L'EUROPE UNIE

UNITED EUROPE

No. 5 / 2011

Revue d'études européennes

PARIS

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EDITORIAL

DR. MICHEL LABORI

L'Europe Unie fête sa cinquième année d'existence. Le numéro cinq montre sa pérennité dans le contexte universitaire européen et marque un tournant important. En effet de nouvelles universités ont dcidé de la parrainer et des universitaires de pays extérieurs à l'Union européenne y ont collaboré.

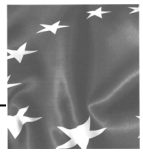
L'Université de BEIRA Interieur (Portugal), l'Université BABES-BOLYAI de Cluj-Napoca (Roumanie) et l'Université de TALLINN (Estonia) donne leur caution. Elles sont renommées sur le continent européen et je tiens à remercier leurs Recteurs.

De nouveaux universitaires ont apporté leur contribution et renforcent le caractère européen de la revue: Dr Licinia Simao, Professeur à l'Université de Beira intérieur (Portugal), Dr Nina Didenko, Professeur à l'Université d'état de management de Donetsk (Ukraine), Dr Anila Nepravishta, commissaire du Médiateur de l'Albanie, Dr. Tanel Kerikmae et Dr. Katrin Nyman-Metcalf, *Professeurs à l'Université de Talinn (Estonie), Dr. Dorin Dobra (Cluj-Napoca), Dr. Olimpiu Sabău-Pop (Targu-Mures),* Hugo van Hulsen (Marseille), Nicoleta Vasilcovschi (Iasi), Vira Ratsiborynska (Strasbourg), Andrea Kajcsa (Targu-Mures).

Ce cinquième numéro est centré sur trois thèmes:

- *l'Union européenne dans les relations internationales.*
- *le modèle européen pour l'Albanie, l'Ukraine et Kirghizstan.*
- *la construction politique, économique et sociale de l'Union européenne.*

L'Europe Unie veut avant tout approfondir la réflexion sur des problèmes européens généraux ou spécifiques aux Etats membres ou voisins de l'Union européenne.



The EU Foreign Affairs and the European values/ Les affaires étrangers de l'UE et les valeurs européennes

EU-Russia relations and the European security in perspective[1]

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Abstract: *This article addresses the nature and purpose of current relations between the European Union (EU) and Russia, building on the notion of political community development. It deals with the consolidation of new post-Cold War identities both in Western Europe and Russia and the mutually shaping processes undergone by both actors, in order to explain the complex nature of current relations. The paper advances some conceptual and analytical considerations on political communities and identity-shaping, adopting a constructivist view, followed by a case study section which addresses the 2004 EU enlargement, the orange revolution in Ukraine and the war in Georgia, in 2008.*
Keywords: *EU, Russia, regional security, perceptions, neighbourhood.*

INTRODUCTION

This article addresses the nature and purpose of current relations between the European Union (EU) and Russia, building on the notion of political community development. It deals with the consolidation of new post-Cold War identities both in Western Europe and Russia and the mutually shaping processes undergone by both actors, in order to explain the complex nature of current relations. In this section, the paper advances some conceptual and analytical considerations on political communities and identity-shaping, adopting a constructivist view, followed by a case study section which addresses the 2004 EU enlargement, the orange revolution in Ukraine and the war in Georgia, in 2008.

The issue of political community formation in international affairs has been consistently shaped by what can be called the *nationalisation* of the modern political communities[2], i.e. the establishment of the modern nation-state as the measure against which all other forms of political community are assessed. This has reinforced the socio-cultural homogeneity and territorial boundedness of the modern political communities, as opposed to a focus on the values and norms guiding political communities. This view, however, has not been without challenges. First and foremost, the EU has stood as a hard case for theorists of political communities, due to the hybrid nature of its sovereignty and due to its normative nature. Despite the hardships of the European integration process, the EU remains an "active identity builder" in Europe through its polity and its interaction with the states and the people of

[1] This article builds on the paper presented at the Conference on "The EU: an active player in a globalised world" organised by the Centre for European Studies, Alexandru Ioan Cuza University of Iasi, Romania, on the 22nd October, 2010.
[2] Baker, Gideon and Bartelson, Jens (eds.) (2009) *The future of political community*. New York: Routledge, p.3.

Europe[1]. It defines standards for its members, for new ones to access it, but also in its relations with the outside world, between those inside and outside its borders.

An area of particular importance for the definition of a shared European political community, and for the EU's relations with Russia, is their shared neighbourhood in Eastern Europe and the Caucasus. The EU's Neighbourhood Policy (ENP) is an example of this active construction of Europe's social identities, defining the features of the members of the community, but also its boundaries. Beyond the rhetoric of common values and shared principles, the limitations of the ENP became visible when the construction of the neighbours' identity as European was being actively linked to accession demands. It can be argued that in the framework of the ENP, the redefinition of identities in Europe and the setting of the boundaries of the European political community were being controlled by the EU, in a display of realist political behaviour, based on power asymmetries, more than a normative approach to regional relations. The post-Cold War period was a defining moment for the establishment of a EU identity and the consolidation of a polity based on a post-modern system of government. The EU also sought to be a different type of international actor, guided by norms and values, and promoting a principled approach to international relations. These two trends and the perception that European states and the EU could and should play a bigger role in European security led to the development of an active role of the EU in security missions, namely in the Balkans, but also to the establishment of a structural approach to security, rooted in institutional transformation of the European area.

Identity construction in Russia has also been significantly shaped by the idea of Europe[2]. Russians regard themselves as Europeans, *but also*, Eurasian, *also* unique. Among Russian elites, the nature of post-Soviet Russia has been hard to define. For the liberals supporting closer ties to Europe, Russia is a part of European history and identity and it should strive for closer relations with the EU and the European states. For those advocating the unique nature of Russian identity, Eurasianism has been an appealing notion portraying Russia as the bridge between Europe and Asia. This unsettled identity is the result of historical, geographic and political contexts, which have placed great pressure in Russia to rediscover its identity and purpose in the post-Cold War context, both in global and regional terms.

Overall, both Russia and the EU have developed into two very different actors and their relations have reflected this disparate nature. Considering this reflection on how political communities come to define their identities and how that process is mutually shaped and shapes other communities' identities, the question then arises as to the role of this interaction in European and Russian identities. The development of relations with the EU is therefore inconsistent and dependent on the interpretations advanced at a particular time. Either privileging a pragmatic approach, based on coinciding strategic interests, or promoting an alternative international order, Moscow and Brussels have failed to root their partnership on a clear understanding of what their discourses mean. The EU has also contributed to this confusion, seeking to be recognised as a different kind of actor in the international system. Its governance is complex and hard to understand by its closest partners, including Russia; and its ambitions to set itself as the yard-stick against which political relations should be assessed in Europe has also been contested. The EU's regional normative hegemony, although increasingly consolidated through enlargement and the neighbourhood policy, has also faced increasing challenges, by those standing outside of these processes, or those prevented from having an active voice in them.

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[1] Risse, Thomas (2009) "Social constructivism and European Integration" in Antje Weiner and Thomas Diez (eds) *European Integration Theory*, 2nd ed., Oxford: Oxford University Press: 154.

[2] Neumann, Iver B. (1996) *Russia and the Idea of Europe: A study in identity and international politics*. London: Routledge; Morozov, Viatcheslav (2007) "Russia and the West: Dividing Europe, Constructing Each Other", Paper presented at the ISA Annual Convention, Chicago, February 28 – March 3; Allison, Roy; Light, Margot; White, Stephen (2006) *Putin's Russia and the Enlarged Europe*. London: Chatham House/Blackwell Publishing.

ASSESSING IDENTITY-BUILDING AND MUTUAL PERCEPTIONS: ENLARGEMENTS, REVOLUTIONS AND WAR

Three central events in EU-Russia relations have had important implications for the conceptualisation and the rendering operational of security in Europe. The first was EU and NATO enlargements of 2004. This was a turning point is Europe's conceptualisation as a regional power of continental dimensions, with increased security responsibilities. For Russia this was a turning point in its perception of EU enlargements. If in previous moments the EU was seen as a rather benign neighbour, in 2004 the scope of its enlargement and the inclusion of former-Soviet states considerably changed Russia's perception of the EU. The second was the Ukrainian elections of 2004 and the developments of the orange revolution. EU support for the reformist pro-western movement led by President Yuchshenko and the campaign pushing for Ukrainian accession to NATO radically changed Russia's perceptions of the EU and gradually presented Russia as a challenging regional power and a competitor with the EU. A third and final event was the war in Georgia, in the summer of 2008. The war confirmed Russia's new found assertiveness in the former-Soviet space and its position as a challenger to the EU's (and NATO's) growing engagement in Eurasia. For the EU, it also represented a challenge to its normative standing and a remainder of the increasing difficulties but urgent need to engage with Russia on security issues.

EU enlargement

EU enlargements have been portrayed as the Union's most effective foreign policy tool. Through enlargement the EU consolidates a regional order based on a set of principles and shared values of a European political community. The former External Relations and Neighbourhood Commissioner Benita Ferrero-Waldner has referred to the EU's export of its governance model as '"soft and smart power' to project security and create prosperity"[1]. Besides this dimension of regional integration, seeking to develop a common economic space, upon which political and security coordination could develop, one should not neglect the deep meaning that European integration processes had on the (re)definition of national identities in Europe, and the consolidation of what Waever has termed a security community[2].

All these changes have increasingly placed the EU as a post-modern actor in international relations; if not devoid of state-based hard power concerns, at least heavily influenced by supranational dynamics and normative goals, relying on structural power. This process has posed a fundamental challenge to EU-Russia relations. As cited in Averre[3], Lukyanov makes the argument that

> "Due to differences in political culture, Russians find it very difficult to understand the complex post-modernist logic which Europe declares... for Russia, this is the traditional understanding of force, based on economic and military–political levers; whereas for the European Union, it is soft power used to expand the European legal space and make the European model more attractive to neighbouring countries".

Opinions in Russia regarding the advantages of closer cooperation with Europe have evolved throughout time, from regarding it as an area where mutually advantageous relations should be pursued[4], to portraying EU countries as week and divided, and thus justifying Moscow's preference for a bilateral

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[1] Ferrero-Waldner, Benita (2008) 'Perspectives of the European Neighbourhood Policy', Parliamentary Conference on the European Neighbourhood Policy East, SPEECH/08/306, Brussels, 5 June.

[2] Waever, Ole (1998) "Insecurity, security, and asecurity in the West European non-war community." *in* Addler, E. and Barnett, M. (eds.) *Security Communities*. Cambridge: Cambridge University Press pp. 69-118.

[3] Averre, Derek (2009) 'Competing Rationalities: Russia, the EU and the 'Shared Neighbourhood", *Europe-Asia Studies*, 61 (10): 1689 — 1713.

[4] Allison, Roy; Light, Margot; White, Stephen (2006) *Putin's Russia and the Enlarged Europe*. London: Chatham House/Blackwell Publishing.

approach to relations with the EU. According to one commentator, "the enlargement of the EU, initially perceived as an objective process in the development of post-bipolar Europe, is today more and more often seen by many in Russia as a source of new challenges [linked with] rivalry in the post-Soviet space"[1].

The disputes over influence in the so-called "shared neighbourhood" have added tension in EU-Russia relations. As Fernandes and Simão have argued

> "Russia views the overall ENP as interference in its 'near abroad'. This is less problematic than the engagement of NATO or the U.S. (e.g., the missile defence project) in Central and Eastern Europe, but it nevertheless provokes a will to reassert Russian power and sovereignty. Globally, EU post-enlargement ambitions in the common neighbourhood are those of a post-modern actor,[2] in contrast with traditional Russian sovereign prerogatives. Instead of becoming an idealised European partner, Russia is becoming, in the EU perspective, a challenging foreign policy actor"[3].

Whereas the EU was presenting the 2004 enlargement as an opportunity to reunite the continent, the creation of the ENP denotes recognition by the EU that integration processes do create new borders in Europe, between those in and those outside of the EU. Russia's demand to be treated as a strategic partner by the EU outside of the framework of the ENP was a clear statement that Moscow would challenge this revisionist EU notion of a wider Europe, and would fight for its influence in the CIS.

Colour Revolutions: Ukraine

The contestation of the election results, in Kiev, in late 2004 has been perceived through different lenses. For some it was the wilful action of the Ukrainian people to denounce corruption and fraud as inacceptable for the country's political future, and a committed choice of its leadership to follow a

[1] Arbatova, cited in Averre, 2009: 1691, *op cit.*

[2] We use here some elements of Krastev's definition of European post-modernity: a system of mutual interference in domestic affairs, security based on openness and transparency and the rejection of the use of force to solve conflicts (Krastev, 2007).

[3] Fernandes, Sandra and Licínia Simão (2010) "Competing for Eurasia: Russian and European Union Perspectives" in Maria R. Freire and Roger Kanet (eds.) *Key Players in Eurasia.* New York: Palgrave Macmillan, 113-114

Western model of development[1]. The reaction by the EU leaders, namely the Council, to the events in Ukraine was positive and of support, but also careful not to make commitments to the orange revolution leadership claims of future accession to the EU. Emerson[2] underlines the subtle change in EU rhetoric, whilst initially making "explicitly negative remarks about the new neighbours having no membership perspectives, now the discourse seems to be cutting out the negatives, saying that while accession is not on the agenda, no doors are closed for the future".

The events in Ukraine set Russia in a new course of action in the CIS. The lessons learned were extremely important for Moscow's more assertive and pro-active approach to Eurasia. First and foremost, an important speech, partly reproducing the views of the official elite, began to develop among Russian media, whereas the orange revolution in Ukraine was the result of a deliberate strategy by the west to "rob" Russia of Ukraine[3]. This was closely linked to the fears in Moscow that by pursuing a path of integration into the EU, Ukraine would abandon Russia-led formats of cooperation, namely the CIS, strategically curtailing Russia's power[4]. This discourse poised the West's approach as a zero-sum game, which neglected Russia's concerns in its neighbourhood, and ultimately posed a grave danger to the Russian model of centralised governance. Therefore, we can say that Russia's reaction to the colour revolutions aimed at two reinforcing goals: prevent the establishment of anti-Russian leaderships in Ukraine and Georgia and the spread of the colour revolutions to Russia[5].

The EU's visible support to the leaders of the orange revolution in Ukraine and its support to the new Georgian President's pro-western rhetoric sparked a fierce debate in Moscow on how Russia could counter these events and potentially develop into an alternative centre of attraction to the CIS countries. Some of these views recycled the concept of Eurasianism to underline Russia's innovative offers[6], others sustained that a more purposeful policy towards the near abroad would be necessary to foster pro-Russian forces among civil society and opposition forces[7]. Ultimately, Russia began a policy of contention with its neighbours. It enforced trade embargos on Moldova and Georgia; it raised energy prices to market levels, initiating a series of "gas wars" with Ukraine which had significant impact in Europe and Ukraine proper. The political use of energy has been documented as one of the most significant changes in Russia's policies towards the near abroad, as was the decision to resort to war in Georgia.

Under President Putin, Russia was very actively seeking to anchor Ukraine in the multilateral institutions of the Post-Soviet space, as well as to become a central economic player in Ukraine's strategic sectors, namely its pipeline infrastructures[8]. As the Russian-backed candidate, Yanukovich was elected as President in 2009, Russia also sought to assure another fundamental aspect of its relations with Ukraine, which was the presence of the Black Sea fleet in Crimea. Overall, Russia's presence in Ukraine is considerable, although the orange revolution did present Ukrainian leaders with alternatives to Russian dominance. This heritage was visible in the efforts by the new Ukrainian President to get the

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[1] Kuzio, Taras (2007) "Comparative Perspectives on the fourth wave of democracy" in Joerg Forbrig and Pavol Demes (eds) *Reclaiming Democracy: Civil Society and Electoral Change in central and Eastern Europe*. Washington D.C.: German Marshall Fund of the United States: 217-234.

[2] Emerson, Michael (2004) "Vade Mecum for the Next Enlargements of the European Union" *CEPS Policy Briefs*, 61, December, 3.

[3] Grätz, Jonas (2010) "Who doesn't love stability? Containing the Russian public after the Orange revolution", *Russian analytical digest*, 75, 16 March: 14-16.

[4] March, Luke (2006) "Security strategy and the 'Russia problem'" in Roland Dannreuther and John Peterson (eds) *Security strategy and transatlantic relations*. New York: Routledge: 98.

[5] Makarychev, Andrey (2008) "Rebranding Russia: Norms, Politics and Power" *CEPS Working Document*, 283, February: 14.

[6] Allison; Light, White, *op cit*: 162.

[7] Makarychev, *op cit*.

[8] Samokhvalov, Vasevolod (2007) "Relations in the Russia-Ukraine-EU triangle: 'Zero-sum game' or not?", European Union Institute for Security Studies, Occasional paper 68, September: 11.

EU and Russia to jointly manage the Ukrainian pipeline systems, in an effort to boost energy security in Europe[1]. The debacle of the orange revolution in the Presidential elections of 2009 and the election of the Moscow-backed candidate has been regarded in Moscow as a positive step and an important victory in terms of the maintenance of its influence in the post-Soviet space. As far as the EU is concerned, there has been an attempt to underline the process instead of the outcome, as proof of the positive development for Ukraine's democracy. The lawful conduct of elections is seen by some as the most important outcome for the country's political stability and ultimately the most important fruit of the orange revolution[2].

War in Georgia

Georgia has become another point of contention between the EU and Russia. Since the rose revolution in 2003 brought to power the pro-western President Mikhail Saakashvili, relations with Russia gradually worsened becoming apparent that Georgia's positions were irreconcilable with Russian interests in the Caucasus region. President Saakashvili's main goals for Georgia included, on the one hand the complete withdrawal of Russian troops from Georgian territory, including from the breakaway regions of Abkhazia and South Ossetia, and on the other, a steady path towards full Euro-Atlantic integration. These were two irreconcilable goals with Moscow's own ambitions to remain a relevant and hegemonic power in the CIS.

The EU cautiously welcomed the events of the rose revolution. Brussels was not keen on hampering its relations with Moscow due to a distant and unstable country like Georgia. Eventually the EU's Security Strategy called on the EU to take a more active role in the South Caucasus and the region was included in the ENP, in 2004. As events in Ukraine unfolded and western leaders began to speak of a fourth wave of liberation in Europe, which should be rewarded with Euro-Atlantic integration, Russia's muscle started to flex. Russia imposed what is widely seen as politically-motivated economic sanctions on Georgia, closed its borders and imposed stricter visa-regimes. It also developed an aggressive policy of passport distribution among Abkhaz and South Ossetians, further infringing on Georgia's claimed sovereignty over these territories.

Close cooperation with NATO became another point of contention between Russia and its neighbours, and tension rose even further in the NATO Budapest summit, where both Georgia and Ukraine were hoping to be given membership action plans (MAPs). Ultimately the MAPs were not agreed upon, but Russia was set on demonstrating how far it was willing to go to reassert its power in Eurasia. The hostilities in South Ossetia and Georgia proper were brief, from August 7 to August 12, when a cease-fire agreement was negotiated by the French President, holding the EU rotating presidency. Early EU reactions to the crisis included a repudiation of violence and a careful denouncing of Russia's actions by older EU member states, as opposed to loud statements by some of the younger member states. Although the EU presented a united front in the Council statements, President Saakashvili was being increasingly regarded as unpredictable and taking an authoritarian turn, which was poorly perceived in Brussels. It was therefore no surprise that the official EU position was rather limited to acting as an honest broker between Russia and Georgia.

For Russia, the point was even made that Russia was acting to stop a genocidal campaign ongoing in South Ossetia[3], seeking to take the higher moral ground. Some analysts also predicted that Russia was aiming to undoubtedly prove its hegemonic position in its sphere of influence. The outcome

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[1] RFE/RL (2010) "Yanukovych Says Ukraine Ready For Russian Fleet, Gas Deals", 13 February. http://www.rferl.org/content/Yanukovych_Says_Ukraine_Ready_For_Russian_Fleet_Gas_Deals__/1957076.html

[2] Fischer, Sabine (2010) "Has the EU lost Ukraine?" *European Union Institute for Security Studies*, *Analysis*, February.

[3] Schröder, Hans-Henning (2008) "'A short, victorious war'? Russian perspectives on the Caucasus Crisis" in Hans-Henning Schröder (ed.) *The Caucasus Crisis: International Perceptions and Policy Implications for Germany and Europe*, Berlin: SWP Research Paper 9, November: 8.

might have been more limited than initially thought by Moscow. Instead of warm support, Russia received a cold-shoulder reaction from its CIS partners, concerned that this might symbolise the beginning of a militant and interventionist Russian policy in the CIS.

The intervention in Georgia is "Illustrative of Russia's resistance to the applicability of EU principles 'as the cornerstones of a wider international order'"[1]. President Medvedev's proposal to establish a new comprehensive security treaty in Europe further reinforces this revisionist policy of the Russian Federation. A fundamental aspect of this proposal, as articulated by Foreign Minister Lavrov, in New York, is the rending operational of the concept of indivisibility of security in Europe, seen as "the inadmissibility of strengthening one's own security by infringing upon the security of others". According to Emerson[2] "This can be read as diplomatic language for what writers about geo-politics call 'sphere of influence'; which is not worthy of a 'Helsinki-2', but more reminiscent of some infamous 20th century pacts".

In fact, the war has been regarded by one prominent Russian analyst as being "caused by the inability of the existing European security institutions to prevent both internal and intra-state conflicts which escalated after the bipolar confrontation was over"[3]. The same report clearly states that it was the Western countries' "geopolitical expansion plans" which caused the war in Georgia and that Russia initiated a "radical modernization and revision of the political, legal and institutional frameworks of the system of international and collective security in Europe" right before the war.

CONCLUSIONS:

As these case studies sought to illustrate, the establishment of different and competing perceptions of the regional security environment in Europe has hampered the development of EU-Russia relations and has undermined the existing security regime. Not only the superiority of the European norms has been disputed by Russia, its exclusivist approach to the neighbourhood has been translated into new division lines, which the under-conceptualised Neighbourhood Policy has been unable to address. The ENP potentially escalated competition in the shared neighbourhood with Russia, by building on ambiguity. Moreover, EU official speech portrayed EU governance expansions as apolitical and inclusive, providing benefits for all. This understanding was contested in Moscow, which regarded EU rules as favouring the EU and not-necessarily Russia, or even the countries in the shared neighbourhood. Russia saw regime stability as preferable to so-called democratic revolutions, which created deep political instability in Ukraine, for instance. Moscow also saw EU commitment to Euro-Atlantic integration in the CIS space as a fundamental challenge to the EU's stated desire to build a strategic partnership with Moscow, and to its commitment to shared security in Europe.

After the war in Georgia and with the financial and economic impact of the global financial crisis, both the EU and Russia are looking at each other's potential. The partnership for modernisation has been advanced as the new moto for bilateral relations, although what will be fundamentally different in this approach is still to be seen. Fundamental differences subside. "Russia is more a norm-exploiter than a norm-producer. It stays far-removed from multiple norm-producing initiatives on a trans-national scale, including – but not limited to –norms that regulate transparency, accountability, sustainable development, good governance, and so on. If Russia remains aloof in these debates, communicative problems with its major Western partners are inevitable."[4]

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[1] Haukkala, Hiski (2009), "Lost in Translation? Why the EU has Failed to Influence Russia's Development" *Europe-Asia Studies*, 61 (10), December: 1757..

[2] Emerson, Michael (2008) "The August War and Beyond" *CEPS Neighbourhood Watch,* 41, September.

[3] Valdai Club (2010) Report: *Towards a new Euro-Atlantic Security Architecture* (June 2010) http://www.globalaffairs.ru/docs/Karaganov_eng.pdf

[4] Mararychev, Andrey (2009) "Russia and its 'New Security Architecture' in Europe: A Critical Examination of the Concept", CEPS Working Documents, 310, February: 7.

L'UE, la Roumanie et la coopération régionale

DR. MICHEL LABORI
Professeur Honoraire de l' Université de Franche Comté

Abstract: *Romania has a very important geographical position in the South-East of Europe. The country is neighbouring of the Balkans, the Black Sea and of the countries of Eastern Europe. Romania cooperates: 1) with the Balkans in the context of the" Process of cooperation in South-East Europe". 2) with the countries of the Black Sea in the "Organisation of Economic Cooperation of the Black Sea" and the "the Black Sea Synergy". 3) with the countries of Eastern Europe in the Eastern Partnership, especially Moldova.*
Keywords: *EU, Romania, Moldova, Black Sea Synergy, Balkans*

INTRODUCTION

Le premier janvier 2007 est une date importante pour la construction européenne avec le sixième élargissement qui concerne la Bulgarie et la Roumanie. L'adhésion de ces deux pays modifie les situations géopolitiques et géostratégiques de l'UE qui a désormais un accès à la Mer Noire.

L'UE se trouve implique dans des nouvelles relations avec les pays proches de la Mer Noire et les pays frontaliers des deux nouveaux Etats membres.

La Roumanie est une puissance régionale majeure. Elle a une politique balkanique, elle est très engagée dans la coopération avec les pays de la région de la Mer Noire et elle est concernée directement par le Partenariat Oriental. Elle a l' ambition d' être un leader régional comme l'a déclaré le président Traian Bãsescu lors du débat organisé par l'Association George S.Marshall et l'Administration présidentielle en 2007 « la Roumanie européenne, la Roumanie euro-atlantique, la Roumanie dans la sphère des relations internationales. »

1. LA ROUMANIE ET LES BALKANS

La Roumanie fait partie du Processus de coopération en Europe du sud-est (**SEECP**). Le SEECP est une organisation régionale fondée en 1996. Elle comprend la Turquie, l'Albanie, la Bosnie Herzégovine, la Bulgarie, la Croatie, la Grèce, la Macédoine, la Moldavie, le Monténégro, la Roumanie, la Serbie et la Slovénie. Elle a pour but le renforcement de la coopération politique et économique dans la région, le maintien des relations de bon voisinage et la lutte commune contre le crime organisé. Les sommets sont annuels.

La Roumanie a manifesté son indépendance lors du sommet d'Istanbul des 23 – 25 juin 2010 en refusant la condamnation d'Israël suite à l' attaque de la flottille se rendant à Gaza. Elle soutient le Processus d'intégration des Balkans dans l'UE.

La Roumanie a refusé de reconnaitre l'indépendance du Kosovo (17.02.2008) au nom du principe de l'intégrité territoriale et de l'inviolabilité des frontières. La classe politique roumaine a été unanime à l'exception de l'UDMR qui représente la minorité hongroise. La Roumanie ne veut pas encourager la minorité hongroise à aller plus loin dans ses revendications pour ne pas remettre en cause l'unité nationale.

La Roumanie soutient la Serbie qui a déclaré illégale la proclamation d' indépendance unilatérale du Kosovo et a introduit un recours au près de la Cour Internationale de Justice de La Haye.L'avis de la Cour internationale de justice du 22 septembre 2010 déclare que l'indépendance du Kosovo n'est pas incompatible avec le droit international..En septembre 2010 le projet de résolution serbe faisant appel au dialogue pour résoudre la question du Kosovo a été voté à l'unanimité par l'A.G.de l'O.N.U.

2. LA ROUMANIE ET LA MER NOIRE

La région de la Mer Noire a connu d'importants bouleversements géopolitiques à la fin du XXème siècle et au debout du XXIème siècle avec les effondrements de l'URSS (1989) et l'élargissement de l' UE à la Roumanie et à la Bulgarie (2007).

La disparition de l'URSS a augmenté le nombre de pays riverains (Ukraine, Russie et Géorgie).Plusieurs initiatives régionales ont été prises pour renforcer la coopération entre les pays riverains.

L'organisation de la Coopération Economique de la Mer Noire est la plus importante (**OECMN**). Elle a été créée à Istanbul le 25 juin 1992 par 11 pays (Albanie, Arménie, Azerbaïdjan, Bulgarie, Croatie, Grèce, Macédoine, Moldavie, Roumanie, Russie, Turquie et Ukraine). Elle n'a fonctionné qu'en 1999 après sa ratification par les Etats membres. Elle a été rejointe par la Serbie. Son but est la coopération multilatérale politique et économique de manière à mettre en place une dynamique interactionnelle et un réseau de confiance entre les participants.

Elle repose sur plusieurs institutions:

La Banque de commerce et de développement de la Mer Noire, une assemblée parlementaire et un conseil d'affaires.

La Banque de commerce et de développement de la Mer Noire a été créée en 1997, elle soutient depuis 1999 des projets d'investissement, d'infrastructures de transport et de télécommunications pour renforcer les liens régionaux. Ses investissements s'inscrivent dans le cadre du développement durable. Une douzaine de groupes de travail thématiques fonctionnent (coopération statistique, protection de l'environnement, etc.).

L'Assemblée parlementaire date de 1993. Son siège est en Turquie, elle est composée de 76 représentants des Parlements nationaux.

Un Conseil d'affaires, composé d'experts internationaux, précise les opportunités d'investissements dans la région.

L'OECMN est un cadre de coopération qui dépasse les limites de la Mer Noire (Albanie, Serbie). Elle est la seule structure de dialogue qui existe. Elle peut jouer un rôle de médiateur en cas de crise On lui reproche son manque d'efficacité lors de crises graves comme la guerre russo – géorgienne de 2008 ou pour apaiser les tensions entre la Turquie et l'Arménie ou l' Arménie et l' Azerbaïdjan.

La région est une zone géostratégique majeure avec les richesses pétrolières de la Caspienne et leur transit. L'OECMN est avant tout un forum de dialogue entre les pays membres.

La Roumanie a une situation géostratégique importante, elle constitue un pont entre les Balkans (Serbie, Albanie) et les pays riverains**.**

La Communauté de choix démocratique a été fondée en 2005 à l'initiative des présidents ukrainien Viktor Iouchtchenko et géorgien Mikheil Saakachvili. Elle a pour objectif la réunion de « tous les Etats démocratiques de région de la Baltique, de la mer Noire et de la Mer Caspienne ". Elle comprend avec les pays fondateurs les trois pays baltes et aussi la Roumanie, La Slovénie, la Macédoine et la Moldavie. Elle ne regroupe qu'un nombre restreint de pays par rapport à ses ambitions initiales. Elle n'a donné lieu à aucune concrétisation jusqu'à maintenant. La Russie était hostile à sa création en considérant qu'elle était dirigée contre elle.

La Synergie de la Mer Noire.

L' UE est un acteur majeur dans le basin de la Mer Noire depuis 2007. Elle est la seule entité capable de donner un nouveau souffle à la coopération régionale.

Les enjeux principaux sont l'énergie, l'environnement et la sécurité. La Mer Noire est une zone de transit des hydrocarbures russes et de la mer Caspienne dont le rôle va s'accentuer. La situation

environnementale de la Mer Noire est catastrophique et nécessite une réponse commune. La sécurité est un problème préoccupant avec les « conflits gelés » (Transnistrie, Russie – Géorgie), l' immigration illégale et la criminalité organisée).

L'UE a voulu remédier à cette situation en lançant la « Synergie de la Mer Noire ", le 15 mars 2007. Elle concerne la Roumanie, la Bulgarie, la Grèce, la Turquie, la Russie,

l'Ukraine, la Géorgie, l'Arménie , l'Azerbaïdjan et la Moldavie. Elle est centrée sur les secteurs de coopération où l'UE est déjà partie prenante comme l'énergie, le transport et

l' environnement. Elle agira aussi en tant qu'appui à la société civile et dans la solution des « conflits gelés ".

La Synergie de la Mer Noire sera cofinancée en utilisant les mécanismes financiers existants: le FEDER pour les trois pays membres (Grèce, Roumanie, Bulgarie), l'aide de préadhésion (Turquie) et l' instrument de la politique européenne de voisinage pour les autres pays.

La Commission compte travailler avec les organisations régionales comme **la coopération économique de la Mer Noire.**

La Roumanie voit dans la Synergie de la Mer Noire la possibilité de réduire la dépendance en hydrocarbures de l'UE, des Balkans Occidentaux et de la République de Moldavie vis-à-vis de la Russie, grâce à la proximité des gisements de l' Azerbaïdjan et du Kazakhstan.

Elle s'y est profondément impliquée, c'est ce qui explique ses réticences lors du lancement du Partenariat Oriental.

3. LE PARTENARIAT ORIENTAL

Le Partenariat a été lancé en mai 2009 durant la présidence tchèque à Prague. Il résulte d'une initiative polono-suédoise. Il était une réponse des PECO à l'Union pour la Méditerranée finalisée lors du sommet du Paris du 13 juillet 2008. Il renforce la dimension orientale de la politique européenne de voisinage et comprend le Belarus, l'Ukraine, la République de Moldavie, l'Arménie, l'Azerbaïdjan et la Géorgie et s'inscrit dans la cadre de la PEV.

Il prévoit des accords d' association comportant des accords de libre échange renforcés et globaux, l'intégration progressive dans l'économie européenne, la création entre les 6 pays d'une communauté économique de voisinage, l'amélioration de la sécurité énergétique pour l'UE et ses voisins, une meilleure gestion des frontières, l'ouverture d' une marché du travail de l'UE à la main-d'œuvre des pays partenaires, etc.

La Roumanie a manifesté de fortes réticences au Partenariat Oriental pour plusieurs raisons:

- Le projet a été proposé sans consultation de la Roumanie et sans qu'elle ait donné son avis sur le contenu du projet ;
- Il peut être un frein à la Synergie de la Mer Noire ;
- Il n'offre pas de perspectives clairement définies pour l'adhésion de la Moldavie à l'UE. Elle est placée sur le même plan que les autres pays.

La Roumanie s'est finalement ralliée au Partenariat Oriental à partir du moment où la Commission a affirmé sa complémentarité avec la Synergie de la Mer Noire.

La République de Moldavie est le pays du Partenariat Oriental dans lequel la Roumanie s'implique le plus. Les deux pays sont liés par des liens historiques étroits. La Moldavie a fait partie de la Roumanie jusqu'en 1940 quand elle a été annexée par l' URSS.

Elle est devenue indépendante en 1991 après l'éclatement de l'URSS. Les deux tiers de moldaves sont roumanophones. La Roumanie accorde la nationalité roumaine (Loi de la citoyenneté no 21) aux moldaves qui l'avaient en 1940 et à leurs descendants des premier et deuxième degrés. 800 000 demandes d'obtention de la citoyenneté roumaine ont été déposées pour favoriser la circulation des moldaves dans l' UE.

Les relations roumano – moldaves se sont tendues durant les gouvernements communistes (2001-2009). La victoire des parties libéraux favorables à l'UE aux législatives de juillet 2009 a rapproché les deux pays. Le président Traian Bãsescu a consacré sa première visite à l'étranger après sa réélection à la Moldavie, qui a reçu 100 millions de la Roumanie pour ses projets d'infrastructures et d'éducation. Le premier ministre Vlad Filat a eu un geste symbolique significatif en enlevant les 360 km de barbèles sur les berges du Prut qui sépare les deux pays (février 2010).

La Moldavie a un grave problème intérieur avec la région de Transnistrie dont elle est séparée depuis qu'elle a proclamé son indépendance en décembre 1991. Elle est occupée par des troupes russes.

La Roumanie peut jouer un rôle de médiateur pour la solution de ce problème. Le Partenariat Oriental est un cadre adapté à la négociation d'un accord d' association ,prélude à une candidature d'adhésion. La Roumanie soutient la candidature de la Moldavie à l'UE. Elle fait pression pour qu'elle bénéficie du même statut que les Balkans Occidentaux qui ont signé des accords de stabilisation et d'association avec l'UE.

CONCLUSION

La Roumanie est partie prenante à toutes les formes de coopération régionale. Sa diplomatie pourrait être plus active pour qu'elle contribue à la stabilisation de la région. C'est cette vision de la géopolitique roumaine qui est ressentie ailleurs. Une rationalisation des formes de coopération s'impose pour qu'elles soient plus efficaces. Sa collaboration avec les pays voisins peut avoir un impact majeur non seulement pour la résolution des problèmes de la région, mais aussi pour la stabilité de l'Union européenne.

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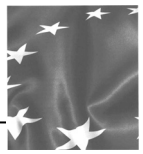

Considérations sur la politique européenne de voisinage en 2011: les évolutions, les défis et les perspectives

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Abstract: *The article focuses on the challenges and developments in the European Neighbourhood Policy (ENP). Established in 2004, the ENP has opened some opportunities for beneficiary countries of this policy. The implementation of the European Neighbourhood Policy (ENP) vis-à-vis the Southern and Eastern partners, has been the subject of scrutiny in the international arena. Recent events in North Africa are forcing a redefinition of priorities in this region and show the new challenges of the ENP. The High Representative's communication from 25.05.2011 opens new perspectives, and more effectiveness of the ENP is necessary.*
Keywords: *ENP, Eastern Partnership, Ukraine, Moldova.*

1. LA POLITIQUE EUROPEENNE DE VOISINAGE: SON EVOLUTION

En 2004 la politique européenne de voisinage apparaît comme une politique étrangère très ambitieuse, qui vise à créer une zone de stabilité paneuropéenne assise sur le partage de valeurs communes (démocratie, droits de l'homme et économie de marché) que doit soutenir un environnement économique de prospérité partagée[1]. Cependant, huit ans après le lancement de cette politique les bénéfices politiques et économiques que l'on peut attendre de la PEV sont nuancés. Les expériences de la pré-adhésion et de l'élargissement, en partie reproduite par la politique européenne de voisinage, montrent que les bénéfices politiques et économiques devraient surtout se trouver du côté des Etats voisins, le bénéfice des Etats membres de l'Union européenne n'étant que relatif. De fait, l'intérêt pour l'Union européenne, quelle que soit «l'offre » destinée aux futurs pays frontaliers de l'Union, était et reste avant tout politique et sécuritaire[2]. Le risque pour la sécurité de l'UE comprend l'escalade régionale des conflits, des flux migratoires ingérables, la mise en suspens de routes commerciales et de l'approvisionnement énergétique et la création d'un terreau d'activités terroristes et criminelles. Dans ce contexte, le développement économique et politique du fait de la PEV doit servir de base à une stratégie préventive d'atténuation de ces risques. Il s'agit d'éléments du « soft power » européen, qui inclut également l'aide humanitaire ou les opérations de police en contraste avec l'approche américaine des dernières années[3].

En 2011 la conjoncture politique et les évolutions récentes de la PEV démontraient l'inefficacité de la stratégie communautaire à l'égard de l'Est et du Sud, et la nécessité de revoir les instruments de sa politique étrangère[4].

L'hétérogénéité du voisinage et la variété des situations des Etats voisins au Sud et à l'Est ont rendu nécessaire le développement de la PEV au cas par cas, par Etat voisin, selon ses spécificités. D'où l'importance de tels principes clés de la PEV comme la différentiation des partenariats et des

[1] Commission européenne, *L'Europe élargie – Voisinage : un nouveau cadre de relations avec nos voisins de l'Est et du Sud, COM(2003)* 104 final, Bruxelles, 11 mars 2003, p.4, disponible en ligne : http ://europa.eu.int/comm/energy_transport/euromed_conf3/doc/com_2003_0262_en.pdf
[2] *Ibidem.*
[3] NYE Joseph., "Bound to lead: the changing nature of American power", Hardcover, Paris, 2008.
[4] http://www.eeas.europa.eu/delegations/lebanon/documents/news/20110527_6_fr.pdf

allocations entre les pays fondés sur les avancées des Etats partenaires dans le sens des principes de la PEV et la mise en oeuvre des réformes[1].

