One concerning issue was given by the strong regional disparities. Despite the provisions of the National Development Plan in 2004 and 2006, adopted by the Hungarian government, the quality of life in the poorest regions did not record any improvement. The difference between developed and less developed areas sharpened. Most of the funds were obtained by Budapest and the contiguous areas, while Eastern Hungary lagged far behind. The data provided by the European Commission analyzed in "EuROpeanul" reveals that the winners of the majority of operational programmes aiming at the growth of economic competitiveness came from Budapest or Central Hungary, where the absorption rate of European funds was the highest. The absorption of structural funds experienced intricate procedures in the Czech Republic as well. As in the previous cases, the lack of experience in managing these funds and the excessive bureaucracy led to the misuse of European funds.

The problems that Central and East-European states came across while accessing structural funds in their first years after adhesion to the European Union were a matter of concern for international consultants. [3] They estimated that there would be a set of conditions to be met by the beneficiaries of this kind of financing so as to reach a high absorption rate. According to the abovementioned publication, one first criterion would be an effective programming of public investments, which ensures a complete integration of structural funds in the public finance system, mainly in the field of public acquisitions and financing of public investments. Secondly, we ought to have in mind the fact that the effectiveness of the absorption degree is conditioned by the improvement and consolidation of the administrative capacity of any beneficiary state. There is certainly a need for more solid institutional structures, capable of sustaining the establishment of public policies, the development of inter-ministerial coordination, the implementation of national programmes and the increase of the ability to establish partnerships among administrations at the local level.

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[1] Fourth Report of the European Commission on the Economic and Social Cohesion- *Growing Regions, growing Europe*, Communication from the Commission, May 2007.

[2] Mihaela Enache, *op. cit.*

[3] Idem.

One further conclusion that specialists have drawn while analyzing the experiences of the European Union's member states having joined in 2004 sets forth the partnerships that local administrations were supposed to settle with representatives of the civil society. Local administrations exercise a restricted capacity in many of the cases that imply locality in managing structural funds, though the partnership with non-governmental units ensures the co-financing of projects and implicitly generates the increase of the absorption rate of European funds.

Far from being considered an excuse for the often invoked "incapacity of Romanian authorities to absorb the European structural funds available for the country" (which has almost become a cliché), the statistics provided by the sources we have previously referred to indicate the existence of a set of extremely complex factors in which may lie the reason for such a heavy start of certain projects. It is obvious that the solution should be searched for simultaneously - both in Bucharest and in Brussels.

During the 20 years of transition, Romania, just like the rest of the Central- and East-European member states, has imported management principles, methods and techniques, typical for developed countries, especially for those in the Anglo-Saxon background. Besides, the evolution of the Romanian managerial practice has been marked by an influx of multinational companies, which have strongly influenced Romanian management. Nevertheless, there are a series of clear differences concerning the approach of managerial practice within the companies from various sectors of activity.

With regard to European funds, the management of structural instruments firstly requires the awareness of the strategic objectives that are to be achieved and the identification of the necessary management solutions. In the case of European funds, the optimization of management is carried out under the supervision of the European Union, by means of the Cohesion Policy[1]. Subsequently and in accordance with the existent *acquis communautaire*, the establishment of the management structure of the personnel scheme and systems, as well as that of processes and instruments for managing structural funds is the first step to be taken so as to ensure an efficient absorption of funds, which will also have a considerable impact on the social and economic development of the country.

According to a recent study by *Roland Gareis Consulting*, developed within an international research endeavour regarding project-oriented management[2], Romania's position lies under the average level of development, in terms of the implementation of project management. The research undertaken in Romania had as objectives the analysis and the standardized evaluation of project-oriented Romanian companies, as well as the observation of project management services (education, research and marketing).

The results of the study are anything but encouraging. On a scale from 1 to 5, Romania's coefficient is 1.96, far below the average of 2.5 that would ensure the position of a medium-developed country, concerning project management. Regarding project management services, marketing records the highest coefficient - 2.31 -, a fact that pinpoints that the two major project management associations, PMI (Project Management Institute) and IPMA (International Managers' Professional Association), are still underrepresented in Romania. As the study shows, the two institutions lack strength and visibility, and this is best proven by the absence of lobbying for the certification of positions in the field of project management.

The process of education for project management reaches a coefficient of 2. Project management is not being taught in secondary schools and is considered rather suitable for the academic curriculum, reveals the study. Even so, from a total of 25 Romanian universities that were analyzed, only 11 have an offer that includes project management, and even fewer are those which actually focus of project management, as a specialization. As if these facts were not indicative already, the lowest value is recorded by the coefficient of research in the field of project management: 1.32. The explanation is as obvious as possible: in Romania there is no national institute responsible for the coordination of

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[1] Regional Policy on Inforegio, source: http://www.eufunds.bg/index.php?cat=592).

[2] The results of the study were presented in the management and leadership publication, *Cariere, Jurnal de leadership,*see references.

research in project management, the only institutions that carry out such activities being universities. Moreover, there is no vast literature and publications on project management.

Considering the previously presented data, it is the authors' belief that the gaps and deficiencies in project management should be firstly sought in its actors, i.e., its resources. Project success requires the committed, coordinated action of many people. While some project managers run rough shod over their team, others tap into human dynamics and make projects a positive growth experience.[1] Any project requires resources in order to be achieved and project management is all about resources. It is regarded as the science of managing resources, in such a way that a project's achievement can be entirely covered[2]. The quality and availability of these key factors in project management are needful elements in building a truly proficient management system. The importance of the human resources component is also shared by Frank Heyworth. His belief is that people make projects work and that communication, motivation, involvement and commitment would be the pillars upon which a solid and effective project management should be based.[3] The professionalism of the personnel involved in the management of structural instruments decisively influences the capacity to attract Community funds. The management of projects meant to access structural funds is marked by the lack of some tangible previous experiences that would have led to the forming and progressive development of proficient human resources. As previously shown, the sole relevant experiences are given by the management of pre-absorption funds (PHARE, ISPA, SAPARD)[4]. There are, however, considerable differences in terms of concepts and procedures. The professional experience and education of management personnel are clear indicators of the latter's success, respectively of the failure of a project. Researchers have shown that, in Romania, there are few organisms whose personnel are indeed highly qualified in the field of project management. Obviously, their tasks are clearly stipulated in their job description. Nevertheless, these duties are rather generally defined and do not refer to particular activities. The market of services is abundant in offers of training courses, yet there is a lot to be discussed concerning the quality of these trainings. A great deal of such courses are not exclusively meant for project management, despite their designation, and they are based on a general content, in the matter of fact (e.g. knowledge of structural funds, development of operational programmes etc.) or are inadequate for the tasks to be fulfilled by the project management personnel (e.g. stress management, leadership, motivation at work, conflict management, external communication etc.). It follows that there is a great deal of similar trainings that have not recorded the anticipated efficiency.

The authors of this paper have been concerned about the issue of project management studies, a preoccupation which has received greater interest after having observed the actual facts, as presented by this research. It is the authors' belief that management studies have a positive impact on the dynamics of the project management process, especially in the context the paper refers to. For this reason, it needs to be emphasized the awareness of the professional quality of human resources, as key actors in project management. According to Soren Merit, many project managers see themselves as the driver – focusing on decisions, deliveries and completion. But managing the development stages is to create openings, follow new paths, keep opportunities alive while testing them –and to make the choice in due time.[5] All of which need more than innate abilities; both instruction and experience are a must. The causes of a defective project management are often to be found in the lack of basic instruction of project managers, which hinders the achievement of performance in this filed.[6] Human resources are formed by means of various kinds of instruction, available on the market. (We ought to point out that it

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[1] Terry Schmidt, Strategic *Project Management Made Simple. Practical Tools for Leaders and Teams*, 2009, p. 184.
[2] Cibela Neagu, *op. cit.*, p.22.
[3] Frank Heyworth, *A Guide to Project Management*, Council of Europe Publishing, 2002, p. 24.
[4] The European Institute of Romania – *Studii de impact* - PAIS III.
[5] Hans Mikkelsen, *Value Creation is the Essence!*, Interview with Soren Merit, MeriPlus+ Aps, in IPMA, Project Management Practice. The Professional Magazine of International Project Management Association, Issue 1, Spring 2008, p.10.
[6] James K. McCollum, Cristian Silviu Bănacu, 2005, p. 61.

has been developed a large sector on the services market dedicated to the instruction of human resources). In order to achieve highly qualified management personnel, professional instruction has become a sine qua non. Together with an apparent lack of training of project managers, it has recently been reported that project management is an option on only two of the top 11 European MBA (Master of Business Administration) programmes.[1] By considering the aforementioned argument, this paper tries to bring forth the importance of high-level education in project management, and in the authors' view, one pertinent way to achieve this is academic instruction. Putting aside its advantages and disadvantages, academic formation proves to be an option that future project managers and not only may wish to take into account, should they aim to attain proficiency in their job. The authors need to specify that it is not this paper's concern to disparage the option for the non-academic trainings and courses of project management, but to put forward the advantages of the academic instruction in this field, for instance, by means of Master classes in the field of project management.

The academic discipline of project management has so far missed the very point of its existence. It should not strive to become a specialism that develops its own grand theories (those concerning planning have already been questioned in this paper), but to echo the role that project managers take in practice and be the integrators of knowledge and theory from all the other disciplines. [2] Hence, the academic instruction now comes to meet the needs for the formation of skilled project managers, which will be demonstrated as follows. The authors have built their argumentation based on the manager's profile, as it can be foreshadowed from the manager's role and necessary skills. Specialized literature has issued various profiles of the project manager. According to John Dingle, the project manager's job consists of bringing wishes to reality, safely and fit for purpose, on time and within budget[3]. Trevor L. Young sustains that the position of project manager implies dedicating one's efforts to the maintenance of a balance between the demands and needs of: the client, project, project team and organization.[4] We also find relevant the proposal of Cibela Neagu, who outlined the responsibilities and competences of the project manager[5].