La PEV pourrait exercer un pouvoir d'attraction effectif sur les pays voisins, et laisser espérer une stabilisation et une diffusion de la prospérité dans cet ensemble paneuropéen, si les réformes substantielles qui entrent dans le contenu de la PEV démontrent leur efficacité. La PEV mise au point le 25 mai 2011 va mettre en équilibre Est et Sud ce qui accroîtrait la transparence et les chances de succès de la PEV dans la satisfaction des besoins des partenaires[2]. La PEV ,revisitée en 2011 ,par la Commission européenne et le Parlement Européen doit certainement s'avérer une fenêtre d'opportunité afin de rééquilibrer son mode de fonctionnement, assurant que les institutions démocratiques, les droits de l'Homme et la préservation de l'environnement ne soient pas délaissés au profit de la libéralisation économique[3].

Mais pour que cette politique adaptée aux réalités actuelles soit efficace, les leçons des dernières années doivent être tirées et les défis relevés.

2. LES DEFIS DE LA PEV

Plusieurs défis et enjeux de taille subsistent dans le cadre de la PEV. En 2011, la Commission Européenne considère que "la coopération avec nos voisins est la seule manière de relever les défis et de s'attaquer aux menaces qui font fi des frontières, telles que le terrorisme, l'immigration clandestine ou la pollution des mers et des rivières qui nous sont communes. Elle nous permet de nous attaquer aux sources d'instabilité et de conflit dans la région"[4].

Mais voilà des autres défis. Premièrement, peu de pays concernés par cette politique s'en satisfont pleinement. Certains d'entre eux souhaitent une promesse claire d'adhésion future à l'UE et désirent un traitement individualisé. La plupart demandent davantage d'aides financières, récusent plus ou moins la lecture communautaire de la démocratie ou des droits de l'homme.

A l'Est, la récente reprise économique en Russie et l'émergence d'un régime de plus en plus autoritaire à Moscou a renouvelé la confiance des dirigeants pour la défense d'intérêts dans les « pays étrangers proches »[5]. La Russie exerce son influence sur six pays concernés par la PEV et s'avère militairement présente dans chacun d'entre eux[6]. Sur le plan économique, il s'agit d'un fournisseur essentiel d'énergie et d'un exportateur important, son marché du travail étant en plus la source de flux financiers énormes. Une histoire commune, la prépondérance de la langue russe et la facilité du déplacement dans l'espace post-soviétique renforce la position de la Russie dans la région. Dans la pratique, ceci a gêné les progrès de la démocratie et favorisé la reprise de conflits ouverts ou larvés (Transnistrie, Abkhazie, Ossétie du Sud)[7].

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1 http://www.diplomatie.gouv.fr/fr/IMG/pdf/11-02-17_Non papier_Action_de_l_Union_europeenne_en_direction_du_voisinage_Sud.pdf

2 http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf

3 Ibid.

4 Commission Européenne, La Haute Représentante de l'UE pour les Affaires Etrangères et la Politique de Sécurité, COMMUNICATION CONJOINTE AU PARLEMENT EUROPEEN, AU CONSEIL, AU COMITÉ ÉCONOMIQUE ET SOCIAL EUROPÉEN ET AU COMITÉ DES RÉGIONS. Une stratégie nouvelle à l'égard d'un voisinage en mutation, Bruxelles, 25.05. 2011, en http://www.eeas.europa.eu/delegations/lebanon/documents/news/20110527_6_fr.pdf

5 Svante CORNELL, "The New Eastern Europe: challenges and opportunities for the EU", Centre for European studies, Brussels, 2009.

6 Laure Delcours, Politique de voisinage et relations russo-européennes :partenariat stratégique ou lutte d'influence ?, Paris, juin 2005, disponible sur le site du CEES : http://www.cees-europe.fr/fr/etudes/revue9/r9a7.pdf

7 http://www.russiegeopolitique.org/Les_separatistes_pro-russes.html

Certains États tels que la Géorgie et la Moldavie ont appelé l'UE à intervenir sur les questions de conflits territoriaux conformément aux plans d'actions identifiés par la PEV[1]. Le problème se ressent surtout par rapport aux États-membres jaloux de leurs prérogatives nationales et par rapport à la volonté de préserver des relations stables avec la Russie. Dans cette situation pour l'Union Européenne il s'avère difficile et contradictoire de concilier la promotion des valeurs de l'UE et la défense d'intérêts par rapport aux exportateurs d'énergie autocratiques.

Les partenaires orientaux comme l'Ukraine et la Moldavie, n'apprécient pas de recevoir le même traitement que les pays méditerranéens et de se voir inclure dans un cadre qui retarderait leur adhésion. Ces pays insistent aussi sur la différenciation de l'approche dans le cadre de la formation d'une stratégie communautaire concernant les États indépendants anciennement membres de l'URSS. Tout manquement à cette nécessité est interprété par les gouvernements de ces pays comme un possible menace envers leurs intégrités.

En ce qui concerne l'Ukraine, la PEV démontre pour l'heure l'absence d'une stratégie d'intégration de ce pays. En tant que tel, la PEV et le partenariat oriental n'offrent rien de plus qu'un partenariat identique à celui proposé à la Russie et aux pays méditerranéens.

Pourtant la perspective d'adhésion joue un rôle fondamental dans la transformation de l'Ukraine. Étant donné le caractère sensible de la question d'une intégration ukrainienne, l'UE réfléchit à des solutions alternatives telles qu'une zone de libre échange entre l'UE et l'Ukraine ou la levée des interdictions de visas[2]. Ceci aurait un impact considérable sur ceux qui se préoccupent de la démocratie en Ukraine et qui souhaitent unir son élite politique avec la société, pour ce qui est des réformes.

Au Sud, l'UE doit faire face à un dilemme du fait de la montée de l'islamisme. La coopération avec les régimes laïques mais autoritaires risque de diminuer leurs adversaires musulmans modérés. Ni les uns, ni les autres n'acceptent entièrement un modèle de société à l'européenne basé sur des droits fondamentaux et des libertés individuelles. Les partenaires du Sud se sentent quelque peu lésés par le processus de Barcelone et voient d'un mauvais œil les conditions imposées par l'UE pour la conduite de réformes et la participation à ce projet politique. L'UE doit soutenir plus activement« le printemps arabe » de 2011.

En gros, les pays concernés par la PEV sont très hétérogènes et la réponse doit être différenciée en fonction de la situation politique de chaque partenaire et de son niveau de développement socio-économique. La différenciation est alors sans doute le plus important principe de la PEV et tombe en adéquation avec la volonté des pays partenaires.

Il existe un autre aspect qui pose une certaine ambiguïté au sein de la PEV. Le lien entre politique de voisinage et politique d'élargissement a été un thème récurrent depuis la création de la PEV. Les incitations créées par la perspective d'adhésion sont fortes et l'UE a cherché à développer à travers la PEV une politique extérieure complémentaire pour l'élargissement et la promotion des réformes.

Dès lors l'objectif de la politique de voisinage est de dresser un cadre pour une relation qui, à moyen-terme, n'inclut pas l'adhésion à l'UE ou un rôle au sein des institutions communautaires[3]. Ces dernières doivent être considérées à part. La PEV a pour but de se dresser au delà de la simple

[1] http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc11/FDOC12521.htm

[2] http://www.biz-affaire.com/communique-752072.html

[3] Commission Européenne, Communication de la Commission au Conseil et au Parlement Européen, Construire notre avenir commun, Défis politiques et moyens budgétaires de l'Union élargie-2007-2013, Com (2004)101 final, Bruxelles, février 2004

coopération et d'accéder à un certain niveau d'intégration économique de même que d'approfondir le dialogue pour que les pays partenaires participent progressivement à des programmes-clés de l'UE[1].

Cependant cette distinction n'est pas facile à mettre en pratique. L'article 49 du Traité UE stipule que tout pays européen peut soumettre sa candidature dans l'optique de devenir membre[2]. Dès lors plusieurs États concernés par la PEV ont des raisons légitimes de nourrir de telles aspirations et perçoivent même la participation à la PEV comme l'exclusion du processus d'élargissement.

De même, un meilleur engagement des partenaires est rendu difficile par la réticence de l'UE à mettre en place des incitations suffisantes dans des domaines qui recouvrent des enjeux vitaux (mobilité, accès au marché). L'UE se révèle très réticente à ouvrir son marché à des produits où des pays partenaires disposent d'un avantage compétitif non négligeable. Les négociations laborieuses des accords commerciaux et les questions de la mobilité des personnes directement en lien avec la sécurité de l'UE et l'immigration clandestine font douter certaines partenaires de la bonne foi de l'Union. A cet égard la PEV a seulement la prétention de vouloir lever certains obstacles techniques à une coopération en vue d'une candidature éventuelle sans aucune certitude.

3. LES PERSPECTIVES DE LA PEV

La PEV est à présent implantée de manière solide et s'avère un élément principal de la politique extérieure de l'UE avec des structures et des instruments bien définis. L'article 7 du Traité de Lisbonne stipule clairement que la poursuite de certains objectifs doit être effective[3]. Néanmoins cette politique souffre toujours de certaines faiblesses liées à la crédibilité de l'UE en tant qu'acteur sur la scène internationale et à la mobilisation des États-membres concernant un agenda très ambitieux et des enjeux de taille à venir.

La PEV a été toujours pensée comme un moyen de promouvoir les « valeurs communes » de l'Europe, notamment dans les domaines de l'état de droit; de la bonne gouvernance; du respect des droits de l'Homme, y compris ceux des minorités nationales; de la poursuite de relations cordiales de voisinage et du développement durable en même temps que l'économie de marché[4]. Une fois de plus, la démocratisation et les droits civiques sont, théoriquement, placés au même niveau que la libéralisation économique. La politique ne fonctionne cependant pas de cette manière en pratique.

Depuis huit ans, à compter de sa création, la PEV donne toujours la priorité à la libéralisation économique par rapport à la démocratie et aux avancées sociales qu'elle s'était engagée à promouvoir[5]. Dans la majorité des pays de l'Est concernés par cette politique, les plans d'action nationaux ne déploient pas de moyens suffisants pour l'agriculture, l'éradication de la pauvreté, les systèmes de protection sociale et les infrastructures de santé publique.

Les évolutions récentes de la PEV ont montré que les choses évoluent rapidement et que la PEV n'a pas porté tous ses fruits[6]. Une importante avancée en la matière est l'élaboration de la

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[1] *Ibidem*.

[2] Article 49 du Traité sur l'Union européenne, Version consolidée du Traité sur l'Union européenne, en http://www.diplomatie.gouv.fr/fr/europe_828/avenir-union-europeenne_14204/colonne-droite_14807/textes-reference_17509/article-49-du-traite-sur-union-europeenne_44445.html

[3] http://www.traite-de-lisbonne.fr/Traite_de_Lisbonne.php?Traite=2

[4] Commission européenne, L'Europe élargie – Voisinage, op.cit., note 1.

[5] Commission européenne, la communication: Politique européenne de voisinage, document d'orientation, Com (2004) 373 final, Bruxelles, 12 mai 2004.

[6] Commission Européenne, La Haute Représentante de l'UE pour les Affaires Etrangères et la Politique de Sécurité, COMMUNICATION CONJOINTE AU PARLEMENT EUROPEEN, AU CONSEIL, AU COMITÉ ÉCONOMIQUE ET SOCIAL EUROPÉEN ET AU COMITÉ DES RÉGIONS. Une stratégie nouvelle à l'égard d'un voisinage en mutation, Bruxelles, 25.05. 2011, en http://www.eeas.europa.eu/delegations/lebanon/documents/news/20110527_6_fr.pdf

communication de la Commission Européenne sur la stratégie nouvelle de la PEV à l'égard d'un voisinage en mutation[1]. L'application de cette stratégie va montrer son efficacité ou pas dans l'avenir. Le cheminement reste malgré tout difficile; les enjeux politiques, les divergences dans la région et les positions hétérogènes de l'UE vis-à-vis des questions sensibles au niveau local et international jouent un rôle et influent dans le processus.

C'est important de reconnaître que les relations de l'UE avec les voisins au niveau gouvernemental ne sont pas suffisantes. Il faut coopérer à plusieurs niveaux. « Conformément à l'objectif de la PEV renouvelée de se focaliser sur les liens entre les sociétés, l'UE encouragera une coopération plus intensive avec les différentes parties prenantes, notamment avec les parlements, dans le cadre du réseau EURONEST créé par le Parlement européen, les acteurs régionaux, en coopération avec le Comité des régions, les chefs d'entreprise, dans le cadre d'un Forum des entreprises du partenariat oriental, ainsi qu'avec la société civile et les partenaires sociaux, en s'appuyant sur le Forum de la société civile du partenariat oriental et ses plateformes nationales»[2]. Mais, à notre avis, le budget alloué par l'UE pour cette coopération à plusieurs niveaux nécessite des efforts et des financements supplémentaire, visibles pour le citoyen. Il faut faire des efforts communs pour dépasser la crise économique mondiale. L'extension de la participation à des programmes tells qu'Erasmus Mundus, Tempus, Jean Monnet, Jeunesse en action et e-Twinning, ouverture de futures programmes supplémentaires, tel le programme pour l'éducation et la formation tout au long de la vie, aux pays du partenariat oriental[3], sont des objectifs très importantes a réaliser, avec des effets multiplicatifs.

Nous considérons que l'UE doit être plus active et persévérante en soutenir les « révolutions » arabes de 2011 et le processus de démocratisation, mais aussi de renforcer la perspective d'adhésion à l'UE de certains pays européennes du « Partenariat Oriental ». Cette perspective européenne est essentielle pour les évolutions politiques et économiques internes de ces pays, spécialement pour la République de la Moldavie et l'Ukraine.

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[1] *Ibidem.*

[2] *Ibidem.*

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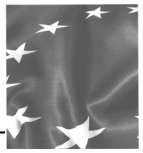

European experience of social partnership and possibities of its implementation in Ukraine

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Abstract: *The article is devoted to the possibilities of implementing European experience of social partnership in Ukraine and actualization of these problems for public administration bodies. The article presents the factors that make a social partnership a necessary one in the social and economic development of the Ukraine. The article shows the key problems of social partnership in the system of thripartism, mechanism of state management in this system. The article also analyses the problems of European experience for accounting in forming the Ukrainian model of social partnership.*

Keywords: *social partnership, public administration, social responsibility of business, models of interaction between trade unions and state, European experience of social partnership.*

Urgency of implementing the European experience of social partnership in Ukraine is determined by the fact, that during the XX-XXI centuries the social partnership is an effective mechanism of social interaction, which allows solving the issues of economic, political, social and cultural character, enables to relieve social tension, to offset the negative social consequences of market reforms.

Availability of different models of social partnership does not contradict the possibility to highlight general principles, methods and forms of partnership that can be applied in Ukraine in developing a national model, in particular, the history of partnership demonstrates that the effectiveness and strength of each of the models were tested repeatedly in the conditions of inflation, high unemployment, social and legal chaos. This allowed recognizing the social partnership as an effective mechanism of social interaction, which guarantees peaceful reforms, coordination of socio-economic interests of subjects of a partnership with significant social objectives.

Existing models of social partnership in Europe differ from one another by institutional mechanism, norms and rules of regulating social and labor relations, the degree of centralization and decentralization, procedures of participation in social dialogue, the effectiveness of the negotiation process and the influence of social partnership on social and economic development, but have common principles of partnership as an alternative to confrontation, the dictatorship of any class or person, means of overcoming risks and contradictions.

The main factors of social partnership in Western Europe after the Second World War was the desire of the European population to rebuild the economy, restore social order, to ensure their own welfare and to ensure the future of their children through cooperation, joint efforts, adherence to high social discipline. The coincidence of economic, political and social interests, supported by the features of Western mentality with its tolerance, the ability to find compromises, the need for social consensus, already in 50-60-ies of XX century provided an opportunity for transformation of social partnership to an important direction of national policy, which was legally enshrined in the form of tripartism in such countries as Italy, Belgium, Netherlands, France, England, Luxembourg, Ireland, Germany, Scandinavian countries.

Each country has formed its own, specific model of social partnership, which reproducing the overall mechanism, has adapted it to the specific circumstances of its country, taking into account the interests of their citizens. This fact is important for the development of social partnership in Ukraine, which also must meet, first of all, the interests of their citizens and take into account historical, political and social experience of the country.

As the European experience shows, partnerships in a transitional society have covered a wide range of subjects and gradually moved beyond the social and labor relations, affecting society development in various fields, bringing together citizens' efforts in solving urgent problems of economic, political, social, cultural character. In particular, in the agreement of establishing the European Economic Community in 1957 a social partnership was considered as a mechanism, which at the formation of the European market enables to remove some social tension, to offset the negative social trends associated with the formation of a market system.

It should be noted that the development of social partnership and welfare of citizens of Western countries after World War II did not occur automatically, along with GDP growth. To establish acceptable social standards the state, citizens, unions, businesses passed the very difficult way of reconciling the interests, mutual claims on acceptable standards of social and labor relations, social security, raising the living standards of different groups. Differences of partnership models also lied in the legal conditions of cooperation between public authorities and unions of workers, trade union relations with employers' associations, participation of workers in production management, level of civil society development and possibilities of political participation of citizens in governing the country.

For Ukraine, which plans to join the EU, it is important to realize that European integration provides the conditions for social partnership, which are significantly better than existing in Ukraine. First of all it concerns the need to harmonize national legislation with EU norms that most meet the objectives of partnership and consolidate the new forms of partnership; recognizing the key role of social partnership in preventing discrimination in employment, vocational training and education in general; ensuring the free movement of workers, functioning a common labor market; cooperation with the International Labour Organization and other bodies dealing with social partnership.

In Ukraine, the formation of its own model of social partnership is carried out in quite difficult conditions of social transformation and is determined by a set of economic, social, political and ideological factors associated with the development of market economy, democratization of society, the transition to new forms of civilization (postindustrial, information," knowledge society ") that influence the formation of partnerships.

The economic factors that determine the introduction of social partnership in Ukraine, in our opinion, include:

1) the need of overcoming the acute social and economic crises that accompany market reforms, which results in falling production and lowering living standards of citizens;

2) urgency of establishing non-confrontational relationships between representatives of different social groups, which prevent further deepening of society crisis, reduce social risks, prevent social conflicts;

3) the need for negotiating the terms of privatization, which takes place in Ukraine in violation of the rights of citizens, as major owners of many state properties have been a small number of individuals who had access to resources and power and could create "by themselves" reasonable conditions of privatization which caused the polarization of income and uncontrolled social differentiation;

4) the need for democratization of the economy, when the partnership between government, business and citizens will provide an opportunity to involve citizens to participate actively in managing the business in which they operate, expand the powers of representative bodies of employees to improve the public administration as a participant and a facilitator of economic relations;

5) the increase of the liability of employers for the conclusion of collective agreements in enterprises of all forms of ownership;

6) the need for revitalization of public administration to resolve labor disputes in enterprises that are privately owned;

7) the struggle for the exclusion of lobby forms of public decision-making for the benefit of certain groups, against the merging of business and government entities and the imposition of "rules" in the socio-economic relations by the shadow economy subjects;

8) the need of combating corruption and "shadow economy", whose existence leads to violation of labor and social rights of citizens.

No less significant are the social factors of social partnership:

1) the need to overcome significant polarization in terms of life when fantastic income of clan-oligarchic groups contrast deeply with the material conditions of workers' life, especially in the countryside or in the so-called "depressed" cities;

2) the need for social programs, which provide joint investment of state funds, business and citizens in developing education, science, training employees, maintaining their health, etc.; 3) the need to expand the network of social services to compensate low income (state paternalism in this case is justified and necessary).

If Ukraine does not continue to solve more effectively such problems as poverty reduction, reduction of inflation to the European level, reduction of social polarization, the resolution of employment problems, social protest and confrontation mood can increase in society. This is confirmed by data on the integral index of social well-being of Ukrainian citizens, which for years 1992-2010 remained below conditional zero, which shows a negative level of satisfaction of social needs. Economic and social problems that exist in Ukraine, are combined with political instability and form a stable negative public view of the state as unable to perform effectively its functions, that causes the need of increasing the responsibility of all social sectors for political stability, the quality of political institutions, democracy.

This involves the circumstances that the development of tripartism in Ukraine demonstrates a lack of organization of not only government but also other subjects of partnership – employers, employees. Thus, the trade union movement in Ukraine, represented by the Federation of Trade Unions of Ukraine (FPU) and network of independent unions, does not cover all workers and gradually loses its credibility, especially for workers of private enterprises, where unions are not created practically. If you take in consideration that private property in Ukraine is already over 80% of firms, the degree of decline in the popularity and effectiveness of trade unions is high. But at the level of other subject of partnership – employers – we also observe a weak organization, as the Federation of Employers of Ukraine does not cover all entrepreneurs and employers and is not an active participant in negotiations and initiator of cooperation with other public sectors.

In the society the active ideology of social partnership hasn't been formed, which offers a peaceful coexistence of different social groups with specific and often conflicting interests and civilized form of overcoming differences and reaching consensus, manifested in the dissemination of legal nihilism, lack of value-normative consensus, insufficient development of human and social capital. Thus, totality of the above factors causes the existence and improvement in Ukraine the system of social partnership as a natural stage of reformation of socio-economic relations and the condition of coordination of interests and motivations of partnership subjects for the welfare of citizens, a socially oriented economy creation.

First of all, it concerns the improvement of the legal framework of social partnership, because due to lack of forethought of legislative actions, frequent and chaotic change of economic legislation takes place that dramatically changes the conditions for entrepreneurs and enterprises of all forms of ownership. Another problem of legislation is that, despite the considerable amount of violations of labor rights and guarantees of workers, number of visits to court, arbitration is very small and there is a widespread opinion among citizens about their legal insecurity. This involves a negative practice of bribery of the judiciary, which "makes" decisions based on motives of profit. This enhances mistrust between business partnerships because demonstrates that even decisions of defense of either side may be disrupted or unfulfilled.

One should also note that, unlike Western European model of social partnership, where the legal modalities were created with the participation of all partnership entities as a result of class struggle, mass movements of workers, in Ukraine the legal framework of partnership, basically, was determined by the state. Although formally it corresponds to the basic principles of partnership, but not always protect the other partners, as it is done in European countries. The legal collisions appear, which show that the existence of laws on settlement of labor disputes, collective agreements and negotiations, tripartite bodies at various levels, the existence of employers organizations and trade unions do not provide real social interaction in society.

In particular, public authorities do not pay particular attention to the fact that among the employers a representative federation has not been really formed, which the real deals could be signed with and the social responsibility of business could be determined by. This allows many employers to use unlimited and uncontrolled power in their enterprises, to act only according to their own interests, not to take social responsibility for workers, to neglect the collective agreements or not to sign them with their employees.

Thus, the normative-legal base of social partnership requires substantial changes in Ukraine and creation of such legal field, most questions, important for all subjects of partnership , can decide within the framework of that, including:

– creation of necessary terms for modernization of economy with the adequate social programs;
- adjusting of social labor relations, that go beyond the scopes of three-way agreements, for example, in the process of privatizing of enterprises or in transition from one proprietor to other;

– overcoming contradiction and insufficient formation of labor-market;

– strengthening of responsibility of employers for a compensation for ill-timed payment of salary and social payments;

– taking of living wage and minimum wage to the international and European social standards;
- social defense of the real incomes of population at economic hardships.

The real practice of partnership requires distribution and systematization of partner relations on all levels – from state to the separate enterprise. We consider that for the further functioning of national model of social partnership the organs of state administration should decide next tasks:
- to strengthen the activity of public authorities in the system of social partnership, to perfect the mechanism of co-operation between the subjects of partnership;

– to define the basic terms of concordance and observance of socio-economic interests of partners, to involve all subjects of social partnership in the process of reformation of economy;

– to introduce ideology and motivation of social partnership, that assists a social collaboration, improvement of quality of life, solidarity of citizens;

– to provide development of social labor partnership on all enterprises regardless of patterns of ownership;

– to make alterations to the normative acts about social partnership in accordance with international norms;

– to ratify in full the European Social Charter and the European Code of Social Security.

It requires the complex of the special measures of economic and social policy, which will stimulate the going out of interactive in these sphere subjects – government, officials, proprietors, leaders of small and large enterprises, and also different groups of the hired workers – from "shadow" space to the sphere of legal, transparent relations that are controlled by the state. Upon it is basic responsibility for forming of transparent and just labor relations, where laws can not be constantly changed, be accepted regulations that are not brought to the wide circle of workers, departmental instructions contradict each other and the legislation. Strengthening of regulative role of the state in social labor relations becomes the urgent condition of further development of social labor sphere.

But a question about the limits of such state interference causes certain discussions. In opinion of M. Rotbard, the state interference increases the load of charges not for businessmen and capitalists, but for workers and landowners, who have to come to terms with the decline of the profits. This gives grounds to M. Rotbard to estimate critically the state interference, acknowledging its advantages only for public administrators. Thus M. Rotbard offers abandonment from any forms of state interference as means of getting maximum social benefit of market. State interference on the side of trade unions in the questions of payment of labor is also exposed to criticism. In particular, analyzing practice of state payments from unemployment, M. Rotbard names them the channels of subsidized unemployment, because they remove mass of potential competitors of trade unions from a labor-market, which opens the unlimited possibilities for continuation of trade-union policy. Moreover, M. Rotbard considers, the removal of workers from a labour-market is paid by those, who pays taxes, *id est* by all citizens [1, 53, 61-62, 87].

Assuming certain objectivity of such analysis, we will notice that the estimations of M. Rotbard are more acceptable to the countries with the developed relations of partnership, where a considerable gap between a minimum and maximum salary has possible limits and abandonment from some elements of government control can really assist the activation of economic life, that, essentially, takes place in developed countries. For countries that did not pass such way and keep considerable polarization of profits, did not attain acceptable social standards (as seen in Ukraine), abandonment from state interference can show up in extremely negative social tendencies, both in the field of social labor relations and in intersectoral co-operation. Thus, the active practice of social partnership and strengthening of state influence on development of social labor relations remain for Ukraine the actual tasks of public administration.

Let's pay attention, that in the conditions of postindustrial development, according to Z.Bauman, we pass to the individualized society, whose features are "flexibility" becomes the slogan of day at the market of labor, id est passing to the new short-term contracts or without them, to work without certain guarantees, to the "duty report", resulting in a worker's loss of position of solidarity and formation of vital strategy, different from that led to the creation of organizations that protected rights of a working class. In such situation, considers Z.Bauman, a capital becomes exterritorial, that gives an opportunity to blackmail the political institutes tied to certain locality with threats to move a production to other territories . It means that a government must go to all concessions for a capital – low taxes, freedom of entrepreneurship, flexible labor-market, – id est retentive influence on a capital, which labor force had that at hiring, the determined amount of workplaces, grows short considerably [2, 30-38].

This negative trend in the labor market, we believe, can be overcome at the terms of creation of new forms of partnership and corresponding strengthening of state influence. In a table 1 the basic questions that are important for sides of tripartite (state organs of management – trade unions – organizations of employers) are systematized (public authorities – unions – employers' organizations).

Table 1: Key issues of the social partnership in the system of tripartism

Subjects of partnership	**Key issues**
1	2
Organs of state administration	social peace; consolidation of nation around socially meaningful aims; increase of welfare of all citizens, their the social protection; increase of profits of the state budget, compliance with its just distribution; ecological safety; competitiveness of national economy
Employees (trade unions)	growth of real incomes of employees; guarantees of social protection (against unemployment, sickness, pension provision, safe working conditions, etc.), ensuring decent living conditions and employment; participation of workers in production management
Employers (Entrepreneurs unions)	effective use of capital; increase of profits through productivity growth; improving product quality; continuity of production; improving the competitiveness of the economy

Solutions of key issues in the system of collective contracting practice in social and labor relations on the part of government are listed in Table 2.

Table 2: Mechanisms of public administration in the system of collective contracting practice in social and labor relations

№	**Fields of activity**	**Functions of public administration**	**Forms of of Public Administration participation**
1.	Carrying out collective consultations and negotiations	Compliance with the law, protection of social and labor rights	Discussions, debates, providing necessary information
2.	Conclusion of collective agreements Recognition of authority party, compliance with legislation, protection of social and labor rights, expert evaluation Participation in joint working committees, allocation of budget funding, information, consultative, methodical assistance	Recognition of authority party, compliance with legislation, protection of social and labor rights, expert evaluation	Participation in joint working committees, allocation of budget funding, information, consultative, methodical assistance
3	Monitoring and evaluating the stability of social and labor relations	Control of compliance to legislation, social and labor rights, state social guarantees	Creation of specific bodies for monitoring, funding, information about the monitoring results of other partners, managing collective contractual relations

But the collective-contractual form of social labor relations does not embrace fully the sphere of partnership and can be complemented by the different forms of participation of workers in management of enterprises and companies. In recent year with the development of market economy a collective -contractual form is complemented by such forms as participation, self-government and participating in incomes. The example of participation is experience of Germany, where as early as 1952 a corresponding law was adopted, according to which participation ("mitbeshtimmung") is realized through production councils. Self-government, as a representation of workers in supervisory boards, economic committees, participating in setting directors from labor is used most actively in Sweden and Italy. The system of participation in incomes in different forms is widespread, for example, in Sweden and Italy. The system of participation in incomes in different forms is widespread, for example, in Netherlands.

The processes of globalization, the development of postindustrial, informative society and integration of Ukraine in a world market actualize a question about a selection of new level in partnership: the state – the hired workers – multinational corporations. Practice of such collaboration exists in Europe, that is why and in Ukraine it is needed to work out the corresponding normative - legal base of such partnership, to create (analogical to European) two – or trilateral councils for realization of collective negotiations and consultations, to work out the mechanism of co-operation between the representative organs of the hired workers of countries on territory of which multinational corporations work.

Important direction of optimization of social labor relations and development of social partnership is an increase of social responsibility of business, relation to which in Ukrainian society is ambiguous. It is considered that business does not execute social obligations and works only for own interests. Such moods can changed only on condition that business in Ukraine really will demonstrate its participation in public affairs, but will not use society as means of achievement of private interests.

Analyzing the social responsibility of modern corporations D.Bell comes to the following conclusions:

– the main lesson having been digested during the last three decades is that the corporations producing things consist of people and people can not be treated as things. The corporation for many employees changed to the business of their life, so it must be an acceptable style of life for their members;

– the corporation is a special world with the social duties to their members which has to determine the balance of its duties in such affairs as corporation members' satisfaction with work; the correlation of motivation with productivity of work; the level of responsibility of corporation for employment of representatives of national minorities; estimation of a worker cost; grounds of the salary gap of workers and managers in ratio of 1:25and more; the responsibility of corporation to local community for environmental protection and so on. To this list belong also the moral problems, so far as to remain value neutral is getting more and more difficult for corporation [3, 166-177].

The social practice of business circles of leading countries affirm the active integration of business into the social life, which gives the possibility to stimulate the economic growth, to settle the social conflicts, to create favourable environment for innovative development. The examples of such cooperation are the creation of social funds, analytic and research centers, support of social projects and so on. For leading countries a stable tendency for merging industrial and local associations of entrepreneurs and creation of nationwide unions, which take the functions of social partners in the scale of the country and now more frequently on a regional and a global scale is observed. The representatives of interests of business circles with the aim of increase of their public prestige come forward Confederation of British industry in Great Britain, National council of businessmen in France et al.

The sociological research "Social responsibility of business of Ukraine" [4]conducted in Ukraine, which was carried out on the base of 811 enterprises, showed that 51% enterprises have the

practice of introduction of social projects, including large enterprises – 64%, middle – 46%, small – 43%.

The actual question of development of social partnership in Ukraine is activity of trade unions. In the relations between trade unions and state it is possible to distinguish two models: cooperation and confrontation. In the first model trade unions are orientated to the achievement of macroeconomic indexes, including of corresponding points in the agreements of different level; activity is in such legal field that foresees the achievement of compromises; realization of policy of integration and co-operation with other partners. In this model trade unions, defending interests of the hired workers, go to the considerable concessions, when it touches modernization of production, understanding winning in the future, which will compensate existent difficulties. In addition, at institutional and legal level they lean against the clearly executed format of relationships with employers, which, as a rule, is not violated. In such model of partnership the role of the state is taken to development of corresponding labor and social legislation, creation of legal infrastructure of defense of labor rights of citizens, provision with legal infrastructure of defense of labor rights of citizens, providing of legal framework of mutual relations between the hired workers and employers and their representative organs. During realization of collective negotiations the organs of state administration provide other parties with complete information about the actions and decisions, study suggestions, take into account opinion of partners, aim to make agreement over the widest circle of questions.

In case of labor disputes and conflicts between the hired workers and employers the task of the state is softening of social contradictions and possibility of their warning. Interference of the state to the relations of social partners takes place only at violation by them current legislation, inability of both parties to produce compromise decisions.

Characteristic signs of model of confrontation is creation of trade unions on productive principle, politically independent, with a hard hierarchical structure; opposition character of actions of trade unions in relation to a government or other partners; defending of interests of the most unprotected layers or concrete group of workers; activity of trade unions in such legal field that relates to the social conflicts. In such model the actions of trade unions are concentrated both in the direction of collective negotiation processes and organization of strikes. The state in such model performs the duty of initiator of reconciliation, using the different branches of power, and active social reforms.

Determination of prevailing character of relationships with trade unions directs corresponding efforts of organs of state administration in desirable direction. The legal status of trade unions in Ukraine, envisaged by Law "On trade unions, their rights and guarantees of activity" [5], provides, that the state does not only ensure the realization of rights for citizens on association in trade unions and observance of rights and interests of trade unions, admits them the competent representatives of workers and defenders of their labor, socio-economic rights and interests, but also cooperates with trade unions, assists the establishment of business partner mutual relations with employers and their associations, provides the increase of level of knowledge of trade unions in relation to legal, economic and social defense of workers (art.13).

It should be noted that development of trade-union motion has the contradictions that reduce efficiency of actions for the defense of rights for workers. Among them we will distinguish:

– Total participation of all workers in the trade unions, including administration that levels structuring of relations an employer – the hired worker, reduces the efficiency of decision of problems of social labor relations in collectives, results in cap-in-hand policy of trade unions with employers;

– New, independent trade unions did not conquer sufficient popularity in society to become influential social and political power;

– Interaction with state unions can not be recognized quite effective, as in Ukraine remains unfulfilled the existing minimum of basic labor standards, fixed by the documents of the International Labor Organization, the European Social Charter and the European Code of Social Security;

– Financing of trade unions, which combines both the remains of the old system and attempts to move to independent financing through membership fees, does not meet the basic trade union functions;

– Agreements between unions, employers and the state often causes dissatisfaction of ordinary members of trade unions, because they outline the items that hardly can be completed in full, or they are not too meaningful for improving significantly working conditions and salary increase. On the other hand, in the arrangements not all unions are involved, but those which are most numerous.

Thus, trade unions of Ukraine should significantly increase their activity in protecting employees and act with joint position as, for example, trade unions in OECD countries exercise it, acting in partnership as a whole. Such an association may use the experience of Germany, France, where unions are partly involved in the social partnership and specially elected representatives of employees express the interests of workers and control the arrangements on their behalf.

In European countries, the activity of trade unions is always directed not only to meet the challenges of the labor market, but also has a broader context as defenders of all citizens. This actualizes the issue that trade unions should act as a group of lobbying for all workers: trade union as a lobby in Parliament, pressure on the media and others.

But implementation of such tasks is facing problems of a growing distrust of the public role of unions in protecting labor rights by reducing the number of union members, formal attitude toward membership. Significant social problems that remain in the country do not convince citizens in the activity of trade unions as defenders of their interests, which reduces their value as full partners. Often in the practice of tripartism most citizens trust the state more than their own unions. So, for the increase of trust from the side of citizens to the trade unions it is imperative to articulate clearly their demands and determine the procedure of actions on such topical issues as: creation of new workplaces; "legitimizing" of wage; prohibition of artificial underestimation of the labor cost; implementation of citizens' constitutional right to an adequate standard of living ; diminishing of level and scales of poverty of population and eradication it among employees that meets the obligations of state taken on the summit in Copenhagen (1995) and the Millennium Goals (2000); strengthening the legal work motivation and returning the workers from abroad; reducing the population differentiation by income and reducing social tension and conflicts; providing the state social guarantees – a minimum hourly wage. This position will contribute to overcoming internal conflicts of the trade union movement, will will make impossible the compromise with employers, especially when the employer uses paternalistic forms of relationships with employees, requires loyalty to the administration and at any disagreement with the administration dismisses the employee.

This view coincides with the spread of idea about the transformation of trade unions to social movements with broad horizontal and associative connections, without a hard individual membership, with developed democratic procedures. It is important trade unions to be able to define their role as an active subject of social partnership and to act in a way that interaction with state government should give the additional resources and capabilities to protect labor rights of employees.

Studying the experience of Western European models of social partnership, we believe it necessary to draw attention to certain issues that accompany the development of social partnership in Europe.

First of all, it concerns the fact that a significant reduction of the public sector in Western countries has led to the loss of state's influence on economic policy. Often in public sector enterprises of transport, energy, communications mostly remain, where the solution of social issues is particularly complex. However, as a result of the privatization of banking and capital market liberalization the part of incomes of enterprises is increasing and the share of wages is reducing. The state practically does

not control the dramatic revenue growth of 10-20% rich people, leading to increase of break in profits with poor in hundred one times. The new social phenomenon as a "new poverty" has appeared, which means the inability to have normal social standards of the citizens who work, but have such a salary, which is considerably less than the living wage. This gives reason to say that the state can not and often does not wish to interfere in the decision of these questions.

Common causes of a crisis triparty structures can be considered, for example, that the state tried to take to the partners a role of consultants that did not allow them to influence more seriously on an acceptance of legislative decisions. On the other hand, in conditions of uneven development of different industries of economy, regions the opportunity to make such decisions that would be acceptable to all subjects of the partnership declined.

As the experience of UK, Germany showed, such forms of social partnership as a "social contract", "joint action" can not be fully realized in a market economy with its recession, elevations, crises and risks, so we observe a replacement of social security system, which made the redistribution of wealth from top to bottom and provided solidarity between social classes and generations, to targeted assistance to certain categories of citizens and policy of "equal chances". Problematic within the framework of social partnership became the possibilities of the executive power to influence partnership process without the support of organized associations of citizens and employers. But the criterion for association is unlikely to be both changes in social structure, caused by the growing number of so-called "hired shareholders", and an increasing number of chronically unemployed and marginalized. Social impact of such changes is also distributing "ghettoisation" and "enclavisation ".

There is the need to revise the functions of partnership in the development of postindustrial society and a change of the vertical and pyramidal structure of work organization to a horizontal networking one. Under the new conditions the labor market becomes natural, flexible and unstable, the guarantee of jobs and stable employee groups are lost. This structure is more self-managed than management requires, i.e. it goes beyond tripartism.