Although there is not a long tradition for academic project management studies in Romania, there are universities with an acknowledged tradition, with a curriculum that offers project management studies, at a high level. These management studies are generally available within the programmes of Masters of Arts or Masters of Science. The Romanian University Babeş-Bolyai, in Cluj-Napoca (Klausenburg) has had a salutary initiative that has come to meet the needs of professional instruction, oriented towards the new professional challenges developed subsequent to Romania's Integration into the European Union. The possibility to obtain post-absorption funds gave birth to the need for specialized project management personnel, which is one of the objectives of the Faculty of European Studies within the abovementioned University. The Master of Arts Programme – European Affairs and Project Management has developed a curriculum which folds upon the role and competences that define a highly qualified, proficient project manager. This post-graduate study framewerk appeared prior to Romania's adhesion to the European Union. It was the first master programme in Romania which focused on project management, i.e. on projects meant to attract European funding, being introduced in 2004, when Romania's negotiations with respect to the country's European integration under way.

In Cibela Neagu's view, the project manager is the person responsible for the project's planning, including the establishment of objectives and priorities, the setting of formal requirements for the connection with the structural instruments, the consolidation of the manner in which the project will be achieved, the definition of the job description for the human resources that are to be hired, as well as the specification of intermediate and final deadlines. One further responsibility of the project manager

[1]Harvey Maylor, *Beyond the Gantt Chart: Project Management Moving on,* in European Management Journal, 2001, p. 97.
[2] Idem.
[3] John Dingle, 1997, p. 53.
[4] Trevor L. Young, 2002, p. 17.
[5] Cibela Neagu, 2007.

would be to organize the project. This is achieved by establishing the project team and deciding its configuration, by defining the tasks, competences and responsibilities, through job descriptions, of the specialists within the project team, by deciding the optimum organizational formula for the quantitative and qualitative achievements of the project, by ensuring the completion and submission of the scoreboard, by configuring the project's budget etc. Additionally, the project manager will have to coordinate the project team, meaning that he/she is expected to ensure the bi- and multilateral communication between team members; moreover, the manager has to organize and mediate reunions (meetings) when launching the project, during its development and implementation (this includes creativity reunions and press conferences) and also at the project's completion. Odd as it may seem, a few decades ago a good project manager could carry out with his/her duties although the ability to communicate efficiently was not a personal attribute[1]. Besides Cibela Neagu, we have also identified other authors who contradict this view and perceive communication skills as essential for the project manager. For instance, Richard Newton considers that a project manager has to apply a set of communication and human interaction abilities.[2] The project manager should also be able to involve the participants in the achievement of the project. This means he/she will have to create adequate material, organizational etc. conditions, so as to indirectly persuade the project team to have an active and real participation in the achievement of the project's goals; needless to say, the team will have to be continuously motivated so as to consciously carry out their tasks. The control and evaluation of the project also lies under the responsibilities of the project manager. Those procedures imply that he/she will have to check whether the costs and deadlines of the project do not exceed the limitations and to carry out the quality check and budgetary control; moreover, the intermediate and final evaluation, the supervision and correction must also be fulfilled by the project manager.

In order to ensure the development of these competences, the curriculum of the Master Programme *European Affairs and Project Management* we are referring to focuses on the economic and organizational dimension of a project, but also on the importance of knowledge in the field of human resources management and financing sources, i.e. structural funds. Consequently, it offers courses of economics for management purposes, organizational behaviour and identification of funding sources; special emphasis lays on the study of structural funds, project design, financial management and financial markets, but also on courses of implementation, monitoring and internal evaluation of projects. Human resources are regarded by the authors of this paper as essential for the success, respectively failure of a project. In this regard, the respective master programme has included in the curriculum the study of programmes for the development of human resources, an aspect which is also given due attention in parts of the courses of organizational behaviour.

Besides the aforementioned responsibilities, there are also some specific abilities assumed by the project manager during the development of the project, as identified by Cibela Neagu. The interpersonal abilities are vital, as the manager's job primarily implies working with people, who, by their nature, are defined by communication and are prone to generate conflicting contexts. The communication or informational role is the most critical role for the success of the project.[3] In the matter of fact, team work is all about communication and its inherent aspects, so the project manager must be able to solve and negotiate the conflicts that may occur within the team. Moreover, he/she has to be able to facilitateand motivate the project team members, in order to achieve the aimed intermediary and final objectives, proposed during the project's development. Of vital importance is to keep the team united, so the project manager must know how to create and maintain the team's unity and cohesion. Likewise, it is necessary that the project manager build positive interpersonal relationships with the stakeholders. The project manager is required to be able to provide continuous information and to transfer his/her

[1] Tom Mochal, Jeff Mochal, 2003, p. 23.
[2] Richard Newton, 2005, p. 13.
[3] Project Management Series, 2007*, The Roles, Responsibilities and Skills in Project Management. Project Management for Development Organizations*, p.24.

knowledge to the team members. Actually, the project manager has to maintain the entirety of the personnel permanently informed, as thoroughly as possible. In this regard, the manager is expected to be able to schedule and lead team meetings, to elaborate and update the work graphics for team members, to inform the superior management structures and the stakeholders about his/her vision of the project. Decision-making abilities are practically indispensable for the project manager, considering that a project implies the frequent making of various kinds of decisions and taking the corresponding measures. As pointed out by John Dingle, the project manager has the responsibility for the project as a whole, and it is up to him/her to decide how he/she will run his project.[1] Consequently, the project manager must be able to decide rapidly, consciously and rationally and to communicate his/her decisions in the most appropriate manner. These decisional requirements also include the maintenance of a balance between costs, time and results, the adequate allocation of resources, provided that the project should record a certain delay and the ability to differentiate between the characteristics and the benefits of an action/activity.

For the achievement of highly appreciated and proficient results in the fulfillment of the tasks, it was found by author Cibela Neagu that the project manager must be a mosaic of a further set of competences. These imply methodical abilities (i.e. strategic thinking, solid knowledge and experience in the field of project management, organizational skills, knowledge of the structural instruments for managing projects), specialized competences (experience in his/her primary field of expertise, technical knowledge about the projects' content), social skills (management experience, the ability to work within a team, the capacity of motivating the personnel, a critical attitude, integrity), and last but not least, personal, communication, relational and moral skills (it is expected that the manager should be a pro-active person, enthusiastic about the project, creative, incorruptible and self-confident; he/she should own the necessary abilities so as to communicate effectively and professionally, as well as the ability to interact with all the involved parts in the process of managing the project) etc.

These professional competences and personal skills were given due consideration by the decisional factors that have imagined and designed the orientation and focus points of the Master Programme European Affairs and Project Management. As Eric Verzuh stated, project management is a discipline designed to facilitate change, and its value grows when used with other leading business practices.[2] In this respect, the curriculum offers its students courses of professional communication and personal interaction techniques. The abovementioned courses of organizational behaviour, identification of funding sources, knowledge of structural instruments, project design, but also practice-oriented courses and seminars where the conception of business plans and the development of feasibility studies are equally learnt. However, the master programme is not responsible for the moral traits and personal skills of the trained students; its purpose is to create and develop general and professional knowledge and abilities indispensable to any project manager. Nor is it meant to fill in the gaps, if it is the case, of the professional background knowledge of the participant students, considering that the master programme brings together people who were academically trained in different manners, on various bases and who are very likely to have distinct degrees and career specializations. This is a premise that each future student of this or other master programmes should be aware of and assume.

Apart from the curriculum elements that have previously been discussed, the studies offered by the master programme we are referring to does not neglect the recent political, economic and social reality of Romania and its implications. It is essential that the manager of a project aiming to absorb European structural funds should understand and assume the reality of the European professional context. Hence, there are several other courses focusing on the understanding of the European Union, its functioning, policies and structures. Such are the lectures on decision mechanisms, theories and policies within the European Union or those aiming to provide knowledge of the structure and organization of the European Union, held by a world-renowned expert in the field. Since the legislation

[1] John Dingle, 1997, p. 53.
[2] Eric Verzuh, 2005, p.12.

of European programmes and projects is a must for a highly-skilled project manager, a lecture aiming to provide such information is also comprised in the curriculum of this master programme.

Given the fact that practically-oriented activities are a priority, special emphasis is placed on the students' activity of professional practice in the field of management of structural funds. The graduates of this master programme are expected to gain the necessary abilities for writing and implementing projects financed by means of European grants (such as structural funds, governmental funds or other sources of funding). They will have the appropriate skills for the management of European affairs in public institutions or private organizations.

The master programme European Affairs and Project Management was conceived on the framework of European integration and its implications for Romania. The country's social and economic reality is changing due to the absorption of European funds, and so are the academic and professional contexts. "Europe across Borders" ceased to be a mere logo of the European Community, since it now has a set of guidelines in all sectors of society, including the professional one.

Professional project management has become a convincing success factor for EU projects. In order to ensure quick and efficient processes, the application of a professional project management approach is of key importance.[1]

The current budgetary plan of European structural funds is accessible until 2013. However, Romania's path to cohesion with the standard of the European Union goes far beyond this time frame and will further rely on instruments such as the European Social Fund, the European Regional Development Fund and the Cohesion Fund. Regional disparities have not been overcome yet. Assuming that the European funds available for Romania were entirely absorbed and that the economic and social objectives in terms of cohesion were fulfilled, there would still be the need for further development of the achieved results, since the European standard is not an easy target. The management process will become more capable of tackling difficult projects and in wider areas. For, as we have initially mentioned, society consists of projects, some of which being a sequel of the projects meant to obtain structural funds. Successful projects need to be sustainable. Having succeeded in integrating into the European Union is only the starting point from which a solid, flourishing future is expected to be built. Here, sustainability should be continuously aimed at, should Romania wish to benefit from the results of its successful projects.

As we have previously indicated, human resources are key factors for ensuring sustainable projects. The master degree we have discussed works with human resources. On the basis of the requirements for the proficient project manager that have been presented in our paper, such superior educational programmes shape their beneficiaries and aim to turn them into project managers; they are not solely "destined" for managing structural funds, as their ultimate role resides in ensuring the sustainable development of the country. Without a doubt, Romania had a problematic start in absorbing European funds; however, success stories in this field have also been written. It is also a fact that Romania's path to sustainability has a broad horizon. It is from now on that it shall be paved.

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Real Economic Convergence Criteria – Logically Sufficient Conditions

Dr. EMIL DINGA
Professeur, chercheur au Centre de Recherche Financière et Monétaire de l'Académie Roumaine, ancien ministre de l'intégration européenne de la Roumanie

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JEL classification: *F15, F36.*

The indicators of real economic convergence refer to the real economy, to those economic dimensions which characterise, quantitatively in particular, the stocks and flows of goods and services which can be directly introduced into consumption. Although, in conceptual terms, we may draw a distinction between the real criteria of economic convergence and the real indicators of economic convergence, we will consider here that there is no such distinction and that, by real indicators of economic convergence, we understand the real criteria of economic convergence and vice versa.

Within this context, it is important and useful to determine a grid for the identification of the economic indicators which can form, similarly to the criteria of nominal economic convergence, criteria of real economic convergence within the EU or even within a national economy or region. To produce such a generating grid, we will first have to determine the sufficient and necessary attributes (predicates[1]) that a specific economic indicator must hold so as to become (be considered) a criterion or indicator of real economic convergence.

THE SUFFICIENT PREDICATES

We consider that the following predicates (attributes) are sufficient for the qualification as criterion/indicator of real convergence:

1. *Structurality* (S_S): real convergence is a convergence presumed to have a high level of stability, that is, of non-reversibility[2]. This feature requires that this indicator should describe a "layer of organisation" of the specific economic system, located at a deeper level. For instance, the absolute indicators (which describe an economic phenomenon exclusively in terms of quantity) are presumed to be non-structural indicators, because they are not able to describe the "texture" of the targeted phenomenon or system. Therefore, these indicators can reverse conjecturally or non-essentially. Some readers might consider that, on the contrary, the qualitative indicators describe profound layers or textures of the economic phenomenon or system. The

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[*)] Professor of Economics, Deputy Director General of the Romanian Banking Institute, Member of the Consulting Council of the Romanian Prime Minister, Scientific researcher I, Centre for Financial and Monetary Research "Victor Slăvescu" – INCE – Romanian Academy.

[1] In a logical perspective.

[2] Non-reversibility also has inertial-type connotations, but the characteristic of inertiality may also result from considerations which have no connexion to stability: for instance, larger systems are usually strongly inertial (a function specific to the features of intra-system communication), but the inertiality generated exclusively by dimensionality is only a delay of the reversibility, not its elimination: it does not logically imply stability. This is one of the reasons for which we may presume that the process of nominal convergence is not sustainable if it is not accompanied, preceded or followed immediately by a process of real convergence.

answer is, unfortunately, negative too: the qualitative indicators express epiphenomenal aspects too, with the difference (which in fact is a shortcoming), compared to the quantitative indicators, that they are not indisputably quantifiable. In a certain sense, the qualitative indicators are even less relevant than the quantitative indicators, despite the common opinion dominating among specialists and practitioners, because they contain too much subjectivism in determining and evaluating the phenomenon or system being examined[1]. In order to fix the notion of structurality we will work with subsequently, we shall state the following:

- by structure we understand a certain composition texture of a system (or phenomenon), characterized by: a) composing elements, in a finite number, homogenous in terms of the interest (purpose) of analysis[2]); b) causal/functional type of relations between the composing elements;
- the structural indicators are those indicators which quantify, in an indisputable manner, the static quantitative relations[3], between the composing elements of a system of phenomena; structural indicators use quantitative indicators as "raw material";
- by representing quantitative relations between the composing elements of a system of phenomenon, the structural indicators are characterized by a higher stability, generated by the appearance of possible invariance, of causal or functional type, associated to the concerned structural relation (for instance, one of the components can only vary in certain proportions – such as proportions of marginal substitution or complementarity – in relation with another component, or the variation of a component generates, causally, negative feedback variations in another component, which annihilates the variation of the first component etc.);
- structural stability (stability which derives from the possible invariance mentioned earlier) has a necessary nature, both ontologically and methodologically;

2. *Persistence* (P_S): a very important sufficient attribute of the indicators/criteria of real economic convergence, which refers to maintaining them within the specific system or phenomenon for quite a long period[4]. This feature is demanded by the following considerations:

- the evolution of the observed economic system/phenomena must be monitored for quite a long period of time, enough to allow the formulation of inductive hypotheses or to test hypotheses formulated deductively, at a previous moment (according to the situation);
- The specific indicator/criterion must be considered "organic", having a capacity to characterize essentially the observed system/phenomenon. A very interesting discussion may appear here concerning the notions of persistence and organicity or, even more complicated, between the three notions that appeared: persistence, organicity, essence. Because the term of

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[1] In our opinion, most of the so-called qualitative indicators prove to be, upon an attentive logical examination, structural indicators. We may thus accept that there are just two categories of indicators: quantitative and structural, the latter having two subcategories: qualitative, expressed as indicators (that is, structural) and qualitative, expressed verbally. In other words, the structural indicators are those qualitative indicators which can be quantified.

[2] It is obvious that different purposes of the research may be associated with different structures of a system of phenomena. We may even say that the interest/purpose of the research/observation is the "cause" of the instant structuring of a system or phenomenon approached by specific research/observation. This is one of the methodological reasons which make us study carefully the possibility to transfer, at the level of economic analysis, the concept of collapse of the wave function from quantum theory, with the purpose of accomplishing a more veridical modelling of the economic process.

[3] The quantitative dynamic relations already describe a model (by model we generally understand the logical sum of a structure and function of that structure. The function can only appear by the dynamisation of a structure).

[4] At the limit, this attribute may even be termed *perenniality*, but the institutional and technological evolutions may determine, however, a certain "life expectancy" (limited) of such quantitative relations between the components of the economic system/phenomenon, life expectancy which is usually specific to a certain economic-social system, persisting or vanishing together with this model. However, the analyses we propose in this paper temporally belong to a generic economic-social model, which makes persistency and perenniality logically equivalent.

essence is non-experimentable[1], we will limit our considerations to the evaluation of the semantic relations between the term "persistent" and the term "organic". From the point of view of this discussion, we would like to consider the two terms as being semantically equivalent: what is organic, essential, to a system/phenomenon, is that which can not lack once the system/phenomenon exists[2]. But, if that which is organic accompanies with necessity the system/phenomenon, then we may decide that this something is, at least, persistent, if not even perennial in relation with the specific system/phenomenon[3].

3. *Generality* (G_S): this sufficient attribute refers to the fact that the respective indicator can be identified at a whole class of systems/phenomena observed (in space or temporal-historic terms[4]). Generality ensures, in fact, comparability and, finally, the methodological possibility to evaluate the process of real convergence of interest for the observer/analyst. There is something more to be mentioned about the attribute of generality:

- generality is operable only at the level of a given class of economic systems/phenomena; in other words, it is circumscribed typologically (consequently, it cannot characterize the general concept of system/phenomena; we may have as many generalities as distinct classes of economic systems/phenomena we can identify[5]);
- we must accept a strong relativity of the notion of generality; on it depends our analytical capacity to identify the criteria of classification for economic systems/phenomena); in this respect, what is general at the level of a class of economic systems/phenomena is, with logical necessity, particular at the level of a class of economic systems/phenomena with a higher inclusion level, and vice versa, if we decrease the inclusion level.

QUALITATIVE ASSESSMENTS

Let us analyse the independence, consistency and completeness of the sufficient attributes of the indicator/criteria of real economic convergence.

Independence[6]

First, let us observe that structurality does not presume[1] persistency, since we may have conjectural, incidental indicators (i.e. non-persistent) which rank, nevertheless, at a structural level,

[1] It must be considered of a metaphysic nature, being thus inadequate to describe "positive" (of course, the term positive has, here, the logical positivism signification). Because of this, by "essential" we will understand definitory.

[2] We observe that, for the time being, we only have here a simple definition of the efficient causality but, for our necessities of demonstration, it is enough. It is immediately observable that the reverse of the above assertion is not true. We may obviously have another interpretation of the assertion than the one using the relation of causality, in the efficient meaning: we may say that it is about an identity necessity, a necessity which ensures the identity (for instance, it allows us, the observers, to state that the system/phenomenon which we are observing is that or that system of phenomena).

[3] We might wonder here why we cannot consider the attribute, or the persistence, but rather the necessity? The answer is that, if we were to propose the necessity (in a logical meaning) of a sufficient attribute, it would mean to consider, implicitly, that the "life expectancy" of that attribute equals the "life expectancy" of the concerned system/phenomena, which is too strong a condition (this condition actually cancels any possibility of evolution for that system/phenomenon – understanding by evolution the alteration of its identity – condemning the system/phenomena to a static existence, to a perpetual identity with itself).

[4] In classical terms for analysis, in point of synchronic and diachronic or, furthermore, in point of transversal and longitudinal.

[5] For instance, the division of labour is general in economic systems based on specialisation, but it cannot be found in economies based on integration (autarchic or natural economies).

[6] The attentive reader understands that we do not refer to the independence of the indicators/criteria of real convergence, but rather to the independence of the attributes/predicates which characterize the respective indicators/criteria. For instance, the criteria for nominal convergence of the **Maastricht Treaty** are not independent among them, and the criteria of real convergence to be selected are also expected not to be independent two by two.

describing static quantitative relations between the composing elements of an economic system/phenomenon. Although less obvious, persistency does not involve structurality either, because a certain persistence may be simply functional, epiphenomenal, which does not refer to the profound texture of the system/phenomenon.

Second, structurality does not imply generality, in other words, we may have certain "specimens" from a class of systems/phenomena which do not possess some indicators which can be identified at the rest of the class. Reciprocally, generality does not presume structurality, because, same as in the case of persistence, we may have an epiphenomenal generality.

Third, persistence does not imply generality and vice versa, both conclusions resulting logically from the statements of the two previous paragraphs.

It results, therefore, that the sufficient attributes of an indicator/criterion of real convergence are independent of one another. Formally, this can be written as follows:

$$S_S \not\subset P_S;\ P_S \not\subset G_S;\ G_S \not\subset S_S;\ P_S \not\subset S_S;\ G_S \not\subset P_S;\ S_S \not\subset G_S.$$

Consistency

The consistency between the three sufficient attributes is also obvious, because none of them implies negation of the other. Thus, structurality does not reject persistence of generality, persistence does not reject structurality or generality, and generality does not reject structurality or persistence. Formally, we have:

$$S_S \not\subset \overline{P}_S\ ;\ S_S \not\subset \overline{G}_S\ ;\ P_S \not\subset \overline{G}_S\ ;\ P_S \not\subset \overline{S}_S\ ;\ G_S \not\subset \overline{S}_S\ ;\ G_S \not\subset \overline{P}_S\ ;\ (S_S \not\subset (\overline{P}_S \vee \overline{G}_S)\ ;\ P_S \not\subset (\overline{S}_S \vee \overline{G}_S);\ G_S \not\subset (\overline{S}_S \vee \overline{P}_S).$$

Completeness[2]

Actually, examining the completeness of the multitude of the proposed attributes/predicates is examining their sufficient character to identify and describe the indicators/criteria of real convergence of an economic system/phenomenon.