Thus, the prospects of social partnership in Western European countries have recently caused an active discussion. In recent years, in EU countries, for example, the social partnership is passing to the new level:

– the scope industry, collective agreements of the European format are concluded; - boards of the European enterprises are established as advisory bodies in each company that has business in two or more EU countries with 1 thousand or more workers in general or at least 150 in each country. In such boards, the management of companies discusses regularly with representatives of workers social and economic issues relating to workers of this company, signs collective agreements (the facts show that penetration of Western multinational companies to the Ukrainian market should be combined with the inclusion to such boards the representatives of Ukrainian Trade Unions and relevant improvement of trade union law).

So, we observe the development of a new kind of social partnership that brings together such entities as the EU institutions, national governments, multinational corporations, labor unions and employers associations. It is reasonable to remain priorities recorded in various position papers of the EU as the base of partners activity (the Stability and Economic Growth Pact, Program, 2000: For strengthening and expansion of Union, etc.) that include the following objectives:

– Stable economic growth and creation of economic conditions that guarantee population employment and reducing unemployment;

– The development of European projects in various fields;

– Leveling of regional imbalances of economic development, maintenance of relatively high standards of living and social guarantees for the population;

– The subordination of economic development to individual interests and providing complete bloom of personality on the basis of scientific and technical capabilities of society, putting them at the service of man.

The experience of the European social partnership shows that this process can not be short-term, one-sided and unsystematic, so it is important to avoid reiteration of mistakes and negative processes that led to the rejection of certain achievements of partnership in European countries, and to provide the formation of their own effective model of partnership in Ukraine.

CONCLUSIONS

European experience of social partnership allows to do some practical conclusions for Ukraine:

– The formation of social partnership is effective if it is carried out systematically at all levels (national, regional, local level of individual organizations), and assists achieving the public consensus;

– Social partnership is effective, if economically and organizationally combined with equitable distribution of income (the ratio of wages and labor productivity, participation in income, indexing ,etc.), participation of workers in the ownership of enterprises, including possession of a controlling interest, participation in company management (membership in supervisory boards, various committees, etc.);

– Social partnership is built on citizens' understanding the need of social and economic representation of their interests at different levels of state government;

– State regulation should not mean monopoly and attempts to solve social problems by establishing a direct state control over the market, market prices (not excluding such control through market mechanisms – differentiated taxes, dues, subsidies, etc.);

– The state must exercise control over the social and labor relations state, labor rights and guarantees of citizens protection, determined by the Constitution and laws, in conflict situations – take the necessary sanctions for partners to stabilize the situation;

– In the development of post-industrial, information society new forms of social partnership are required, which are adequate to the changes taking place in social and economic relations.

Taking into account European experience, while forming the Ukrainian model of social partnership the terms should be created necessarily when socially oriented market economy maintains high economic growth and a reasonable level of social protection and social consensus. Achieving such a balance can be made only through a dialogue, stable relations between citizens, employers and the state, the coordination of basic principles of partnership on the legislative, organizational levels.

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Les droits des enfants en Albanie-une nouvelle ère pour le rapprochement de la législation dans le contexte de l'intégration européenne

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Abstract: *The Children's Rights in Albania, a New Stage for the Approximation of Legislation in the context of European Integration. Children's rights are human rights. Speaking of human rights in general, without identifying the specific rights of children turn them into "invisible" and vulnerable. The United Nations Convention marked the final step of recognition of children's rights as human rights. Corpus of law in Albania so far is a product of the commitment of Albanian lawyers and assistance and expertise, mainly from European member countries of the Union. On November 4, 2010, the Albanian Parliament approved the Law "On Protection of Rights of the Child ", which establishes the institutional framework for the establishment of appropriate safeguards to ensure the rights of all Albanian children by the individual, family, state and / or other third parties. Protection of children's rights in Albania is a constitutional obligation. Experience has shown that lack of coordination of institutions and structures between them, and lack of institutional and administrative capacity, made children's rights not verifiables by concrete mechanisms. Law "On Protection of Rights of the Child" is the first act in which are collected all children's rights, and the functioning structures that guarantee these rights. The Office of the Ombudsman in Albania has established a good reputation for integrity, political impartiality and courageous advocacy for issues raised by citizens. But in Albania doesn't existe a special ombudsman for children's rights. The final goal is to create a special institution and durable to protect the rights of children in Albania and for the realization of rights and improved services for children, and to influence government policies and practices. Albania wants to join the EU. So the European approximation of national legislation remains a major challenges. When it comes to protecting the rights of children Today, we speak of European citizens of tomorrow.*
Keywords: *Children's rights, mechanismes, special institution, ombudsman for children's rights, institutional framework.*

INTRODUCTION

Les droits de l'homme comprennent tous les êtres humains, et malgré cela on parle de plus en plus pour les droits des enfants. On explique simplement l'intérêt de la connaissance et de la protection des droits des enfants, par le fait que:

• Les normés internationales existantes ont clairement indiqué que les enfants devraient avoir la totalité de leurs droits.

• Les enfants constituent une catégorie particulière de personnes qui ont des besoins spécifiques et ne sont pas capables de se défendre. Souvent, les droits des personnes adultes sont différents de ceux des enfants. Parlant des droits de l'homme en général, sans identifier les droits spécifiques des enfants, on les transforme en " »nvisibles et vulnérables ».

Bien qu'en principe, il soit apparu que les enfants jouissent de tout le spectre des droits civils, on peut dire que souvent ils ne sont pas pleinement respectés par de nombreux États. Une telle chose est justifiée par l'idée que le mineur n'a pas les compétences de procédure pour le règlement des intérêts. Une telle attitude a commencé à changer avec la rédaction de la Convention des Nations Unies sur les Droits de l'Enfant de 1989, qui a dépassé la différence entre la théorie et les pratiques existantes concernant les droits de l'enfant. "Il est intéressant de souligner à quel point les États ont ressenti le besoin de passer d'un énoncé de principes, qui avait néanmoins aucune valeur juridique et ne lie pas les Etats, a toujours constitué un engagement moral à une liaison Convention internationale pour eux séparément, et qui a un contenu spécifique pour la protection effective des enfants jusqu'à 18 ans".[1] Ce n'est que par la ratification que les principes et les dispositions de la Convention

[1] L'Intérêt Supérieur de l'Enfant De l'Analyse Littérale à la Portée Philosophique Jean Zermatten Working report 3-2003

devientnent partie intégrante du droit interne, et sont applicables dans les différents pays (l'Albanie a ratifié la Convention en Février 1992 et elle est entrée en vigueur en Mars 1992).

La Convention des Nations Unies a marqué la dernière étape de la reconnaissance des droits des enfants en tant que droits de l'homme. Cela prouve que cette voie est suivie dans le sens opposé à ce qui s'est fait pour les droits de l'homme:, d'abord sont présentés et reconnus les droits sociaux et économiques, et puis les droits culturels, civils et politiques. Donc nous pouvons parler d'un changement radical, parce qu'enfin l'enfant est devenu sujet de droits; il a un statut spécial, autonome et bien définie. De même on peut dire que jusqu'à ce que la présente Convention existe l'enfant a été seulement l'objet d'une protection et non pas le sujet. Une bonne connaissance de certains droits de l'enfant encourage les différents niveaux de responsabilités: ,en premier lieu les parents et la famille, l'État et enfin la communauté internationale, à travers un mécanisme de protection et de contrôle.

En Janvier 2005, à Genève, a eu lieu la réunion du Comité des Droits de l'Enfant et il a examiné le rapport initial[1] présenté par le Gouvernement Albanais pour mettre en œuvre la Convention relative aux droits de l'enfant. Le Comité a adressé des observations finales et recommandations[2] qui ont émergé de cette réunion. Il a également déclaré que l'une des étapes les plus importantes entreprises dans le pays était la création d'une sous-section pour les droits de l'enfant dans la Bureau du Médiateur, qui doit être équipé de plus de pouvoirs et de ressources[3].

Sur cette base il est le temps de créer la base juridique nécessaire pour institutionnaliser la protection des droits de l'enfant dans notre pays. Le but finale est de créer une institution spéciale et durable afin de protéger les droits des enfants en Albanie, et pour la réalisation des droits et des services améliorés pour les enfants, et d'influencer aux politiques et pratiques gouvernementales.

I. UN PAS AVANT POUR L'APPROCHE DE LA LEGISLATION DANS LE CONTEXTE DE L'INTEGRATION DANS L'UE-UNE LOI SPECIALE POUR LES DROITS DES ENFANTS.

En 2006, la Communication de la Commission européenne «Vers une stratégie européenne sur les droits de l'enfant», établit une stratégie globale de l'UE pour promouvoir et protéger les droits de l'enfant dans les politiques internes et externes de l'Union européenne et à soutenir les efforts des États membres dans ce domaine. L'UE et l'Albanie ont conclu un accord de stabilisation et d'association (ASA), vu la première étape vers l'adhésion en Juin 2006. L'Albanie a demandé à adhérer à l'UE le 28 Avril 2009.

Lisant les chapitres 2 et 3 de l'article 3 CDE[4] on peut évaluer le progrès de l'Albanie en adoptant une loi spécifique sur les droits des enfants:

ch.2: Les Etats doivent prendre toutes les mesures législatives et administratives propres à assurer protection et soins nécessaires au bien-être de l'enfant, dans le respect de la famille.

ch.3: Les Etats doivent veiller au bon fonctionnement des services et institutions qui reçoivent ou prennent en charge des enfants.

Le 04 Novembre 2010, le Parlement Albanais a approuvé la Loi "Sur la protection des droits de l'enfant", qui fixe le cadre institutionnel pour la mise en place des mécanismes de protection appropriés, afin de garantir le respect des droits de tous les enfants albanais par l'individu, la famille, l'état et / ou d'autres entités tierces.

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[1] www.mfa.gov.al/dokumenta/crc_report.pdf

[2] http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7d5e3444b12ac33dc1257018004dd14c/$FILE/G0540844.pdf

[3] CRC/C/15/Add. 249 31 March 2005

[4] http://www2.ohchr.org/english/law/crc.htm

La Loi "Sur la protection des droits de l'enfant"[1] est le premier acte dans lequel se trouvent tous les droits des enfants, prévoyant la création et le fonctionnement des structures qui garantissent ces droits. Protéger les droits des enfants est une obligation constitutionnelle[2]. Garantir et promouvoir ces droits constitue une priorité dans les programmes entrepris et achevés à ce jour par les institutions albanaises élaborant des politiques. Le nouvelle Loi "Sur les droits de l'enfant" dans son contenu a été harmonisée en vertu de l'article 4 de la Convention des Nations Unies "Sur les droits de l'enfant", du Rapport de l'Union Européenne (pour 2009) pour le progrès de l'Albanie, des Recommandations du Comité de Genève sur les droits de l'enfant, dans laquelle l'obligation de l'Albanie était d'assurer une coordination efficace entre les ministères, les autorités locales, les représentants d'ONG et autres acteurs impliqués dans la mise en œuvre de la Convention.

Le législateur à l 'élaboration de cette loi a pris en compte la Recommandation nr.1934 de 2010 de l'Assemblée Parlementaire du Conseil de l'Europe "Pour la protection des enfants dans les établissements et à assurer leur protection complète", pour sanctionner et pour interdire les châtiments corporels des enfants. La Stratégie nationale pour l'enfance et son Plan d'action prévoient également l'élaboration d'une loi sur les droits des enfants. Pour la première fois dans un acte juridique sont résumés tous les droits des enfants et des mécanismes institutionnels qui garantissent leur accomplissement.

La Loi est conçue en deux parties. La première sur les droits et les garanties pour les enfants, et la deuxième sur les mécanismes institutionnels, qui seront chargé d'élaborer et de coordonner la politique et la législation pour les enfants et leur mise en œuvre.

Les dispositions légales concernant les droits des enfants se trouvent l'ajustement à des lois spéciales dans le domaine de la justice pour mineurs, en matière d'éducation, de la santé, de la culture, de la protection sociale etc. Ce cadre juridique permet la définition d'un droit protégé, tandis que la loi spécifique dans les domaines mentionnés réglemente en particulier la procédure d'obtention du droit et des institutions responsables qui assureront ce droit.

L'expérience a montré que le manque de coordination des institutions et des structures entre elles, et le manque de capacité institutionnelle et administrative, a fait des droits de l'enfant quelque chose de nonvérifiable par des mécanismes concrets. La Loi reprend la mise en place de ces mécanismes institutionnels et leur coordination afin de mieux répondre à l'intérêt supérieur des enfants et garantir leurs droits. La loi ne vise pas seulement à définir les droits, mais aussi à assurer leur mise en œuvre, en fournissant des dispositions spécifiques sur les mécanismes institutionnels au niveau central et local, qui permettront de déterminer et de consulter les politiques, lois et mesures pour les droits des enfants, assurera la coordination avec la protection d'un enfant à risque (abus, les enfants des rues, etc) et ainsi seront punis les contrevenants. La loi stipule qu'un enfant est considéré un enfant à risque dans les cas suivants : les enfants victimes de la violence dans la famille, dans les établissements scolaires, et ceux qui sont utilisés pour la mendicité des parents / leurs représentants légaux (les enfants des rues). S'il est établi qu'un enfant a subi les formes de violence ou d'abus cités ci-dessus, chacun a le droit de renvoyer l'affaire à l'Unité de la protection de l'enfance, qui travaillera dans les Unités du gouvernement local. Les représentants de la police et de la justice (dans les unités locales) seront partie du mécanisme, qui coordonne le travail entre les autorités chargées de diriger les enfants au cas de risque au niveau local. En plus des corps de police les citoyens peuven agir en invoquant la loi sur la violence domestique et ont le droit de demander directement au tribunal de rendre une ordonnance de protection immédiate pour l'enfant. La Cour rend une décision dans les 24 heures pour des cas de maltraitance dans une famille d'accueil ou un établissement de soins sociaux. En outre, la police peut commencer des poursuites contre les parents ou le représentant légal de

[1] Loi nr.10347 date 4.11.2010 "Pour la protection des droits de l'enfant"

[2] http://www.parlament.al/, Article 54 te la Constitution Albanaise prévoit que: "1.Les enfants, les jeunes, les donnes enceinte et les nouvelles mères ont le droit d'une protection spéciale de l'Etat"

l'enfant, basées sur l'article 124 du Code Pénal "la violence physique et l'exploitation des enfants" et du Code de la Famille, la recherche jusqu'à la suppression du droit exerçant la responsabilité parentale, de contraindre le parent ou l'utilisateur. Donc, ces éléments font que la loi ne soit pas simplement une loi déclarative des droits des enfants, mais aussi le garant de leur mise en œuvre. Un mécanisme national pour protéger l'enfant sera établi, ainsi que des unités de protection des enfants dans les municipalités et communes qui seront obligés de suivre et de résoudre les cas d'enfants qui mendient ou vivant dans la rue. Un nouvel organisme sera créé subordonnée au Ministère du Travail et des Affaires sociales pour protéger les droits des enfants. La loi prévoit l'établissement et le fonctionnement d'une institution centrale, qui est l'Agence nationale pour la protection des droits de l'enfant. Cette institution sera subordonnée au Ministère du Travail et des Affaires Sociales.

L'adoption de la loi contribuera à:

• Harmonisation de toutes les lois et les politiques pertinentes à la Convention en donnant la priorité aux enfants défavorisés dans les plans nationaux économiques et sociaux avec l'allocation budgétaire appropriée.

• Mise en place et renforcement d'un suivi, d'évaluation adéquats et d'un système de rapports avec des indicateurs bien définis pour surveiller la pauvreté et l'exclusion sociale.

• Alignement des politiques et des normes de droits de l'enfant à la Stratégie nationale de développement et d'intégration ainsi qu'à mi-parcours du cadre budgétaire.

Donc: "L'intérêt supérieur de l'enfant vient éclairer le politique! N'est-ce pas là aussi une révolution?"[1].

C'est la Convention des Droits de l'Enfant que lui donne la parole, et toute la société est obligée de l'écouter.

II. LE RÔLE DES INSTITUTIONS INDÉPENDANTES POUR LA PROTECTION DES DROITS DES ENFANTS

Le Médiateur en Albanie[2] est une institution juridiquement indépendante des organes de l'administration publique de la magistrature et financée par le budget de l'Etat. Il protège les droits, les libertés et les intérêts légitimes non seulement des citoyens albanais, mais aussi pour les étrangers qui sont (ou non) des résidents permanents en Albanie, par les actes ou omissions illégaux ou irréguliers des organes de l'administration publique, en donnant des recommandations, ouen faisant des propositions pour remédier à la violation de la loi. Cette tâche fondamentale est réalisée dans la pratique, même si officiellement l'Avocat du Peuple (Médiateur en Albanie) n'est pas un organe de décision et ses recommandations n'ont pas de pouvoirs exécutifs. Comme on le sait, le système de contrôle et d'équilibre aujourd'hui est un principe fondamental d'un gouvernement moderne partout dans le monde, y compris l'Albanie. Sans aucun temps réservé pour les plaintes quotidiennes des citoyens, cette institution essaie d'influencer positivement à la bonne gouvernance dans le pays.

Grâce à des recommandations systématiques qui affectent l'administration, en peut préciser son rôle dans le système démocratique. Grâce à ses recommandations, le Médiateur a pour but d'améliorer les normes et la qualité des services aux citoyens, et de promouvoir et de respecter les valeurs morales des employés de l'administration publique. Telle qu'elle est conçue par la Constitution albanaise et comme elle fonctionne dans la pratique, l'institution de l'ombudsman (médiateur) ne remplace pas les tribunaux. Il fait partie de la machinerie des droits de l'homme, qui doivent être fournis à tous les Etats démocratiques, travaillant pour une culture de bonne gouvernance et de la protection et du développement de droits de l'homme. D'année en année le nombre de plaintes et des

[1] L'Intérêt Supérieur de l'Enfant De l'Analyse Littérale à la Portée Philosophique Jean Zermatten Working report 3-2003

[2] Crée par la Loi nr.8454 dt.4.02.1999 "Pour le Médiateur en Albanie", www.avokatipopullit.gov.al

demandes aux Médiateur sont été augmentés, ce qui indique la confiance publique albanaise au Médiateur. Du service du Médiateur, ont bénéficié des milliers de personnes qui non seulement sont aidées par des conseils juridiques, mais elles ont reçu souvent les documents requis, les pensions, l'aide sociale. Le but du Médiateur est avec le précédent créé de punir ceux qui maltraitent les enfants et que soient aidés indirectement des centaines d'autres enfants qui ne devrons jamais frapper à la porte du Médiateur. La Constitution Albanaise de 1998 et plus particulièrement son article 60, a servi de base juridique pour la création de l'institution du Médiateur.La Loi sur le Médiateur a été conçue en tenant compte de la législation d'autres pays européens, qui ont déjà créé une telle institution. À ce titre, la protection et la promotion des droits des enfants sont des éléments importants du travail du Médiateur. Les citoyens de 0-18 ans sont considérés comme des mineurs en Albanie. Il est évident que les enfants sont les plus vulnérables. Le Médiateur a apporté une contribution particulière pour protéger les droits des enfants, à la fois par des plaintes individuelles et de son enquête de propre initiative des cas rendus publics, mais aussi par la révision de la législation et les recommandations de modifications ou améliorations nécessaires. Les caractéristiques de base de l'institution du Médiateur sont l'indépendance de toute l'influence politique, la facilité de contact, la vitesse, la flexibilité, l'efficacité et la solidité des recommandations. L'institution du Médiateur depuis les débuts de son travail a été très sensible à respecter les droits des enfants. Les résultats des réformes législatives ont entraîné l'amélioration de la situation des enfants dans le pays.

La Recommandation 13 du Comité des droits de l'enfant du Genève prévoit que "*Le Comité s'est félicité des informations relatives à l'établissement de l'institution du Médiateur en 2000 et enfin la création du Département des droits des enfants, au sein de l'institution du Médiateur. Le Comité note qu'il existe des plans pour l'expansion et la reconnaissance de la nouvelle section. Toutefois, le Comité s'inquiète parce que le niveau de sensibilisation du Bureau des services aux enfants de l'ombudsman peut être faible. Le Comité recommande à l'État partie pour permettre avec plus des ressources financières et humaines, pour assurer son plein fonctionnement, notamment par des campagnes de sensibilisation et de permettre pour obtenir les plaintes des enfants et des rapports pour la mise en œuvre des droits de l'enfant*"[1]. Dans l'avenir, il sera nécessaire de modifier la loi sur le Médiateur ou mieux créer une institution indépendante. Le but de créer une institution spéciale et durable afin de protéger les droits des enfants en Albanie est de parvenir à améliorer les droits et les services destinés aux enfants, d'influencer les politiques et pratiques gouvernementales. Le Médiateur n'est pas créé comme un établissement axé sur les enfants. Le Département sur les droits de l'enfant a été créé en avril 2004 par un accord de la coopération entre Save the Children en Albanie et le Bureau du Médiateur de la République d' Albanie.. Le mandat du Département était de "servir comme un avocat, un catalyseur et un organe de contrôle pour les droits des enfants, selon la Convention sur les droits de l'enfant (CDE) en Albanie".

[1] CRC/C/15/Add.249 31 March 2005

Les taches principales de la section étaient –Le traitement des plaintes concernant des violations des droits de l'enfant. – L'amélioration de la législation existante pour les droits de l'enfant. – La promotion des droits de l'enfant et les actions qui déterminent la façon dont ils ont exercé ces droits, et la sensibilisation de la société dans son ensemble.

Un bref résumé des travaux de la section pour les droits des enfants du Médiateur:

En 2005 on a traité 39 cas de plaintes ou de requêtes pour la violation des droits de l'enfant, dont 10 ont reçu une solution positive et 3 recommandations ont reçu une réponse positive des organes de l'administration publique.

En 2006 sont été examinés 46 cas de plaintes concernant des violations des droits de l'enfant, dont 8 ont reçu une solution positive et 3 recommandations sont été acceptées par l'administration publique.

En 2007 le nombre de plaintes a considérablement augmenté en comparaison avec 2006, au niveau de 280% de plus. 136 plaintes ont été traitées dont 43 positiveme

Les efforts de l'Office du Médiateur et du Section pour les droits des enfants sont concentrés non seulement sur les poursuites, le procès et le châtiment des coupables et des agresseurs des droits des enfants, mais aussi dans la reconnaissance et la sensibilisation du public sur les droits des enfants. Les efforts visant à lutter contre les violations des droits des enfants, souvent sont confrontés à des défis difficiles. Les droits plus souvent violés sont: pour la séparation des enfants et des adultes en détention ou dans des lieux de détention, en termes d' âge de la responsabilité pénale, le droit à la présence des parents, le droit de vivre avec le parent qui s'est engagé à la croissance et de l'éducation dans les cas du séparation légale des parents, etc. Afin de stimuler la réflexion à la protection des enfants, le Médiateur a eu en priorité les cas d'abus, de mauvais traitements et de la violation des droits de l'enfant, au début de l'exercice de son activité dans le domaine de la protection des droits de l'homme. Ici, il convient de mentionner le cas de la maltraitance d'un enfant orphelin par les forces de police, rendu public en 2000. Le succès du traitement et l'impartialité dans cette affaire a donné lieu à des mesures disciplinaires prises contre les employés de la police, et a affecté la sensibilisation du public sur la reconnaissance et le respect des droits des enfants.

L'amélioration de la loi organique "Pour le Médiateur"[1], a donné la respiration et de plus grandes possibilités pour mieux protéger les droits des enfants, permettant l'examen et l'enquête des cas de violations des droits les enfants à l'initiative et sans restriction de l'obtention du consentement de la personne lésée. Durant ces années, le Médiateur a travaillé principalement sur le renforcement des capacités du personnel pour travailler avec les enfants. De même on peut ajouter les recommandations faites par le Bureau du Médiateur pour l'amélioration de la législation relative aux droits de l'enfant:

– Recommandation pour les changements de la Loi "Sur l'état civil" adressée au Parlement albanais. L'inscription de la naissance d'un enfant doit être faire en tout temps par un acte administrative, et non par une décision de la justice. La Recommandation a eu une réponse positive, et le législateur albanais a fait les changements de la Loi "Sur l'état civile"[2] en faveur de l'interet supérieur des enfants.

– Recommandation au Ministère de l'Intérieur de l'ouverture des fonds financiers aux autorités de police locales pour le paiement des travailleurs sociaux et des avocats pour les mineurs.

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[1] *Loi nr.9398, du 12.05.2005 "Pour des amendements de la Loi nr.8454 du 4.02.1999 "Pour le Médiateur", article 13 et l'article 19/1. L'article 19 / 1 mentionne les institutions de l'administration publique où le Médiateur ou les personnes autorisées de lui ont le droit d'entrer à tout le temps, sans restriction et sans autorisation préalable, mais en informant le chef de l'institution: les prisons, les salles de détention, les hôpitaux psychiatriques, les asiles, les foyers pour les enfants.*

[2] *Loi nr.9929 du 9.06.2008 "Pour des modifications de la Loi nr.8950 du 10.10.2002 "Sur l'Etat Civile".*

Donc le Médiateur a recommandé que le travailleur social doit toujours être présent lors de la question des mineurs par la police. Cette recommandation est acceptée par le Ministère de l'Intérieur et la Police d'État, qui a établi une commission rogatoire à tous les postes de police qui fait respecter le droit d'avoir un avocat au moment de l'association de l'enfant. Comme liée à la présence d'un psychologue, il est clair que ce sera fourni par la société civile prévue dans l'accord de coopération établi par le ministère de l'Intérieur.

On peut dire que le Département des Droits des Enfants dans le Bureau du Médiateur est reconnu et apprécié comme un acteur majeur dans le lobbying pour les questions relatives aux droits des enfants en Albanie. Il a établi une coopération avec les ONG au niveau national. Il ya eu une augmentation significative des plaintes.

Le Bureau du Médiateur a établi une bonne réputation d'intégrité, d'impartialité politique et de plaidoyer courageux pour les problèmes soulevés par les citoyens. "L'humanité doit donner aux enfants ce qui est le plus bon". C'est une proclamation de la Déclaration des droits de l'enfant, publiée par l'Assemblée de l'Organisation des Nations Unies en 1959. Mais en Albanie manqué un médiateur spécial pour les droits de l'enfant-ce qui est le plus bon pour leurs droits.

Le Comité des droits de l'enfant, l'organisme chargé par l'ONU du suivre la mise en œuvre de la CDE, a toujours souligné le rôle essentiel des médiateurs pour enfants pour la promotion et la protection des droits de l'enfant. Il a encouragé les États parties à la CDE à développer des institutions indépendants pour la défense des droits des enfants au lequel devrait être donné un large mandat dans la loi, des fonctions spécifiques, des pouvoirs et des fonctions relatives aux enfants et leurs droits conformément à la CDE[1].

Plus précisément, l'article 4 de la CDE prévoit que:

1. Les gouvernements doivent prendre toutes les mesures législatives, administratives et autres pour la mise en œuvre des droits reconnus dans la Convention

2. Les enfants sont un groupe particulièrement vulnérable: ils sont vulnérables aux violations des droits humains et sont dépendants des adultes. Les enfants n'ont aucun pouvoir politique: ils ne votent pas et n'ont pas accès à des lobbies qui influencent les programmes du gouvernement. Les enfants ont un accès limité aux mécanismes de plainte, les systèmes juridiques et les tribunaux"[2].

III. QUE PEUT FAIRE UN MEDIATEUR POUR LES DROITS DE L'ENFANT?

Il peut influencer à mieux prendre en compte les droits des enfants, donner une voix aux enfants et il est un modèle de communication entre les enfants et le gouvernement. Il peut veiller à ce que les enfants disposent de moyens efficaces de recours lorsque leurs droits sont violés et contrôler la conformité du gouvernement avec la CDE[3].

Il fait le sensibilisation des droits de l'enfant parmi les enfants et les adultes en produisant et diffusant des informations sur les droits des enfants et de la CDE, la formation des professionnels qui travaillent avec les enfants, il peut travailler avec les médias pour accroître la sensibilisation, etc.

La Charte des droits de l'homme de l'Union Européenne, adoptée lors du Sommet de Nice en Décembre 2000 est le premier document officiel du monde dans le domaine des droits de l'homme qui a reconnu le droit à une bonne administration, en tant que droit humain fondamental. En fait la définition de cette Charte, le droit de bonne administration, le droit d'accès aux documents officiels et l'institution du médiateur, ont eu un développement nouveau et positif pour

[1] Observation générale n ° 2 sur le rôle des institutions nationales indépendantes de droits de l'homme dans la promotion et la protection des droits de l'enfant, http://www.crin.org/resources/infoDetail.asp?ID=8042&flag=report

[2] www.crin.org/enoc/

[3] Article 4 de la CDE

la promotion des droits de l'homme non seulement au sein des pays de la Communauté Européenne, mais aussi dans d'autres pays européens et au-delà.

Maintenir un contact régulier avec de nombreux Albanais et des ONG internationales travaillant dans différents fronts, surtout pour la protection des droits des enfants a été et demeure l'un des objectifs du travail du Médiateur. Cela parce qu'encore il n'est pas créé un Office du Médiateur pour les Enfants, comme il se trouve en plupart des pays de l'Europe. L'intérêt supérieur de l'enfant, la non-discrimination, le droit à la survie et le développement, la participation des enfants aux décisions concernant leur vie, sont des guides d'orienter les activités du Médiateur. Tous sont conscients que les droits des enfants, comme les droits humains fondamentaux ont leur fonctionnalité propre, ce qui nécessite des politiques intégrées et un engagement non seulement de l'État, mais aussi de toute la société entière.

L'article 3 ch.1 CDE fonde le principe de l'intérêt supérieur de l'enfant:

"Dans toutes les décisions qui concernent les enfants, qu'elles soient le fait des institutions publiques ou privées de protection sociale, des tribunaux, des autorités administratives ou des organes législatifs, l'intérêt supérieur de l'enfant doit être une considération primordiale."

Ce membre de phrase fonde donc une obligation[1] pour les Etats d'examiner, dans toutes les décisions relative à un enfant, si son intérêt supérieur est garanti.

IV. LES DEFIS DE L'ALBANIE-UNE NOUVELLE ERE POUR LE RAPPROCHEMENT DE LA LEGISLATION DANS LE CONTEXTE DE L'INTEGRATION EUROPEENNE

Depuis la ratification de la Convention des Nations Unies, le 28 Février 1992, de nombreux défis ont engagé le Parlement, le gouvernement, d'autres institutions albanaises et la société civile, parce que les enfants ont des besoins particuliers en tant qu'individus et en conséquence, ils ont leur statut. Par conséquent toutes les institutions publiques, de la protection sociale, des tribunaux et les autorités administratives dans leurs décisions doivent toujours garder l'esprit que l'intérêt de l'enfant soit le supérieur.

– Les enfants ne sont pas le produit de l'État et ils ne sont pas seulement en possession de leurs parents. Pour cette raison, tous les adultes de la société doivent avoir le devoir de connaître les exigences et leurs droits, droits en tant qu'individus. Certes, on peut dire que la situation des enfants, l'éducation et leur santé est un baromètre mesurant l'évolution précise socio-économique de l'État.

– Corpus de droit en Albanie jusqu'à présent est un produit de l'engagement des juristes albanais et de l'assistance et l'expertise proviennent principalement de pays européens membres de l'Union**.** L'approbation de la Loi "Sur la protection des droits de l'enfant" marque un succès important pour la protection des droits de tous les enfants albanais dans un cadre juridique complet et institutionnel en conformité avec la Constitution albanaise et la Convention relative aux droits de l'enfant (CDE). La loi ouvre la voie à la mise en place des mécanismes institutionnels appropriés permettant de garantir et d'assurer le respect des droits des enfants par l'individu, la famille, l'État ou d'autres entités tierces. Avec l'élaboration et l'adoption du cette loi l'Albanie a fait l'approche et l'harmonisation de la législation dans le contexte de l'intégration dans l'UE. Ainsi les institutions assumeront les responsabilités particulières pour la protection réelle des droits de l'enfant.

– La nécessité d'une coopération étroite et solide entre les différents acteurs multidisciplinaires en vue d'assurer la protection effective des enfants grâce à l'utilisation du modèle de CPU (Unités de la Protection des Enfants). Il est nécessaire qu'an niveau régional les représentants de l'administration des Municipalités souscrivent leur engagement et leur soutien aux

[1] FLAMMER August., Wer weiss dann, wann das Kind (ganzheitlich) wohl ist?, in Le Bien de l'enfant, pg. 45.

Unités pour les droits des enfants grâce à l'allocation appropriée des fonds dans leurs budgets pour assurer la viabilité future des droits des enfants en Albanie.

– La nature et les défis à surmonter pour réaliser les droits des enfants, souvent ont besoin de la création d'un processus de renforcement des capacités. Le Médiateur doit avoir la capacité de traiter des violations des droits de l'enfant et de donner une solution à ce problème. Les capacités devraient être développées dans trois domaines fondamentaux: l'infrastructure, les compétences et la coordination. Les efforts visant à établir et renforcer une structure spéciale pour les droits de l'enfant au sein de l'institution du Médiateur en Albanie, ou de créer une institution particulière à l'exemple de leurs homologues dans les bureaux d'ombudsman pour les enfants dans de nombreux pays de l'Europe, doivent recevoir des interventions appropriées pour améliorer la protection des droits des enfants en Albanie, avec l'augmentation de la capacité des conseillers juridiques et autres employés de la première ligne dans l'identification, l'orientation et la réponse aux cas qui violent les droits de l'enfant, le renforcement et l'amélioration des structures législatives, de la police et la mise en œuvre institutionnelle des droits de l'enfant et de la communauté, afin de s'assurer que tous les enfants et les jeunes jouissent les droits sanctionnées dans la Convention des Nations Unies sur les Droits de l'Enfant.

–Renforcement des capacités du gouvernement au niveau national et local pour être en mesure de répondre aux exigences de l'adhésion de l'UE et d'accroître l'efficacité de la mise en œuvre des politiques de droits de l'enfant dans une perspective revêt une importance particulière.

–L'Albanie souhaite d'adhérer à l'UE. En ce process il y a deux défis à relever: d'une part pour assurer le rapprochement de la législation avec la législation communautaire, et d'autre part e l"appliquer efficacement. L'Albanie a été inclus dans TAIEX (Technical Assistance Information Exchange Office) un programme de la Commission européenne qui vise à fournir une assistance technique en matière d'adoption et la mise en œuvre de la législation.

– C'est vrai quand on pense que dans tous les pays du monde, les enfants sont représentés par la famille mais souvent, la famille est l'endroit où se produisent la plupart des violations des droits des enfants.

Mais on doit efforcer de réaliser en pratique ce que la loi prévoit et lutter contre l'idée que les droits des enfants ne seront plus des droits-enfant.

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EU standards and deliberative democracy: Case of Kyrgyzstan

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Abstract: *The article discusses, against the example of recent events in Kyrgyzstan, different forms of democracy including the use of alternative, traditional forms (mainly the kurultai) instead of "European style" parliamentary democracy. It analyses what is seen as a successful transition to democracy and rule of law in the eyes of the international community that in various ways supports democratic transition in Kyrgyzstan among many countries.*

Keywords: *EU, Kyrgyzstan, constitution, consultative democracy, third countries, post–communist regimes, Central Asia and EU, transition, coup d'etat, kurultai.*

I. INTRODUCTION

1. The year 2010 made Kyrgyzstan world-famous. Shocking and horrifying news about killed civilians, refugees, destruction of property and a political coup were noticed by the international community. Kyrgyzstan was propelled to the forefront of international attention. Even before this, there were various projects of international assistance to the country, for example for building up a constitutional democracy. After the coup, some projects continued and some were added, hoping that the new government would be even more receptive to international support to establish a rule of law democracy.

2. Kyrgyzstan presents an example of a country with quite peculiar constitutional and legal traditions that do not easily fit into the model of European-style parliamentary democracy and that has never in practice had such a system. At the same time, governments have claimed to strive toward this[1], even if reality has been quite different. Especially European Union (EU) assistance aims to link the country to a democratic value system. Kyrgyzstan serves as an interesting and topical example of whether international assistance for democratic state structures, using existing models from very different countries, can work.

3. In creating a new governing structure for Kyrgyzstan after the dramatic events of 2010, what both in the opinion of the former President and the opposition is the weakest link in the chain of power – the Parliament – is given a strong role. This leads to the question why to attempt to use the parliamentary system when it has never proved to work in the country and if the Parliament is the only possible way to strengthening democracy in Kyrgyzstan. Both sides in the power struggle have advocated the use of alternative forms of democracy, the traditional *kurultai*. This is something not known in the European model of democracy. The article discusses if this is a reason why such alternative models are not properly examined and if it may mean that striving for a unified model of a democratic state may even hinder a proper democratic transition in Kyrgyzstan.

4. The current article will not try to screen theories on who (how and why) were behind the curtains when the revolution or *coup d'état* of 4th of April 2010 (still called officially "political events") took place. The authors would rather analyse the legal society of Kyrgyzstan and especially its constitutional justice in the light of "political events" that suddenly left the country in chaos. The ethnic clashes in June of 2010 are not analysed to a greater extent than that which ties in with the

[1] At one point, in the 1990s, Kyrgyzstan was even called the Switzerland of Central Asia. See among others, Alkan, H. (2009) 'Post-Soviet politics in Kyrgyzstan: between centralism and localism?" Contemporary Politics 15: 3, 355 – 375 at p 355. During the last decades, the influence of China (economic) and Russia (political) have shadowed the pro-European policy.

topic of this article, namely the governing system of Kyrgyzstan and more specifically, if and how traditional structures can serve the aim of democracy and rule of law. Nor does this article attempt to engage with the debate on the theories of democracy. We understand by the term democracy not just the holding of free elections but also existence of a parliamentary system, a constitutional justice system, respect for human rights and the landscape enabling free elections, including the media landscape. Democracy also includes a link to development and social justice. It is this general understanding of democracy that we use to denote what it is that international organisations and especially the EU wish to promote and what the constitution and laws of the country include. The relationship between freedom and democracy on the one hand and a capitalistic and free economy on the other hand is widely debated in the world and this debate lies outside of the main topic for this article.

II. THE 2010 POLITICAL DEVELOPMENTS IN KYRGYZSTAN: RE-INSTATING *KURULTAI*

5. The *coup d'état* derived from several political events that have not been internationally discussed to any great extent.[1] What is relevant for our topic is how President Bakiev in March 2010 declared suddenly in media that the old Kyrgyz tradition of having councils of people's representatives "*Kurultai of Consent*" would be introduced. This was certainly an attempt to secure solid political say even if it was not clear enough why, in the case of a relatively weak Parliament (*Jogorku Kenesh*), it was needed.[2] This kind of "consultative democracy" (words of Bakiev from his TV appeal) was officially needed because of the energy deficit and the new tariffs, worsening socio-economic situation and probably also unreliable relations with Russia (after the non-obedience of Bakiev that lead to the prolongation of a US military base). At this time the apparatus of the President controlled everything in the country. Legislative acts were formulated and legislative procedure was coordinated by the ministry of justice. However, *de facto*, the office of the President was always consulted. The initiative to have "real peoples representation" *Kurultai* was a surprise including to high officials after the speech of the President at national TV. The Parliament members were clearly insulted and expressed their disapproval. The *ukas* of the President was even taken to the Constitutional Court. However, as the role of the *kurultai* was as a consultative institution, the Constitutional Court did not find a problem. The Court was later disbanded by the new government after the withdrawal of Bakiev. The new Constitution directs the competences of the Constitutional Court to the Supreme Court.

6. Supposedly, the *kurultai* had to be established to secure that in the case of constitutional crisis (maybe caused by foreign political power, or the opposition), the President would be able to use his loyal friends and demonstrate the ultimate link of his own decisions with *vox populi* to increase legitimacy. Marat Kazakpayev, professor of political science and conflict resolution at Kyrgyz-Russian Slavic University, said the *kurultai* "raised questions that arouse popular interest and that the government can solve".[3]

7. Kurultai Presidium Chairman Sadykbek Ablesov said the presidium would meet at least once a quarter owing to the large number of complaints and requests from the people. "There are 17 of us

[1] The concentration of more and more power in the hands of the president Bakiyev and his family, the geographical and clan-based anger this gave rise to and all this at a time of worsening economical conditions are mentioned as explanations for the unrest. Cheterian, V. (2010) "Kyrgyzstan: Central Asia's Island of Instability" Survival 52: 5, 21 – 27 at p 21.

[2] It is regarded as accepted knowledge that the Parliament in Kyrgyzstan has been weak for some time and often has been sidetracked, with the President and certain ministries holding the power. This is the case foreign policy for example according to Omelicheva. Omelicheva, M. Y.(2009) "Convergence of Counterterrorism Policies: A Case Study of Kyrgyzstan and Central Asia" in Studies in Conflict & Terrorism, 32: 10, 893 – 908 at p 897.

[3] Karabayev, A. (2010) "Opposition wary of Kyrgyz kurultai results" Central Asia Online 2010-03-25 http://centralasiaonline.com/cocoon/caii/xhtml/en_GB/features/caii/features/politics/2010/03/25/feature-02

in the presidium", he said. "We'll figure out a general working plan in a week. We'll convey the essential issues not to the president but to concrete ministries and agencies, straight to the bureaucrats who are responsible for handling this or that problem".[1]

8. Naumova explains that "*Kurultai* is a political and military council of ancient Mongol and Turkic chiefs and khans. The root of the word "*Kural*" or "*Khural*" means political "meeting" or "assembly" in the Mongolian language and having also these meanings in the Turkish languages. Various modern Mongolian and Turkic peoples use it in the political or administrative sense, as a synonym for parliament, congress, conference, council, assembly, convention, gathering". [2] Kyrgyzstan has retained many traditional elements parallel to the modern governing structures throughout its independence as well as even to some extent during Soviet times. This has included dispute resolution mechanism, law as well as governing bodies.[3]

9. The institute of the *kurultai* was also used in the context of the 2005 so called Tulip Revolution as a way to unite the very fractured opposition to the then president Akaev.[4] A form of this body or an assembly of the people was used by Akaev and retained by Bakiev as a way to involve people in democracy but in practice more to support official policy. As for the Parliament, its role as well as structure (uni- or bicameral) has changed several times since the independence of Kyrgyzstan.[5] The role of Parliament has often been questioned and some MPs even soon after independence made proposals that Parliament should abolish itself. Even if this did not happen, political parties have ever since independence been weak in Kyrgyzstan and Parliament thus also has not contained strong political forces or been regarded as representative of the popular will. Neither has it been structured as a subunit of and in reality if not formally dependent on the executive as in other Central Asian states.[6] After the Tulip Revolution the pre-revolution Parliament was retained as a way to have stability rather than a democratic change.[7] Mainly the Parliament has been seen as rather irrelevant. Constitutional changes in 2007 somewhat increased its role e.g. in forming a government and for some appointments of high officials, at the expense of the role of the President, but the situation still did not lead to real parliamentarism, nor the perception of it.[8] The authority of Parliament was boosted after changes to the constitution were overwhelmingly approved in a nationwide referendum in June 2010. That model sets the country apart from the other former Soviet republics in Central Asia, where power is usually held in the hands of authoritarian leaders.[9] Whether this new role for Parliament will mean anything in practice mainly remains to be seen.

10. It is significant that after the President's announcement in March 2010 the opposition started to compose their own *kurultais* thus ignoring the Parliament as a tool for political change while

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[1] Karabayev (2010)

[2] Naumova, V. (2010) "Small Kurultai of ethnic Kazakhs of CA, Iran and Afghanistan opens in Tajik capital today"Asia-Plus. http://www.asiaplus.tj/en/news/50/50134.html. 20.04.2009 11:48

See also example of kurultai like forum for specific purposes "Astana hosts the International Kurultai of the Turkic-speaking Countries on Architecture and Urban Planning, as well as the IX Urban Forum Kazakhstan – 2010" at http://engnews.gazeta.kz/art.asp?aid=308070

[3] Juraev, S. (2008) "Kyrgyz democracy? The Tulip Revolution and beyond' Central Asian Survey, 27: 3, 253 – 264 at p 260.

[4] Heathershaw, J. (2009) "Rethinking the International Diffusion of Coloured Revolutions: The Power of Representation in Kyrgyzstan" Journal of Communist Studies and Transition Politics 25: 2, 297 – 323 at pp 306-307.

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[6] Alkan, H. (2009) pp 361-363. Also Juraev, S. (2008) especially pp 258-259.

[7] Ó Beacháin, D. (2009) "Roses and Tulips: Dynamics of Regime Change in Georgia and Kyrgyzstan" Journal of Communist Studies and Transition Politics, 25: 2, 199-226 at p 219.

[8] Alkan, H. (2009) pp 369-371.

[9] Leonard, P and Karmanau, Y (2010) "Kyrgyz Democratic Experiment Begins Uncertainly, Kyrgyzstan's parliament vote yields uncertain result, with nationalist party leading the pack", October 11, 2010, abc News International, available in internet: http://abcnews.go.com/International/wireStory?id=11847965 (access 15 February 2011)

supporting the core idea of consultative democracy. The idea as such of having *kurultai* as an instrument to secure democracy was however not discussed by the opposition. Rather, the accusations directed to President Bakiev were related to corruption and isolation of the *kurultai* from the general public. At the same time, the fact that the opposition composed their own *kurultai* is significant as it demonstrates the support to this kind of mechanism.

11. The address of President Bakiev to the *Kurultai* of Concord of the Kyrgyz people (also called Grand National Assembly, *Kurultai* of Harmony or *Supreme Kurultai* to differentiate it from the other *kurultai* type of assemblies organized by the opposition)[1] included the following aspects that help to identify the elements of the Kyrgyz kind of consultative democracy:

1. the country requires a continuous dialogue
2. decisions must be made quickly and accurately, and then effectively implemented
3. nobody has a monopoly on truth (Bakiev calls it "deliberative democracy")
4. a reasonable balance of age-old traditions and innovations should be ensured
5. there should be a forum outside of State public offices

12. At the same time, Bakiev tried to use *kurultai* to distance Kyrgyzstan from a transparent democratic system and revitalize the idea of national identity in the light of *vox populi*, which would in the Kyrgyz tribal system mean to follow the leader. As he put it: Can we save the family and tribal values and at the same time to develop a Government based on the idea of equality before the law, even in spite of the relationships? And maybe, instead of forcibly imposing on all people a universal way of life, it is better to offer them an opportunity to choose themselves how to live?[2]

13. That the opposition *kurultai* concentrated on the most critical problems of the state (rather than analyzing the idea of *kurultai* as such) is reflected in the *kurultai's* resolution that stated among other things the following: The National *Kurultai* decides to recognize the social-economic and political situation as an extremely hard one. Increasing costs for food products, fuel and lubricants, public utilities, and transportation costs are worsening the nation's living conditions. Therefore, for their improvement we are calling on the government and the president to take urgent measures.[3] The National (opposition) *kurultai* also decided to recognize work of the Kyrgyz Republic Government as unsatisfactory. What is also interesting, the opposition, using the *kurultai* as a forum, acted against competence of public offices including the Parliament: Thus, they "recognize results of early Parliamentary Elections of the 16th of December 2007 as illegitimate due to the self-willed behavior of local self-government bodies, the fabrication of election protocols and the absence of an open announcement of the election results as the State Legislation requires, and, accordingly, to recognize all laws adopted by this Jogorku Kenesh session as invalid".[4]

14. The political situation can best be described as "weird": the President wanted to secure his power and opposed himself to the constitutional institutions (Parliament, government). At the same time these institutions were first attacked by "revolutionists" as pro-Bakiev institutions. Kyrgyzstan has already earlier, both before and after the Tulip Revolution, shown evidence of political confusion, with a continued Soviet tone, strive toward the West and national traditions all competing for attention.[5] The Parliament was left alone by both sides. The question is whether the newly elected (at the end of 2010) Parliament will not become the same kind of powerless and mistrusted institution.

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[1] Available in internet: http://www.thefreelibrary.com/Address+of+President+Kurmanbek+Bakiev+to+Kurultai+of+Concord+of...-a0221874138

[2] *Ibid.*

[3] Safin, R IPP media "Will the April revival lead to a dialogue between the opposition and the government?" 29.04.2008http://www.ipp.kg/en/analysis/629/

[4] *Ibid.*

[5] Alkan, H. (2009) p 355.

III. A UNIFORM EUROPEAN MODEL FOR POST-COMMUNIST STATES, INCLUDING KYRGYZSTAN?

15. All the former communist States that belong to the EU have attempted to follow a Western-European track in adapting the State to principles of democracy (the democratic nature of the EU itself is a separate issue and not touched upon in this article). Although some commentators stated that "democratization quickly came to mean westernization that was often chaotic, arbitrary and divorced from the country's psychological and cultural roots"[1] the countries of East and Central Europe that are now in the EU all share the cultural background of the older EU Member States. Similarly further expansion of the European model to new territory, with Georgia, Ukraine, the Balkans and Turkey can be imagined relatively easily.[2] It is when going further afield in the sense of cultural and psychological characteristics that the question of using a uniform European model becomes more complicated.

16. Many transformational states (including the most politically and economically 'successful' and 'advanced') continue to struggle with the problems of corruption and other forms of abuse of public power for private gain. Even within the group of relatively new East and Central European EU Member States it seems that EU institutional control has not been enough to remedy the problem. It is doubtful if the existence of a stick in the sense of strict EU institutional control in the new Member States compensates for the lack of a carrot when membership has already been obtained. For states that do not purport to become EU members, interest in closer cooperation and trade provides a certain carrot and stick to the EU to allow it to influence rule of law and human rights in states it is having relations with. But seeing that even membership is not a guarantee that EU values can be effectively upheld, further afield the obstacles are even greater. To what extent has international assistance and conditionality linked to this assistance aiming at achieving a rule of law and democratic state been successful? These questions are examined in this article in relation to Kyrgyzstan. Many features of the state and society in Kyrgyzstan are similar to that of other former Soviet Central Asian countries, as they come from the same recent historical situation, also in earlier times were similar in different ways and have population groups that are not restricted to one country. At the same time, it is not correct to assume that the Central Asian states are very similar in all respects – indeed, the road they have taken since independence from the Soviet Union has varied quite a lot. Kyrgyzstan is generally regarded as the country with the most open debate and relatively free and fair elections as well as a certain amount of media freedom[3] – positive but only in the context of the weak democratic structures in the region.

17. Post-communist regimes in Central-Asia are known by their totalitarian nature, however, streaming to the Western welfare and values. Export of European democracy to Kyrgyzstan has been disputable. It is, of course, early to predict the political concept of the new Kyrgyz government. However, already a few weeks after the political events that forced President Bakiev and his supporters to step down, the idea of a parliamentarian republic (instead of presidential) was replaced with the idea of mixed form of parliamentarian and presidential republic. The former President clearly did not favour the Western model of democracy (emphasizing elections). His vision included "dialogue with social groups rather than a foundation of elections and individual human rights …since elections have become an arena for "competing moneyed interests".[4] The elite under Bakiev (as well as that under Akaev, the leader before the Tulip Revolution) belonged to a large extent to the

[1] Baczynski, J. (2007)"The Flaws in Europe's Democracy" Europe's World, Autumn 2007/7, p. 105.
[2] Baczynski, J. (2007) p 106.
[3] Murzakulova and Schoeberlein for example point out that the debate on ideology in Kyrgyzstan has had different participants as opposed to the generally centralised discourses in Central Asia. Murzakulova, A. and Schoeberlein, J. (2009) p 1233.
[4] Rogers, S. (2010) "Bakiyev favours 'consultative democracy' over Western model", Central Asia online 2010-03-23

former Soviet elite. They were familiar with as well as often supportive of Soviet-style thinking as well as generally pro-Russian.[1] Various studies have shown that countries with a clear break with the past (not least in the post-Soviet context) have lower incidence of corruption[2], which is one factor affecting the failure of a country like Kyrgyzstan to successfully integrate into what may be called a European or Western value system. As Cokgezen writes, a democratic system is essential to be able to combat corruption, together with transparency and legal certainty.[3]

IV. WHAT IS SUCCESSFUL TRANSITION TO DEMOCRACY?

18. Transition to democracy and when it is successful must be measured with international measures as well as by the measures of the society in question. Studies of transitional societies shows the role of international and regional bodies (international organisations, trade bodies, international NGOs) in encouraging, monitoring or even enforcing plans and decisions made within the transitional countries. The general trend of globalization, here meaning a global convergence tendency in many fields, looks like it could support the idea that legal and institutional harmonization through legal transplants is a rapid way of reform.[4] There are various international (global or regional)

[1] Omelicheva, M. Y. (2009) p 900.
[2] Cokgezen, M. (2004) "Corruption in Kyrgyzstan: the facts, causes and consequences" *Central Asian Survey*, 23: 1, 79 – 94 at p 83.
[3] Cokgezen, M. (2004) p 90.
[4] Merryman talks about pride in one's own culture and traditions, commitment to specific doctrines and distrust of foreign ideas as obstacles for legal convergence. Merryman, J. H. (1999) The Loneliness of the Comparative Lawyer, Kluwer Law International, The Hague/London/Boston at p 35. Legal transplants have generally been seen to be successful when they

measurement tools and benchmarks for determining success and failure e.g. through the growing body of international laws and norms on political, judicial and administrative performance. However, at the same time as it is possible to find such tools and benchmarks, experience also shows that transposition of laws or institutions from one type of society to another is not easy. There are many authors from the past decades within the spheres of legal history and legal sociology who show how the assumption of transferring laws and institutions as a rapid way to development needs to be reformulated or even refuted.[1] Some call this non-transferability of law[2] while others point to a risk of legal failure – the transplanted law will not lead to anything near the intended results.[3] There has been much research on conditions for success in transplanting, like how similar the original and the transplant country have to be for a successful transplant to be possible. Fogelklou stresses that it is not strictly a matter of aligning transplants with the existing legal culture in the narrow sense, but rather ensuring that transplants resonate well with the broader political and moral environment,[4] or 'deep structure' of law.[5]

19. What this means for the practical reform work is that strategies for the transplantation of laws or institutions need to be carefully formulated for the society in question. They should take into account means for influencing current popular notions of what is fair or efficient[6] in addition to having long time-frames. The question of making effective and long-term strategies is however in practice often not really an option as states in transition want to 'catch up' quickly. There is also a certain pressure from the rest of the world, for different reasons – be they possible EU accession or other closer ties with various international organisations – to develop rapidly. This may lead to a temptation to think there are ideal models of social organisation, ready to be imported and put into work. The temptation of transplants as a quick road to development is there both for international organisations and other donors and for domestic forces looking for reforms. The copying of events or institutions elsewhere can be more or less conscious and planned as well as more or less successful, both factors dependent on a variety of parameters such as similarity of the different societies concerned, the time element, contacts between the parties involved and much else.[7]

20. In some countries it is often claimed – both on behalf of authorities and on behalf of the people – that certain reforms or progress is not possible because the country and the mentality of people are "different". Such views can be exploited by authorities as an excuse to avoid reform and indeed the actual idea that the country is "different" is in authoritarian or post-authoritarian societies

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concern instrumental matters like commercial practices rather than matters more linked with specific cultural ideas or principles. Cotterrell, R. (1992) The Sociology of Law: An Introduction, Butterworths, London p 24.

[1] For example Cotterell, R. (1992); Harding A. (2001) "Comparative Law and Legal Transplantation in South East Asia: Making Sense of the "Nomic Din" in Nelken, D. and Feest, J.(eds.) Adapting Legal Cultures, Onati International Series in Law and Society, Hart Publishing, Oxford/Portland; Tamanaha, B. Z. (1995) "The Lessons of Law-and-Development Studies" (Review article), The American Journal of International Law, Vol. 89, No. 2, 1995 pp. 470–486; Waelde, T. W. And Gunderson, J. L. (1994) "Legislative Reform in Transition Economies: Western Transplants – A Short-cut to Social Market Economy Status?" in International and Comparative Law Quarterly, Vol. 43, No. 2, 1994 pp. 347–378.

[2] Seidman, A. and Seidman, R. B. (1994) State and Law in the Development Process: Problem-Solving and Institutional Change in the Third World, St. Martin's Press, New York.

[3] Galligan, D. J. (2003)"Legal Failure: Law and Social Norms in Post-Communist Europe", in Galligan, D. and Kurkchiyan, M. (eds.) Law and Informal Practices: The Post-Communist Experience, Oxford University Press, Oxford, pp. 1-24.

[4] Fogelklou, A. (2003) "Constitutionalism and the Presidency in the Russian Federation" in International Sociology, vol. 18, no. 1, 2003 pp. 181-98.

[5] Tuori, K. (2002) Critical Legal Positivism, Aldershot, Ashgate.

[6] Cotterell uses the failure of alcohol prohibition in the United States in the 1920s and 1930s as an example of a failed attempt to change behaviour through law alone. Cotterrell, R. (1992) p 55.

[7] The limited size of this paper does not allow going into detail on this question of how and why some developments may or may not be copied between countries. On the question or transferability of the coloured revolutions, e.g. in Kyrgyzstan (based on political science theory), see Heathershaw, J. (2009) and sources quoted there.

usually instilled from above. It must be said that this is a poor excuse: even if reforms will have to look different and may work in different ways because of traditions and cultural norms, there is no excuse for not having a good legislation guaranteeing human rights and the rule of law with the corresponding institutions and mechanisms to ensure this.[1] In the content of this article, this means that although the way in which Kyrgyzstan should reach higher levels of democratic governance may have to differ from the traditional European model of parliamentary democracy, there is no reason to doubt that this country like any other one could have democracy.

21. Nor is the fact that democracy itself is not immune to crisis a reason not to vigorously support it as the best available mean of governance. Some commentators may even say that democracy has always been in crisis. It seems to be reasonable to look back and find parallels with previous historical periods, like for example when the Estonian researcher Peeter Tarvel wrote already in 1928 that development of democracy goes together with problems of parliamentarism, corruption, battles between different social groups, armed conflicts.[2] At that time, in Estonia as in many parts of the world, these problems lead to a return to autocratic political systems – explained as in many places as necessary because of the problems of democracy.

22. Peters and Schwenke warn that culture-based moral relativism may pay a high price as it can easily be made a handmaiden of dictators.[3] Even if leaders of transition countries may be more wary than autocratic leaders in how they present the relativism of rights, when this goes to the essence of the rights and their protection rather than to details of their implementation, it must be recognised for what it is: limitation of the internationally recognised and most often also nationally explicitly protected human rights. Just because it is not easy to introduce democracy and respect for human rights – as there is no ready-made model applicable everywhere – the aim should not be abandoned.

23. However, although the statements that any one people is different and do not want democracy should not be used as an excuse to stop change, it is a fact that there is less popular pressure for reform in certain countries than in others and the objective reasons for this are not always clear. How and when media comes in to shape the pressure is a key factor as well as the question of when if ever (in living memory or not) the state in question has experienced democracy. Large Diasporas in democratic states may also have an influence. If the bureaucracy resists reform, the will to reform is not there at the top and there is not much pressure from below, the climate for reform is clearly poor. The effect of these factors on expectations of the population in the post-Soviet period can be observed when comparing different previous Soviet states. In Central Asian Soviet Republics it means that even if the Soviet system was never democratic, the reasons for the lack of strong opposition to it may partly be found in the system that preceded it. Also more subjective factors may be factored in like traditional fear or dislike of any disorder and an obsession with security, loyalty to persons rather than institutions and reluctance to engage in individual political and similar activities. As always with mentality, it is controversial to state what depends more on what: mentality on developments or developments on mentality. In Kyrgyzstan there have been some conscious and state-sponsored events to promote the creation of a state ideology, for example building on ancient historical facts or events to create an image of the country. As well as the state ideology, other factors such as Islam, nationalism, internationalism and other competing or complementary ideas for an ideology have been discussed, promoted and sometimes rejected.[4] It is not evident which value family

[1] Nodia points out that the problems with introducing liberal democracy are likely to lead to one of two attitudes: that democracy is not suitable for a certain society so attempts to achieve it are pointless or that even if there are impediments, it is still the ultimate goal (even if people have no experience of it). Nodia, G. (2002) "The Democratic Path" in Journal of Democracy Vol. 13, No. 3, July 2002:13-19 at pp 17-18.

[2] Tarvel, P. (2002) Demokraatia tulevik., Karjahärm, T. and Runnel, H. (eds.) Ilmamaa, Tartu at p. 50.

[3] Peters, A. and Schwenke, H. (2000) "Comparative Law beyond Post-Modernism" in International and Comparative Law Quarterly Vol. 49 October 2000:800-834 at p. 819.

[4] Murzakulova, A. and Schoeberlein, J. (2009) p 1236.

the country belongs to, but it contains elements of many and may not yet have found its place in a specific such setting.

24. Another factor influencing the interest in, and conditions for, transplanting and otherwise receiving institutional concepts from the outside is various forms of external assistance and aid aiming at facilitating democratisation, rule harmonisation, human rights, rule of law, etc.[1] There is a debate in the academic community, among aid agencies, and in international and regional organisations, about the effectiveness and impact of such assistance. There are several examples of failed attempts by international organisations, states and NGOs in designing and implementing such assistance strategies. Inexperienced personnel, applying models from totally different societies without knowledge of local conditions, not recognizing that perfect solutions cannot always be expected, lack of receptiveness to local criticism that among other things may lead to structures being set up that do not have any real attachment to local society, lack of budgets that provide for sustainability – these are just examples of what not infrequently leads to failure of external assistance projects.[2] This does not mean that external assistance is always irrelevant or doomed to fail, but rather that the success of a transition or transplantation strategy is not automatically correlated to the external assistance provided for its implementation.

25. The issue of external assistance to transition states and even the question of the notion of transition states has been actively debated in academic literature not least following the article "The end of the transition paradigm" by Carothers in early 2002.[3] The article was commented on by several authors[4], most of them finding that the naïve view on what transition is and how other states can help that Carothers criticised was in fact not a view that really coloured assistance efforts. It is important to take a wider view on transition than the limited and mechanical one criticised by Carothers. All in all, it is easy to be critical to many assistance efforts for their failure to properly link into the societies they are operating in or the tendency of donors to look more at their own procedures and expectations than those of the receiving states, but at the same time it would be unfair to deny any positive effects of assistance efforts.

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[1] Regarding the importance of EU aid and assistance strategies for facilitating rule harmonization in Eastern Europe, see Nyman-Metcalf (2003) "Influence through Assistance" in European Public Law, Vol. 9, Issue 3, September 2003 pp. 425-442. On rule harmonization generally, Peters, A. and Schwenke H. (2000) especially at p 810.

[2] Diamond, L. (1997) "Introduction: In search of consolidation" in Diamond, L., Plattner, M. F., Yun-han Chu, Hung-mao Tien (eds.) Consolidating the Third Wave Democracies. Regional Challenges, John Hopkins University Press, Baltimore/London 1997 p. xiii; Mendelson, S. E. (2001) "Unfinished Business: Democracy Assistance and Political Transition in Eastern Europe and Eurasia" in Problems of Post-Communism Vol. 48, No. 3 May-June 2001 pp. 19-27; McMahon, P. C. (2001) "Building Civil Societies in East-Central Europe: The effect of American non-governmental organisations on women's groups" in Democratization, Vol. 8, No. 2 Summer 2001 pp. 45-68.

[3] Carothers, T. (2002) "The end of the transition paradigm" in Journal of Democracy Vol. 13, No. 1, January 2002, pp. 5-21.

[4] Hyman, G. (2002) "Tilting at straw men" in Journal of Democracy, Vol. 13, No. 2., July 2002 pp. 26-32; Nodia, G. (2002) "The Democratic Path" in Journal of Democracy Vol. 13, No. 3, July 2002 at pp. 13-19; O'Donnell, G. (2002) "In partial defence of the transition paradigm" in Journal of Democracy Vol. 13, No. 3, July 2002 pp. 6-12; Wollack, K. (2002) "Retaining the Human Dimension" in Journal of Democracy Vol. 13, No. 3, July 2002 pp. 20-25.

V. INTERNATIONAL EXPECTATIONS ON THE NEW REGIME IN KYRGYZSTAN

26. For Kyrgyzstan the formation of a new government after the coup was a turning point for a country that has been aggravated by political violence at various times since its independence in 1991.[1] The country has also been politically divided based on geography, between the north and south, although the reasons as well as the real extent of this division are debated and it may have been more pronounced earlier on in the history of independent Kyrgyzstan, especially at the time of the Tulip Revolution.[2] The division is one of the reasons why some commentators called the Tulip Revolution more of an inter-regional confrontation than an institutional overhaul[3], which may be one reason for its failure to lead to sustainable state building. The division between north and south can also be seen as an expression of the division of the country into different tribes, with geographical concentration of certain tribes in particular areas as well as traditional relations with other tribes based on this.[4]

27. Kyrgyzstan and Central Asia in general has long been seen as a region at a cross-road of many different cultures, including legal and governance cultures. Ancient traditions such as oral custom having an important role as a source of law remained relevant for longer than in for example Europe. Kyrgyzstan is an example of a part of Central Asia were ancient oral traditions have traditionally had greater weight than Islam and legal rules derived from it, such as Sharia. Kyrgyzstan like all of the former Soviet Republics of Central Asia became established as states of the Soviet Union in 1924. Before that the state structures in the region had been based on various traditional territories incorporated into Russia in different more or less strict ways.[5] A state identity like what most European countries have is thus less evident for the Central Asian countries.

28. Kyrgyzstan did not have any tradition of democracy and had never had any democratic institutions when it was incorporated in the Soviet Union. After the fall of the Soviet Union there were no civil or social movements. The media has been relatively free by regional standards but state controlled media has still managed to dominate.[6] Breaking with the region's political tradition of rigged elections, Kyrgyzstan at the end of 2010 held free, democratic and open elections. This assessment made by the new leaders of the country was largely shared by an election monitoring group from the Organization for Security and Cooperation in Europe (OSCE). "Fundamental freedoms, including the right of assembly, association, and expression, were generally respected," Norwegian parliamentarian, Martin Hoglund, who led the OSCE monitoring group, said. "I have observed a number of elections in Central Asia over the past years. I must say, this is the only election in Central Asia that I have been to, where I could not predict the outcome. And I believe this election reflected the will of the people of the Kyrgyz Republic."[7] In a regional comparison, Kyrgyzstan even before these elections had a relatively good adherence to international democratic standards of elections – even if this did not mean totally free and fair elections and is positive only when compared against the low standard of the region.[8]

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[1] *Kyrgyzstan Forms New Coalition Government, VOA News 30 November 2010*

[2] See Ryabkov, M. (2008) "The north-south cleavage and political support in Kyrgyzstan" in Central Asian Survey 27:3 pp 301-316 who questions if the cleavage is the same when looking at the general population as opposed to the elites, see p 301. He however agrees that a certain division does exist.

[3] Ryabkov, M. (2008) p 306.

[4] Alkan, H. (2009) p 356.

[5] Tkatov, R. (2010) "Central Asian States and International Law: Between Post-Soviet Culture and Eurasian Civilization" in 9 Chinese Journal of International Law (2010) pp 205-220 at pp 208-209

[6] Cokgezen, M. (2004) p 90.

[7] *Brooke, J (2010:1) "Krygyzstan Parties Start Coalition Talks for Parliamentary Democracy", Global Security.org, 11 October 2010, available in internet: http://www.globalsecurity.org/military/library/news/2010/10/mil-101011-voa05.htm (access 15 February 2011)*

[8] Heathershaw, J. (2009) p 305

29. There are important differences in the accepted political doctrine between the political parties, also as concerns the fundamental issues of what kind of political system the country should have. Several parties that did well in the 2010 elections campaigned for taking the nation back to a presidential system.[1] It furthermore appears that the ethnic issues are escalated by the new parliament, which is based on multi party system.

30. At the same time, many Kyrgyz citizens are still worried. Some opinions may be given as illustrations. The Kyrgyz, lawyer Aynura Sultanbaeva, 22, says people are worried that political instability will only continue as parties jockey for positions in a ruling coalition."The problem with Kyrgyzstan is that there is no leader", she said. "And even if he is a bad leader, it is easier to bargain with him and for international investments to come into the country. But when there are lots of leaders, you have to bargain with everybody."[2] As Hillary Clinton hails the development, Dmitry Medvedev, predicts that Kyrgyzstan's experiment with parliamentary democracy will be a "catastrophe." "The events in Kyrgyzstan are not just a political crisis, they are a tragic example of what happens to a society unable to create a strong state," a deputy head of the Russian presidential administration, Vladislav Surkov, said.[3] Some of the fears expressed in Kyrgyzstan about instability are very similar to those expressed after the tulip revolution[4]. Many people, especially but not only those not belonging to the elite, fear a lack of stability much more than a lack of democracy as they have experience of chaos versus stability but too little experience of democracy in order to properly compare it with its opposites.

31. In accordance with the opinion of experts working under guidance of EU funded project [5] serious issues on validity of the new constitution can be foreseen. Just before the political events, the experts found that there was a problem with the principle of the coordinated functioning and interoperability of branches of authority. The report stated that interpretation of the Constitution is carried to the competence of the Constitutional court; official interpretation of laws – the competence of Parliament. In practice interpretation is applied very seldom, which does not support the efficiency of the legal system. The parties to a proceeding quite frequently face a situation when interpretation of laws is necessary during litigation. Official interpretation of legal acts is not publicly available because of the complexity of parliamentary procedures. This does not assist efficiency of litigations, which can last for years, especially in economic matters. Interpretation of laws is necessary for a dynamically developing economy.

32. The balance of power between constitutional institutions and the principle of subsidiarity are underestimated. If the court does not cope with the task of effective justice, the parliament passes the law; if laws contradict each other – the court assesses the legislation. Subsidiary responsibility is not a call for intervention in actions of another branch of authority, but the tool of constitutional institutions with the objective of improvement of quality of services to citizens.

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[1] *Brooke, J (2010:1)*

[2] *Brooke, J (2010:2) "Kyrgyzstan Votes for New Parliament", Bishkek 10 October 2010, Global Security.org, available in internet: http://www.globalsecurity.org/military/library/news/2010/10/mil-101010-voa04.htm (accessed 15 February 2011)*

[3] Lack of democracy Kyrgyzstan's main problem – Kremlin Vladislav Surkov 18:19 16/04/2010 RIA Novosti. Aleksei Drujinin

[4] Heathershaw, J. (2009) pp 316-317.

[5] The following section is a short overview of the section of the "Report of Representation in Kyrgyzstan' Expert Groups analyzing the accordance of the legislation with the Kyrgyz Constitution". One of the authors of this article, Tanel Kerikmäe has been the head of the component at the EU-GTZ project "Support of the Judicial Reform of Kyrgyz Republic" under which the research was conducted. The coordinator of the working group on constitutional issues was Mr. Nurlan Sydõkov. The report is published in Russian language by EU and GTZ in 2010, Bishkek.

VI. EUROPEAN STANDARDS ON "ORIGINAL DEMOCRACY"

33. The EU system is construed around the fact that Member States trust one-another.[1] Thus, the export of "European democracy" is complex phenomenon as it has to take account the loyalty principle to the European Union and it means something different in the EU context (and thus for candidate countries) than as a general principle. The Haider case from 1999 is an interesting example: The Austrian coalition government was composed of several parties one of which was regarded to be undemocratic and as some other European leaders said, acting against the very principles of human rights. Although the government was composed according to the Austrian constitution and through participatory democracy process, the EU put pressure on Austria to recompose it and even instituted some forms of sanctions even if there was no clear legal basis for this. After evaluation by a committee set up by the EU, the sanctions were withdrawn quite quickly, as the committee judged that Austria had not violated the founding values of the EU. Partly as a result of this situation, the EU through the Treaty of Nice (signed 26 February 2001, in force 1 February 2003) included in the treaties (now Article 7 of the Lisbon Treaty, in force since December 2009) an explicit possibility of sanctions against Member States that violate the values of the EU. There have been several instances of parties or politicians with e.g. overtly racist ideology or in other ways not in line with "European standards" gaining certain power in various European countries since the Haider affair. This has not lead to any new instances of sanctions, even if there now as opposed to at the time of the Austrian crisis actually is a legal basis. It may be so that the European model is better than its actual content.

34. Exporting European democracy can be seen, therefore, as a multi-level process where external political will (other Member States and developing common values of the EU) must be considered. Exporting democracy faces many problems e.g. cultural relativism. However, there must be something that is not disputable. It seems that the main keyword that secures the democratization is "institutions". As put by Sadurski: "It is remarkable how the choice of this or that institution – whether it is a form of a presidential, semi-presidential, or parliamentary system of government, or a type of electoral system, or a role of a constitutional court – makes an important change in the way that otherwise similar societies can develop at a point of major transformation".[2] According to Annus, "there are several reasons why the transfer of policies and ideas makes good sense for the less developed countries. There is a severe need of introducing new policies and creating them from scratch is costly and time consuming".[3] There can be several reasons why this kind of transition fails. It would be assumed that the main donor and first political supporter of the new government, Russia would be the example. However, the path that was chosen by new power differs from the system of main political partner. Political history of EU Member States is rather different from Kyrgyz political culture. This leads to the idea that Kyrgyzstan can become successful with reforms only if the local traditions will be taken into account.

35. Paasi points out how foreign-funded NGOs in Kyrgyzstan have deviated somewhat from the role the donors presume (toward a more political role) as they understand better what would

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[1] Nyman-Metcalf, K. (2006) "Common Values as a Basis for Integration: Is there an End to Europe? The Baltic States as a Bridge Between Europe and Beyond" in Promoting Democratic Values in the Enlarging Europe: The Changing Role of the Baltic States from Importers to Exporters. Kasekamp, A. and Pääbo, H. (eds.) Tartu University Press, at p 110.

[2] Sadurski, W. (2001) "Conclusions: On the Relevance of Institutions and the Centrality of Constitutions in Post-Communist Transitions" in Democratic Consolidation in Eastern Europe, Vol 1. Institutional Engineering. Zielonka, J. (ed) Oxford University Press, at p. 455.

[3] Annus, T. (2004) Governance and Law in Transition States. Dissertationes Rerum Publicarum Universitatis Tartuensis. Tartu University Press at p. 16

work in the Kyrgyz society and achieve the goals the donors support but in a different way than that which may be imagined by foreign donors.[1]

VII. SOME CONCLUDING REMARKS

36. Kyrgyzstan has appeared uncertain of where its natural position lies and has been looking both toward Europe and toward Asia when determining its new place in the world after the fall of the Soviet Union. It is a Member of the OSCE but also of the Islamic Conference and Economic Cooperation Organization (ECO). Like most parts of the former Soviet Union (and indeed Russia itself) Central Asia was immediately after the fall of the Soviet empire caught up in a general mood of creation of a common value system and world view based on what can be called Western or European ideals.[2] Tkatova finds the end of the Millennium as the time when Central Asian states began to cool about the "Westernization" euphoria.[3] This started a period of several regional initiatives on the international law stage. Tkatova further sees the development of "Eurasianism" with more and more emphasis on traditional values of the region rather than striving toward similarity with other regions.[4]

37. The *kurultai* was used by former Kyrgyz President as tool to secure his power and he gave orders how to compose it. Alternatively, the opposition's *kurultais* were used to proclaim that the former President's policy was not feasible in Kyrgyzstan. In both cases, the actors can be accused that they were using non-constitutional means and institutions. Of course, "the development of effective institutions is a process that takes time and is strongly affected by a variety of factors related to the resource and the individuals involved."[5] However, the President was deviating from constitutional order which means mistrust between him and the Parliament. At the same time, the opposition was not using the Parliament to achieve its goals, which is a sign that either:

a) Parliament was an useless instrument
b) Parliament was not representing the interests of neither the new or old power

38. It seems that the challenges involved with parliamentary democracy are not easy to overcome taking into account the non-existing experience of such a system and the political vehicles used by the new government. Kyrgyzstan has experienced very many changes to the Constitution so there has been no time for people or the leaders of the country to get used to systems of government before there are new changes.[6] There have been power struggles between the President and the Parliament throughout the independence of the country.[7]

39. As Wilkinson claims "it is clear that Kyrgyzstan recovery is still far from assured. Aspirations to create a parliamentary democracy are no doubt laudable in the opinion of the international community, but are no substitute for addressing the immediate concerns of the population regarding their safety and security".[8] The idea of having participatory parliamentary system

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[1] Paasiaro, M.(2009) "Home-grown strategies for greater agency: reassessing the outcome of civil society strengthening in post-Soviet Kyrgyzstan" Central Asian Survey, 28: 1, 59 – 77 at p 68.
[2] Tkatova (2010) pp 211-212
[3] Tkatova (2010) p 213.
[4] Tkatova (2010) p 217
[5] Ostrom, E. (2001) "Decentralization and development: the new Panacea" in Challenges to Democracy. Ideas, Involvement and Institutions. The PSA Yearbook 2000. Dowding, K., Hughes, J. and Margetts, H. (eds), Palgrave at p 253.
[6] Between 1994 and 2007 there were eight constitutional amendments, all but one decided by referendum based on a proposal by the president (rather than by Parliament). Most of the amendments included provisions strengthening the president at the expense of parliament. Alkan, H. (2009) p 363.
[7] Alkan, H. (2009) pp 367-368.
[8] Wilkinson, C. (2010) "Kyrgyzstan: one referendum does not make a government. The Birmingham Brief, intelligent thought on policy issues. 2010, http://www.birmingham.ac.uk/news/thebirminghambrief/index.aspx

in an Asian country might be endangered by fact that the political culture has traditionally been very much influenced by tribal thinking. The rulers of the regions have to agree between themselves when electing the ones who are in power. As the active electorate is from the capital city, many of the interest groups may not have the chance to be represented and the antagonism with the new political culture can be fatal. In case the designers of new system will ignore the previous traditions, there will be a phenomena which can be called in the words of Christopher Hood as "a case of Hamlet without the Prince of Denmark"[1], a political chaos as the new parliament will be ignored (as it has been evident before the political events in 2010 by both sides, opposition and the former President). On the other hand, if the new power will try to combine the local interests with the homogenous Parliament, the result can be corruption.

40. As the Parliament has not been used as a tool for revolution and as it as an institution is associated with reform *fatigue*, the *kurultais* could still play a significant role as the members of different interest groups can be there as ex officio members, not just representing the local dukes but also different social groups.[2] Then, the local *kurultais* can be a basis for electing a Parliament and the participatory democracy and parliamentary democracy will be combined to reduce social and political tension. By Bevir, "if we were to promote a participatory democracy that emphasized deliberation and ethical conduct, we might seek to devolve aspects of governance to various associations within civil society".[3]

41. The *kurultai* as a traditional format and, furthermore, a potentially relevant instrument successful in fighting against the old and corrupted mentality, could therefore remain as a link between Europeanized capital city inhabitants and the regions. It would also help to overcome or soften the problem of transitional society i.a. dealing with the past as the *kurultais* are based on social agreement and "network democracy".