The following can be said in this respect, concerning the simultaneous relation among the three mentioned predicates:

1. it provides a description of the *deep texture* (i.e. authentic) of the economic system/phenomenon, due to the attribute/predicate of structurality;
2. it provides a *continuity* of the description of the system/phenomenon, allowing in fact to evaluate the process of real convergence (in terms of amplitude, speed and acceleration), in time, due to the attribute/predicate of persistence;
3. It provides a wide, just on the line, complete *representation*, of the classes of systems/phenomena, allowing non-local evaluations in space, due to the attribute/predicate of generality.

Therefore, we have, for the three predicates taken simultaneously, functions of representation in time, space and structure. Since the purpose – authentic, representative and continuous evaluation of the process of real convergence of the classes of economic systems/phenomena – is reached by accepting the three attributes/predicates mentioned, we consider they represent a complete system of attributes/predicates. This means that any economic indicator which verifies concomitantly the three attributes/predicates is a candidate to represent an indicator/criterion of real convergence[3].

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[1] The terms "presume", "imply" and other equivalent terms are used here with their strong significance, that is, "to generate with necessity".

[2] The problem here is how to ensure the principle of the sufficient ration (or the principle of Occam's razor) when there are quite a lot of such indicators/criteria which verify the sufficient predicates.

[3] It results therefore, that ultimately, the real economic convergence is a structural convergence, or more precisely, a convergence of the economic structure. This is an extremely important result, considering that the literature

Formally, if we note with S the multitude of sufficient predicates of an indicator/ criterion of real convergence, then we can write:

$$S = \{S_S, P_S, G_S\}$$

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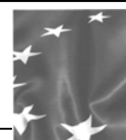
dedicated to this topic contains frequent confusions regarding the semantic relation between real economic convergence and structural economic convergence.



Towards a Logical Definition of the Automatic Fiscal Stabilizer

Dr. EMIL DINGA
Professeur, chercheur au Centre de Recherche Financière et Monétaire de l'Académie Roumaine, ancien ministre de l'intégration européenne de la Roumanie

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JEL classification: *E62, E63, H3.*

THE CONCEPT OF AUTOMATIC FISCAL STABILIZER

An automatic fiscal stabilizer (AFS) could be presumed as an institutional device concomitantly verifying the following features:

a. AFS has an exclusively *normative* character. This means that an AFS cannot just appear from the logic of the economic market (although certain economic phenomena can inspire the fiscal normative authority to design and implement some AFS[1]);

b. AFS has the specific finality to *reduce the volatility* of the macroeconomic output[2]. GDP volatility or oscillations may be generated by shocks (usually on the job offer, but any other shocks which influence, one way or another, the result of the production function, must be taken into consideration[3]). This stabilizing capacity, associated to an AFS, gives the name of the concerned institutional device[4];

c. a more general finality of the AFS is to absorb the *asymmetrical shocks* generated necessarily by the functioning of a common monetary policy (which also is a public policy of adjustment), under the conditions in which the effects of this common policy are displayed in member states with distinct financial structures (channels with different parameters for monetary impulse transmission);

d. AFS *does not have a symmetrical* action, when it acts from the perspective of the available income, compared to the situation in which it acts from the perspective of the expenditure: for instance, its efficacy is certain in the case of governmental expenditure, but it is uncertain when it acts from the perspective of the income[5], because, if the multiplier of governmental expenditure

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[1] We must say, nevertheless, that such automatic stabilizers may and do appear within the economic process as such. Otherwise, if it were not so, the market failure would be total (for instance the communist economic doctrine presumed implicitly that the economic progress itself can not generate and maintain automatic stabilizers). The best-known example is the phenomenon of market clearing (coincidence of the demand with the offer for an economic good, the price being generated by the respective balance). We must however notice that when we speak of public policies of adjustment (such as the fiscal policy), the normative nature (origin) of the automatic stabilizers is logically necessary.

[2] The macroeconomic output is measured by the current GDP indicator.

[3] The "hard" expression of GDP volatility refers to the exceeding of the potential GDP by the actual GDP (for increase) or to GDP decrease below the so-called CDP of constant occupation (for decrease). The GDP of constant occupation (of course, very different from full occupation) is quite a difficult concept to instrument analytically, but it is suggestive from the perspective of ensuring a "smooth" trajectory of the GDP (also see **Barry Eichengreen**, University of California, Berkeley, *Saving Europe's Automatic Stabilizers*, in National Institute Economic Review, November 1996).

[4] Empirical studies have shown, however, that the AFS may also have destabilising effects, for instance, in the case where the grid (or granularity) of action of the AFS is not indexed to shocks (for instance, to the inflationary shock).

[5] For instance, in OECD countries, both the taxation and governmental expenditure act as automatic fiscal stabilizers.

is produced entirely[1], the reduction of the income due to the action of the AFS does not produce a proportional modification of the consumption, therefore of the aggregate demand[2];

e. AFS has, by definition, an, *anti-cyclic*[3] impact. It is important to mention here that AFS only has an anti-cyclic impact while the discretionary measures of fiscal policy, even if they are anti-cyclic as finality, may also have pro-cyclic consequences (temporarily or concerning some segments of the fiscal matter);

f. AFS *increases* the efficacy of the macroeconomic prediction (by reducing the incertitude of the concerned predictions). The mechanism is as follows: an AFS is always designed in terms of the fiscal policy purpose (final cause), which means that once we accept the theoretical paradigm within which such an AFS is conceived, its operationalization leads with great certitude to the variation of the target macroeconomic variable into the expected direction, and most times, amplitude[4].

g. AFS is a *structural* instrument, unlike the discretionary decisions of fiscal policy which are purely functional. This is an aspect of particular importance because the structural aspect gives the concerned instrument a fundamental property, its capacity to "control", with certitude[5], the dynamics of the phenomenon or process to which it is assigned. Although the structural nature may also hold another property – that of permanence – we are reserved in stressing too much on it because, in principle, a discretionary decision may abolish at any time the concerned AFS and may equally perpetuate or renew any discretionary decision; in other words, AFS may have the same properties of permanence as discretionary decision, therefore, this property doesn't express a specific difference;

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[1] It is appreciated that the multiplier of the aggregate demand (the absolute modification of the output to the modification of the aggregate demand by one unit) is diminished by the automatic stabilizer with the dimension: $\frac{\alpha \cdot \tau}{(1-\alpha+\beta)\cdot(1-\alpha+\alpha\cdot\tau+\beta)}$, where:

α : the marginal inclination to reduce the consumption following the income tax

τ : the marginal rate of the income tax

β : a coefficient which overtakes the crowding-out effect generated by the increase in the interest rate and prices (also see **Cohen, D, Follette, G.**, *The automatic fiscal stabilizers: Quietly doing their thing*, FRBNY Economic Policy Review, April 2000).

[2] Thus, when AFS acts into the direction of increasing the income, the marginal inclination towards consumption decreases, while when AFS acts into the direction of decreasing the income, the **Duesenberry** effect is produced.

[3] Hence, the essential feature of the AFS is to provide negative feedback. On the other hand, a discretionary public policy for adjustment (PPA) may be anti-cyclic, that is, it may have the nature of negative feedback, only that in the latter case, the negative feedback due is explicit, deliberate, unlike the AFS in which it is implicit, automatic.

[4] This observation may be of crucial importance in the paradigmatic rethinking of the economic modelling (prediction). For instance, for us it is obvious that in economy we don't have actual predictions, but rather…retrodictions from the future towards the present. This statement is likely because, in a so-called economic prediction, we do not extrapolate the past and the present (that is, the movement law of the economic phenomenon, the initial conditions; if we did so, we would expose ourselves, directly, to the Lucasian critique) but we restore the process starting from the set purpose, that is from the future towards the present. In this respect, a so-called economic prediction should have an enormous normative load (in fact, the economic prediction must be considered as closed in normative terms), which means it should project the process, chronologically, from the present towards the future leaving, in logical terms, from the future towards the present.

[5] The word „certitude" is essential here because the discretionary decisions of fiscal policy too, can modify (or may attempt to modify) the structure of the particular economic phenomenon or process, but only at the moment or starting with the moment when they are implemented. Therefore, we are not sure whether the responsible public authority will react to the signals from the economy by deciding in a discretionary manner on the changes of structure deemed necessary (the authority may be incompetent or may have a political interest, for example, not to intervene). On the contrary, once AFS is implemented within the fiscal institutional mechanism, it becomes autonomous in relation to the particular public authority and its action is certain, as soon as the economic conditions allow its activation.

h. As mentioned before, AFS requires the design of an *"institutional path"* on which it runs (unlike the discretionary fiscal policy which creates this path simultaneously with the discretionary decision of intervention, see the military tank metaphor). This means that AFS is "path dependent", which entails that condition (usually, preponderantly economic) fulfilment is the efficient cause[1] to start the considered automatic action;

i. AFS is characterised by high *efficacy* (the efficacy of an action is, of course, something different than its certitude). By AFS efficacy we understand its property to achieve the purpose for which it was designed and introduced into the institutional mechanism of fiscal policy. AFS efficacy is diminished or even annulled (with the risk of destabilising pro-cyclic effects occurring) if AFS are designed using distorted taxation data[2]. Furthermore, AFS efficacy depends, directly proportionally, on the nominal and real rigidity of the economy. The last conclusion is logical, considering that AFS action is, to make a physical comparison, like a lever: the rigidity of the lever ensures the presumed effect (which means that we have a potential trade-off between the distortions introduced by the nominal and real rigidities in the economy and AFS efficacy which relies exactly on these rigidities). After all, an AFS determines the private sector to do (in terms of changing its economic behaviour and sometimes even the criterion of economic behaviour) what the government can not convince it to do. In terms of quality, efficacy is also a logical consequence of the structural nature of the AFS, and so is certitude. In terms of quantity, efficacy is a function of two parameters: 1) the rate of action – the intensity with which AFS updates its programmed action; 2) the basis of action – the economic support on which the rate of action is exerted. Let us examine the two components, while making some logical and methodological considerations[3]:

(1) The *rate of action* (k) refers to the „step" which AFS takes once all the "path" conditions are fulfilled, which starts its action automatically. For instance, if we take an AFS which acts on the income, such as progressive taxation of personal income and/or of corporate income, the rate of action is described by the size with which the taxation rate changes from one level of incomes to another[4];

(2) The *basis of action* (B) refers to the interval of the "action cell" which has a certain rate of action;

(3) The *quantitative dimension of AFS efficacy* (E) refers to the product between the rate of action and the basis of action: $E = -k \cdot B$[5]. One can observe immediately that the rate of action and the basis of action are substitutable[6]. In this case we may define an indifference curve of AFS efficacy, putting the differential condition:

$$dE = 0 \rightarrow dk \cdot B + dB \cdot k = 0 \rightarrow Rms = \frac{dk}{dB} = -\frac{k}{B}$$

where Rms is the marginal rate of substitution between the rate of action and the basis of action;

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[1] In Aristotelian terms.