42. By Anar Musabaeva "*Kurultay* (sic) is another occasion to reflect on whether democracy is possible in Kyrgyzstan. There are different views on this matter. Proponents of liberal democracy have long been disappointed, and their answer is "impossible", at least, in the near future. Supporters of the ideas of sovereign democracies and democracies with national specific features, may say "yes, possible". In general, democracy turned out to be a diverse phenomenon. And now we may be on the verge of creating our own special Kyrgyz model of democracy".[4] Taking account the peculiarities of Kyrgyz society, legal culture and failures to build up western standard based democracy, the search for innovative ideas to bridge *kurultai* and parliamentary democracy are only welcomed.

43. Cheterian[5] says that Kyrgyzstan more and more resembles a failed state. If reliance on traditional models of governance can help the country to avoid this fate, it would appear worth trying. Juraev discusses the different suggestions for how to use or incorporate traditional, informal structures in democratization of the country. The informal may be formalised by having quotas based on tribes or similar for parliament, rotation between parts of the country for the presidency or similar. Others again fear this cements differences between regions and groups and feel that the country would be best served by a proper parliament with a proportional election system.[6]

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[1] Hood, C. (2008) The Art of The State. Culture, Rhetoric, and Public Management. Clarendon Press. Oxford, at p 24.

[2] Kyrgyzstan has quite successfully formally included traditional councils of elders, *aksakal*, as dispute solving bodies. Merrell, D. E.(2010) "State engagement with non-state justice: how the experience in Kyrgyzstan can reinforce the need for legitimacy in Afghanistan" Central Asian Survey, 29: 2, 205 – 217 at p 205.

[3] Bevir, M. (2007) "Democratic Governance: Systems and Radical Perspectives" in Public Governance, Bevir, M. (ed), vol 4. Sage Publications. London, Thousand Oaks, New Delhi, at p 393.

[4] Anar Musabaeva: "Deliberative Democracy in the Kyrgyz Manner", Institute for Public Policy, http://www.ipp.kg/en/analysis/802/

[5] Cheterian, V. (2010) p 22.

[6] Juraev, S. (2008) pp 262-263.

La Diplomatie commerciale de l'Union européenne dans l'Organisation mondiale du commerce

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Abstract: Commercial diplomacy of the European Union in the WTO. *Globalization and its global implications, transform international economic relations and require adaption to the current economic changes. The must important actors in international trade diplomacy are the European Union, United States of America and Japon. The purpose of this article is to present the actors of international commercial diplomacy and to note the role of European Union trade diplomacy. In the first part of the paper, we give a general presentation of the key actors in international commercial diplomacy and the organization of European Union Common Commercial Policy. In the second part of the paper, we present European Union commercial activities in World Trade Organisation and the results of UE commercial diplomacy in WTO.*

Keywords*: European Union commercial diplomacy, WTO, actors of commercial diplomacy, common commmercial policy, Doha Development Programme.*

La mondialisation et ses implications au niveau mondial, transforment les relations économiques internationales et imposent l'adaptation aux changements economiques actuels. Dans un monde global, il est important que de" nouvelles formes de consultation et de réglementations soient mises en pratique".[1]

Dans ce contexte, Giplin argue qu'une economie mutuelle entre les Etats Unis, l' Union Européenne et le Japon peut etablir les bases d'une stable économie globale.[2]

1. LES ACTEURS DE LA DIPLOMATIE COMMERCIALE

Les plus importants acteurs de la diplomatie commerciale au niveau international restent les Etas Unis, l' Union Européenne et le Japon. Dominique Roy considère que les Etats Unis sont un associé pour l' Union Européenne.[3] La politique commerciale commune doit être une politique commerciale libérale qui defend les interêts des Etats membes de l'Union européenne dans l'Organisation mondiale du commerce et dans le cadre des négociations multilatérales. L' élargissement de l'Union Européenne apporte l'analyse des differents problèmes que l' Union peut avoir du point du vue commercial. Certains analystes estiment que les Etats-Unis maintiennent leur influence sur les activités du Fonds monétaire international, de la Banque mondiale et de l'Organisation mondiale du commerce.[4]

2. LES ACTIVITÉS DE L' UNION EUROPÉENNE DANS L'ORGANISATION MONDIALE DU COMMERCE

Dans le cadre de l'Organisation mondiale du commerce, l'Union européenne est obligée d'agir selon les principes de l'Uruguay Round. Ainsi les thèmes principaux des négociations sur l'agriculture, les services, la propriété intellectuelle, ont été établis par les Américains. Le 21 mai 1992,

[1] Serge Cordeiller, *Le dictionnaire historique et géopolitique du 20e siècles,* Ed. La Découverte, Paris, 2000, p. 202.
[2] Robert Gilpin, The challenge of global capitalism, The world economy in the 21st century, Ed. Princeton University Press, New Jersey, 2002, p. 352.
[3] Dominic Roy, *Histoire du siecle, perspectives internationales*, Ed. Modulo, Quebec, 2003, p. 274.
[4] C. Fred Bergsten and the Institute for International Economics, *The United States and The world Economy, Foreign Economic policy for the next decade,* Ed. Institute for International Economics, Washington, 2005, p. 55.

l'Union européenne a accepté la réforme de la Politique Agricole Commune. En 1984, la Communauté européenne a créé le Nouvel Instrument de la Politique Commerciale. Cet Instrument a été conçu pour lutter contre la concurrence déloyale des autres Etats.

Le nouvel instrument de la Politique commerciale a été remplacé en 1994 par les Règlements des Obstacles au Commerce. La Commission européenne a reçu l'accord de représenter l'Union européenne dans la lutte contre les barrières commerciales provenant d'autres pays. Dominique Pantz présente l'importance de ces réglementations sur les obstacles au commerce: elles permettent d'imposer des mesures unilatérales au commerce *en accord avec les procédures multilatérales du l'Organisation mondiale du commerce.* [1] Ces réglementations exercent leur influence sur le déroulement du commerce de l'Union européenne, en permettant la protection des produits européens au niveau mondial.

L'Union européenne doit encore faire des efforts dans le cadre de l'Organisation mondiale du commerce pour les réglementations commerciales internationales. Les negociations du Cycle de Doha n'ont été pas avantageuses pour l'Union européénne. Les ambitions d'élargissement du development ont été lancées en 2001, elles étaient sans applicabilité au domaine agricole. Le Programme de Doha pour le développement, lancé en 2001, est soutenu par l'Union européenne. Il est basé sur un cycle de négociations lancé au niveau mondial pour intégrer et développer les pays pauvres. La Conférence ministérielle de Cancun (2003) fut un échec à cause des divergences entre l'Union européenne et les Etats-Unis et les Pays du G 20 et du G 90.

Les pays africains et les pays en développement du G 90, qui sont choisis comme partenaires commerciaux de l'Union européenne, ont refusé de s' engager dans l'élaboration des nouvelles responsabilités proposées par l'Union européenne. A la fin des négociations, pour être en conformité avec les règles de l' OMC, l'Union européenne a révisé le régime d'importations en commençant son application dès le 1er avril 2001.[2] Le 26 Juin 2003 était adoptée la réforme Fischler, qui a modifié les modalités de financement de l'agriculture européenne. En 2004 sont relancés les débats pour le Programme Doha de Developpement.

Après la Conference ministérielle de l'Organisation mondiale du commerce de Hong Kong (decembre 2005), l'Union européenne était obligée de rééévaluer sa position pour la politique agricole au niveau interiéur et pour la diplomatie commerciale, au niveau extérieur. Les pays les plus pauvres pouvaient éxporter la plus grande partie de leur produits aux pays developés, sans respecter les quotas et sans payer les taxes.

Les résultats intérieurs de la politique commerciale de l'Union européenne sont dans quatre programmes d'initiative communautaire 7:

1. INTERREG, qui est pour la coopération à l'extérieur des frontalières nationales ou inter-régionales
2. EQUAL, qui représente un programme de coopération pour lutter contre la discrimination et les inégalités sur la marché du travail;
3. LEADER; qui est axé sur le développement rural;
4. URBAN; qui est un programme d'aide pour les régions en developpement.

Au niveau mondial, l'Union européenne maintient depuis 1968 la taxe pour les produits importés qui entrent sur le marché européen à Marseille, Hamburg, Amsterdam etc. En même temps, elle essaie de promouvoir sa vision commerciale à l' Organisation mondiale du commerce. L'Union européenne participe à l' Espace Economique Européen en partenariat avec l'Islande, le Lichtenstein et la Norvège.

Pour connaitre l' importance des théories proposées pour analyser la diplomatie economique, nous proposons une analyse sur l'évolution de la connaissance scientifique du processus de détermination à l'expérince pratique.

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[1] Dominique Pantz, *Institutions et politiques commerciales internationales: du GATT à l' OMC,* Ed, Armand Colin, Paris, 1998, p. 59.
[2] Gérard Marie Henry, Annie Reithmann, *100 Questions sur la mondialisation,* Ed. Studyrama, La Flèche, 2003, p. 20.

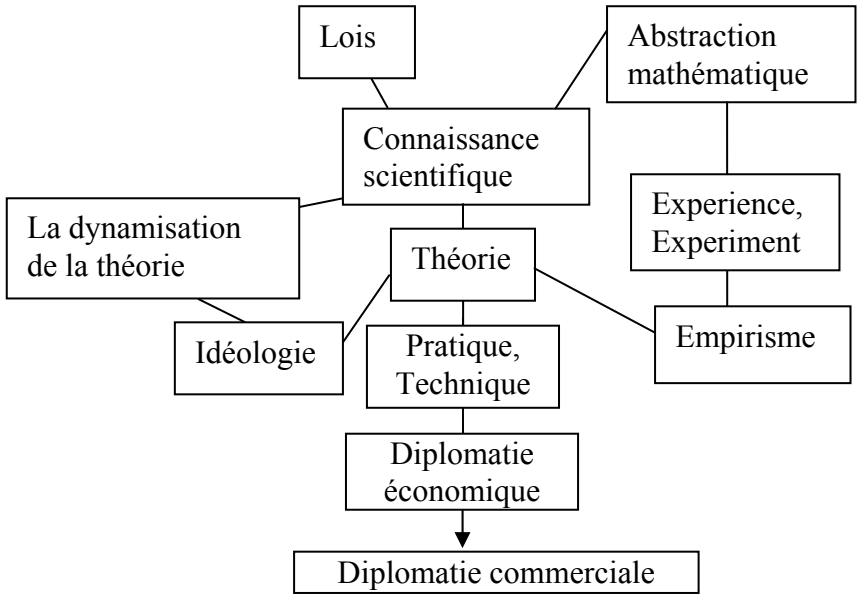

Fig. 3: Le Système d'opération de la théorie à la pratique en diplomatie économique, Source: Adaptation d'après Gérard Durozoi, André Roussel, *Dictionnaire de philosophie,* Ed. Nathan, Paris, 1990*,* p. 331.

L'Union européenne a des accords européens d'assocation avec les pays de l'Europe orientale ou avec les pays du bassin méditeranéen. En 1960 l'Union européenne a signé plusieurs accords commerciaux avec des pays d'Afrique- Caraibes-Pacifique et des accords commerciaux et d' association avec le Mexique et le Chili. L'Union européenne a des accord avec les pays du Mercosur, d'Afrique du Nord et l'Accord du Golfe. En 2001, l'Union européenne était la premier pouvoir commercial qui ait ouvert ses ports pour les 49 pays les plus pauvres du monde et pour réglementer les obstacles au commerce.[1]

4. CONCLUSIONS

L'article propose des analyses de la diplomatie commerciale de l'Union européenne dans l'Organisation mondiale du commerce. Dans la premiére partie de la recheche nous avons essayé de présenter les relations commerciales entre l'Union européenne et les autres puissances commerciales, ainsi que sa position dans le cadre de l'OMC. Dans la deuxieme partie ont été presentées les principales conférences auxquelles a participé l'Union européenne et aussi leurs résultats.

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[1] La politique commerciale commune, http://www.touteleurope.fr/fr/actions/economie/commerce-exterieur.html, consulté le 4 Mars 2010.

The Political, Economical and Social Construction of the EU / La Construction Politique, Economique et Sociale de l'Union Européenne

Les Europes d'Europe – avant et après la seconde guerre mondiale

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Abstract: The Europes of Europe –before and after the World War II. *This paper aims to perform an analysis of the complex course of events that surrounded the division of Europe after World War Two and, more particularly, the adoption of the Marshall Plan, with special emphasis on the positions of East-European governments, such as the one of Romania. This topic may now be subjected to a more comprehensive investigation, thanks to the newly-published literature, based on more open archives and a more objective view of this thorny subject. Hence, this article reviews part of the recent historiography related to the Marshall Plan and further traces its roots by moving backwards to the interwar period and that of the Second World War.*
Keywords: *Marshall Plan, WW2, division, communism.*

LE PLAN MARSHALL – VERS LA RECONSTRUCTION OU LA DIVISION DE L'EUROPE?

Action politique

La fin de la deuxième guerre mondiale a marqué l'achèvement d'une époque, avec la victoire des Alliés contre la machine de guerre nazie, une victoire qui est venue avec des coûts inimaginables, en matière de vies, destructions et horreurs. Les traumatismes sans précédent, tels l'holocauste et l'emploi de la bombe nucléaire sur les villes japonaises d'Hiroshima et Nagasaki en août 1945, ont laissé des cicatrices sur le visage du monde entier qui ne guériraient jamais. À part ces désastres, les tentacules de la dévastation se sont étendus jusqu'aux secteurs de l'économie des pays combattants, qui ont vu leurs branches industrielles converties en fournisseurs pour le front collapser devant le choc du retour à leur usage initial. Le Royaume-Uni, qui avait mené la bataille la plus dure contre le Wehrmacht pendant les premières années de la guerre, s'est vu dans la situation d'abandonner son héros de guerre, le premier ministre Winston Churchill, qui a perdu les élections, en faveur du laboriste Clement Attlee.[2]

En ce qui concerne l'Union soviétique, les pertes humaines ont été extrêmement sévères, d'environ 40 millions d'habitants, aussi bien sur le front que pendant les sièges de longue durée,

[1] ***Investing in people!*** Ph.D. scholarship, Project co-financed by the SECTORAL OPERATIONAL PROGRAM FOR HUMAN RESOURCES DEVELOPMENT 2007 – 2013
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[2] Chris Wrigley, *Winston Churchill. A Biographical Companion,* Éd. ABC-CLIO, Santa Barbara, 2002, p.34.

comme celui de Leningrad, ou dans les camps de concentration des Nazis. Si la population avait été brusquement réduite, l'économie a été également secouée, de sorte que le gouvernement soviétique a dû faire appel à ses pays-satellites pour les ressources nécessaires à la reconstruction, à côté des réparations de guerre de la part de l'Allemagne et de ses anciens alliés. Sous la main de fer de Josèphe Staline, c'est l'industrie lourde qui connaîtrait le plus grand essor, tandis que la production agricole et les biens de consommation ne reviendraient que très tard au niveau de développement d'avant la deuxième guerre mondiale. En outre, Staline a refusé d'accepter l'application du plan de reconstruction économique soutenu par le gouvernement américain dans les pays contrôlés par les Soviétiques, appelé le Plan Marshall.[1]

Nommé aussi le *Programme de rétablissement européen*, le Plan du général George Marshall, le Secrétaire d'État des États-Unis sous le Président Harry Truman, visait une intégration des États européens au sein de l'Organisation européenne de coopération économique. Mettant fin à une politique traditionnelle d'isolement économique, le Plan a fonctionné entre 1947 et 1952 et s'est adressé à un nombre de 17 pays européens, leur octroyant une aide totale de treize milliards de dollars (une somme comparable à un montant neuf fois plus grand à présent).[2]

Quant à la Roumanie, l'invitation de prendre part au Plan Marshall est venue de la part des gouvernements de la France et du Royaume-Uni le 4 juillet 1947, comme l'on apprend de la lettre adressée par le président du Parti national libéral, Constantin I.C. Brătianu, au Premier ministre de la Roumanie, Petru Groza.[3] Dans cette lettre, Brătianu fait une plaidoirie impressionnante en faveur du besoin national de la Roumanie de continuer sa tradition d'être ouverte vers le commerce international, tout en soulignant le caractère vital de ce plan de reconstruction pour une Roumanie dévastée. Dans les trois points de son argumentation, le président du Parti national libéral fait preuve de lucidité, en analysant la situation économique et sociale du pays de manière univoque et en engageant la responsabilité de ce parti historique et pro-européen, pour une réponse affirmative de la part du gouvernement roumain à l'invitation des Alliés. En plus, Brătianu soulignait les dangers qui apparaîtraient suite à une décision d'isolement du pays à l'égard de l'Occident, puisqu'une réponse affirmative ne serait pas du tout équivalente au renoncement à la souveraineté de la Roumanie sur la scène des relations internationales. En fait, il a accentué le cours historique des liens de la Roumanie avec ces deux pouvoirs occidentaux, qui était fondé sur la coopération solide, c'est pourquoi dans sa vision, la seule réponse acceptable serait celle d'approuver la participation de ce pays au Plan Marshall.[4]

En revanche, la réponse officielle du gouvernement Groza est venue par l'intermédiaire de la lettre rédigée par le ministre des affaires étrangères, Gheorghe Tătărăscu, un ancien libéral dont le collaborationnisme avec le gouvernement communiste a été totalement incompatible avec ses visions politiques antérieures. S'appuyant sur une structure argumentative rigide et incohérente, typiquement rédigée sous les auspices d'un régime communiste, la lettre fait appel à l'argument des intérêts particuliers de la Roumanie et de l'éventuelle perte d'indépendance suite à la construction des structures qu'impliquerait le plan de reconstruction.[5] Finalement, la dernière partie du document fait les louanges d'une Union soviétique qui est censée représenter le premier pilier de rétablissement

[1] Robert Service, *Stalin: a Biography,* Éd. Macmillan, Londres, 2004, pp.513-514.

[2] Gérard Bossuat, *L'Europe occidentale à l'heure américaine 1945-1952*, Editions Complexe, Paris, 1992, p.140.

[3] Lettre du président du Parti national libéral de Roumanie, C.I.C. Brătianu, au président du Conseil des ministres, Dr. Petru Groza, le 5 juillet 1947. Archive de Cicerone Ioniţoiu, http://www.procesulcomunismului.com/marturii/fonduri/ioanitoiu/maniu2/default.asp.htm.

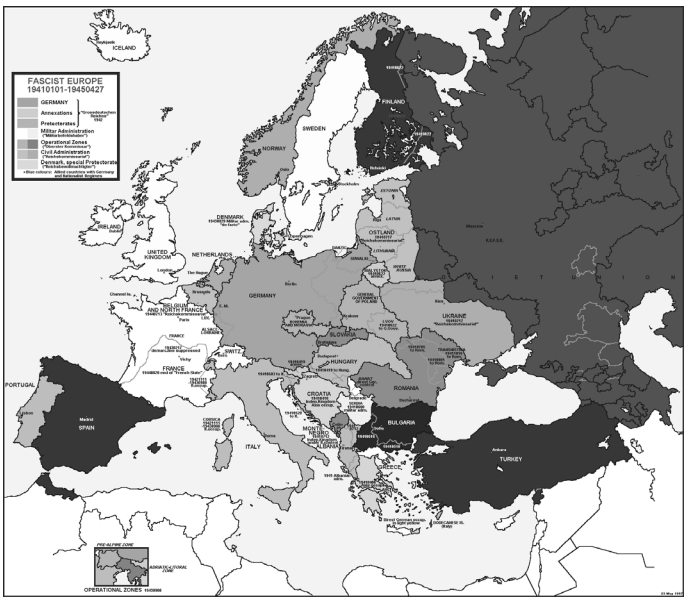
[4] Pour en savoir plus: Dinu Giurescu (éditeur), *Cade Cortina de Fier. România 1947. Documente diplomatice*, Éd. Cartea Veche Publishing, Bucarest, 2002, p.256.; Florin Dobrinescu, *România la Conferinţele de pace (Paris: 1919-1920; 1946-1947)*, Focşani, 1996.

[5] Nicolae Păun, *Planul Marshall – veritabilă instituţie a construcţiei europene*, dans *Studii istorice. Omagiu Profesorului Mureşanu*, Éd. PUF, 1988, pp.507-513.

économique du continent, grâce à la « discipline travailleuse des peuples qui la forment ", à sa productivité et à l'abondance de ses ressources naturelles. Qualifiant le plan d'inefficient sur le plan économique et dangereux du point de vue politique[1], Tătărăscu a utilisé un langage qui deviendrait exponentiel pour l'approche de la communication avec l'Occident des gouvernements communistes de Roumanie – une structure argumentative dénuée de toute consistance, la perpétuation des clichés d'orientation soviétique et le manque de vision dans la projection du cours d'action politique et économique.[2]

Comme une preuve étonnante d'ironie, c'est le même Tătărăscu qui, le 9 juillet 1947, seulement un jour après la lettre de rejet du Plan Marshall, adresse une lettre au Secrétariat Général des Nations-Unies, afin d'obtenir la qualité de membre pour la Roumanie, « au milieu des autres peuples libres du monde ».[3] Pour que sa hardiesse soit encore plus aveugle, le ministre affirme alors que la Roumanie a entrepris une série décisive de réformes démocratiques et a réussi à réorganiser la vie entière de l'État – une série de mensonges qui n'ont pas convaincu la société occidentale, persuadée de la corruption du gouvernement roumain et de son assujettissement à la voix soviétique. Il faut donner raison à l'ambassadeur britannique de cette époque-là, Archibald Clark Kerr, qui avait déjà caractérisé non seulement Gheorghe Tătărăscu, mais aussi Petru Groza, comme des traîtres et des trompeurs rusés, des marionnettes contrôlées par le Commissaire soviétique des affaires étrangères, Andrei Vîşinski.[4]

En réalité, au moment où ces lettres ont été envoyées au-delà du *rideau de fer* déjà bien visible en Europe, la Roumanie avait déjà connu la persécution de l'opposition par les communistes, les fraudes immenses lors du processus électoral et les emprisonnements illégaux des opposants politiques du nouveau régime « démocratique ". En fait, le premier ministre roumain avait répondu aux lettres reçues des gouvernements britannique et américain les 24-25 juin 1947 et qui avaient accusé l'administration de Bucarest de violation des droits de l'homme et du Traité de paix, sous le même ton hostile. Ainsi, Groza y avait récité la même poésie omniprésente au sein du discours communiste à l'égard de l'Occident, en affirmant franchement que l'attitude des deux gouvernements occidentaux constituait une immixtion inacceptable dans la politique intérieure de l'État roumain.



Il devient plus visible maintenant la contradiction flagrante entre l'attitude des pouvoir occidentaux et celle du blocus communiste à l'égard de l'aide financière offerte par l'administration Truman à la reconstruction européenne. Tandis que les États occidentaux ont bénéficié d'un modèle taillé conformément à l'expérience capitaliste américaine, les pays communistes ont, dans quelques cas, été obligés par Staline à ne pas l'accepter. Par exemple, il y a des signes clairs que la Tchécoslovaquie et la Pologne

[1] Marcel Ştirban, Nicolae Păun, *Continuitate şi schimbare în structurile instituţionale din România în anii 1940-1947*, Studia historia, 1991, 36, no.1-2, pp.111-119.

[2] Lettre du Ministre des affaires étrangères de Roumanie, Gheorghe Tătărăscu, adressée aux représentants de la Conférence de paix de Paris, le 9 juillet 1947. Archive de Cicerone Ioniţoiu.

[3] Lettre de Gheorghe Tătărăscu adressée au Secrétariat général de l'ONU, le 10 juillet 1947. Archive de Cicerone Ioniţoiu.

[4] *Idem,* http://www.procesulcomunismului.com/marturii/fonduri/ioanitoiu/maniu2/default.asp.htm..

étaient prêtes à accepter l'accord avec les dirigeants du Plan Marshall, mais il faut comprendre que cette voie, qui mènerait de manière inévitable vers une forme d'unification économique de l'Europe, était tout-à-fait incompatible avec la vision soviétique de l'économie dirigée.[1] En fait, la rencontre programmée pour le 12 juillet 1947 à Paris comptait sur la participation, déjà confirmée, des représentants polonais et tchécoslovaques, qui ont pourtant été persuadés par Staline de ne pas rejoindre cette démarche. En revanche, Staline a fait à la Pologne une contre-offre, sous la forme d'un accord sur cinq ans, consistant en crédits, équipement industriel et céréales – et le premier ministre de Varsovie, Josef Cyrankiewicz a accepté la proposition soviétique.[2]

Les autres États de l'Europe orientale ont suivi l'exemple des Polonais, en rejetant le Plan Marshall et en s'inscrivant sur la route alternative du Plan Molotov, concrétisé sous la forme du Comecon, le Conseil d'aide économique mutuelle.

Approche historiographique

L'historiographie du problème du Plan Marshall est abondante, mais il est important de souligner le ton qui a été adopté par les historiens à l'égard de ce sujet, des deux parties du rideau de fer. L'un des ouvrages écrits le plus proche du moment de l'adoption du Plan appartient à Sidney Stuart Alexander, qui a fait partie de l'Administration pour la coopération économique des États-Unis, appelée également l'Agence du Plan Marshall, étant l'un des souteneurs de cette initiative. Entre 1949 et 1952, Alexander a travaillé pour le Fond monétaire international à Washington DC et il a publié 31 études au cours de sa vie, surtout sur des thèmes liés à l'économie internationale. Dans son ouvrage intitulé « The Marshall Plan ", il présente une vision de l'intérieur des structures qui ont été responsables de la conception du Plan, en analysant de manière détaillée les objectifs et la nature de cette initiative.[3] En plus, l'auteur s'arrête sur l'implication américaine au sein du Plan Marshall, tout en présentant les enjeux pour le pays initiateur du Plan, mais d'une manière qui trahit l'appartenance d'Alexander au système (car le tout est exposé avec une certaine dose d'idéalisme sous la couverture d'une objectivité souhaitable).[4]

Si cette attitude a été normale du côté américain à l'époque, il est à noter que le thème du Plan Marshall est resté une préoccupation des historiens occidentaux même une décennie après la chute du rideau de fer. L'historiographie de cette période inclut une collection abondante de titres, dont l'un des plus compréhensifs est signé par Martin A. Schain, professeur de sciences politiques et directeur du Centre des études européennes de l'Université de New York[5], qui a regroupé dans le volume « The Marshall Plan: Fifty Years After » une collection de textes valeureux sur ce thème. Parmi ceux-ci, il est à souligner, dans la première partie de l'ouvrage (intitulé de manière suggestive « The Marshall Plan and European Construction »), la contribution de Michelle Cini[6], dont l'article « From the Marshall Plan to EEC: Direct and Indirect Influences » surprend la contribution du Plan à la reconstruction de l'Europe occidentale après la guerre et, en particulier, les mécanismes par lesquels l'initiative américaine a poussé les États européens démocratiques vers l'unification économique.[7] Dans la deuxième section du livre (qui s'appelle « The Others: From the Outside Looking in »), la

[1] Gerhard Wetting, *Stalin and the Cold War in Europe*, Éd. Rowman & Littlefield, 2008, p.138.
[2] *Poland: Carnations,* Time Magazine, 9 février 1948, Time Archives : http://www.time.com/time/magazine/article/0,9171,855998,00.html, consulté le 15 février 2011.
[3] Sidney Stuart Alexander, *The Marshall Plan*, National Planning Association, Washington DC, 1948, p. 4-6.
[4] *Ibidem*, p. 7-10.
[5] http://us.macmillan.com/author/martinschain. (consulté le 15 janvier 2010).
[6] Michelle Cini est Professeur d'études européennes à l'Université de Bristol, Grande Bretagne.
[7] Michelle Cini, *From the Marshall Plan to EEC : Direct and Indirect Influences*, dans Martin A. Schain, *The Marshall Plan : Fifty Years After*, Palgrave, New York, 2001, p. 13-39.

contribution de Bradley F. Adams[1], intitulée « The Marshall Plan and Czechoslovak Democracy: Elements of Interdependency ", surprend les pressions soviétiques qui ont obligé le gouvernement de ce pays, par le ministre des affaires étrangères, Jan Masaryk, de ne pas prendre part à la Conférence de Paris en juillet 1947.[2]

Finalement, une autre étude extrêmement utile pour comprendre l'attitude de l'occident à l'égard du plan Marshall à l'époque où il a été conçu a été rédigée par Allen Dulles, ancien directeur de l'Agence Centrale d'Informations des États-Unis, en 1947/48. À ce moment-là, les débats dans l'opinion publique américaine et dans les cercles gouvernementaux à l'égard du cours que le Plan Marshall devait prendre étaient plus vifs que jamais. Parmi d'autres, Dulles souligne les connexions du Plan avec la ligne politique prise par l'administration Truman dans la direction de la lutte anticommuniste, tout en précisant les principaux courants d'opinion de la société américaine envers ce problème.[3]

L'ENTRE-DEUX-GUERRES: UN LABORATOIRE DE LA RECONSTRUCTION EUROPÉENNE?

Si la rupture entre les Deux Europes s'est faite aussi d'une perspective économique, dont le témoin a été sans doute le Plan Marshall, les racines de cette faille peuvent être tracées dans la période entre les deux guerres. Ainsi, la création de l'Union soviétique en 1922 a déstabilisé un système déjà remis en danger par les attitudes révisionnistes après la signature des traités de paix appartenant au système de Versailles.L'héritage de la première guerre mondiale rend plus facile la démarche pour comprendre comment
s'est faite la rupture entre le modèle occidental d'intégration (témoigné par un nombre impressionnant de projets, comme l'initiative de *Pan-Europa*, du comte Richard von Coudenhove-Kalergi, ou bien le *Mémorandum* du ministre des affaires étrangères de France, Aristide Briand) et le nouveau modèle oriental, créé autour des structures communistes et déjà en roulage au sein de l'Union soviétique.

L'une des répercussions les plus dangereuses de la première guerre mondiale, qui avait complètement renversé la nature de l'économie européenne, a été la *Grande dépression* qui s'est déroulée surtout entre 1929 et 1933, mais qui n'a cessé d'affecter certains pays jusqu'à l'aube de la seconde guerre mondiale. Les effets désastreux de cette crise qui a affecté le système capitaliste au sens plus profond a engendré une nouvelle approche du libéralisme, qui a trouvé sa plus fameuse expression dans la nouvelle ligne économique adoptée aux États-Unis sous le président Franklin Delano Roosevelt, appelée *New Deal*. Cette nouvelle orientation, impliquant un rôle plus proéminent de l'État dans l'économie, a rendu possible la réalisation du Plan Marshall après la fin de la guerre.[4]

Mais, en même temps, la situation économique créée par la crise a représenté une bonne occasion pour les mouvements politiques extrémistes d'acquérir de plus en plus de popularité en Europe. Réunifié sous des formules politiques, le Parti national-socialiste allemand est arrivé au pouvoir avec l'ascension d'Adolphe Hitler au poste de chancelier allemand, en 30 janvier 1933, un événement qui allait changer la configuration géopolitique de l'Europe au long d'une période de douze ans.

Dans le contexte d'un intérêt réduit de la part des États-Unis pour les actions de ses alliés après la première guerre mondiale et dans la période entre les deux guerres, la scène internationale a été préparée pour une reconfiguration périlleuse. Si pour les États-Unis, c'était l'axe du Pacifique qui a accaparé l'attention de la classe politique plutôt que les liens avec le vieux continent, l'Union

[1] Bradley F. Adams est Professeur d'histoire du communisme à l'Université Columbia de New York.
[2] Bradley F. Adams, *The Marshall Plan and Czechoslovak Democracy : Elements of Interdependency*, dans *op.cit*, p. 93-119.
[3] Allen Welsh Dulles (Éditeur : Michael Wala), *The Marshall Plan*, Éd. Berg, 1993, p. 14-15.
[4] Ronald Edsforth, *The New Deal: America's Response to the Great Depression*, Éd. Wiley-Blackwell, Hoboken, 2000, p.25.

soviétique était en train de concevoir ses plans pour étendre son influence idéologique à travers le continent européen, afin d'aboutir à la domination politique. Quant aux alliés, à part le Pacte de Locarno de 1925 entre la France et l'Allemagne, qui ne garantissait que les frontières occidentales de cette dernière, et le Pacte Briand-Kellogg de 1929, qui condamnait l'action de recourir à la guerre sans y imposer de réelles contraintes, les démarches institutionnelles ont été limitées afin de prévenir l'expansion du radicalisme sur le vieux continent[1]; c'est également l'effet d'une Société des nations inefficiente et dont les instruments fonctionnels ne permettaient pas une action cohérente, coercitive et prompte de la part des États européens contre un agresseur.

En revanche, l'attitude des franco-britanniques dans cette période de temps a été caractérisée dans l'historiographie comme *conciliatoire*, puisque les alliés, visiblement affectés par la mémoire de la Grande guerre, ne voulaient pas arriver à des confrontations militaires avec les régimes autoritaires d'Allemagne ou bien d'Italie. Cette politique, regardée parfois dans l'historiographie comme une preuve de lâcheté, a été premièrement l'apanage du premier ministre britannique Neville Chamberlain et du premier ministre français Édouard Daladier, dont les actions à l'égard d'Hitler ont suivi la même logique que l'impuissance de la Société des nations. La Conférence de Munich de septembre 1938, pendant laquelle ces leaders politiques ont consenti à l'occupation par Hitler de la région Sudète, contrairement aux traités de paix, n'est qu'une preuve de l'échec de cette politique de conciliation qui n'a fait que d'amplifier les échos du revanchisme allemand pendant l'entre-deux-guerres.[2]

ET LA GUERRE? UNE RUPTURE CULTURELLE OU GÉOPOLITIQUE DE L'ESPACE EUROPÉEN

Ainsi, c'est le moment du 1er septembre 1939 qui est intervenu de manière inévitable, avec l'invasion de la Pologne par un Hitler qui se considérait déjà apparemment invincible, face à des Alliés incohérents et faibles.[3] L'axis du Pacifique est rentré dans les coordonnées des franco-britanniques après l'événement tragique du 7 décembre 1941, constitué par l'attaque de Pearl Harbour par les Japonais, suite auquel les États-Unis sont entrées dans la guerre, abandonnant une fois de plus la doctrine de l'isolement à l'égard des problèmes du vieux continent.[4]

Dans le cadre de l'alliance entre la Grande Bretagne, les États-Unis et les Français trouvés en exil, auxquels s'ajoute l'Union soviétique, il a été inévitable d'arriver à un compromis pour l'avenir de l'Europe et du monde entier, qui satisfasse les intérêts des deux pôles qui s'étaient déjà formés, du point de vue idéologique: les Soviétiques ou communistes, d'une part, et les capitalistes de l'autre. Pourtant, il est très important de noter que cette fois, à la différence de la première guerre mondiale, le conflit qui a duré jusqu'en 1945 n'a pas été achevé à l'aide des traités de paix. Si les vainqueurs ont appris bien des choses suite à l'échec du système de Versailles et de la Société des nations, ce manque n'a guère résolu la situation géopolitique du continent européen à la fin du conflit, un *status quo* dont nous sommes particulièrement intéressés afin de tracer le contexte dans lequel il a été possible de témoigner de la tombée du *rideau de fer*.

En revanche, les outils dont les leaders des alliés se sont servis afin de rendre officielles leurs ententes ont bien été les conférences. Celle de Téhéran, entre les « trois grands », qui a eu lieu à la fin de l'an 1943, a accueilli la première rencontre des trois personnalités politiques qui ont été responsables pour la reconfiguration de l'Europe après la capitulation des Nazis: Winston Churchill, le premier ministre britannique, Franklin Delano Roosevelt, le président américain et Joseph Staline,

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[1] Ladislau Gyémánt, *Prehistory of the European Construction*, Éd. EFES, Cluj-Napoca, 1999, p.321.
[2] Peter Neville, *Hitler and Appeasement: the British Attempt to Prevent the Second World War*, Continuum International Publishing Group, Londres, 2006, p.59.
[3] *Ibidem*, p.192.
[4] Sir John Thomas Pratt, *Before Pearl Harbour: a Study of the Historical Background to the War in the Pacific*, Éd. Caxton, University of Michigan, 1944, p.59.

le leader incontestable de l'Union Soviétique. Si cette première conférence, suivant immédiatement après le sommet du Caire, n'a fait que d'établir des principes militaires dans la lutte contre les ennemis, elle a ouvert la voie vers des pourparlers supplémentaires sous la même configuration.[1]

En conclusion, c'est la rencontre de Yalta qui est de première importance pour cette démarche de recherche, puisque les leaders alliés y ont mis en question l'idée de réorganiser l'Europe après la victoire face aux ennemis. À part les points clés qui se réfèrent à la capitulation sans conditions de l'Allemagne, une victoire significative de Roosevelt a été celle d'obtenir la promesse de Staline conformément à laquelle celui-ci joindrait l'organisation qui hériterait des idéaux de la Ligue des nations, c'est-à-dire l'Organisation des Nations Unies.[2]

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[1] Chris Wrigley, *op. cit.*, p.321-322.
[2] Robert Service, *op. cit.*, p.503.

The Romanian intellectual's profile and the recreation of the European interwar myth[1]

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Abstract. *Along with the XIXth century, the Romanian lands entered a truly European route. Whether we refer to the cultural circuits or the economic ones, the European influence is strongly perceived in this area and imposes culture and civilization patterns. We can therefore speak of a comeback to the native cradle of the Romanian people, namely, to the European cultural lodes that occurred and were consequently maintained together with the Latin origin of the Romanian people. It is upon this foundation that the European formation routes of the Romanian intelligentsia sit, the institutional and cultural premises taken from within the country, even the political-administrative and cultural dialogue that was kept alive during the interwar period. From this point of view, one can always speak of the role of the Romanian intelligentsia in the reaffirmation of the plenary actualized European myth in the studied historic period.*

Keywords: *the Romanian intellectual, European creation routes, political elites, interwar European projects.*

After a European century of building the „nation states" and after a war with tragical consequences, all announced through the so-called ideology of the „European decline" in Oswald Sppengler's work, the European intellectual elite enters a febrile phase that was concerned with the common European destiny. More plans, societies and continental and regional unification projects, which grants the new century a new paneuropean preoccupation, following a XIXth century of national accomplishments. In various formulas, almost all the national states, especially the newly configured ones, enter this concert, and Romania, in its turn, even manages to play founding roles in these constructions. Through its intellectual elite, our country manifests intensely on a European plan, being recognised especially due to its great public names that represented its name. And this was not a random thing, as long as the great majority of the RomnRaian intellectuals, asored by the political class, came via European formation routes and had accessed, therefore, the same schools with the European intellectual elites.

Therefore, the interwar debate referring to the European unification had, in its times, a serious partner in this side of the continent, reference made to Romania and its representatives in intercontinental relations. If one were to sequentially remember the main European unification projects in this period, promoted by Kalergi, Briand or Tardieu, one could name Romanian personalities such as V. Madgearu, G.G. Mironescu, N. Titulescu or Iuliu Maniu, who promptly positioned our country on the routes of these projects. It suffices to remember that in the Briand plan, Romania acted, through its representatives, a part of founding coutry in a conjuncture in which the president of the Nations Society Association was N. Titulescu, a Romanian whose name relates to the history itself of the entire organisation. „The president of the Association, read the resolution project that the French government lodged, on behalf of 45 delegates (September 17th 1930), by which the governments of the European states were invited to follow the inquiry initiated through Briand memorandum, finishing the proposals of the Nations Society Association."[2]

From the point of view of the lights caused by the suggested title it is obvious that the Romanian intelligentsia, in general, and especially its elite, which turned into a normative and technical one, through all its representatives who took part, one way or another, in the decision-making and

[1] *This work was possible with the financial support of the Sectoral Operational Programme for Human Resources Development 2007-2013, co-financed by the European Social Fund, under the project number POSDRU 89/1.5/S/60189 with the title „Postdoctoral Programs for Sustainable Development in a Knowledge Based Society".

[2] George Ciorănescu, *Românii şi ideea federalistă*, Ed. Enciclopedică, Bucharest, 1996, p. 115;

legislative national process, becomes responsible for this entire development and modernisation step of Romania. But the connection between the proposed European model and the private destiny of each personality that adhered to this stands precisely in their process of intellectual growth. The ways of intelectually developping that the Romanian public figures of the times had followed were meant to tie them to the myth and destiny of Occidental Europe. From here to the settlement of unified Romania on an exclusive and uniquely European path was only a step. The entire intellectual debate of the epoch was, as we will here show, one of European descent; the development patterns being themselves organically European, and as a confirmation and crowning of these patterns,the political elite contributed in the fourth decade of the XXth century to the shaping and projection of some federative projects. And the mere mentioning of the fact that Romania, already engaged in the „ Little Entente", played a significant role along its partners in the receiving of the „Briand Project" would suffice to underline the role that our country was playing in the epoch. „ The Foreign affaires Ministers agreed to promote under the institutional aspect a „staged accomplishment" of the European Union, which would initially have only an annual conference without the permanent comittee that Briand proposed."[1]

By the reporting to the „Latin cultural fund" of the Romanian country, the recreation of the European myth becomes easier explained. The observed adhaccession to the European pattern, in the interwar epoch, which imposed the modernisation and rationalisation of the entire state system, represented, from this point of view, a comeback to the original root, the „latin gens". The prevailing of the accession to this pattern, and its touched depths, built out of paradoxes, became realities of the Romanian interwar period.

And the Romanian intellectuals, as promotoers and representatives of the the Latinity of the national fund, acted in accordance to the „spirit of the epoch" in which they were living.

Contact routes with the European West. Undoubtedly placed in a dynamic geographical area, at the junction of empires and especially at the borders of cultures hereby influenced, the Romanian lands of the XIXth century find themselves in a crucial moment of liberation from the Ottoman power and of reoreintation or new contacts with new cultures. As a matter of fact, the culture and lifestyle of this people have been deeply influenced by the Sublime Porte's interests in the area. „The geographical settlement of the Romanians largely decided the historical route of these lands."[2]Starting from this premise, of the influence analysis in the Romanian regions by the cultures with the highest interests in the area, we shall use the reality of the Ottoman influence over the area until around the end of the XVIIIth century, when the Russian-Turk wars change the balance of the powers and, at the same time, of the cultural influences.Along with the occurrence of the first Russian troops in the territory of nowadays Romania, the citizens enefit from the first contacts with the European culture. „During the war, (1768-1774n.n.) the boyars came into contact with the Russian officers, many of them being of Frencg, German or Greek origin, with a cosmopolitan education."[3] The influence is powerful, especially when the upper classes take over European social habits, starting with clothing, dances, furniture etc. It is actually for the first time in a few centuries when the locals change their preferences and behaviours after a period when influences were primarily Oriental and then regional.

In an overall view, there are three periods of maximum cultural ebullience of the Romanian lands. The first, begun in 1774, was of exit from the exclusive influence of the Porte and of entrance into contact with the Western customs throughout the Russian officers. Under the auspices of the

[1] Simion Costea, *România şi proiectul Briand de Uniune Europeană,* University Publishing House „Petru Maior", Târgu-Mureş, 2004, p. 130;
[2] A.D. Xenopol, *Războaiele dintre români şi turci.,* Albatros Publishing House, Bucharest, 1997, p. 7;
[3] Keith Hitchins, *Românii – 1774-1886,* Humanitas Publishing House, Bucharest, 1996, p. 83;

„Kuciuk-Kainargi Treaty", the period represents the taking notice of the Western economies through the relative lieration from the Ottoman hegemony. The second, marked by the Adrianopole Treaty, represents the entrance into contact with the Enlightment Anglo-French ideology, especially throughout commerce with the two countries. Begun in 1830, the period is favored by the opening foresight of free commerce at the Danube gates. It is the period in which the 1848 Revolution takes place, the Union of the Romanian lands and the imposing of the first Constitution, all under the print of the French Revolution and its basic concept „the nation". „The new system was obviously mimicked from Belgium, but if the Belgian system was preferred to the French one, the true cause was the animosity that Cuza had provoked in our political parties, left and right, representing at those times the same interests in which the bold agrarian reform hit."[1] Eventually, the third period, from 1875 until the first World War, came as a balancing of the German revolutionarism taken from the universities in Wien and erlin and sustained by the economic relations with these countries.

Therefore, throughout a century, Romania has already changed its cultural orientation by exiting the exclusive authority of the Porte and by imposing radical reforms in parallel with the sequencial building of the great Nation State. All these phenomena, of deep cultural assimilation,will coem to full amturity within the inter-war debate, in a tight corelation witht he European debate. Actually, stemming from the initial premise, already proven, the messages of the inter-war personalities has as foundation this entire European trace acquired in the XIXth century and was, with its configurations, a deeply Western one-especially at the level of the great „modernism-aboriginal" debate or „progress-return to the archaic". This return to native values,s trongly represented in the background of inter-war ideology, unveils another essential theme for the understanding of the inter-war equation: „ the latinity of the Romanian people and culture."

The Europeanness of the Romanian culture-the common Latin fund. In the larger context, the mentioning of the historical-cultural luggage of the Romanian people was becoming a respectable stake, as long as it represented, or, on the contrary, it couldn't offer a basis for the modern existence of the XXth century society. Particularly, a significant part of the debate moved around the issue of the national specificity and the need to modify it, in the case of revolutionaries or the keeping and encouraging of an organic evolution, in the case of the conservatives. Criticized or not, as we shall show, the European fund of the Romanian culture, Latin in its roots, became a common theme, consistently debated throughout the epoch, with a respectable ideological stake. According to this, the opponents were in favor of the need to keep it, or, at the opposite pole, in favor of reconfiguration as insufficient means of keeping new socio-institutional forms. Regardless of the positioning, the supporters of the two ideologies stemmed from the same premise: the cultural historical fund of the people was a latin one, worthy of being called „European".

A sort of return seems to be the answer that imposes in this issue: by the adhesion to the European culture, to the French revolutionary movement, the Romanian intelligentsia sets the culture of its country in the proper place: along with the modern, rationalist Enlightened European culture. Nevertheless, this maximum importance and value phenomenon seems to have a single explanation or, at least, it would require more complex explaining answers. „Why didn't the idea of the superior model action before the beginning of the XIXth century, when it appeared in the form of the Czar empire, and even beforehand, of the Habsburg empire, in full offensive? Why, if we,Romanians, were characterized through such plasticity and will to „mimic", didn't we choose the Turkish model, that is, that of a country invincible for half a milenium?(...) Why didn't we later crossed to Catolicism? Why did we adopt the French revolutionry model, combining it with an Italian variant, carbonar and mazziniste? Lovinescu suggests that „through our pro-Western adherence, we found ourselves, on

[1] I.C.Filitti, *Originea şi rolul constituţional ale Consiliului Legislativ Român,* Revised edition, Graphic Arts Institute, Bucharest, 1936, p. 11;

the asis of Latinity and the true vocation of our race, ignorant of the foreign forms of Slavo-phanariot civilisation, but today such an explanation is no longer considered valid."[1]

To further emphasize the phenomenon, other two essential aspects ask to be brought into focus: the precedence of the connection of the Romanian lands to the European culture and the rapidity with which the phenomenon was achieved. The Romanian people set in 1848 a benchmark from which its history seems to be rushing in a new direction, but with which it shared numerous connections: „Both the older protagonists and the younger ones of the culturalisation epoch are guided by the same ideal, of going out of the dark and abjection, the ideal of recovering the disparity towards Europe, of the development of the Romanian creative potential, force to hibernate for such a long time."[2] But if we were to establish exactly the origin of the phenomenon of closeness-synchronization with the European culture, it seems to have begun even from the end of the XVIIIth century, when Enlightment started to pierce Romania through Phanariots and young students in Paris. „It must be mentioned that we claimed and entered „Enlightened Europe" even from the Enlightenment, therefore the end of 18th century. "[3] The phenomenon was already emphasized, through its first dedicated book."We only want to ascertain a characteristic trait of the French influence in Romania it is an influence exerted by far and almost unconsiously by a people over another."[4] From this perspective, the 1848 moment is a formalization of all these aspects, an eruption in the light of what until then assiduously manifested itself in the social strata, especially in cultural awareness.

"The fourth decade also provides a much deeper infiltration of the ideas, morals, French cultural property assets than in the past, causing active mimicry phenomena among the ruling class and downwards, through the characteristic of the snobbery of the rapid transition ages , in the rows of the Bourgeois nobility and the regular bureaucracy."[5]This is why 1848 is more a formalization of these events than only a beginning of modernization of the country. "The date 1840, where we stopped, is not a border-we said that beforehand – but a point of inflection. After 1840, everything we have seen bursting through the surface complex due to the inextricable determination of the circumstances will continue to subsist and procreate. (…) Looking from the point of view of history, the point we reached is just the need of the beginning."[6] "Thus placing the beginning of this process Adrian Marino, we have more than two centuries of cultural "claiming" from the Enlightened Europe, but, more importantly, the settlement of Romania in the front place of the process.

The message of the Romanian public figures. From the point of view of the suggested theory, the pattern of the European intellectual, the thesis of their implication in the political-administrative life of the country, remains to be demonstrated. Following the same pattern, the intellectual elite of the coutnry interferes with the political one and therefore becomes an authority in the field, with implications in debating the development path that the country needed to follow. Specifically, we support here the thesis according to which between the intellectual elite of the country and the political elite there were strong recrutment phenomena. The mere enumeration of some epoch ministerials confirms the theory: N. Iorga, V. Madgearu, D. Gusti, ..., etc. There is, then the only logic step to achieve, that of accomplishing the connection between the modernisation effort and the implication of these personalities in the managing of these efforts. Even if unified Romania

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[1] Alexandru George, *Reveniri, restituiri, revizuiri*,. Cartea Românească Publishing House, Bucharest, 1999, pp. 74-75;
[2] Paul Cornea, *Originile romantismului românesc*, Minerva Publishing House, Bucharest, 1972, p. 432;
[3] Adrian Marino, *Modern, modernism, modernitate*, Universal Literature Publishing House, Bucharest, 1969,p. 75;
[4] Pompiliu Eliade, *Influența franceză asupra spiritului public în România – Originile,*. Humanitas Publishing House, Bucharest, 2000, pp. 9-10;
[5] Paul Cornea, op.cit., p. 513;
[6] *Ibidem*, p. 605;

engaged itself, later in the XIXth century, in this modernisation process, the steps taken, although strongly criticized, represented minimal stages in the tendency to draw closer with the Western Europe. „The inter-war modernisation obviously ears the marks of the lack of means and purposes, but above everything the lack of a modernisation programme, of a suitable consensus"[1]

By and large, we assume the thesis according to which the message of the Romanian inter-war public figures was one of pro-European essence. We have shown, at a proper time, that the return towards autochtonism tendency itself was one of European cultural nature. From this point until the assumption of the consequent pro-Europeanism of the inter-war Romanian debate, there is a short distance. With public figures shaped in the European cultural space, with ehaviours adequate to the European intelligentsia, all in a Latin cultural fund, common to most European cultures, the Romanian message suited the geral borders of the European cultural debate.

In conclusion, we can ascertain, along with other historics of the epoch, that the inter-war period in Romania was one of continuing the modernisation effort initiated in the XIXth century. And the imposed landmark, especially of a country that had to report to such a model (as long as the peripheric geographic positioning towards the cultural emission centre gave birth to time gap) was permanently the European one, of the developed country in the Western part of the continent.

Starting from the premise ascertained in the first part of the paper, according to which the XXth century was the century of federalist projects, this happening after the XIXth century being one of national movements, we can only observe the affiliation of the Romanian elite to this natural flow. And if we were to mention simply the „Little Entente" and the „Balkan Pact", the position taken by Romania in the Briand Project or the play N. Titulescu acted at the Nations' Society, it would be sufficient to confirm our thesis. At ideational level, the only aspect to be emphasized remains that the Romanian intellectual elites, such as Iuliu Maniu, Take Ionescu or Virgil Madgearu projected themselves European unification hypostases, with which they actually adhered to the preoccupations of the European elites of the time.

Starting either from regional interests of coalition for the peace keeping, or from continental preoccupations and of representation for the country at an European level, the Romanian initiatives to coagulate some inter or super statal, which will constitute a future study, were inscripted therefore in the general European interwar base lines of intellectual debate.Through the patterns of the regional „agreements" in which our country was an active element, the Romanian intellectuals represented an European behaviour landmark for their foreign brothers. „The Balkan Pact constituted, throughout

[1] Marius Jucan, in the study „Intelectualii Europei interbelice şi mitul fondator al unităţii europene" in volume *Actualitatea mesajului fondatorilor Uniunii Europene",* coord. Nicolae Păun, Ed. FSE, Cluj-Napoca, 2006, p. 32;

all the years of the passive activity of the four allied states, an extremely vivacious example, showing the role and the contribution, not deprived of meaning, brought by these small and middle states in the battle for the defense of security, for the protection of peace;(...) it revealed the ol dfriendship traditions and the common battle of the people in the region, by showing the values and their unshakable connections, values and connections that asserted and will always assert in this European space with benign permanence."[1] Then, through the opening proven towards the paneuropean plans, the intellectual elite in Romania constituted itself in a coagulant element of the general debate, through the open way of touching these initiatives. „In an interview granted to the „Neue Freie Presse" newspaper in 1930, when one intensely discussed A. Briand's plan of the European federation, Maniu proves to e a partisan of a regional federation, as a first step towards the accomplishment of a general European federation, and the proposal of a central-European nucleus, which would include Poland, Czechoslovakia, Austria, Yogoslavia, Hunagry, Bulgaria, Greece and Romania."[2]

Having, therefore the historical and cultural premises readily shaped, one only has to observe and confirm the acculturation phenomenon to which our country was submitted. After more than a century of intensified contact with the European West, both by intellectual elite and the historic-economic mixtures, in which all the institutional and national models were of European nature(the revolution of Pasoptism, the first Romanian Constitution, the national-statal building throught he two Unions), Romania was actually a state deeply connected to the realities and the European phenomena. By the initiatives that concerned the European future, the intellectual elite of the country confirms it, its continuous effort to modernise the country being the valid proof in this respect. And all these aspects, fundamental to the country's evolution in these hsitorical moments, provide sufficient arguments to support the rebirth of the European myth, through the models offered by Western Europe in our country. The active participation of the coutnry, through its intellectual elites, to the debate refering to the common European future shows that Romania has turned, from spectator into actor and author in the great central European dialogue. The assimilation-adaptation phenomenon, as Lovinescu has seen it, of the European culture was nearly accomplished, and the configuration one has already become a granted historical accomplishment.

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8. Hitchins, Keith – *Românii – 1774-1886,* Ed. Humanitas, Bucharest, 1996;
9. Jucan, Marius – in the study „Intelectualii Europei interbelice şi mitul fondator al unităţii europene" în vol. *Actualitatea mesajului fondatorilor Uniunii Europene",* coord. Nicolae Păun, Ed. FSE, Cluj-Napoca, 2006;
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[1] Eliza Campus, *Înţelegerea Balcanică*, Acad. RSR Publishing House, Bucharest, 1972, XXIV;
[2] George Ciorănescu, op.cit., p. 124;

Shaping the New Europe. The Actuality of the German Ordoliberalism

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Today's international economic crisis is seen by many as the end of the *laissez-faire* liberalism. On the other side, liberal economists argue that we are only dealing with a crisis in the economic-financial sector, due to the insufficient quality of the *judicial framework* and its implementation in a very complex and technical domain such as financial services[1]. In addition, a great part of the responsibility in triggering the crisis can be attributed to the US intervention (the government and the federal reserve banks), whose policies supported exaggerated real estate investments[2]. As we shall see[3], this is exactly the type of policy that liberal thinkers after the Second World War criticise.

Without entering this debate, it is obvious that liberal democratic principles continue to prevail in the political and economic organisations of European and EU member states. After a period of state intervention in the economy through bank nationalisations, state-supported investments and strengthening regulations, economic development will resume its course based on market economy principles.

However, the road so far has been long and the rebound periods numerous. From the first liberal economic ideas in the 18th and 19th centuries, a great part of the European continent had fallen prey both to Nazi and communist ideologies in the 20th century. Faced with two world wars and a profound economic crisis, liberal thinkers remained either in the shadows, could not express themselves, left in exile or were simply "unfashionable." Even in free societies, the trend was the "Keynesian revolution," resulted after the Great Depression, which promoted a greater state intervention in economic processes. In his autobiography, Alan Greenspan mentions that by the 1970s, John Maynard Keynes' ideas had replaced those of Adam Smith[4]. Despite his great contribution to the understanding of macroeconomic processes and despite the fact that he considered himself to be "liberal," a large part of Keynes' works oppose classic liberalism: "I expect to see the State, which is in a position to calculate the marginal efficiency of capital-goods on long views and on the basis of general social advantage, taking an even greater responsibility for directly organising investment."[5] In this context, however, in Western Europe, Germany, Austria, but also in Italy and France, new thinkers emerged, who, on the basis of liberal principles, managed to greatly influence the economic policy in the democratic European states and the European Economic Community.

This study aims to present the German school of liberal thought after the Second World War and its contribution to the contemporary economic liberalism, as well its role in implementing the economic policies in European countries, given the context of the economic crisis.

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[1] Melnik, Stefan. *The Current Financial Crisis: Propositions from a Liberal Perspective*, 9.4.2010. <http://www.stmelnik.com/>
[2] Taylor, John. "How Government Created the Financial Crisis." *Wall Street Journal*, 9.2.2009.
[3] see p.11.
[4] Greenspan, Alan. *The Age of Turbulence: Adventures in a New World.* New York: Penguin Press, 2007, p.15.
[5] Keynes, John Maynard. *The General Theory of Employment, Interest, and Money. The Collected Writings,* vol. 7. London: Macmillan, Cambridge University Press, p.164.

THE ORDOLIBERALISM AND THE GERMAN ECONOMIC MIRACLE

The German miracle (*Wirtschaftswunder*) was due largely to reforms undertaken after the Second World War and to introducing a "social market economy." The engine behind these reforms and behind the German economic is the School of Freiburg, which promoted ordoliberalism.

The sources of German liberalism go back as far as the 16th and 17th centuries, to Samuel Pufendorf's theories of natural rights or to Johaness Althusius' decentralisation/federalisation. Liberal ideas can later be found in the works of Kant (1724-1804) and Fichte (1762-1814), who discussed the rights of man, the freedom of thought and expression. However, if we were to identify a work or a central author who expresses the liberal ideas in Germany, he would have to be Wilhelm von Humboldt (1767-1835). His treaty *On the Limits of State Action*[1] represents a solid and objective political analysis. Although written in 1792, the work was only partially published in various magazines of the time due to censorship. It was fully published in 1851, after the author's death. The treaty influenced the work of John Stuart Mill, especially *On Liberty*, published in 1859. Mill said that the only author worth talking about is Humboldt[2]. The latter criticised the paternalist state, which gives excessive attention to the well-being of its citizens, and suggested that the state intervention beyond its main duties – ensuring internal and external peace and internal order – leads to uniform behaviour in society which suffocates the natural variety of individuals. Although he held important diplomatic and governmental positions in Prussia, Humboldt did not apply his ideas into politics because of the political circumstances of the time.

The merit for reviving liberalism in Germany, both from an academic and a political point of view, goes to the Freiburg School and to those influenced by it. To be more precise, we are talking about the Faculty of Law and State Sciences (*Fakultät für Rechts- und Staatswissenchaften)* of the University of Freiburg. Its founders are economist Walter Eucken (1891-1950) and lawyers Franz Böhm (1895-1977) and Hans Grossman-Doerth (1894-1944), but also Leonhard Miksch (1901-1950).

The ordoliberals considered that Adam Smith's theory of the "invisible hand" was not sufficient to ensure a harmonious economic development. The economy was supposed to be managed according to an "economic constitution," established, applied and guaranteed by the state. In 1940, Walter Eucken said that the problem of the economy would not resolve itself, allowing the economic system to develop spontaneously. The economic system had to be designed and deliberately enforced. Matters related to economic and commercial policies, protection against monopoly, fiscal policy and bankruptcy represent various aspects of a single fundamental issue – the way of establishing rules of the functioning of economy as a whole, on a national and international level[3]. Without these, private interests turn into monopolies or oligopolies, replacing competition through performance (*Leistungswettbewerb*) with competition through blocking the competitors (*Behinderungswettbewerb*), and thus damaging equality before the law and the legal state (*Rechtsstaat*).

According to the ordoliberals, in a social market economy the state has to be powerful to be able to fight against practices that damage the social functioning of the market, such as monopolies or rent-seekers. Eucken said that the state has to act on the *forms* of economy, but not to manage the entire economic *process*. It is essential to make a distinction between form and process and to act accordingly[4].

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[1] German: *Ideen zu einem Versuch, die Gränzen der Wirksamkeit des Staates zu bestimmen*

[2] Miniter, Richard. "Wilhelm von Humboldt: German Classical Liberal." *The Freeman,* vol. 41, no. 2, February 1991.

[3] Eucken, Walter. *The Foundations of Economics – History and Theory in the Analysis of Economic Reality.* Berlin, New York: Springer, 1992, p.314.

[4] Eucken, Walter. *This Unsuccessful Age, or, The Pains of Economic Progress.* Oxford: Oxford University Press, 1952, p.95.

In order to be able to examine, elaborate its principles and apply such an order, a synthesis in the fields of law and economy was necessary. A *Wirtschaftsverfassungspolitik*[1] is a political order that intends to improve the results of economic systems by means of establishing "rules of the game" and not directly, through specific economic interventions.

The principles of this order have to be: ensuring the correct functioning of the price system, the freedom of commerce, guaranteeing private property and freedom of contract, full responsibility, coherence and the establishment of economic policies. The purpose of such an order was to create the conditions that would allow economic actors to act together in the common interest of society, by following their own interests[2].

In other words, they considered that the objective of the *Wirtschaftsverfassungspolitik* was to create the necessary conditions for the effective functioning of Smith's "invisible hand."

In what concerns the judicial aspect, Böhm concentrates upon the aspects of judicial order, elaborating a theory of the "private law firm" (*Privatrechtsgesellschaft*) based on private law, in order to protect individuals from the intervention of other individuals, groups or the state. This is how the state's power on citizens is limited. Too great a role of the state leads to sacrificing the general interest in favour of personal or group interests.

The social market economy protagonists were after social justice through economic means. They were not using the term *social* only because it was in fashion in the politics of the time. They were thinking about how to reply to accusations of being mere partisans of the *laissez-faire* under a *social* disguise. The answer was that they could demonstrate that, in long term, the policies would lead to a favourable result from a human point of view[3].

The implementation of the social market economy

At the level of the German government after the Second World War, the social market economy was put into practice thanks to the Minister for Economy (and, for a short while, Chancellor) Ludwig Erhard (1897-1977) and to Alfred Müller-Armack (1901-1978), economy professor and secretary of state within the Ministry for Economy.

Erhard's purpose was to create a *social* market economy. Erhard's preoccupation with the social problematic comes from of Oppenheimer's influence, among others. According to Oppenheimer, there has to be a way – a third way – that is a more effective synthesis, or a solution[4]. Oppenheimer's "liberal socialism" turned into Erhard's "social liberalism," whose purpose was creating a social economy by means of a market economy. Erhard's vision of economic policy takes three points into account: preventing political power from becoming a source of disorder, eliminating monopolistic structures, promoting freedom and competition.

Moreover, in Erhard's programme, free market competition is not a purpose in itself, but a means. He considered that as long as competition functions properly, the socialisation of progress and profit is better achieved[5].

Erhard fully recognises the merits of the Freiburg School. He declared that the merits of the school are not only economic, but also of political nature. By applying the Eucken doctrine, many

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[1] Eucken, Walter. *The Foundations of Economics – History and Theory in the Analysis of Economic Reality.* Berlin, New York: Springer, 1992, p.316.

[2] Eucken, Walter. *Grundsätze der Wirtschaftspolitik*, p.336.

[3] Wiseman, Jack. "Social Policy and the Social Market Economy" in Peacock, A., op. cit., p.161.

[4] Erhard, Ludwig. "Franz Oppenheimer, dem Lehrer und Freund" (1964) in Erhard, Ludwig. *Gedanken aus fünf Jahrzehnten,* Düsseldorf-Vienna-New York: Econ, 1957.

[5] Erhard, Ludwig. *Prosperity through Competition.* London: Thames-Hudson, 1958, p.1.

countries sought to implement an economic order in conformity with clear intellectual principles, instead of pragmatism without an intellectual basis[1].

The influence of the Freiburg School on Erhard's work is indisputable. For example, Leonhard Miksch, and important representative of the School, became a close collaborator of Erhard. He was one of the first to support a policy of regulation and liberalisation of prices coupled with a monetary reform. Against the instructions of the Allies[2], Erhard used this policy to launch the liberalisation of prices at the same time with the monetary reform, an action that would later be known for marking the "birth of the market economy."[3]

Both Erhard and Eucken were born and raised in the same historical period of Germany. Born at the end of the 19th century, they had experienced the false market economy during the Weimar Republic, an economy dominated by personal interests that took advantage of the state's weaknesses. Erhard described that period as years of degeneration of the market economy. He said that they had two options: re-establishing an effective market, a truly liberal one, or declaring complete obedience towards the state a general economic principle[4]. Erhard said that his policy has the purpose of creating an order dominated by game rules[5]. This metaphor brings Erhard closer to the ordoliberals, since this is a basic principle of ordoliberalism: the state institutes and guarantees an economic order, but does not control the economic processes, thus allowing free and correct competition.

According to this ordoliberal perspective, the state has a specific function to perform: adopting and ensuring the respect of a constitution that is able to dominate the rent-seekers and those with personal interests.

Unlike the Austrian School, German ordoliberals gave great importance to resolving the social matter: "Everything has a social importance."[6] The success came also from the combination of the political and social expectations of the population and the academic economic thought. Like Joachim Zweynert said, the main concern of Müller-Armack was to make a traditionally socialist and romantic country accept capitalism. At the same time, the social market economy presented itself as a programme of liberally open reforms, corresponding to the demands of the Western Allies, especially the USA, who wanted to establish a liberal and capitalistic society in Western Germany[7].

Müller-Armack differs from the other German liberals. He considers that it is possible to intervene in the market economy in order to produce a sufficient amount of richness that can be redistributed in the name of social justice. He promotes this idea in the context of the subsidiarity principle, taking into consideration that social responsibility belongs to smaller communities. If, however, this proves insufficient, the state has to intervene in a decentralised manner. The upper levels have to intervene only when the lower levels and the communities cannot fulfil the necessary functions. A central bureaucracy that uniformly and impersonally administers the state should be avoided. Armack goes even further to point out that there is a necessity for state subventions for small companies and vocational training, codetermination in the workplace and social right of

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[1] Erhard, Ludwig. *Demokratie heißt Freiheit, Recht und Ordnung* in Erhard, Ludwig. Brüß, Kurt. Hagemeyer, Bernhard (ed.). *Grentzen der Demokratie? Problem und Konsequenzen der Democratisierung von Politik, Wirtschaft und Gesellschaft.* Düsseldorf, Vienna: Econ, 1973, p.39.

[2] Broyer, Sylvian. "Retour à l'économie de marché : les débats du Conseil scientifique attaché à l'administration économique de la Bizone," in Commun, Patricia (ed.). *L'ordoliberalisme allemand. Aux sources de l'économie sociale de marché.* Cergy-Pontoise: CIRAC, 2003, p.201-219.

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[5] Erhard, Ludwig. *Prosperity*…, op. cit., p. 102.

[6] Eucken, Walter. *Grundsätze*..., op. cit., p.313.

[7] Zweynert, Joachim. "Shared mental models, catch-up development and economic policy-making: The cases of Germany after World War II and contemporary Russia" in *Eastern Economic Journal (Eastern Economic Association)*, vol. 32 (3), 2006, p.457-478.

participation in the organisation of work, as well as anti-cyclic macroeconomic instruments to ensure full employment[1].

WILHELM RÖPKE

A presentation of the German liberalism after World War II cannot leave out Wilhelm Röpke (1899-1966), who, together with Alexander Rüstow (1885-1963), played an important role in elaborating the concept of social market economy and influenced the reforms of Ludwig Erhard.

After Röpke's death, Ludwig von Mises wrote that a great part of what is reasonable and positive in Germany's monetary and commercial politics can be attributed to Röpke's influence. Along with Walter Eucken, he is considered one of the intellectual authors of the German economic revival[2].

Although an economist by profession, Röpke could be called a Renaissance man: he had a very broad academic education, ranging from sociology and politics to literature and art. After having taught at the universities of Jena and Graz and having worked in the Ministry for Economics in Germany, Röpke was forced to leave Nazi Germany, arriving together with Rüstow at the University of Istanbul in 1937, and afterwards, in Geneva. During the war he published several important works, such as *Gesellschaftskrisis der Gegenwart* (The Society Crisis at Present), *Civitas Humana* and *Internationale Ordnung* (International Order), as well as *Jenseits von Angebot und Nachfrage* (Beyond Demand and Supply). After the war, Röpke was one of the founders of the Mont Pelerin Society.

Both Röpke and Rüstow strongly criticised socialism and the welfare state, as well as too utilitarian an approach of economic liberalism. The market and freedom cannot function by themselves; there is a need for values and basic structures beyond demand and supply. In this way, the two criticise the *laissez-faire* policy, because it does not take into account certain prerequisites related to a moral, ethical, political, judicial and economic law. On the other hand, few were those who brought such strong criticism to the welfare state – a centralised mechanism of social uniformity created by egalitarian democracy. The collective welfare ensured by the state is nothing else but the prosthesis of a collectivist society paralysed by proletarianism, a crutch that protects the economic and moral incapacity of the social classes, caused by the demolition of the old social order. In the "asylum of the welfare state" people turn into "obeying animals from the great state farm," every one of them receiving "a good part of fodder." In reality, it is not the masses that benefit from this evolution, but the state and government, which become the factors of decision in what concerns creating and using capital[3]. Röpke also criticised Keynesianism, which he considered to be a symptom of this centralised way of thinking – manipulation at a macroeconomic level cannot take into account all the microeconomic aspects subjected to continuous modification.

As an alternative, Röpke considers that decentralisation is necessary, as well as the involvement of the citizen in his environment – the family, small communities, clubs, associations –, and a greater autonomy of local and regional authorities. In the economic field, we are talking about small and medium enterprises which, according to Röpke, are disadvantaged by the legislation, created to suit the interest of larger companies.

The German School managed to create an economic, judicial and political synthesis in a coherent organisation of the *framework*, not the economic *act*. Without this framework, the state and

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[1] Müller-Armack, Alfred. "The Second Phase of the Social Market Economy: An Additional Concept of a Humane Economy" in *Standard Texts on the Social Market Economy. Two Centuries of Discussion*. Stuttgart, New York: Ludwig-Erhard-Stiftung, 1982, p.53-61.

[2] Mises, Ludwig von. *Wilhelm Röpke, RIP* in *National Review*, no. 8, 1966, p.200, quoted by Ebeling, Richard. "Wilhelm Röpke: A Centenary Appreciation" in *The Freeman*, October 1999, p.20.

[3] Röpke, Wilhelm. *Jenseits von Angebot und Nachfrage*. Stuttgart, p. 247.

the society could become dominated by strong private economic interests, like it happened during the Weimar Republic. The ideas of Walter Eucken, Franz Böhm and the others were transposed in the economic policy of Germany after the Second World War by Ludwig Erhard and Alfred Müller-Armack. Through the *social market economy* syntagm they obtained the political support to implement the principles of ordoliberalism – establishing an "economic constitution," "rules of the game" of a powerful state that would ensure the economic liberty by protecting fair competition, the best means of creating a market economy that would guarantee justice and social welfare.

LIBERALISM IN EUROPE. AN ENDLESS DEBATE IN FINDING OPTIMAL SOLUTIONS

Reviewing the school of liberal thought in Germany after the Second World War might leave the impression of a divergence in opinions and approaches – from Mises'[1] "intransigence" in what concerns the state intervention in economy to "social liberalism" shared by some ordoliberals[2] or French[3] and Italian[4] liberals.

An analysis would show that the basic principles are the same; there are however differences in nuance, in the degree of the state's involvement or in the angle of approach. These differences are explainable through the different professions of the members of various schools, as well as through the historical experience and the political and social context of different countries.

The emphasis on the free action of the individual, as a starting point in every analysis of economic functioning, is one of the main common principles of European schools. The free action of each individual is precisely the essence of Mises' economic theory[5], as opposed to the statistical, quantitative economic approach, which would allow the economy to be governed. In order to explain how the invisible hand works, Hayek, too, starts from the individual, the only one able to observe, calculate, decide and act freely[6].

Despite the Allies' reluctance, Ludwig Erhard liberalised prices in Germany ever since 1948, this being one of the essential factors that led to the German economic miracle[7]. Free prices, along with an appropriate judicial framework, make possible the functioning of the invisible hand and allow the interaction of a large number of economic agents without the need of direct contact. When the state (or private agents, through cartels or monopolies) intervenes in the process of forming prices, the information contained in the price is no longer correct, and the mechanism is disrupted[8]. Hayek considers that there is a necessity for structures, institutions, and a judicial framework that can prevent the appearance of such cartels and monopolies. The appropriate judicial order, those "rules of the game" which Erhard talked about constitute the other essential pillar of the free market economy. This order has to respect the principles defended by Hayek and the other liberal schools: free and correct functioning of the price system, fair competition, freedom of commerce, private property, freedom of contract. In this context, competition is a means, not a purpose in itself, of ensuring the functioning of a social market economy, which provides the best conditions to as many citizens as possible[9].

Unlike Hayek, Eucken and the ordoliberals had a different vision in what concerns the role of the state in establishing and implementing this judicial order. Ordoliberals cannot agree to the idea

[1] see p.10.
[2] see p.5.
[3] see p.25.
[4] see p.20.
[5] see p.10.
[6] see p.13.
[7] see p.6.
[8] see p.14.
[9] see p.5.

that free market competition rules can appear and be maintained spontaneously, without being enforced and controlled. Thus, it is not sufficient to apply some main principles and then to allow free development[1]. In his 1948 paper *Individualism and Economic Order*, Hayek proposed the deliberate adoption of principles of competition, market and prices as guidelines and using the judicial framework established by the state to allow a competition as effective as possible, intervening only when the framework proves to be ineffective[2]. We can therefore observe a difference, which is not irreconcilable however. Both Hayek and the ordoliberals support a market model through which the actions of economic operators are spontaneously coordinated within the framework of established rules. The state intervention in the delicate mechanisms of establishing prices is not welcome. In what concerns institutional organisation, ordoliberals make a distinction between the daily functioning of the market and a certain planning, an "economic constitution" that cannot be left to chance. The rules of the "game" have to be clearly established, known and applied by a powerful state. A *laissez-faire* in what regards the rules would paralyse the state in front of personal interests, which would compromise the coherence and neutrality of the rules. This approach can be explained through the historical and political context in Germany after the Second World War. The radical change of society called for the elaboration of a new judicial order in all fields, and liberal ideas were not dominant within the political parties. At the same time, the development of German economy after the First World War led exactly to what Eucken had predicted: seizing of the power of groups of private interests. The political context was however influenced by the American supervision in the reconstruction of Germany, as well as by the role played by Erhard in the government of Germany after the Second World War. Hayek himself considered that Erhard could not have accomplished what he had, had he been subjected to bureaucratic or democratic constraints. It was lucky to have the right person in the right place to do what he considered necessary[3]. Even if he did not specifically say it, Hayek would not have been opposed to the efforts of the ordoliberals to create an economic constitution and an institutional reconstruction in the period after the Second World War.

Between more different liberal schools the problem is the state intervention in the economy, with the purpose of developing "the social matter." We are dealing with a continuum from Mises and Hayek at an extreme – to which "social justice" has no meaning in the context of free market economy –, to the representatives of the German and Italian Schools.

For ordoliberals, a powerful state and an institutional structure are necessary to maintain a functional competition, the best way to ensure "social justice." Ordoliberals explained that classic liberals (*laissez-faire*) ignored the probability that, in an environment that allows monopoly, there can be certain individuals who have disproportionate power over others or, in a corporatist society, individuals who can control the public power of the state[4]. Eucken said that the social matter and social justice were the great dilemmas of the time[5]. The fact that the level of income depends on market conditions may lead to serious injustice[6]. Hayek has a different analysis. In his works of social philosophy, he came to the conclusion that the "social matter" cannot be formulated rationally, since there is no one who can give an answer, and the term "social justice" is devoid of content[7]. To Hayek, justice consists in equality before the law, but this does not mean that certain aspects of what "social justice" means are not important. We are however talking about a procedural justice, not a material

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[1] Eucken, Walter. *Grundsätze*…, op. cit., p. 373.
[2] Hayek, Friedrich von. *Individualism…,* op. cit., p.110.
[3] Hayek, Friedrich von. *The Rediscovery of Freedom: Personal Recollections,* in *The Collected Works of F. A. Hayek, Volume 4: The Fortunes of Liberalism, Essays on Austrian Economics and the Ideal of Freedom*. Chicago: The University of Chicago Press, 1992, p.193.
[4] Eucken, Walter. *Grundsätze*…, op. cit., p. 358.
[5] Eucken, Walter. *This Unsuccessful Age…,* op. cit., p.56.
[6] Eucken, Walter. *This Unsuccessful Age…,* op. cit., p.63.
[7] Hayek, Friedrich. *Law, Legislation and Liberty*, vol. 2, op. cit., chapters 9-11.

one. The inequality of incomes is the unpredictable and temporary result of individual abilities and opportunities.. These results cannot be considered just or unjust according to universally acknowledged principles. We can only assess the rules of the economic system as being just or unjust, but not even this assessment can be considered "universal."[1] Still, Hayek does not exclude the possibility of ensuring a minimum wage for those who, within the free market, could not earn their living. Einaudi sustains the same principle of equality of chances and ensuring a necessary minimum[2]. However, just like Rueff, he proposes more interventionist methods to realise this – progressive taxation, inheritance tax, financial aid for certain activities that are desirable for society (such as building houses)[3]. Ordoliberals add other versions of "income policies,"[4] meant to correct the "spontaneous" distribution of income and to satisfy "urgent needs" of the population, all within the concept of "social market economy." Müller-Armack also supports codetermination in the workplace, using anti-cyclic macroeconomic instruments or subventions for small enterprises[5].