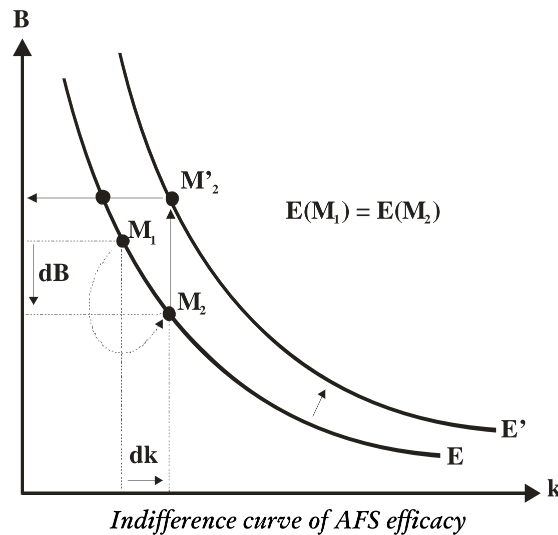
[2] Any public norm having the effect to cut down consumer surplus is regarded as creating distorsions.

[3] It seems, for instance, that AFS efficacy increases with the size of the state (a larger state implies, necessarily, larger bases of action but, for budgetary equilibrium reasons, it may also imply higher rates of action) (also see **Barrell, R.**, **Pina, A.L.**, *How important are automatic stabilizers in Europe? A stochastic simulation assessment*, European University Institute, WPECO nr. 2/2000).

[4] We will observe here the necessarily discrete character of the rate of action. We will also notice another property according to which there is, on the one hand, an administrative constraint (fiscal revenue administration) concerning the number of "action cells" (the income levels in our example above), while on the other hand, there is an economic constraint concerning the actual size of the rate of action (see the classical Laffer curve).

[5] The negative algebraic sign shows the reversed direction of AFS action on the controlled economic variable in relation to its autonomous variation.

[6] According to the case, the minimal and maximal thresholds of this replaceability must be examined by putting economic conditions. In our opinion, these economic conditions must be sustainable.



Indifference curve of AFS efficacy

j. In relation to AFS, we will introduce the concept of AFS *granularity*, which refers to the finesse of the "square grid" of both the rate of action and basis of action. The finer the two "square grids", the smaller AFS granularity is, and vice versa. AFS granularity is important in terms of the sensitiveness of AFS reaction to the change of economic conditions, which is, as mentioned earlier, its efficient cause. Just as we have replaceability between the rate of action and the basis of action of an AFS, in the same way we have replaceability between the granularity of the rate of action and the granularity of the basis of action of an AFS. It is, of course, another problem if AFS efficacy depends more on one granularity or on another. A conclusion in this respect might be interesting, but the issue will be resumed in a future intervention[1];

k. An AFS is an indirect and implicit entity. In terms of concrete action, however, AFS may have an impact characterized by an *economic lag*[2]. Developing the idea on the asymmetrical character of AFS action, we may say that, for instance, an AFS which acts on the governmental expenditure (such as the unemployment aid) does so without any economic intermediary on the aggregate demand, because governmental expenditure is an explicit component of the aggregate demand. On the other hand, an AFS acting on private consumption (another part of the aggregate demand) will first modify the available income which, in turn, will modify (for instance through the intermediation of the marginal inclination towards consumption) private consumption. We are dealing here with an economic lag. We should therefore probably speak of non-mediated AFS (AFS target being a component of the aggregate demand or of the aggregate offer), and of mediated AFS (AFS target being an economic variable characterized by a certain economic lag behind the final component of the aggregate demand or of the aggregate offer, according to the case);

l. Finally, we can state that even the substitution effects mentioned above (both between the rate of action and the basis of action, or between the granularities of the two) may act as a *sui-generis AFS*[3] (the reader can easily generate an explanation in the matter).

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[1] In our now opinion, this matter must be dealt with rather empirically than theoretically, meaning it represents a contingent property rather than a necessary one.

[2] This is not a temporal lag, because any AFS acts "instantly" once the conditions forming its efficient cause are fulfilled, but an economic lag, meaning a lag referring to the mechanism of AFS action transmission onto the command variable which it must modify (the economic lag is generated by the economic theory acknowledged to govern the specific economic process.

[3] We probably have here a theoretical starting point to introduce some kind of second degree AFS.
We will hold, however, this idea to be developed during an other intervention.

Based on the above 12 features, we may say that an AFS is a *device of institutional type, of normative origin, with structural nature, with macroeconomic sphere, with anti-cyclic action and with implicit (automatic) start, whose purpose is to reduce the volatility of the macroeconomic output (GDP).*

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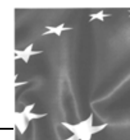
The European Union and the Vatican. The papal discourse concerning the projects of European construction

Dr. FABIAN ISTVAN
Chargé de cours (lecturer) Université Petru Maior de Târgu-Mureş

The history of European integration shows how in the last 150-200 years, European ideologists and politicians tried, through different initiatives, to create the premises of a pan-European unity by, creating long-lasting peace and prosperity.

Beginning with the second half of the 20th century, probably as a consequence of the horrors of the Second World War, the participation of statesmen, as well as the pragmatic involvement of politicians in the ideological battles concerning the creation of a pan-European unity, created the premises of a stabile integrationist process as well as durable peace. Unfortunately, this process was limited, at the time, only to Western Europe because the eastern part of the continent sank in the ideological darkness provoked by the fall of the "Iron curtain". In this bipolar climate of eastern-western tensions, the net of (semi)official relations of Christian Churches, relations which transgressed official state borders, ensured more or less the subsistence of the feeling of European community for those living under communist rule. The events provoked by the fall of totalitarian regimes in Central and Eastern Europe revived the belief in the possibility of creating a union capable of covering the entire European continent.

. It is well-known that in the process of creating and expanding the EU, many questions and problems arose: we are speaking about the ideological confrontations which opposed national values and traditions with universal ones (or supposedly universal)



or local or regional interests with European ones[1]. Among the representatives of these ideas in opposition were politicians, leaders of economic and social groups of interest, but also men of arts and letters. In this spiritual, ideological conglomerate, the representatives of religion cannot be absent, and because we are talking about Europe, we need to refer to the Christian religion. The reason is simple and obvious: in the vast majority of European countries, the Christian Church represents a great intellectual, cultural and opinion forming force. Without its cooperation, it is very hard to conceive a European Union, in spite of political willingness or economic hardship. Even the father of the EU, Robert Schuman, once said: "European unity is not accomplished by the European institutions, because the European Community cannot be just an economic and technical enterprise. It needs a soul, the awareness of a historical relationship, the awareness of the responsibility of assuming the present and the future and political will for serving a common human ideal" [2]

From these considerations as a starting point, in the following we will try to present a few representative aspects of the papal discourse concerning the Union's projects and the spiritual-ideological aspects concerning the existence of the EU[3]. The main idea is that the Vatican from the beginning of the 20th century conceived the elaboration of pragmatic plans to build a pan-European union (Benedict XV, Pius XII), respectively they participated in the elaboration of the main ideological trends of the existence of the EU (Paul VI, John Paul II).

BENEDICT XV

Witness to the violence of the first World War and to the deficient peace conference of Versailles, Benedict XV observed with bitterness in his encyclical letter from 20 May 1920, entitled Pacem Dei munus pulcherrium: "even after two years from the end of the war, the seeds of old conflict have not been been destroyed" [4] and called European leaders to do something for the creation of lasting peace, and in the long term, to think about the possibility that "all the states should be unified into one single community, more than that to form one family of nations having as aim the preservation of individual freedom and social order" [5]

PIUS XII

Considered to be the "initiator of the proper Catholic contribution to the European unification" [6] Pius XII's declarations, correspondence and speeches were marked the

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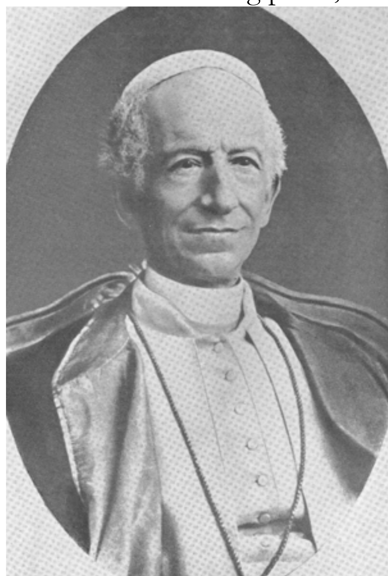
[1] Holló László, *Europai Unió- Értéközösség. Az europai integráció katolikus társadalometikai vonatkozásai*, Roma, 2006, p.145
[2] Schuman, Robert, *Pour l'Europe* Paris, 1963, p.48, 78.
[3] For documentary basis: open letters, radio speeeches, oficial papers held into the documents of the Pedagogic Institute of the Roman-Catholic Church, and of the Council of the European Episcopal Conference, as well as COMECE-Comissio epicopatum Communitatis Europeis.
[4] Encyclical from 20 May 1920 , *Pacem Dei munus pulcherrium,* în Utz, A- Groner F, *Aufbau und Enftallung des Geselschaftlichen Lebens* Bd I-III, Freiburg, 1955, p.962
[5] *Ibidem* .p.977- 981
[6] Rauch A. M, *Kontinuität mit wechselden Akzenten. Der Heilige Stuhl und die europäische Einigung* în *Herder Korrespondenz* 1/1994, p.38

guidelines (valid even today) of the Vatican politics concerning the projects of European unity and extension. We will mention five of his declarations concerning the issue in question.