THE MONT PELERIN SOCIETY AND THE LIBERAL REVIVAL OF EUROPE

A proof of predominant common principles in the manifestation of the contemporary liberalism is the initiative launched by Friedrich von Hayek in April 1947 in Mont Pelerin (Switzerland) – a debate forum meant to allow reflections on common principles and differences between points of view. This forum – the Mont Pelerin Society – would discuss liberalism and its decline, as well as the possibility of a liberal revival and the desire to form an association of individuals with common beliefs on the nature of a free society[6]. In the society's statement, the 39 members mentioned that the group does not wish to create propaganda. It does not wish to establish a meticulous and limited orthodoxy. It is not allied with any political party. Its objective is simply to contribute to the maintenance and perfecting of the free society by facilitating opinion exchange between the minds animated by common ideals and conceptions[7]. These opinion exchanges were meant to clarify and study problems such as the moral and economic causes of the crisis, redefining the state's functions, methods of re-establishing the lawful state and equality between citizens, the fight against the abusive use of history to promote un-liberal policies and creating an international order that would ensure peace and liberty.

Many of those mentioned in this paper were members or took part in the Society's debates: Friedrich von Hayek (president, 1947-1961), Wilhelm Röpke (president, 1961-1962), Bruno Leoni (president 1967-1968), Walter Eucken, Luigi Einaudi, Karl Popper, Ludwig Erhard, Jacques Rueff, Ludwig von Mises, Bertrand de Jouvenel, Alfred Müller-Armack, Friedrich Böhm, Alexander Rüstow, Salvador de Madariaga. Other members were Milton Friedman, George Stigler, Maurice Allais and James Buchanan, all prominent economists.

Thanks to the lengthy and prestigious academic and public activity, but also thanks to the success of implementing liberal policies in Germany, the representatives of the European liberal schools managed to achieve the objective set by the Mont Pelerin Society, that of promoting "liberal revival." Even if it took several decades, principles such as promoting fair competition and limiting the state intervention in the economy have become universal principles not only in Europe, but in the entire world. As a proof, these principles can be found among the EU accession criteria, a fact that says a lot about the degree of penetration of liberal ideas launched more than 50 years ago.

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[1] Hayek, Friedrich. *Law…,* op. cit., p.27.
[2] see p.20.
[3] see p. 25.
[4] Eucken, Walter. *Grundsätze*…, op. cit., p. 300.
[5] see p.7.
[6] Hartwell, R. M. *A History of the Mont Pelerin Society*. Indianapolis: Liberty Fund, 1995, p.26.
[7] Mont Pelerin Society – "Statement of Aims," 9.4.2010. <https://www.montpelerin.org/montpelerin/mpsGoals.html>

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The Article was draften with the support of the European Union in the framework of European Program POSDRU- **Proiect cofinanţat din Fondul Social European prin Programul Operaţional Sectorial pentru Dezvoltarea Resurselor Umane 2007 – 2013 Axa prioritară 1 „Educaţia şi formarea profesională în sprijinul creşterii economice şi dezvoltării societăţii bazate pe cunoaştere"Domeniul major de intervenţie 1.5 „Programe doctorale şi postdoctorale în sprijinul cercetării".Titlul proiectului: „Ştiinţele socio-umaniste în contextul evoluţiei globalizate – dezvoltarea şi implementarea programului de studii şi cercetare postdoctorală" – ID 61104 Contract: POSDRU 89/1.5/S/61104**

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La réalisation de l'Espace Economique Européen

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Abstract: The Creation of the European Economic Area (EEA). *The long-term cooperation between the European Free Trade Association (EFTA) and the European Economic Community (EEC) – that has meanwhile become the European Union (EU) – led to the creation of a complex economic setting, the biggest in the world when the agreement was signed at Porto in May 2002 . This short article summarizes the evolution of these two European organizations from the perspective of their common project: the European Economic Area (EEA).*
Keywords: *EU, European Economic Area, EFTA.*

A. L'ASSOCIATION EUROPÉENNE DE LIBRE ECHANGE

Le 25 mars 1957, par la signature des Traités de Rome, l'Allemagne, la Belgique, la France, l'Italie, le Luxembourg et les Pays-Bas ont créé la Communauté Economique Européenne[1] et la Communauté Européenne pour l'Energie Atomique (C.E.E.A. ou Euratom). Les Six se proposent à ce moment-là, selon le Traité C.E.E., de « promouvoir un développement harmonieux des activités économiques dans l'ensemble de la Communauté, une expansion continue et équilibrée, une stabilité accrue, un relèvement accéléré du niveau de vie et des relations plus étroites entre les Etats qu'elle réunit ». En réaction à la mise sur pied de cette organisation économique une initiative concurrente vois le jour en 1960[2].

1. Chronologie et objectifs initiaux

L'Association Européenne de Libre Echange a été créée le 3 janvier 1960 par l'Autriche, le Danemark, la Norvège, le Portugal, le Royaume-Uni, la Suède et la Suisse, à l'initiative du Royaume-Uni, par la signature – le 3 janvier 1960 – de la Convention de Stockholm[3], entrée en vigueur quatre mois plus tard, au 3 mai 1960. Le Liechtenstein s'y est rallié ultérieurement, l'Islande en 1970, et la Finlande a été membre associé depuis 1961 jusqu'à son adhésion à l'Union Européenne. Entre 1967 et 1972 ont quitté l'organisation le Danemark, le Royaume-Uni et la Norvège, suite au début des négociations d'adhésion à la C.E.E., le Portugal s'est retiré en 1985, en fin – en 1995 ont quitté l'A.E.L.E. l'Autriche, la Finlande et la Suède, pour le même motif.

Le siège de la toute nouvelle organisation a été fixé à Genève, où a été installé également son *Secrétariat* international. A Bruxelles a son siège *l'Autorité de surveillance* de l'A.E.L.E., compétente dans le domaine de la concurrence. La vocation initiale de l'A.E.L.E. était de mettre sur pied une zone de commerce libre, sans établir un tarif douanier commun, donc sans l'ambition d'évoluer vers une union douanière. Cette organisation fonctionne jusqu'à aujourd'hui comme une simple zone de libre-échange, sans une politique économique commune, à l'exception du fait que les droits de douane et autres taxes pour les importations entre les Etats membres ont été supprimés au 1er janvier 1967.

2. Structure et organes

L'A.E.L.E. est administrée par un *Conseil*, qui est d'ailleurs son seul organe exécutif. L'organisation s'est dotée d'un *Secrétariat*, ayant à sa tête un *secrétaire général*. Le Conseil est composé des

[1] Sur la création de la C.E.E., voir, entre autres, Jean BOULOUIS, *Droit institutionnel des Communautés européennes*, Montchrestien, Paris, 1991, pp. 25-30.
[2] Cette organisation a été créé, selon certains analystes, plus par un esprit de réaction, inspiré aux pays membres par l'initiative d'intégration des six pays fondateurs de la C.E.E.
[3] Sur la création de l'A.E.L.E., voir *L'A.E.L.E.,* Secrétariat de l'A.E.L.E., Genève, 1987, 235 p.

représentants des Etats membres, les décisions étant prises par consensus. Le Conseil se réunit habituellement deux fois par an au niveau des ministres. Cet organe exécutif est assisté par des *comités permanents* et des *groupes d'experts* dans les domaines considérés importants, comme l'agriculture, la pêche, etc. Le Conseil joue entre autres le *rôle d'arbitre* dans le cas des différends entre les Etats membres. Il peut négocier un accord avec un Etat membre ou avec un Etat tiers (par exemple, l'accord du 27 mars 1961 avec la Finlande), ou avec les autres organisations internationales à vocation régionale ou universelle (par exemple, l'accord avec la Communauté.).

Les accords réalisés avec d'autres Etats ou avec d'autres organisations internationales sont soumises aux ratifications des Etats membres.

Le Conseil adopte des décisions obligatoires pour les Etats membres, ainsi que des recommandations. Par l'intermédiaire du mécanisme du règlement des différends cet organe solutionne les cas de non respect de ses actes ou de la Constitution fondatrice de 1960.

L'organisation s'est dotée, suite à l'accord avec la Communauté européenne – pour la réalisation d'un espace économique européen intégré, d'autres structures comme le *Comité permanent*, chargé d'assurer la coordination avec l'Espace Economique Européen (E.E.E.), et la Cour A.E.L.E., siégeant à Genève, chargée du règlement des différends entre les pays membres.

La philosophie de cette organisation est bien différente de celle d'une union douanière, en lui opposant la formule d'une zone de libre-échange[1], par laquelle les Etats membres abaissent leurs barrières douanières internes, mais conservent leurs tarifs douaniers nationaux envers les pays tiers, éliminent les restrictions quantitatives, ainsi que les obstacles non-tarifaires au niveau européen.

L'A.E.L.E. a réussi une bonne période de temps de faire pression sur la C.E.E., en démontrant ainsi la viabilité de l'idée de libre-échange, dont l'intérêt majeur était de suivre le plus possible les rythmes de libéralisation des échanges économiques imposés par les Communautés, mais sans s'encombrer de la bureaucratie supranationale des dites Communautés.

La logique d'une intégration très profonde adoptée par la C.E.E. a fini, pourtant, par donner à cette dernière gain de cause, car de façon indirecte et à travers des méthodes spécifiques elle a réussi à amoindrir le rôle de l'A.E.L.E., en réduisant son effectif à trois membres, tous les autres étant intégrés dans les structures de l'actuelle Union Européenne, où les standards législatifs et institutionnels sont beaucoup plus élevés. En dehors des accords « individuels » de libre-échange réalisés par ses pays membres, l'A.E.L.E. a signé plusieurs accords bilatéraux avec d'autres organisations – c'est le cas, notamment – comme nous l'avons vu, de celui qui la lie à la Communauté (ou à des pays européens, dont la Roumanie[2]).

B. LA COMMUNAUTE EUROPEENNE ET L'EVOLUTION DE LA NOUVELLE ENTITE CREE PAR L'ACCORD DE PORTO

Le plus important des accords internationaux signés par l'A.E.L.E. est celui instituant un Espace Economique Européen, signé à Porto, le 2 mai 1992 (entré en vigueur le 1er janvier 1994), avec la Communauté européenne, suite à un premier accord, du 22 octobre 1991, qui a suscité les critiques de la Cour de Justice des Communautés Européennes (C.J.C.E.)., relatives à la création d'une juridiction indépendante qui aurait eu compétence en matière de règlement des différends, qui s'est soldé ainsi par un échec[3]. L'accord signé à Porto a permis, suite à des négociations ultérieures, un premier élargissement de l'E.E.E.

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[1] Dominique CARREAU, Thiébaud FLORY, Patrick JUILLARD, *Droit international économique*, Dalloz, 3ème édition, Paris, 1990, pp. 123-124.

[2] La Roumanie a signé un accord avec l'A.E.L.E. le 10 décembre 1992, à Genève, accord ratifié par la Loi n° 19/1993, publiée dans le *Moniteur Officiel*, Première partie, n° 75, du 16 avril 1993.

[3] Cf. *EUROPE*, Bruxelles, 16 et 17 décembre 1991, n° 5631, p. 7.

Au départ – radicalement antagonistes, les deux grandes organisations européennes ont fini par subir des évolutions spectaculaires.

1. La Communauté européenne et la coopération initiale avec l'A.E.L.E.

Le but des pères fondateurs des Communautés européennes était celui de mettre sur pied une union totale: économique, douanière, ensuite monétaire, politique et militaire, avec un degré d'intégration très profond, pour promouvoir un développement harmonieux dans l'ensemble des pays membres. Cela a provoqué, nous l'avons vu, des inquiétudes à certains pays non membres, qui par souci de préserver leurs intérêts ont préféré promouvoir une initiative parallèle, menant à la création d'une zone de libre-échange. Malgré l'antagonisme initial entre les deux grandes aires de coopération et les différences de structure (les Communautés étant nées d'un traité comportant une gamme complète d'institutions et d'organes qui collaborent à l'exercice du pouvoir: exécutif, législatif et judiciaire), une amorce de collaboration a été possible dès la décennie suivante à leur fondation, menant finalement à un projet d'envergure.

La coopération entre la Communauté européenne et l'A.E.L.E. pour la création de l'Espace Economique Européen, matérialisée finalement par la signature de l'accord de Porto (Portugal) du 2 mai 1992, était une modalité d'impliquer dans la coopération pan-européenne des pays qui ne pouvaient ou ne voulaient pas adhérer à l'Union Européenne, comme l'Islande, la Norvège, etc. Cette réalisation notable était précédée, comme nous l'avons signalé, par de nombreux accords bilatéraux, qui ont été signés durant les dernières deux décennies d'avant l'accord de Porto, à commencer par les accords de commerce, spécialement après 1973, surtout concernant les produits agricoles. D'autres accords – relatifs aux sciences et technologies, à la protection de l'environnement ou à d'autres domaines d'intérêt mutuel – ont été mis sur pied dans cette période. D'ailleurs, en 1972 les pays de l'A.E.L.E. ont signé individuellement des accords de libre-échange avec la Communauté, dans le but déclaré d'éliminer les taxes douanières à l'importation des produits industriels, action achevée en 1977.

Au-delà de ce cadre, la Communauté européenne elle-même a évolué de manière significative durant ces dernières décennies (dans les années quatre-vingts la Commission Européenne avait lancé le projet d'envergure d'un marché interne complètement intégré, projet retenu par l'Acte Unique Européen – A.U.E. – signé en 1986 et entré en vigueur en 1987), ses relations avec l'A.E.L.E. étant généralement cordiales. On apprécie que la Communauté a été le principal partenaire commercial de l'A.E.L.E. Encore en 1984 les Etats membres de l'A.E.L.E. et la Communauté européenne ont adopté une Déclaration commune relative à la mise sur pied d'un Espace Economique Européen intégré, qui prévoyait les principales voies de leur future collaboration, tout spécialement dans le cadre du commerce des marchandises. Ainsi, entre 1984 et 1989 ont été éliminées les barrières commerciales, au cas par cas, mais il y avait encore des entraves au commerce – vu que certains domaines étaient retenus pour la coopération et d'autres non.

En tenant compte de ces circonstances, à la fin de cette période – dès 1989, le Président de la Commission Européenne – Jacques Delors, avait proposé aux membres d'alors de l'A.E.L.E. (l'Autriche, la Finlande, l'Islande, le Liechtenstein, la Norvège, la Suède et la Suisse) une nouvelle forme de partenariat, beaucoup mieux structurée, qui allait devenir plus tard l'Accord sur l'E.E.E.

2. L'Accord instituant un Espace Economique Européen

Les négociations effectives entre la C.E.E. et l'A.E.L.E., pour la création de l'Espace Economique Européen, ont commencé en juin 1990 et ont mené à un premier accord en 1991, mais qui n'est jamais entré en vigueur, miné par l'intervention de la Cour de Justice de Luxembourg, l'accord définitif étant signé à peine le 2 mai 1992, au bout d'une nouvelle étape de négociations.

a) ***L'importance de l'accord réalisé***

i) *L'échec de 1991*. A l'occasion des travaux préliminaires et par l'accord de 1991 – la Communauté et l'A.E.L.E. avaient essayé de créer une juridiction indépendante, compétente en

matière de règlement des différends éventuels entre les pays membres de cet espace intégré. La nouvelle Cour devait avoir huit juges – cinq de la part de la Cour de Justice des Communautés Européennes et trois de la part des pays membres de l'A.E.L.E.

Mais la C.J.C.E. a apprécié, par avis du 16 décembre 1991, que la mise sur pied d'une telle juridiction porterait atteinte à l'autonomie du système juridictionnel communautaire[1]. L'institution d'un nouveu système indépendant dans le cadre du nouvel accord sur l'E.E.E. était ainsi jugée incompatible avec le Traité C.E.E. La C.J.C.E. y voit également une atteinte à son indépendance et se voit obligée de critiquer la possibilité que pourrait avoir une Cour de l'E.E.E. de définir les compétences des institutions communautaires, ainsi que celles des Etats membres de la Communauté. En plus, selon la C.J.C.E., une Cour de l'E.E.E. ferait sans doute double emploi et serait de toute façon contraire à l'article 219 du Traité C.E.E., qui prévoit l'obligation des Etats membres de soumettre leurs différends à la C.J.C.E. Pour ne pas parler de l'inconvénient créé par le fait que les cinq juges de la C.J.C.E. devront siéger tantôt à la Cour de l'E.E.E., tantôt à la C.J.C.E. – sur des questions commerciales – et dès lors ils n'auront plus leur indépendance d'esprit lorsqu'ils reviendraient siéger à la C.J.C.E. sur des questions identiques à celles dont ils viendraient de trancher à la Cour de l'E.E.E.

Comme la C.J.C.E. ne rend que des décisions obligatoires, la Cour de Luxembourg s'opposait à ce que les Etats membres de l'A.E.L.E. puissent lui demander des avis non contraignants. En outre, aucune des dispositions du Traité C.E.E. n'autorise ses Etats membres à créer une nouvelle institution juridictionnelle.

L'accord instituant un Espace Economique Européen a été considéré comme important de part et d'autre. Cette entente instaura à la date de sa signature une zone de commerce libre de grandes dimensions, un marché interne gouverné par les mêmes règles de base. Suite aux crises successives des années '70, qui ont mené à une poussée de protectionnismes dans le commerce mondial, de manière que les statistiques des organisations économiques internationales montraient que seulement 20 % des échanges mondiaux s'effectuaient en régime de commerce libre (promu alors par le GATT, devenu entre temps l'Organisation Mondiale du Commerce), on a constaté qu'une certaine intensification des « guerres économiques ", ainsi que l'interdépendance croissante des économies mènent à une évolution accélérée vers la libéralisation des échanges économiques. Au point de vue régional, on a observé une libéralisation des échanges par l'intermédiaire des unions douanières ou des zones de commerce libre.

L'Espace Economique Européen, en tant que zone de libre-échange (même si les Etats encore membres de l'A.E.L.E. n'ont transféré aucune compétence législative vers les institutions nouvellement créées par cet accord), ainsi que les autres zones de commerce libre apparues dans le monde ces dernières années, suggèrent l'idée que l'internationalisation croissante des grandes provocations actuelles (les questions liées à la protection de l'environnement, au chômage, le contrôle de l'immigration, les nouvelles politiques industrielles et régionales, etc.) porte atteinte au concept de « souveraineté nationale ", tel qu'il a été compris jusqu'il y a peu.

b) ***Principes généraux et objectifs préliminaires de l'Accord***

i) *Les principes d'intérêt majeur et le premier élargissement de l'E.E.E.* Les « quatre libertés » ou principes d'intérêt majeur pour l'intégration et la coopération économique promus par la Communauté européenne sont applicables à partir du 1er janvier 1994 (la date d'entrée en vigueur du traité de Porto) également aux pays de l'A.E.L.E. L'E.E.E. comprend actuellement 30 Etats – les 27 pays membres de l'Union Européenne et les trois membres actuels de l'A.E.L.E. – et 505 millions d'habitants. La Suisse a décidé par référendum, en décembre 1992, de ne pas participer à l'E.E.E., en reniant ainsi son statut de membre, tout en développant ses relations avec la Communauté européenne par le biais des

[1] Ibid.

accords bilatéraux. Le Liechtenstein est devenu membre à part entière de la nouvelle organisation au 1er mai 1995. Un premier élargissement de l'E.E.E. a eu lieu au 1er mai 2004[1], lorsque dix des douze pays candidats à l'adhésion (la République Tchèque, l'Estonie, le Chypre, la Lettonie, la Lituanie, la Hongrie, Malte, la Pologne, la Slovénie et la Slovaquie) ont intégré l'U.E. Les négociations en vue de cet élargissement, débutées en janvier 2003 et finalisées en juillet, ont eu comme objet les arrangements financiers et les contributions des Etats pour éliminer les disparités de développement, les différences économiques et sociales dans le cadre de l'E.E.E., ainsi que les modalités d'accès sur le marché des produits de la pêche, l'accord étant signé au mois de novembre 2003.

ii) *L'acceptation de l'acquis communautaire. Les exceptions*. L'accord sur l'E.E.E. implique pour les pays signataires (membres de l'A.E.L.E.) l'assimilation de toutes les directives communautaires relatives à la libre circulation des personnes, biens, services et capitaux, des règles dites « horizontales » (la politique sociale, la protection des consommateurs, la protection de l'environnement, la statistique et le droit des sociétés), ainsi que des politiques d'accompagnement ou la coopération en dehors des susdites « quatre libertés » ou les domaines de « flanc » (recherche fondamentale, développement technologique, éducation, formation continue, protection civile, etc.). Ont été exclus du traité constitutif des domaines importants comme les politiques communes concernant l'agriculture et la pêche (mais l'accord prévoit divers aspects concernant le commerce des produits agricoles et piscicoles). L'accord ne comprend pas non plus l'union douanière, la politique commerciale commune, la politique étrangère et de sécurité commune, la justice et les affaires intérieures (même si la Norvège et l'Islande sont des signataires de l'accord de Schengen), l'union économique et monétaire.

c) ***Législation, procédures, institutions politiques et de contrôle de l'E.E.E.***

i) *La dynamique législative de l'accord*. L'Accord signé à Porto en 1992 est réalisé sur la base des traités fondateurs (le droit primaire ou originaire), du droit dérivé (directives, règlements, décisions, etc.) et de certains instruments non-obligatoires de l'E.E.E., adoptés au fil du temps par les institutions communautaires.

L'accord lui-même est constitué de 129 articles, 22 annexes et 49 protocoles.

En respectant une certaine dynamique, les règles usuelles de l'accord sont actualisées continuellement par l'ajout de la nouvelle législation et des nouvelles normes. Chaque mois un nombre croissant de normes et d'actes législatifs relevant de l'E.E.E. sont incorporés dans l'Accord par la décision du Comité Commun de l'E.E.E.

ii) *Le processus décisionnel et les organes de décision de l'E.E.E.* La prise effective d'une décision a posé aux négociateurs des deux parties un problème épineux du point de vue institutionnel et politique. Ainsi, devait être prévue une modalité de prise de décision qui pourrait permettre aux deux ensembles de pays de s'exprimer de façon équitable, mais sans faire appel à un système de pondération de voix, qui aurait procuré de toute façon une majorité confortable aux membres de l'U.E. On a évité également l'hypothèse des négociations bilatérales entre un représentant de l'A.E.L.E. et un représentant de la Communauté. On a opté finalement pour un *Conseil de l'E.E.E.*, formé par les représentants des pays de l'A.E.L.E. et des ceux des Communautés, conseil qui devait se réunir deux fois par an au niveau des ministres. La présidence du Conseil doit revenir, par alternance, au représentant de chacune des deux entités.

Les organes de l'E.E.E. sont les suivants: le *Conseil de l'E.E.E.,* le *Comité mixte de l'E.E.E.* (chargé d'évaluer la jurisprudence des deux Cours de Justice et d'éviter les divergences), le *Comité parlementaire commun de l'E.E.E.* et le *Comité consultatif de l'E.E.E.* Ces organes sont habilités de maintenir la liaison entre les deux grandes organisations économiques continentales.

[1] Les négociations pour l'élargissement de l'E.E.E. ont eu lieu entre janvier et juillet 2003, la signature de l'accord final étant différée pour le mois de novembre de la même année .

iii) *La procédure de règlement des différends*. Suite à maints débats on a accepté finalement que la C.J.C.E. sera seule compétente dans le domaine de la concurrence (autorisations de fusion, aides d'Etat). Néanmoins, l'A.E.L.E. pourra se prononcer à elle seule sur une telle question si au moins 33 % du chiffre d'affaires de l'entreprise fusionnée sont réalisés dans ses pays membres. En même temps, l'U.E. pourra demander que la C.J.C.E. se prononce elle-même dans ce même dossier si la dite fusion aura des conséquences importantes pour son marché.

Une *procédure d'arbitrage* est prévue pour les litiges concernant les autres domaines. Cette procédure sera valable pour tous les litiges que surviendront dans le cadre de l'E.E.E., dans tous les domaines, sauf la concurrence.

En guise de conclusion – on doit rappeler l'importance des implications juridiques et économiques, très complexes, de cet accord, signé une première fois le 22 octobre 1991, mais qui a été renégocié et parafé le 14 avril 1992, signé dans sa forme finale le 2 mai 1992 et entré en vigueur le 1er janvier 1994. Tout d'abord, les pays membres de l'A.E.L.E. devaient intégrer dans leur droit national l'*acquis communautaire* et harmoniser leurs législations dans les domaines les plus importants avec les normes de l'U.E., ce qui même pour eux présentaient des difficultés inhérentes. Mais ces pays n'ont pas été ne seront pas obligés de participer aux politiques communautaires en matière de défense, diplomatie, monnaie unique ou autres domaines communs, par contre ils seront associés dans les affaires commerciales de l'U.E. Ainsi, dans le moment actuel de la globalisation et de l'interdépendance des économies, de la multiplications des échanges régionaux et interrégionaux, l'E.E.E. sera appelé à avoir un puissant impact sur le commerce mondial, dans une époque qui se dessine comme celle des antagonismes entre les grands blocs commerciaux[1].

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[1] Voir en ce sens les développements récents sur les autres continents, les autres essais de coopération régionale dans le domaine économique.

Limits of the Financial and Banking Integration

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Abstract: *The following article makes an overview of the limits of the financial and banking integration inside the Euro Area. The article presents the situation of the Central and Eastern European Countries that have recently joined the European Union and are on the verge of adopting the Euro. The article also presents some of the features of the Single Market and raises questions about the possibility of having a financial integration. The article presents some of the key aspects that are now to be handled by Romania on the road of adopting the Euro.*

Keywords: *banking, European Union, integration, Euro.*

High price transparency and the elimination of exchange rate fluctuation uncertainty accelerate the integration process of EU product markets and financial services.

Integrated product markets contribute to the intensification of international trade, competition growth and support foreign investments. The most integrated financial service markets provide high liquidity markets, distribution possibilities (the diversification of risk) and low capital acquisition costs. Through its role in the international financial system, the single European currency has started to ensure income and to strengthen Europe's resistance to external economic shocks. These positive effects stimulate the high competitiveness of the eurozone economy, which leads to rapid economic growth and higher living standards.

However, the eurozone productivity does not fully correspond to these optimistic expectations. It is much too early to talk about the advantages of adopting the euro. Various empirical analyses evaluating the effects of the single European currency shape a mixed image, not always clear. If we take a look at the expected final effect of the European unification, we have to admit that there are some deficiencies in what concerns the demand of the largest eurozone economy (especially on the labour market). These deficiencies can be explained through the disagreement that persists in national policies implemented between the '70s and the '80s. The euro was introduced in insufficiently reformed national economies and, although it brought advantages in certain fields (increase of international trade, reduction of capital acquisition costs for large companies), its effects could not be reflected in the increase of overall productivity in the eurozone. The euro did not exert a direct influence on the elimination of structural deficiencies (we have mentioned the insufficient flexibility of labour markets, unsustainable social systems in a long-term perspective, inefficient service markets, etc., belonging to several countries that joined the eurozone in the late '90s).

The impact of the euro in the progress of reforms had motivational effects only before the adoption of the currency in 1999, when the euro preparations stimulated a fiscal consolidation and a reduction in inflation. However, the structural reform has remained poor, and after the euro adoption, the process has become slower.

The consequence of insufficient reform initiatives, especially in the area of labour markets, is that some eurozone countries are negatively exposed to the effects of the globalisation, EU market integration and to the EU enlargement to the East. These countries will have to increase the competitiveness of their own employees and renew the trust of investors and consumers; to put it simply, they will have to adapt to the new international environment through essential and structural reforms.

In many eurozone countries, the direct pressure of financial markets on budgetary policies disappeared after the adoption of the euro. The market pressure was replaced by the administrative pressure of the European Commission, less effective and relatively slow in decision-making.

ADMINISTRATIVE BARRIERS. RISKS FOR THE EURO SYSTEM

The single internal market has brought advantages to the business environment and consumers of the EU. However, some barriers persist in areas where common standards have not been accepted and national laws still apply. For example, barriers against the free circulation of goods, services, capital and workers on the internal market diminish the implementation of the single market and of the euro advantage.

In what concerns trade (circulation of goods), we can observe various technical barriers imposed by national governments or unregulated barriers created by consumer groups, trade associations or governmental recommendations that are not compulsory for consumers. Such barriers meant for health protection, environment protection and consumer safety serve national or regional interests and impose additional import costs, which are not covered by producers. Exceptionally, the rules of free goods and services circulation are broken by the member states.

Services are part of the total EU 27 GDP value, with 60 to 70%. Although the service trade between member states is growing (unlike the goods trade), its worth is of only 20% of the mutual goods exchange. Despite the Maastricht Treaty assurances[1], the common market is more likely a distant dream rather than a reality (McCreevy, 2005: 14). Opening a service market by eliminating numerous legislative and administrative barriers is also found in the ambitious project for services *Service Directive on the Internal Market* elaborated by the European Commission in January 2004. Although the estimated economic effects of the adoption of the Directive are favourable, so far the development shows that there are numerous difficulties. Moreover, the Directive is, politically speaking, situated in a very sensitive area.

The financial services and the financial integration represent a significant matter on the EU internal market agenda. The essence of these problems is the creation – still insufficient –, of a regulating legislation for the sector of financial services, seen in an integration vision of European financial markets[2].

The euro has significantly contributed to the integration of monetary markets, bond markets and stock exchange and has brought advantages by lowering the cost of capital acquisition. The retail banking market is still segmented by national borders (Kaltenthaler, 2006: 125). This fact is reflected in the limited amount of foreign loans. Positive effects for the population and small companies are missing. Although supportive measures[3] have been implemented in the legislation, the existence of national regulations in the field of consumer protection prevents the development of the common market. At the EU level there are discussions about the directives necessary for the consumer, meant to harmonise the laws, regulations and administrative measures in the field of loans.

Beyond legislative barriers, the integration is prevented by national languages and cultural barriers, but also by other factors (preference for local service providers, problems in estimating the level of risk for a client of a different EU state, difficulties in evaluating accounts of clients of other

[1] The freedom of services is established through Art.43 of the Maastricht Treaty, according to which a person has the right to develop stable economic activities in one or several member states. The freedom to provide services across borders is emphasized in Art.49 of the Maastricht Treaty, according to which a person providing services in one member state has the right to temporarily provide the same service in a different member state, without the obligation of establishing an organizational structure in that state. These two articles and the freedoms they promote are crucial for the functioning of the internal market of the EU.

[2] This objective is part of the *Financial Services Action Plan* and the *Green Paper on Financial Services Policy 2005-2010*, published in May 2005 (http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0177en01.pdf)

[3] See the second bank directive of the EC, crucial for the elimination of legislative barriers for bank services abroad (http://heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/frdint12&div=18&id=&page=).

EU states)[1]. Problems that slow down the integration of the common financial market include the relatively slow implementation of European laws within national laws, inconsistent implementation of European standards at a national level and the disagreement caused by the lack of supervision of the cross-border cooperation mechanism of European financial supervisors.

The free movement of capital through direct investments is prevented by national laws, through which some member states violate Art.56 of the Maastricht Treaty, guaranteeing the free movement of capital. The norms which limit the acquisition of equity shares or which restrict opportunities for participation in the administration or control of the company discourage foreign investors and restrict the access to the single market.

After the EU enlargement, most of the old member states limited the free movement of workers for a period of even 7 years. Today, in 2010, many eurozone countries still have closed labour markets for the new member states, especially for Romania and Bulgaria. Of course, there are economic reasons for such restrictions. However, they represent extra barriers for the greater economic growth of Europe and contribute to the conservation of the non-flexible economic environment in some western states. According to the *theory of the optimal currency area* (Mundell, 1961: 18-40), the profitability of a monetary union is conditioned by the mobility of the labour force and the capital of the states that make up that monetary union. The theory is correct because if the real economies of the countries that make up monetary unions are affected by an asymmetric shock, the absorption instrument in the form of nominal exchange rate is no longer available. In this regard, Mundell's model relies on the non-flexibility of wages and on the reduction of prices in a short time and, therefore, a response to asymmetric shocks involves only replacing a part of the workforce. If labour mobility is restricted, asymmetric shocks will increase the unemployment rate in the respective countries.

Hochreiter's references (Hochreiter 2002: 160) point out that, while the labour mobility in Europe is low and the stability of the common market has not changed, the flexibility of real wages has risen. This way, according to the renowned economist, labour mobility is not an inevitable condition for the proper functioning of the eurozone. In Hochreiter's opinion, the flexibility of real wages and the flexibility of prices on goods and service markets are the key factors for adapting to asymmetrical shocks.

Tavlas (Tavlas 2002: 172-215) does not agree to the conclusions of the above mentioned economists, showing that the low mobility of labour in the eurozone is alarming. He suggests that although labour mobility is not crucial for creating a monetary union, it is an inevitable condition for its implementation with full rights and benefits for the single European currency.

We consider that the lack of labour mobility in the EU, the administrative obstacles for the free movement of workers coming from the newer member states and, at the same time, the incomplete elements of the common market in the service sector, constitute a major drawback in the faster adoption of the euro by all new member states of the European Communities.

THE COMMON MONETARY POLICY INVOLVES A DECENTRALISED FISCAL POLICY

One of the concerns and possible risks of entering the eurozone is represented by the scepticism regarding the monetary union project. In fact, this is a coherence problem of the common monetary policy based on national competences in fiscal policy matters. The aforementioned aspects have previously been resolved by the *Stability and Growth Pact*[2]. The fiscal pact was conceived in such a way that the decentralised fiscal policy is consistent with the discussions about the common monetary

[1] The integration of credit registries and the retail payment system could contribute to resolving these situations. At present, the payment in euro is ready for retail payments, but we cannot wait for its practical use in the next period.

[2] See http://europa.eu/legislationsummaries/economicandmonetaryaffairs/stabilityandgrowthpact/indexenhtm/

policies. Recent discussions regarding the SGP and its results have led to an amendment of the norms and have shown that the "optimal" proposal of tax norms has not yet been reached, a key to successful implementation of the common monetary policy with the decentralised fiscal policy being the national governments' formal approval and adoption of the laws[1].

The main reason specialists and decision makers in European matters complain about the promotion of certain fiscal regulations is the perpetuation of the deficit, which manifests itself through the implementation of the fiscal policy by almost all states and governments. The uneven political process of the eurozone, the tendency of spending more and indebting future taxpayers – these represent the constant governmental practice of EU countries. The main negative consequences of this practice are the government debt accumulation and the visible pressure on the increase of interest rates, with a negative long-term impact on economic growth.

The uneven fiscal policy generates other negative aspects as well, such as excessive growth of government spending and prices, while also fuelling the pressure of the inflation in the economy. In this case, the monetary policy, oriented towards profitability (or towards exchange rate stability), loses credibility.

Although the European central bank system does not allow financing by central banks without additional norms, responsible fiscal policies cannot be guaranteed (in this context, clear norms are needed, both fiscal norms and contractual obligations).

Within the eurozone, the exchange risk does not function as an instrument that would regulate government lending by immediately increasing their debt costs. Financial markets cannot directly sanction a poor fiscal policy, even if the costs go to other eurozone members (governments, households, businesses). This situation facilitates loans (there is a "free riding" risk – wrong implementation of the fiscal policy without suffering all its consequences).

Another reason supporting fiscal regulations is the stabilising function of fiscal policies in the economic cycle. In certain circumstances, when there is a sufficient margin, the fiscal policy can act as an automatic stabiliser (it can reduce cyclic fluctuations in the economy). A preliminary condition is that the fiscal deficit created within the economic cycle must not be so great that reducing it would impose discretionary interventions. The discretionary fiscal policy is, in general, less effective, since, in the EU, it is difficult to both establish the measures and estimate the effects, which are usually pro-cyclic. In order to stimulate fiscal stabilisers, the level of the fiscal deficit has to be, on average, low enough or close to zero during the cycle, so that the fiscal deficit could be maintained within acceptable limits, including during the recession.

Fiscal laws have to meet certain conditions to become effective. These have to be adequate, not represent an inadequate burden or a restriction for the economy. The laws have to be sufficiently consistent to support trust in the fiscal policy, but also sufficiently flexible to allow the adoption of measures in emergency situations, since otherwise there is a risk of governments not respecting them.

The laws should be simple to enable their supervision, but not so simple as to avoid applying those laws, taking into account the complexity of the economic reality.

The SGP involves 27 EU countries. This policy should respect the differences between the 27 economies and, at the same time, guarantee equal treatment in applying the laws. The SGP cannot be in conflict with the sovereignty of each country.

The SGP was conceived as a two-pillar pact:

- the preventive component consists in establishing adequate fiscal objectives and adopting the convergence programme, namely the stability programme, which ensures that these fiscal objectives are met. The fiscal objectives should make sure that a balanced budget is maintained.

[1] European Commission, Economic and Financial Affairs, Special Issue, 20-29 September 2010.

- the corrective component resolves the situation when the fiscal policy deviates from the established objective and requires a correction. The discipline of this component comes from the maximum deficit level of 3% or from the application procedure of excessive deficit.

The Economic and Monetary Union is built on uneven foundations. The monetary policy of the eurozone is correlated with the explicit responsibility of the European Central Bank. The fiscal policy is decentralised, but the coordination problems are only partly covered by the Stability and Growth Pact. In addition, the European Commission has certain options of implementing fiscal transfers through the Structural Funds to help those regions affected by negative shocks. The economic policies are almost exclusively the responsibility of the state.

From a long-term perspective, the stability of the Monetary Union can be difficult to achieve, with the exception of reaching a political union. A common position of EU countries is currently realised through a complicated long-term process. In the eventuality of a major economic and financial crisis, like the one we are experiencing at present (2009-2010), a strong asymmetric shock may affect the eurozone, a problem that would need an appropriate response[1].

At present, the EU is capable of acting quickly and efficiently, given the actual crisis, even if we are witnessing a relative failure of the subsequent reform of the Stability and Growth Pact. Besides, the issue of a closer political integration is not an urgent matter of the eurozone. The EU can function in its actual form for a long-term stability of the EMU. There is a necessity to create a mechanism for taking decisions quickly in crisis situations and correcting asymmetric shocks efficiently through fiscal transfer meant to strengthen the coordination of fiscal policies.

When the periodic assessment of the preparation stage of new member states for joining the EU (based on the Copenhagen criteria) started, fears concerning the next integration step appeared – certainly, the fulfilment of the nominal convergence criteria might lead to a decrease in inflation and to a consolidation of public finances, but could in short-term jeopardise the economic growth in these states. It has been shown that in the support of the nominal convergence process short-term economic costs can appear, but on a medium and long term, the fulfilment of the Maastricht criteria supports the real convergence process.