A. The speech from 24 December1940 addressed to the College of Cardinals

In a Europe torn apart by war and, for the time being without the perspective of an immediate and lasting peace, Pius XII in his speech expressed the interest of the Holy See toward the creation of a new European order which should grant "the legal basis of the stately existence and of long lasting international relations. At the same time, he emphasised that the Church must not rally to a certain political system but "must be the bearer of the basis of faith and morality, which should grant a durable base of the new order"[1] The pontiff sovereign established five coordinates for creating a new European order: the destruction of the hotbeds of international conflicts, as well as the destruction of the ideology which states: "the race for profit is the basis of international law and violence creates rights. In the economic domain, it is necessary to create a system which grants a state the possibility that its citizens, regardless of their social status, can benefit from above average life standards. Finally, the last coordinate would be the creation of Christian-democratic legislation able to grant relations between states and individuals based on healthy economic legislation, which does not endanger state and individual independence".[2]



B. Radio speech from September 1st 1944

This speech was held by the pope at the sad commemoration of five years from the outbreak of war, and it emphasised the necessity of a new European order based on Christian ethics. Pius XII underlined the fact that during the centuries, the Christian culture adapted itself to the individuality of each nation and respected the moral and natural right to existence[3] . In this matter, the pope emphasised once again the idea of a new sentiment of international unity, possible only through the creation of institutions capable of maintaining long-lasting peace.

C. Radio speech at Christmas 1944

"This speech began with the famous quotation from John's Gospel: „lux in tenebris lucet et tenebraeeam non comprederunt", after which the pope described the point of view of his generation which "from the bottom of his conscience declared war to war, a generation which (…) crossed oceans of tears and blood, and lived at the highest intensity the unseen cruelties which linger in their conscience and memory".[4] The pope was already thinking ahead to the formation of a new European order especially when he was referring to the Germans: "no matter how rough it may seem to be, it is obvious that certain nations whose governments, and in a smaller measure themselves, are responsible for the outbreak of the war, for a limited period of time, must support the heavy consequences of their actions" but in the same time the pontiff underlined the necessity that also these nations should also benefit "in the same way from the

[1] Utz, A- Groner F, *op.cit.* p.3584-3586
[2] *Ibidem* p. 3587-3591
[3] *Ibidem,* p.727-730
[4] *Texte zur katolischen Soziallehre. Der sozialen Rundschereiben der Päpste und andere kirchlische Documente.* Bundesverband der Katolischen Arebeitnehmer Bewegung Deutschlands- KAB Köln, 1989, p.137-141

benefactions of an equalitarian reconstruction which must have as a result their acceptance in the great family of European nations". The pontiff ended his speech expressing his hope that in the future the great nations would realise for themselves that the only way to avoid wars was "their affiliation to a single community based not on a specific nation but on the conscience of common destinies and values" [1]

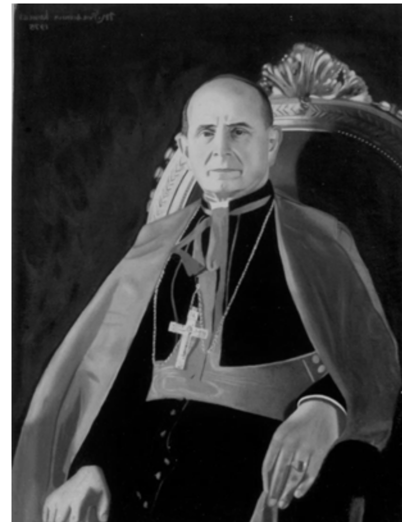
The hopes of the pontiff became real in the way that the Christian-Democratic parties based on the Christian ideology had an exceptional development in the post-war period: Mouvement Populaire Republicain, Cristlich Democratische Union, Österrechische Volkspartei had considerable power from their high-ranking politicians, such as Robert Schuman, Alcide de Gasperi, Konrad Adenauer or Paul Henri Spaak.

D. The speech from 2nd June 1948 addressed to the College of Cardinals

Held three years after the end of the Second World War, the pope's speech represented a clear signal that the Holy See wanted to participate in the construction of European unity. "Without involving the Church in the web of temporal interests" [2], the pope affirmed that the Vatican wished to send e representative to the Hague, a gesture through which they wanted to express the "encouraging attitude of the Apostolic Sea towards the unity of nations."

E. Speech at Christmas 1953

Eight years after the end of WWII the pontiff bitterly remarked that the peace process was again in danger and in the same was he observed the existence of a "moral short-sightedness" as a result of overestimation of the role of technical progress. "The technical spirit" does not limit itself to the material world but it is deforming the perception of labour and family "reducing the European peace to a continuous race for improving life standards" and forgets the fact that "long-lasting peace is after all a problem of spiritual unity and moral standards." Therefore, Pius XII made an appeal to Christian-Democratic leaders in Europe to help in creating long-lasting peace and a climate of reciprocal understanding



PAUL VI

Pope Paul VI had a benevolent position towards the projects of European construction which, at that time, manifested themselves in the plan of an active policy of the European Community. "We actively support all those plans which contribute actively to the proper implementation of European unity" said the pontiff in his encyclical letter from 24 October 1964 entitled The Ambassador of peace. Also, in this encyclical letter written amid the re-sanctification of the Monte Cassino monastery (entirely destroyed in 1944 by the Allies), the pope designated St. Benedict as the patron saint of Europe. "St.Benedict -noted the pope- consolidated the spiritual unity of Europe in which nations so different in traditions and customs considered themselves brothers within the great nation of God. This unity destroyed by a series of dark events is now being rebuilt by benevolent people" [3]

[1] *Ibidem* p.147-148
[2] Utz, A- Groner F, *op.cit.* p.669
[3] Paul VI, Encyclical *Ambasador of peace* in *Bencés Hirlevél*, 2004, year VI, no.2, p.1-2

In the idea of an effective contribution of the Catholic Church to the process of European construction and integration, Paul VI founded a nunciature in Brussels in November 1970. On the other hand, observing the difficulties which appeared in the EC, concerning the acceptance of Christian values, he signed a concordat with the Community, through which strengthened by means of international law the role and place of the Catholic Church [1] During his pontificate, the Council of European Episcopal Conferences (CCEE) was founded at St. Gallen, as an instrument of collaboration with the EU, while protecting the interests of Catholic Church.

JOHN PAUL II

Considered to be the most active pontiff of the 20th century, John Paul II was preoccupied with the idea of European construction from his youth. As a teacher at the Catholic University in Lublin, Karol Wojtyla had as his research theme the common cultural roots of European nations. In all these years, the future pope synthesised his own ideology concerning European unity: European construction is a social necessity, European nations can reach this unity through Christian ideology without which European construction would be deprived of a solid basis. At the same time, Wojtyla considered that in a real Europe, there was no opposition between East and West...[2]

As a pontiff, John Paul II, proved from the beginning to be an excellent supporter of the EU, a fact emphasised by the frequent contacts with its institutions. At the occasion of his visit to the European Parliament in October 1988, the pontiff declared: "since the end of Second World War, the Vatican has expressed its support towards the projects of European unity (…) without abandoning its spiritual aim the Holy See considers as a primordial target the support of those initiatives which are in accordance with the ideals and values promoted by the Vatican".[3]

John Paul II inscribed the Vatican's policy on new coordinates, by abandoning the "small steps" policy promoted up to him by the Vatican toward communist states but he also had a more aggressive and pragmatic approach toward the great economic – military powers. That is why Mikhail Gorbatchev, in an interview for the *La Stampa* newspaper, considered John Paul II the real initiator of the radical and irreversible changes that took place in Eastern Europe, and across the rest of the continent. "Without the role assumed by John Paul, the changes that took place in Europe could not be imagined" asserted the Soviet leader [4]

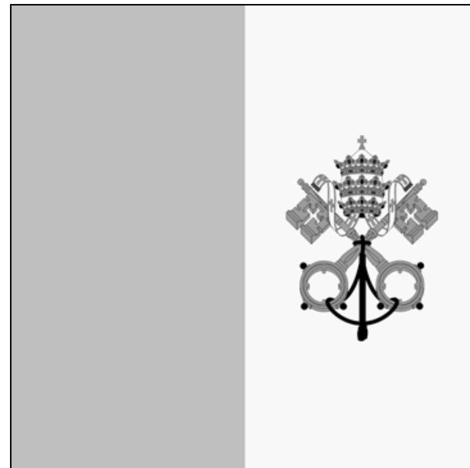
This role is reconfirmed at the occasion of the First European Synod (28 November-13 December 1991), at which occasion the ardent problem of European extension was taken into discussion. The Synod's conclusion was alarming from the Vatican's point of view: Europe was

[1] Loser, *Das Engagement der Katolischen Kirche in Process der Einigung Europas* in Beutler-Loser, *Europa-aufgabe für Christen*, Frankfurt a. Main ,1992, p.9-33
[2] Krims A, *Wojtyla. Ein Programm und Politik des Papstes*, Köln, 1982, p.47
[3] Ioan Paul II, *Speech in the European Parliament (1988, october 11)* in *Merleg*, ed. Boor Janos, year 25, 1989/4, p.369-375
[4] Hollo *op.cit.* p.158 *apud* Fries Heinrich, *Das neue Europa und die Kristlichen Kirchen,* în *Die Stimmen der Zeit,* 210, 1992, p.741-750

in a cultural, moral and social crisis. If in Eastern Europe the crisis was caused by the "reduction of the individual to his material and economic essence, by destroying his moral essence" in the western part of the continent, the crisis of values was given by "economic selfishness and the exaggeration of individual liberties". The pontiff asserted that the extension and continuation of European construction had to be done by respecting human rights, universal solidarity, and the moral, cultural, economic and cultural responsibilities of an individual and community. That is why John Paul II and the members of the Synod urged all EU leaders to "recognise in all the differences the richness of Europe and to maintain and support the historical pillars of European solidarity" [1]

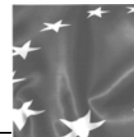
This idea was once more emphasised in a more determined manner at the Second European Synod (1-23 October 1999) in the context of the bitter debates concerning the text of the European Constitution which make reference to the Christian roots of European construction but, also in the context of strong deviation of European policy from the Vatican's expectations. John Paul declared on that occasion: "it is clear that the Christian religion is part of Europe's cultural basis. Modern Europe, which gave to the world the ideals of democracy and civil rights, took its ideology from Christian morality. That is why Europe is no longer just a geographic concept, but also a cultural-historical one, which by the power of Christianity, has managed to unify different nations and cultures. Today we are witnessing the birth of a new culture which tries to separate European heritage from its Christian roots." [2] From these ideas, the pontiff continued to militate for the reformulation of European Constitution. Unfortunately we all know the final outcome.

In conclusion: the Holy See, during the 20th century, supported many times the ideas of European unity, construction and expansion. Of course, this support was given with certain demands: the EU should not be just a technical-economic organism, but also a cultural-spiritual union, a community of values. To what extent these perfectly normal demands have been respected, we leave it to everyone to judge for themselves.



[1] Ioan Paul II, *Sollicitudo rei Socialis* 38, in *Az egyház társadalmi tanitása. Dokumentumok*, 487-530

[2] Apud *L'Osservatore romano,* 1999, 3 October, p.6



LES AUTEURS (Les 4 numeros)

Dr. Michel LABORI (michel.labori@wanadoo.fr)
Est ancien Professeur Jean Monnet, Agrégé d' histoire, Docteur d Etat en science économique, Docteur 3e cycle en aménagement du territoire et en Economie régionale, Professeur honoraire de l' Université de Franche Comté.

CARRIERE

1967 – 1971 Professeur des Ecoles Européennes à Bergen (Pays-Bas)
1971 – 1996 Professeur de classes préparatoires à l'Ecole Spéciale Militaire de Saint-Cyr Coëtquidan (France)
1978 – 1990 Professeur enseignant à la Faculté de Droit de Dijon
1983 – 1992 Professeur de classes préparatoires commerciales ESC – HEC, Vesoul (France)
1990 – 1997 Professeur enseignant à la Faculté de Droit et de Sciences Economiques de Besançon (l'Université de Franche Comté)
1993 – 1995 Professeur chargé d'un cours Jean Monnet à l'Université Technologique de Sevenans (France)
1993 – 1997 Professeur chargé d'un cours Jean Monnet à la Faculté de Lettres de Besançon (l'Université de Franche Comté)
1997-present - Professeur honoraire de l'Université de Franche Comté

Il est auteur/coauteur de plusieurs **livres:**

Michel LABORI, co-auteur avec Didier BOURDELIN
L'Europe des Douze – Paris - *Editions ELLIPSES MARKETING* – 1986 – 493 pages, ISBN 2-7298-8619-2
Michel LABORI, co-auteur avec Didier BOURDELIN
Le Portugal au seuil du XXIe siècle – Paris - *Editions ELLIPSES MARKETING* – 1990 – 143 pages, ISBN 2-7298-9045-9
Michel LABORI, **L'espace rural bourguignon** - Dijon - *Cahiers de l'Institut Régional de Bourgogne Franche Comté* – Université de Bourgogne, janvier 1990 – 324 pages – ISBN 2-85637-001-2
Michel LABORI, co-auteur avec Jean-Marc TETIER
Le fédéralisme industriel – Paris – Editions SIDES – 1995, 144 pages, ISBN 2-86861-091-9
Michel LABORI, co-auteur avec Didier BOURDELIN
De l'Europe des Quinze à l'Europe Continent – *Paris - Editions ELLIPSES MARKETING-1996 – 192 pages, ISBN 2-7298-4668-9*
Michel LABORI,
Le Maghreb et L'Union européenne – Singelfinden - *Editions LIBERTAS- 2000*

DECORATIONS

Chevalier de la Légion d'Honneur (2000)
Officier du Mérite
Commandeur des Palmes académiques

ACTIVITES EUROPEENNES

Président du Mouvement Européen Nord (France)
Membre du jury du Baccalauréat Européen (Luxembourg)
Directeur de la Revue d'Etudes européennes -*L'Europe Unie* (Paris), publiée par l'Université Catholique de Lille, Institut Catholique de Toulouse, Mouvement Européen Nord, l'Université de Targu-Mures (Roumanie)
Membre du « Team Europe » (UE-Bruxelles) de 1983 à 2007.

Dr. Simion COSTEA (simion.costea@gmail.com)

Est maître de conférence (Associate Professor) à l'Université "Petru Maior" de Târgu-Mures, Roumanie, "Professeur Jean Monnet" d'intégration européenne. Il est coordonnateur du Projet Jean Monnet (girée par l'UE) et membre du Centre Européen d'Excellence Jean Monnet (coordonné par l'Université de Cluj-Napoca). Il est rédacteur en chef de "L'Europe unie" (Paris)-revue française d'études européennes. Il est Docteur en in Histoire (2003) et lauréate du Prix de l'Académie Roumaine (2006) pour son oeuvre d'historien de l'intégration européenne. Il a publié 35 études scientifiques, 4 livres et 7 courses universitaires (syllabi), concernant l'histoire de l'intégration européenne et les Relations Internationales. Conseiller au Parlement Européen (depuis décembre 2007-present).

Les livres publiés sont:

1. Costea, Simion, ***România şi Proiectul Briand de Uniune Europeană (La Roumanie et le Projet Briand d'UE),*** Târgu-Mures, „Petru Maior" University Publishing House, 2004, 400pages.
2. Costea, Simion, ***Ideea europeană si interesele statelor (L'idée européenne et les intérêts des états)***, Cluj-Napoca, Napoca Star Publishing House, 2005, 280pages.
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Dr. Mukwabuhika Placide MABAKA

Professeur de Droit Public à l'Institut Catholique de Lille – Faculté Libre de Droit

Directeur du Centre de Recherche sur les Relations entre le Risque et le Droit (C3RD).

Principales publications:

- *Problèmes et perspectives constitutionnels du processus de l'intégration européenne – Aspects nationaux et européens*, version remaniée de la thèse de doctorat, Editions Ant. N. Sakkoulas, Athènes et Bruylant, Bruxelles, coll. « Bibliothèque Européenne. Droit Constitutionnel – Science Politique », Athènes, Bruxelles, 2006, 623 p.
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- « Suprématie de la Constitution et Primauté du droit européen : mariage impossible ? », *Revue de la Recherche Juridique – Droit Prospectif*, 2001-2, pp. 691-721.

Dr. Bruno GUERMONPREZ

Enseignant-chercheur-ISA LILLE

D.E.A. d'Economie et sociologie rurales (PARIS X/Sciences Po)

Domaine d'expertise : en filières de productions animales,politiques agricoles et organisations professionnelles agricoles, afin de mener à bien des activités d'enseignement, de consultance et de recherche. Coordination d'un Module Européen sur les politiques agricoles et rurales avec 7 autres universités européennes. Missions à l'étranger : USA, Chine, Roumanie (3 à 4 missions par an), Liban (2 missions), Congo : (4 missions).

Dr. Boris GRESILLON

Maître de conférences en géographie à l'Université de Provence Chercheur au laboratoire CNRS-Telemme (Temps, Espaces, Langages, Europe Méridionale, Méditerranée)

Sujet de thèse: "*Berlin métropole culturelle – essai géographique*". Livre publiée *Berlin métropole culturelle*, Paris, Ed. Belin, coll. "Mappemonde", (2002)

Responsable du DEUG de Géographie; Responsable du programme Erasmus Aix-Tübingen (Allemagne)

Responsable pédagogique des étudiants en M1 du Master Etudes européennes
Participation aux programmes collectifs et groupes de recherche :
- "Dynamique des territoires métropolitains en Méditerranée"
- "Villes en mouvement ou la production de nouvelles centralités urbaines et compétences citadines" et "Territoires, pouvoirs, institutions".

Dr. Ioannis K. PANOUSSIS est titulaire d'un Doctorat d'Etat en droit public (spécialité droit international et européen – droits de l'Homme). Il est actuellement maître de conférences à la Faculté Libre de Droit de Lille (ICL) et professeur invité à l'EDHEC Business School et à l'Institut d'Etudes Politiques de Lille. Il assure de surcroît la fonction d'assesseur au Doyen, chargé des relations internationales depuis septembre 2007 et est responsable du parcours « Licence européenne ».
Ses recherches portent en priorité sur les relations entre le Risque et le Droit, en particulier dans le domaine du droit international public et des droits de l'Homme (obligation des Etats de prévenir les violations des droits de l'Homme, terrorisme, succession d'Etats…).

Florent VANREMORTERE
-ancien maître de conférences à l'I.E.P. de Lille

Dr. Eric OLSZAK, Faculté Libre de Droit,
C3RDet IDDR, Université Catholique de Lille,
Chercheur associé au CLERSE
Enseignant chercheur au sein de la Faculté Libre de Droit, membre de l'Institut du Développement Durable et Responsable au sein de l'Université Catholique de Lille
Docteur es sciences économiques nouveau régime, mention très honorable. Université de LILLE 1
Membre du Séminaire interdisciplinaire sur le Développement Durable de la Faculté des sciences économiques et sociales de LILLE 1
Participation à la rédaction de l'ouvrage collectif : *«Développement durable et territoire »* ,
co-rédacteur avec Guy CHAUTARD du chapitre 6 : *«Développement durable et territoire en reconversion : l'exemple des zones minières du Nord-Pas de Calais »,* Presses Universitaires du Septentrion, 2000.
Secrétaire de l'association CDEE (Centre de développement des éco-entreprises) à Loos en Gohelle et membre du Comité Grand Lille depuis Janvier 2001, co-animateur de la commission « *Réflexion et motivation dans le passage à l'acte d'entreprendre* » de CREATIVALLEE, membre des commissions : *Développement économique, Grands équipements sportifs, Vie quotidienne, Gouvernance et territoire et S'ENERGIE (*articulation entre Lille Métropole et l'Ex-Bassin Minier).

Dr. Liviu MARIAN
Est Recteur et professeur universitaire à l'Université "Petru Maior" de Târgu-Mures, titulaire des disciplines de Management Stratégique, Management des Projets, Entreprenariat, auteur unique de 3 livres, collaborateur pour 7 livres, ayant plus de 30 ouvrages scientifiques publiées dans des revues de spécialité. Manager de projet dans 2 projets ERASMUS, 5 projets PHARE, 5 projets CEEX et CNCSIS.
Informations supplémentaires sur www.upm.ro/conducere ou directement à l'adresse liviu.marian@yahoo.com.

Dr. Theodor STOLOJAN
Est député au Parlement Européen (Groupe du PPE-DE), ancien premier ministre de la Roumanie, Professeur.
Diplôme d'économie (1966) et Doctorat d'économie. Professeur - Université de Transylvanie, Braşov, Roumanie (depuis 2002). Conseiller présidentiel - Présidence de la Roumanie (2004 - 2006). Ancien Économiste et économiste principal - Banque

mondiale, Washington D.C., États-Unis (décembre 1992 - 1998). Ancien Premier ministre - gouvernement roumain (1991 - 1992), ancien Ministre des finances, Bucarest (1990 - 1991).
Premier vice-président du Parti démocrate libéral (depuis 2008); ancien président du Parti libéral démocrate (2006 - 2007); ancien président du Parti national libéral (2002 - 2004). Depuis décembre 2007 il est député au Parlement Européen, Groupe du Parti populaire européen (Démocrates-chrétiens) et des Démocrates européens, membre dans le Commission des budgets.

Dr. Andreea VASS
Est chercheur à l'Institut d'Economie Nationale de l'Académie Roumaine et collaboratrice de l'Académie des Etudes Economiques. Ancien conseiller dans l'Administration Présidentielle de la Roumanie (Janvier 2005-Juillet 2007) et conseiller au Parlement Européen (depuis décembre 2007-present).

Dr. Sorin FRUNZAVERDE
– député au Parlement Européen, Vice-président Sous-commission „Sécurité et défense", Membre dans le Commission des Affaires étrangères**,** president de la Delegation roumaine dans le Groupe du Parti populaire européen (Démocrates-chrétiens) et des Démocrates européens. Ancien Ministre de la défense nationale (mars - décembre 2000 et 2006-2007), ancien président de l'Autorité nationale pour le tourisme (1998-2000), ancien ministre du tourisme (avril - décembre 1998), ancien ministre de l'environnement, des eaux et des forêts (décembre 1997 - février 1998). Président du Conseil départemental de Caraş-Severin (1996-1997, 2004-2006, juin2008-). Président de la section départementale de Caraş-Severin du Parti démocrate (depuis 1992) et vice-président du Parti démocrate, Roumanie, département des relations internationales (depuis 2000). Doctor en sciences militaires (avec la mention "magna cum laude") - Université nationale de défense (2004). Doctorat de gestion - Universitatea de Vest, Timişoara (2000). Ingénieur diplômé de l'Institut polytechnique de Bucarest (1985).

Dr. Emil DINGA
Est professeur universitaire d'économie théorique et d'économie européenne, director général adjoint de l'Institut Bancaire Roumain, chercheur au Centre de Recherche Financière et Monétaire de l'Académie Roumain, ancien ministre de l'intégration européenne de la Roumanie.
M. Dinga a publié sept livres scientifiques, trois livres économique traduit de la langue anglaise et française, 80 articles scientifiques, et a participé à l'élaboration de 50 projets scientifique dans le domaine de recherche économique fondamental. M. Dinga est spécialisé dans les domaines : philosophie économique (épistémologie, logique et sémiotique économique), politiques publiques d'ajustement macroéconomique (politique fiscale, politique monétaire) et la modélisation hétérodoxe du processus/système économique.

Publications principales:

- **Livres**: Théorie économique générale (1994), Le règles du jeu (traduit du français, 1994), La théorie de la marche libre (traduit de l'anglais, 1997), Le phénomène inertielle dans le processus économique (2001), Les bases de l'analyse macroéconomique (2003), Les bases de l'analyse microéconomique (2003), L'économie de l'intégration européenne (traduit de l'anglais, 2004), Etudes d'économie. Contributions à l'analyse épistémologique, logique et méthodologique (2010).
- **Articles**: La source financière soutenable (2007), Entropie et soutenabilité (2007), De l'authenticité de la science économique (2007), Soutenabilité et le systèmes dissipatives (2008), L'inflation et ses spécimens (2008), Véridicité et simplicité dans le modélisation de le processus économique (2008), De la

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Dr. Emilia Lucia CATANA
Est chargé de cours (lecturer) et docteur en Sciences Administratives.
Elle est licencié en droit, dispose d'études avancées en administration publique et est docteur en Sciences Administratives à l'Ecole Nationale d'Etudes Politiques et Administratives Bucarest ; chargé de cours à la Faculté de Droit dans l'Université „Dimitrie Cantemir" de Târgu Mureş, titulaire des disciplines "Droit Administratif" et "Droit communautaire européen" ; membre de l'Institut National des Sciences Administratives de Roumanie "Paul Negulescu" ; membre de American Society for Public Administration – section Public Law&Administration membre de la Société académique des sciences administratives de Bucarest; membre du comité éditorial de la publication nationale « Revista de drept procedural ».

Miruna Andreea BALOSIN is the editor of the Babeş-Bolyai University Press Office. She graduated a master at the Marne-la-Vallee University in Paris, which allowed her to work inside a well-known think tank in the world of EU's lobbying: "Thomas More" Institute in Brussels. Presently, she's finalizing her PhD thesis: "The Importance of lobbying and think tanks in the evolution of the European Communities". She is teaching seminaries of European Construction, History of International Relations and EU's Policies at the Faculty of European Studies, Babeş-Bolyai University, Cluj-Napoca, Romania.

Dragoş PĂUN is a Teaching Assistant at the Faculty of Business, Babeş-Bolyai University Cluj-Napoca, graduate of Nottingham Trent University, United Kingdom and Faculty of Economics Cluj - Napoca and a Phd Candidate in Finance at the Babes - Bolyai University. He has published articles in fields such as Banking, Corporate Finance, Public Finance, European Integration and has also published a book, *Economic and Financial Systems in the Global World.*

Adrian-Gabriel CORPĂDEAN, PhD Candidate, Faculty of European Studies, „Babeş-Bolyai" University Cluj-Napoca. He is teaching seminaries of European Construction at the same Faculty and has published various articles on the Reform of the European Union. He also specializes in project cycle management and European Structural Funds at the Faculty of European Studies.

Dr. Georgiana CICEO, Lecturer at the Faculty of European Studies, Babeş-Bolyai University in Cluj-Napoca. She teaches on the history of international relations, international organisations and European integration at at the Faculty of European Studies, Babeş-Bolyai University. She co-authored the books „*Europa unită, Europa noastră*" (together with N. Păun and A.C. Păun), PUC, Cluj-Napoca, 2003 and „*Finalitatea Europei*" (together with N. Păun, A.C. Păun and R. Albu-Comănescu), EFES, Cluj-Napoca, 2005 and 2007.

Dr. Flore POP
Est docteur en droit à l'Université de Paris, Maître de Conférences à la Faculté des Sciences Politiques, Administratives et de la Communication de l'Université "Babeş-Bolyai" (Cluj-Napoca, Roumanie), auteur, entre autres, des ouvrages: "La Roumanie: les mécanismes juridiques de la transition", "L'expérience roumaine de la transition",

"Introduction au droit des organisations économiques intergouvernementales", "L'Union Européenne: droit, mécanismes et institutions communautaires".

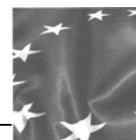
Dr. Cristina-Maria DOGOT
Est Chargé de cours (lecturer) à Université de Oradea, Faculté d'Histoire, Géographie et Relations Internationales, titulaire des cours dans le domaine de l'histoire de la construction européenne et les institutions européennes. Docteur en Histoire à Cluj-Napoca et en Sciences Politiques à Marne la Valée (cotutelle). Collaboratrice de la revue *Cultura*.

Dr. Lucretia DOGARU
Est Maître de conférences et docteur en Droit ; est titulaire dans les disciplines du Droit de l'environnement et dans la Théorie Générale du Droit à l'Université « Petru Maior », Faculté de Sciences Economiques, Juridiques et Administratives, Târgu-Mureş, Roumanie ; vice doyenne dans la période 2004-2008, elle a publiée plusieurs études dans le domaine de spécialité dans des publications internes et internationales. Comme auteur et co-auteur, elle a publiée 5 livres de spécialité et plusieurs cursus universitaires.

Dragoş CIOBANU
Est juriste, licencié en histoire et anglais à l'Université "Petru Maior" de Târgu-Mureş, vice-président du Mouvement Européen Mureş – Roumanie et conseiller au Parlement Européen.

Georgeta BOARESCU (1962) diplômée de la spécialisation Psychologie – Pédagogie, au présent doctorande, psychologue spécialisée en psychologie éducationnelle et coordinatrice du Centre Conseil de l'Université « Petru Maior » de Târgu-Mureş – Roumanie; professeure associée de l'Université d'Art Théâtrales, chargée des cours en pédagogie, psychologie et didactique; a publié plusieurs études de spécialité dans les domaines: psychologie, management de la carrière et des ressources humaines. Informations supplémentaires sur http://www.upm.ro/career_center/index.htm ou directement à l'adresse geta@upm.ro.

Dr. FABIAN ISTVAN
Chargé de cours (lecturer) -Université „Petru Maior" de Târgu-Mureş



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Directeur de la publication :
Dr. Michel LABORI – Docteur d'Etat en science économique et Agrégé d'histoire, ancien Professeur Jean Monnet, Université de Besançon (France)

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Rédacteur en chef :
Dr. Simion COSTEA – professeur Jean Monnet à l'Université « Petru Maior » de Târgu-Mureş et conseiller au Parlement Européen

Comité de rédaction :

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Dr. Erol KULAHCI, chercheur au Centre d'étude de la vie politique (Cevipol) d'Université Libre de Bruxelles.

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