An important element in taking decisions on inflation involves the promptitude of the disinflation strategy. The permanent decrease of the inflation rate may be accompanied by a temporary decrease of production. Too rapid a decrease in inflation may expose the structural defects of the real economy. The dilemma of low inflation or economic growth represents a challenge for researchers, most of them accrediting the idea that a rise in inflation over a certain threshold is detrimental to economic growth and that, in addition to high costs due to the level of inflation, the economy must also support costs generated by uncertain decisions of the economic agents. On the one hand, efforts meant to reduce the inflation below a certain threshold are harmful for economic

[1] The Commission proposes a comprehensive package of legislative proposals and measures for a *European Economic Pact*. The ECOFIN has approved the agreement that allows supervision authorities of the financial and banking system of the EU to become operational from January 1, 2011 (www.euractiv.ro, September 8, 2010). It is a matter of complementing an already strong monetary union with an authentic and real economic union. It is already time to achieve these – Oli Rehn, European Commissioner for Economic and Financial Affairs (European Economy News, Issue 19, October 2010).

growth. Therefore, analysts consider that the optimal inflation rate in developed countries may vary between 1-3% (Bruno & Easterly, 1998: 14-18). On the other hand, the monetary disinflation strategy depends on the transmission mechanism existent at the level of the monetary policy. The Central Bank has to take into account the benefits and costs of a comprehensive strategy between inflation volatility, on the one hand, and the volatility of another variable – product, output gap (loss of economic performance to the potential or rate of interest) and commercial deficit –, on the other hand.

For example, the study regarding these problems for the Czech Republic shows that fast disinflation leads to better results in what concerns the output gap, but to a greater commercial deficit, while slow disinflation leads to a greater output gap with a lower commercial deficit (Mahadeva & Šmídková, 2001).

THE REGIONAL IMPACT OF THE SINGLE EUROPEAN CURRENCY AND THE SYNCHRONISATION OF ECONOMIC CYCLES

During the last years, empirical studies have discovered a growing synchronisation of economic cycles between the new EU member states and the eurozone countries. The structure of these countries' economies has become closer to that of the eurozone, thus reducing the risk of asymmetric shocks (Pisani-Ferry & Sapir, 2009: 69-70).

The rising role of the euro in the region can be assessed according to the exchange rate arrangements (single currency status agreement), the currency composition of national reserves and the public debt, the use of the euro in bank loans and deposits, in invoicing foreign trade and in domestic contracts.

In what concerns the status agreement for exchange rates, more and more countries have anchored their national currencies to the euro. Four of the new EU member states (Bulgaria, Estonia, Latvia, and Lithuania) have anchored their national currencies with fluctuations between different margins. Apart from Lithuania, the countries come under the regulation of the Monetary Council (Szapary, 2009: 122). Croatia and Macedonia, not part of the EU, have anchored their currencies *de facto*, through a controlled fluctuation. Bosnia and Herzegovina has anchored the currency according to the Monetary Council recommendation, while Montenegro and Kosovo have unilaterally adopted the euro as a national currency.

Therefore, all South-Eastern European countries except for Albania and Serbia have either adopted the euro or anchored their currencies to it. This goes to prove the role of the euro as the reference nominal currency of countries that are not yet members of the EU, but could be candidates. At the same time, the reference currency role of the euro is evident in the case of free floating currencies both in the EU (Poland, Romania and Hungary) and outside the EU (Serbia, Albania). The Russian rubble varied *de facto* around the US dollar until 2005, but since then the variation takes place around the dollar and the euro, the latter's role being more and more visible. In the nearby countries, only the Ukrainian hrvynia is anchored to the dollar, however, during the current financial crisis, the currency has depreciated by over 90% (Szapary, 2009: 124).

The presentation of exchange rate arrangements clearly reflects the rising role of the euro, not only within the EU member states, but in other countries of the region as well. The authorities' deliberate decisions of coordinating their monetary policies according to the euro show their recognition of close commercial links between these countries and the eurozone and the wish to use the euro as a stable nominal anchor. In the case of free floating currencies, their growing stability towards the euro shows a high degree of commercial and financial integration in relation with the euro area. The reaction of the monetary authorities of these countries, reflected in the evolution of exchange rates, is influenced and tends to be guided by the steps taken by the ECB, a natural approach that shows the close financial integration.

Table 1: The Maastricht Criteria (Indicators of Nominal Convergence)

Indicators of nominal convergence	**Maastricht Criteria**	**Romania**	**Bulgaria**	**Czech Republic**	**Hungary**	**Poland**
Inflation rate (IAPC) (percentages, annual average)	<1,5 pp over the average of the three best performing EU member states (1.6%*)	5.6	2.5	0.6	4.0	4.0
Long-term interest rates (percentages per year)	<2 pp over the average in the three lowest inflation member states (5.3%*)	9.7	7.2	4.8	9.1	6.1
Euro exchange rate (maximum percentage appreciation(+)/depreciation (-)**)	±15 percentages	–15.1	0.0	–6.0	–11.5	–23.2
Annual government deficit*** (GDP percentages)	under 3 %	8.3	3.9	5.9	4.0	7.1
Government debt*** (GDP percentages)	under 60 %	23.7	14.8	35.4	78.3	51.0

*) reference level
**) calculated as maximum deviation of the euro exchange rate in 2009 compared to the 2008 average, based on daily data
***) according to the ESA95 methodology
Source: Eurostat, http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/

The euro is also the most important reserve currency of national banks in Europe and outside (Morocco, Tunisia).

Most central banks consider national reserve data to be confidential, so public data is approximate. In the official reserves of non-eurozone EU countries, in Bulgaria and Lithuania, the euro reserves go over 90%, in Romania 70% and in Croatia 86% (Szapary, 2009: 127).

These high percentages are explained by the euro's role of accord, but also by the high level of financial integration of the respective states with the eurozone.

The countries, in the decision to create and administrate currency reserves, take into account the currency composition of the public debt. Thus, the currency in which most of the country's debt is expressed usually predominates in the national reserves. In Romania, for example, only 68% of the public debt is in euro, which would explain the 70% euro proportion in the national reserves. 99% of Lithuania's public debt is expressed in euros, and the euro national reserve is close to 100%[1].

Lithuania's currency is anchored to the euro through a Monetary Council agreement, which constitutes a plausible reason for the quasi-total euro reserves. This is also the case of Bulgaria, where 90% of the reserve is in euros, while the public debt in euros was of 67% in 2007.

[1] See www.bnro.ro.

Table 2: Currency composition of the public debt in Central and South-Eastern Europe

Country	2004	2005	2006	2007
Bosnia				
euro	21.4	22.5	25.5	28.2
US dollars	18.8	19.6	18.3	16.7
SDR	33.6	33.7	33.3	32.6
other	26.2	24.2	22.9	22.5
Bulgaria				
euro	44.4	55.7	63.1	67.3
US dollars	39.4	29.5	25.7	25.7
other	16.3	14.8	11.2	7.0
Estonia				
euro	100.0,0	100.0	100.0	100.0
Lithuania				
euro	88.2	n.a.	n.a.	99.4
US dollars	6.7	n.a.	n.a.	0.0
other	5.1	n.a.	n.a.	0.6
Romania				
euro	54.4	54.8	61.7	68.4
US dollars	35.7	34.8	28.6	23.0
SDR	3.2	2.0	0.8	0.0
Other	6.7	8.4	9.0	8.6
Slovenia				
euro	n.a.	n.a.	n.a.	99.6
US dollars	n.a.	n.a.	n.a.	0.4

Source: http://www/petersoninstitute.org/publications/paper/szapary1008ppt.pdf

Another characteristic of the countries neighbouring the eurozone is the large share of euro loans and, to a lesser extent, deposits in other foreign currencies. Loans and deposits in euro are dominant, with the exception of Hungary, where the Swiss franc predominates, and Ukraine, where loans in US dollars prevail.

In 2007 foreign currency loans represented 50% or more from the total loans on average and reached 80% in countries that operated with Monetary Councils and where the exchange risk was still present – Estonia[1] and Lithuania. In countries with floating currencies, euro loans were greater – 72% in Albania, 59% in Hungary and 55% in Romania (Szapary, 2009: 129). Loans in foreign currency were facilitated by the dominant role of foreign capital banks in the bank structure of Central and Eastern Europe countries.

Another way of evaluating the euro influence in the region is related to its share in settling or invoicing foreign trade. This has risen during the last years and it is greater than the percentage of exports and imports from the eurozone, which demonstrates the importance of commercial transactions denominated in euro with third party countries (Szapary, 2009: 132).

Approximately 60% of the Czech Republic's exports are headed towards the eurozone, while almost 70% of its exports are denominated in euro. The difference is greater in the Baltic

[1] Estonia will join the eurozone on January 1, 2011.

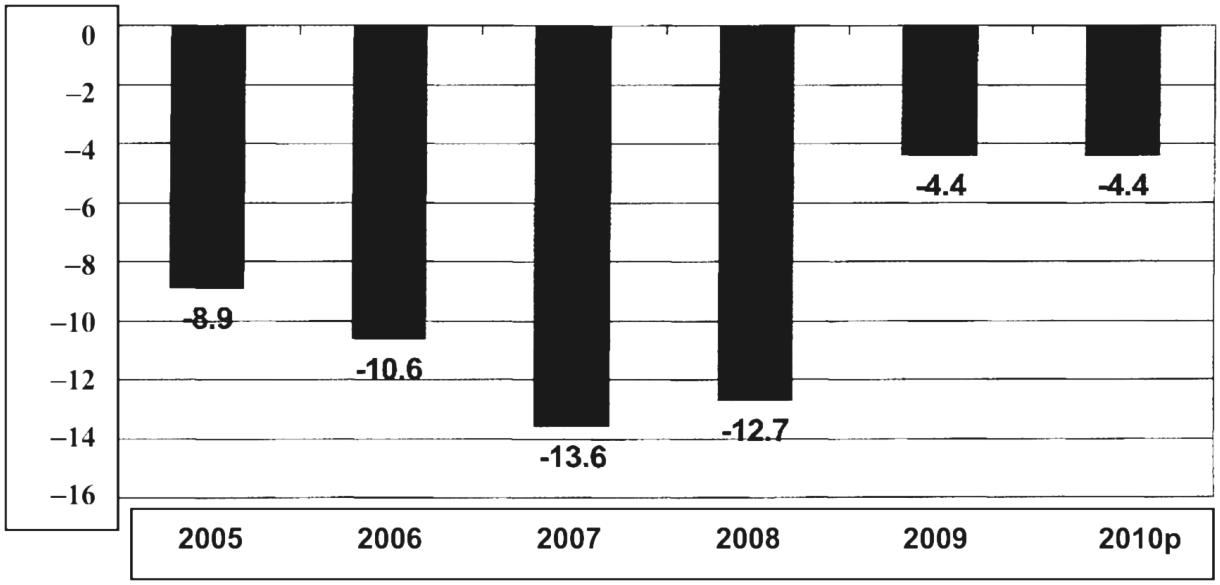
States (Estonia, Latvia and Lithuania), who export between 25 and 31% towards the eurozone, while almost 55% of the total exports are denominated in euro. In Romania, over 50% of exports are headed towards the eurozone, and 69% of the exports are denominated in euro.

Table 3: The Degree of Openness of the Romanian Economy

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Degree of openness*	70.7	74.5	76.1	77	80.6	76.3	76.3	72.4	75.6	67.4

***** (export+import) of goods and services/GDP
Source: http://www/petersoninstitute.org/publications/paper/szapary1008ppt.pdf

Table 4: Romania. External Imbalance. Import/Export. Current Account Deficit (% of GDP)



Source: Idem; BNR statistics processed by the author

60% of the total Czech imports come from the eurozone and 68% are invoiced in the single currency. The Latvians have almost 61% of imports denominated in euro, while 46% of these come from the eurozone.

Romania imports 48% of the total from the eurozone, while imports denominated in euro reach almost 72%[1].

Romania's problem is the high current account deficit. In 2009 and 2010, the deficit decreased not because of the corrections in the economic structure, but because of the crisis.

A final way of establishing the impact of the euro on the region's economy could be the presence of the single European currency in the denomination of contracts and the cash movement in the respective countries. Although there is insufficient statistic data regarding this type of usage, the euro is often used in real estate leases for premises (e.g. offices), especially when the tenants are foreign companies or individuals.

[1] See http://www/petersoninstitute.org/publications/paper/szapary1008ppt.pdf.

In July 2009, the European Central Bank estimated that in 2008, in Eastern Europe, 43% of the euro bills outside the eurozone were bought, and 45% were sold. A research of the National Bank of Austria[1] confirms the phenomenon analysed by the ECB and points out that the possession of euro bills varies considerably from country to country and tends to be greater in South-Eastern Europe countries than in Central and Eastern Europe countries. This situation can be explained as a reaction to a high inflation rate, especially in former Yugoslavia countries and Albania.

The relatively high rate of cash possession in countries near the eurozone is also due to the fact that the eurozone countries are the main business, shopping or holiday destination for many citizens. There are a few assumptions according to which a number of euro bills are used in these countries in the underground economy.

The European environment is a transparent one. In order to take advantage of that, these countries have to take certain steps, including the acceleration of economic and structural reforms and the liberalisation of trade and capital movements. The euro represents an opportunity of redefining the exchange rate policy, the European currency being a factor of stability.

* * *

The authors wish to thank for the financial support provided from the program co-financed by The Sectoral Operational Program for Human Resources Development, Contract POSDRU 6/1.5/S/3 – "Doctoral studies, a major factor in the development of socio-economic and humanistic studies".

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Le développement de l'Economie sociale et solidaire, un enjeu européen pour la future programmation 2014-2020?

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Abstract: The development of social economy and solidarity, a European issue for the future 2014-2020 programming?. *The social economy is also an economy of solidarity. Its finality is not the profit. The european Commission supports this economy with the structural funds. The social economy is important in France. Few regions practice the development of the social innovation in France. "Provence -Alpes-côte d'Azur" (PACA) is an exception. The Belgian Presidency (2010) stresses the importance of social economy.*
Keywords: *social innovation, development, EU.*

Née d'influences diverses, l'Economie sociale et solidaire réunit sous un même vocable une diversité d'organisations qui mobilisent au quotidien des hommes et des femmes ainsi que des moyens économiques pour atteindre des finalités autres que la réalisation d'un profit financier.

L'idée d'une économie dont le but n'est pas stricto sensu le profit financier est un concept on ne peut plus paradoxal, et trouver ce paradoxe exprimé et défendu au sein même de la politique économique européenne est un fait qu'il convient de souligner.

Il est à mettre au crédit de la Commission européenne de défendre cette option, de la faire exister, de la nommer et de la soutenir financièrement. Dans le foisonnement des objectifs de Lisbonne et de Göteborg, il s'agit bien d'intégrer un modèle économique qui concerne déjà une large part du salariat français.

L'économie sociale et solidaire est au centre des notions d'innovation socio-économique, de développement durable et plus globalement de société de la connaissance. Toutes notions qui sont balisées et conceptualisées et qui portent en elles leur propre modèle de développement.

Au modèle global de type libéral, vient se surajouter un autre modèle, tout aussi transversal, mais dont on n'a pas encore pris la mesure. Il ne semble y avoir, à aucun niveau que ce soit, un rejet de la notion, mais plutôt une incompréhension pratique qui amène souvent à l'incapacité de se saisir de cette réalité économique.

Pour être effectives, les politiques engagées se doivent, à tous les niveaux (européen, national ou régional), d'engager un véritable travail de conceptualisation de la notion et de compréhension de ses fonctionnements. Faute de quoi, chaque étape de transmission financière ou politique risque de constituer une source de blocage supplémentaire plutôt qu'un rouage efficace, capable d'insuffler une dynamique propre.

Les enjeux de l'économie sociale et solidaire sont d'abord didactiques, où l'effort de formulation et d'explicitation au niveau national et local en est à ses débuts. Dans la mesure où la donnée sociale et solidaire est de plus en plus reconnue, il s'agit de lui donner force d'objectif et de veiller qu'elle ait assez de poids idéologique pour ne pas constituer qu'un simple alibi dans l'ensemble de la politique économique européenne.

UN SECTEUR DYNAMIQUE EN FRANCE:

9,9 % de l'emploi français
2,3 millions de personnes salariées
53,1 milliards d'euros de rémunérations brutes
215 000 Etablissements employeurs
Plus de 100 000 emplois créés chaque année[1]

1/ ÉTATS DES LIEUX: LES FONDS EUROPEENS REGIONAUX FSE ET FEDER

Les fonds européens régionaux de l'Objectif Compétitivité régionale et Emploi (Objectif 2) représentent pour la période 2007-2013 un levier programmatique et financier de près de 26,45 milliards d'euros pour le développement des territoires. Ils sont gérés essentiellement au niveau régional par les Préfectures et les Conseils régionaux.

Les autorités françaises (la DATAR pour le FEDER et la DGEFP pour le FSE) ont établi un Cadre de référence stratégique national (CRSN) pour articuler l'intervention des fonds structurels (FEDER et FSE) aux politiques nationales. Ce cadre définit les orientations stratégiques pour contribuer à la politique de cohésion économique et sociale et constituer un instrument de référence pour la préparation, le pilotage et la révision de la programmation des Fonds.

Maquette financière de l'Objectif Compétitivité régionale et emploi pour la France pour la période 2007-2013 en milliards d'euros

Fonds	UE	Public	Privé	Total
FEDER	5,59	8,16	3,72	17,46
FSE	4,49	3,34	1,16	8,99
Total	10,09	11,49	4,87	26,45

NB: Les co-financements publics et privés ne sont pas systématiquement acquis. Il est du ressort du porteur de projet de mobiliser ces co-financements.

État d'avancement au 30/05/2010 Objectif Compétitivité régionale et emploi pour la France *Donnée Infocentre Présage*

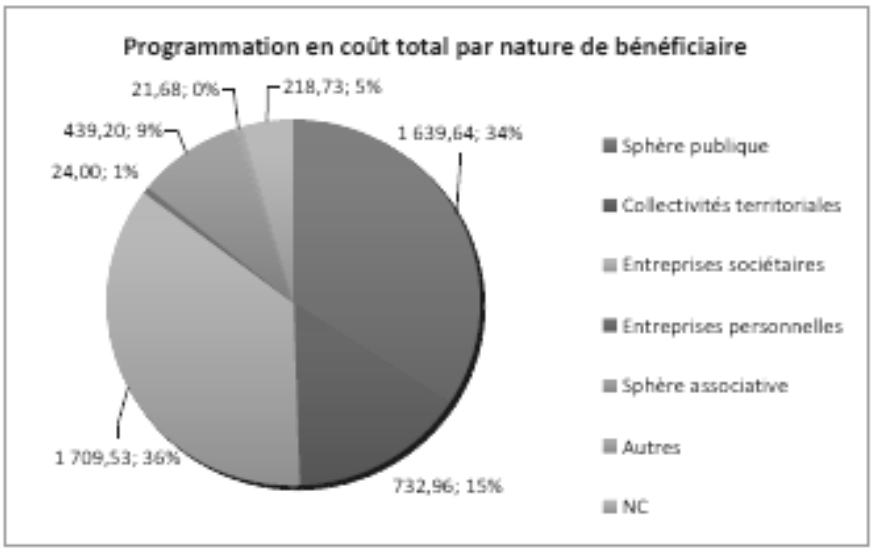
Fonds	UE	%	Public	%	Privé	%	Total	%
FEDER	1,88	33,6%	3,17	38,9%	2,20	59,3%	7,26	41,5%
FSE	1,74	38,8%	2,02	60,5%	0,39	33,5%	4,15	46,2%
Total	3,62	35,9%	5,19	45,2%	2,59	53,2%	11,40	43,1%

Prévision du dégagement d'office au 30/05/2010
Objectif Compétitivité régionale et emploi pour la France
Donnée Infocentre Présage

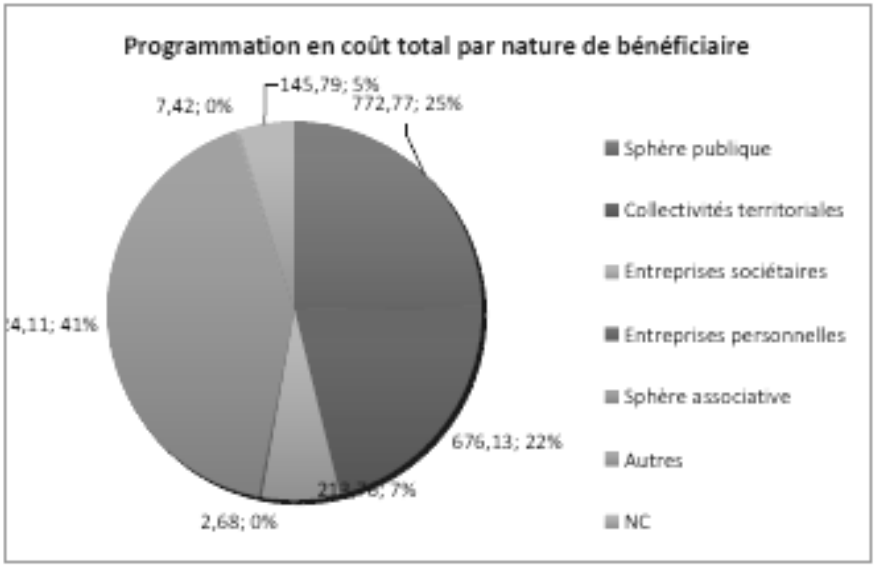
Fonds	**Dépenses nouvelles à réaliser** au 31/12/2010 pour échapper au dégagement d'office	Montant des **contributions de l'UE** calculées pour le dégagement d'office
FEDER	1 360 845 441 €	**421 083 434 €**
FSE	735 165 049 €	**367 470 345 €**
Total	**2 096 010 490 €**	**788 553 779 €**

[1] Source: Panorama **2010 – l'Economie sociale et solidaire en France et dans les Régions. Observatoire national de l'économie sociale et solidaire – CNCRES – Décembre 2010.** www.cncres.org

Nature des Bénéficiaires du Fonds Européen de Développement Économique Régional (FEDER) 2007-2013 FRANCE
Données infocentre presage au 01/11/2009



Nature des Bénéficiaires du Fonds Social Européen (FSE) 2007-2013 FRANCE
Données Infocentre Presage au 01/11/2009



2/ ECONOMIE SOCIALE ET SOLIDAIRE ET INNOVATION

Issus de la stratégie de Lisbonne-Göteborg révisée en 2005, les principaux axes d'intervention de la Politique régionale européenne 2007-2013 sont l'Innovation, le Développement durable et l'Emploi.

a) L'Innovation

Contexte

L'innovation technologique est une notion fortement cadrée par les référentiels communautaires et nationaux. Elle se traduit par une homogénéité d'affichage (tous les programmes proposent les mêmes objectifs centrés sur la recherche, le transfert de technologie, les projets collaboratif, le financement de l'innovation, les pôles de compétitivité, ...).

On note **deux grands types de stratégie d'intervention** (et beaucoup de situations mixtes):

- Les régions qui privilégient des **stratégies de construction ou structuration de l'offre** d'innovation technologique. Il s'agit le plus souvent de région qui ont peu anticipé la montée en puissance de l'innovation dans les économies régionales, au sein desquelles l'appétence pour ce sujet est faible, où la recherche et les filières ne sont pas ou peu structurées. Ces régions financent beaucoup les équipements de la recherche ou la mise en place de filières (infras-universitaires et de recherche, plateformes de recherche, incubateurs, pépinières, équipements de laboratoires) mais ont plus de mal à faire émerger des projets ;
- Les régions qui privilégient des **stratégies d'accélération ou d'optimisation des réseaux et outils** déjà en place. Il s'agit des régions qui avaient déjà largement anticipé le mouvement dans la génération de programmes précédents, dotées d'un tissu d'entreprises dense et déjà sensibilisées, où la recherche et les filières sont plus structurées. Ces régions mettent davantage l'accent sur les outils de financement de l'innovation ou sur les questions d'organisation, de formation, de management de l'innovation. Elles sont en avance sur le développement de projets collaboratifs et sont plus sensibles à la nécessité de déployer des actions au plus près de l'entreprenariat. On note dans ces régions une dynamique de programmation plus forte.

Les Stratégies Régionales d'Innovation (SRI) et la prise en compte de l'innovation sociale

Dans le cadre de la mise en œuvre des Programmes opérationnels FEDER 2007-2013, les régions ont élaboré une Stratégie Régionale d'Innovation (stratégies arrêtées fin 2009).

Ces stratégies, préparées dans une démarche partenariale entre les services déconcentrés de l'Etat (SGAR, DRIRE, DRRT) et les Conseils régionaux, ont été élaborées en deux phases: une phase de diagnostic, qui permettait aux régions de faire le point sur leurs faiblesses et leurs atouts, et une phase stratégiques où État et Région devaient définir des priorités stratégiques communes.

La forme des diagnostics

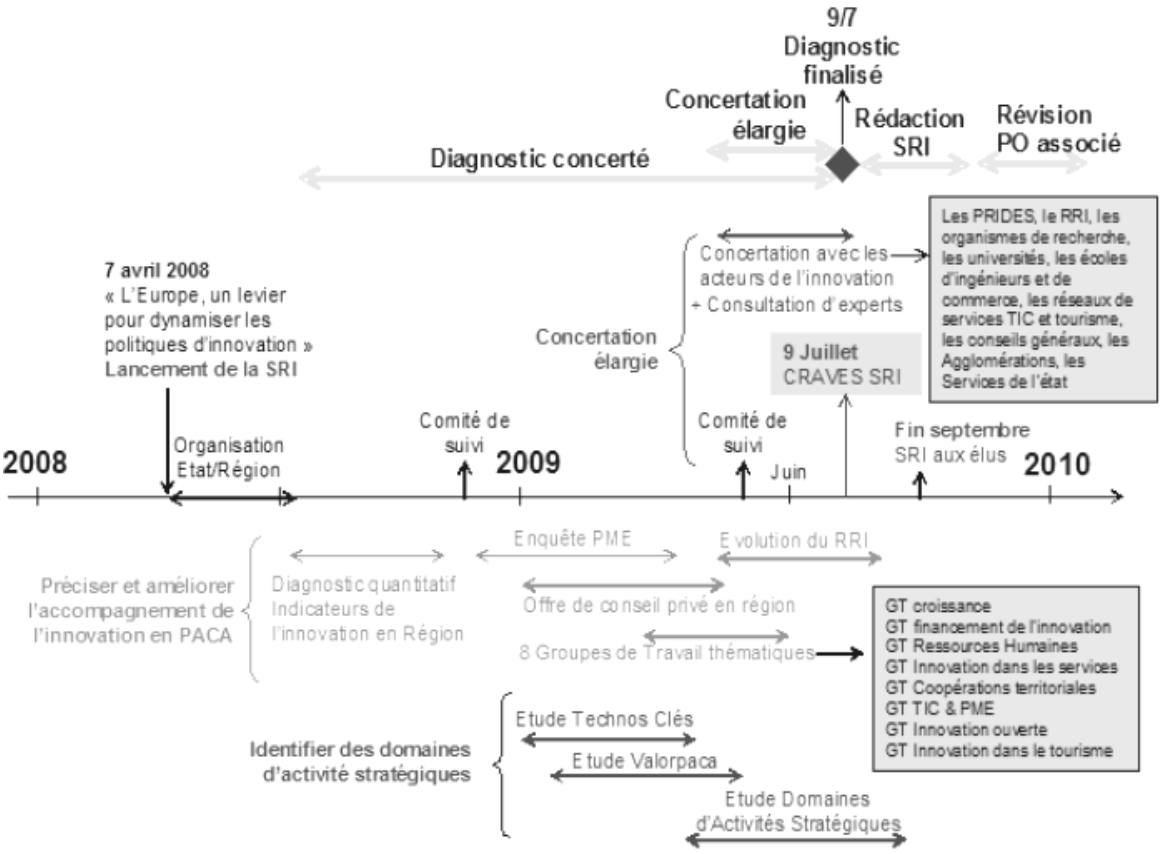
Elle varie très sensiblement selon les régions. Alors que certaines régions ont rédigé un document complet avec une synthèse, d'autres ont simplement déjà défini des éléments de stratégie sans établir formellement un diagnostic.

Modalités de validation

La validation de l'étape de diagnostic s'est effectuée selon des modalités elles-mêmes très diversifiées. Soit:

- d'une simple approbation dans le cadre d'un comité de pilotage du programme opérationnel. Cette option a été retenue par 4 régions (Aquitaine, Auvergne, Pays de la Loire, Rhône-Alpes) ;
- d'une validation des orientations stratégiques dans le cadre d'une réunion de concertation ou d'une manifestation régionale ad hoc ;
- d'une approbation formelle du document par le préfet de région et le président du Conseil Régional (ex. Bretagne, PACA).

L'exemple de la région Provence-Alpes-Côte d'Azur:



Le contenu de ces stratégies

Certaines régions ont exclusivement défini quelques point clefs et des axes stratégiques alors que d'autres ont élaboré un manifeste de politique économique accompagné d'un plan d'actions. D'autres encore ont rédigé un document permettant de modifier directement le Programme opérationnel FEDER.

La prise en compte de l'innovation sociale

Peu de Régions font clairement référence à la nécessité de la prise en compte de l'innovation sociale. Néanmoins, la Région PACA a mis en place des Pôles Régionaux d'Innovation et de Développement Economique Solidaire – PRIDES – faisant clairement référence à l'ESS.

La plupart des régions françaises se limitent cependant à la prise en compte de l'innovation via une approche en terme de recherche et développement et d'innovation technologique.

L'innovation sociale est parfois mentionnée à travers les services qui constituent clairement un potentiel important de croissance et d'innovation. Il existe par exemple dans les services à la personne, une logique d'innovation qui répond à des besoins importants.

L'Observatoire régional de l'Economie sociale et solidaire PACA (ORESS PACA) a, pour sa part, entrepris une réflexion collective avec les acteurs de l'ESS sur la caractérisation de l'innovation sociale.

b) Le Développement durable

Le développement durable ne constitue pas un chapeau introductif ni un modèle d'organisation du diagnostic territorial. De même, **les orientations communautaires et nationales étant davantage centrées sur l'environnement que sur le développement durable**, cette empreinte initiale se retrouve clairement dans la structure des programmes qui ont tous identifié un axe dédié à l'environnement.

L'analyse permet de dégager un modèle type de prise en compte du développement durable dans les programmes qui correspond à une fusée à 3 étages:

- un axe dédié à l'environnement,
- la mise en place de critères transversaux (plus ou moins contraignants),
- dans certaines régions, la mise en place d'outils d'accompagnement à une meilleure prise en compte de l'environnement voire du développement durable (grille développement durable d'analyse des projets, mission d'appui dédiée, formations des services à la prise en compte de critères qualitatifs).

L'axe dédié à l'environnement a élargi son champ d'intervention par rapport à 2000-2006: changement climatique et maîtrise de l'énergie complètent les mesures traditionnelles axées sur la biodiversité, la ressource en eau, les risques.

On observe dans beaucoup de programmes l'existence de liens, c'est-à-dire des mesures, voire des actions qui articulent, intègrent les composantes économiques et environnementales (innovations, technologies vertes, recherche sur la biodiversité, tourisme durable par exemple).

Les liens économie et social ou social et environnement sont beaucoup plus rares (TIC au service du social ou de l'environnement; innovation sociale sur les appels à projet urbain par exemple).

3/ PERSPECTIVES

Les institutions européennes commencent néanmoins à intégrer l'Economie sociale et solidaire dans leurs prises de position. Ainsi, on peut noter les Conclusions de la Présidence belge du Conseil de l'Union européenne des 27 et 28 octobre 2010 intitulé « L'économie sociale et la Stratégie Europe 2020, La plus-value locale et l'ancrage territorial » Bruxelles:

« *La Présidence est convaincue que l'économie sociale peut apporter des réponses positives et durables aux défis de la société européenne.*

A l'heure où les propositions législatives pour la future politique de cohésion sont en cours d'élaboration par la DG REGIO de la Commission européenne, nous pouvons nous demander quelle place sera faite à l'Economie sociale et solidaire et si cette hypothétique intégration prendra en compte un de principes directeurs de cette économie alternative à savoir la gouvernance démocratique citoyenne.

The theoretical and practical implications of Criminal Convention regarding the corruption concluded in Strasbourg 1999 upon Romanian legislation

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Abstract: *Considering Resolution (58)7 regarding the authorisation of creating of an enlarged partial Agreement, which establishes the Group of States against corruption – GRECO,* the Penal Convention regarding Corruption *was also issued in January 27, 1999 at Strasbourg (STEN 173), convention which had a decisive impact upon changing the vision of the Romanian legislator regarding aspects concerning the notion of 'corruption', both of incriminatory as well as of procedural order.*
Keywords*: criminal law, corruption, conventions, European law*

1. INTRODUCTION

The member states of the European Council and other states[1], considering that the aim of the European Council is to build a tighter unity among its members, being convinced by the necessity of promoting in a priority way of a legal common policy with the purpose of protecting the society from the corruption phenomenon, which constitutes a threat to the supremacy of law, democracy, human rights by undermining the principle of a proper administration, equity, encroaching of the economic development, are agreeing for the establishment of an adequate legislation and proper procedural measures concretized in The Criminal Convention regarding the Corruption, concluded in Strasbourg in January 27, 1999.

Out of the recent development of some measures at international level against corruption, we mention the measures taken by the United Nations Organization, the World Bank, the International Monetary Fund, the World Trade Organization, the American States Organization. Some of the results are: *The Action Program Against Corruption*, adopted by the European Council Ministers Committee in November 1996; we also mention the Resolution 1 adopted by the European Ministers of Justice within the XXI Conference (Prague 1997) which resorts to urgent application of the previously presented program and recommends the issuing of a criminal convention regarding the corruption; we also wish to mention the *second Summit which took place at Strasbourg in October 10-11, 1997* and the *Resolution from November 6, 1997*, which refers to the 24 fundamental principles concern the fight against the corruption phenomenon authorizing the Ministers Committee to finish within the proper time the papers issuing the international legal instruments. Considering Resolution (58)7 regarding the authorization of creating of an enlarged partial Agreement, which establishes the Group of States against corruption (GRECO)[2], the *Penal convention regarding corruption* was also issued in January 27, 1999 at Strasbourg (STEN 173). The latter convention, as we are about to see as it follows, had a decisive impact upon changing the vision of the Romanian legislator regarding aspects concerning the notion of 'corruption', both of incriminatory as well as of procedural order.

2. THE LINK BETWEEN THE CONVENTION PROVISIONS AND THE 5TH ARTICLE FROM CORPUS JURIS (2000)

Between these two, there is a series of similarities regarding their content. It can be observed that the deal of corruption offence is made on the both sides of the subject, which is the active and passive corruption, a conception taken from the French doctrine and criminal legislation.

We can find this opinion, to a certain extent, also in the Romanian [3] doctrine. Both two forms of corruption contain, also in the Convention and Corpus Juris, same elements of the *actus reus*.

Corpus Juris refers only to the member states of the European Union and the common institutions, while the Convention refers to every state-party [4]. But among the member states of the European Union, those who have ratified the Convention, we consider that the qualified subjects of these legal international norms are overlapping due to lato-sensu interpretation which is received by the notion of civil servant in the European law. The only statute foreseen by the Convention, upon it could fall the suspicion that it's not incorporated by the expression "civil servant" from the European law, is the "agent or judge of an international Court" one.

To find an answer on this problem we must start from the interpretation of the 5th Article from E.C.H.R. concern the activity of "justice". The justice is represented by every organ with competence in solving litigations, and by consequence implicitly defines the term "agent or judge". In supporting this conclusion we'll refer to a series of decisions of the European Court: Van Marle/Holland, Van Leuven and Meyere/Belgium, H/Belgium.

Thus, by the time of entry into force of Corpus Juris for the member states of the European Union, the two mentioned international norms will overlap perfectly upon the provisions of corruption offences.

3. THE COMPATIBILITY BETWEEN THE PROVISIONS OF THE CONVENTION AND THE ROMANIAN LAW

Neither the Criminal Code nor the special domestic law have offered a definition to the concept of corruption and this fact led to a tendency of extrapolation, situation ended by the article 5 of Law 78/2000[5], modified by Law 161/2003[6]. It considers that crimes are: the ones stipulated by article 254-257 from the Criminal Code[7] (Accepting Bribe, Offering Bribe, Accepting Undeserved Goods, Traffic of Influence); the crimes stipulated by the articles 6^1 (influential buyer), article 8; crimes assimilated to those of corruption stipulated by the articles 10, 11, 12, 13 of Law 78/2000; crimes directly[8] linked with corruption(articles 17-18 of Law 78/2000), assimilated [9]to those of corruption (articles 10-16 of Law 78/2000) and those against the financial interests of the European Union[10]

The Article 2 has correspondent in the article 255 of Criminal Code, with the note of the formulation "any un-owed advantage" that corresponds in the Criminal Code with "money or other benefits". The notion of money or other benefits, in the way formulated by the Romanian legislator, can be explained due of the insufficiently formulation in the criminal field only on the basis of Romanian Civil Code provisions, and implies an interaction between the patrimony of the briber (or a tertiary) and the bribed, more exactly at least the possibility of increasing the patrimony of the civil servant co-related with the decreasing patrimony of the briber, according to the element of the objective side from the article 255, which is made by the doer.

To demonstrate the meaning of "other benefits" understood by the legislator, we'll refer to the provisions regarding the special confiscation that require a patrimony feature to this notion [11].

In this way, the promise made by a civil servant but without a patrimonial feature(for example, passing the exam for somebody) can not framed at the article 255 of the Criminal Code, but

eventually at the article 257 of the Criminal Code if are fulfilled the conditions of the latter offence. Also, the donations [12] without economic value are not associated with the bribe offence.

The drafter of Convention preferred the formulation "un-owned advantage" that regards the valuable and non-valuable element. As a result, we have two choices: first, in a wider way, the interpretation of bribe could be extended, making abstraction of the "money" and this notion is associated with the notion "other benefits"; secondly, the national drafters cold take the formulation from the Convention. The former is considering better.

The article 3 from the Convention corresponds, regarding the objective side, the offence of bribing also to the national public agent, the provisions of article 1(a-d) of the Law 78/2000.

The objective side of the offence (stated by the article 3 of Convention) contains only actions, and the correspondent provision from the domestic law contains in addition an inaction, that is "non-rejecting the promise". As a consequence, it can be observed that it is imposed an active behaviour to the Romanian civil servant, that is to refuse of the briber.

Due to in-advertences that persist between the Convention ratified by Romania and the provisions of the article 254, as well as between the Convention and the Draft of the Criminal Code (article 303) we are suggesting to straighten them.

Another interesting aspect is that in the paragraph 3 of the article 303 of the project, are included also the categories of subjects from the article 8 from the Law 78/2000. Qualified subjects are to be seen also in the provisions of articles 5, 6, 7,8,9,10,11 from the Convention. From this statement we conclude that the purpose of legislator is to include the provisions from the special laws (that is Law 78/2000 and 16/2003, implicitly those from the Convention) in the Chapter I of the Title VI "offences and corruption offences".

The Article 4 of the Convention refers to the *actus reus* of the offences stated by the articles 2 and 3, committed by a member of the Parliament. This quality of the active subject, therefore also this offence is to be re-find in to a smaller extent in the Law 78/2000, more concrete in the article 1(f) - "the persons that hold a leading role in a party or in a political entity".

A member of parliament in his law making activity acts in his official capacity, representing a collective organ, thus, taking into consideration the require of the criminal responsibility to have an individual [13] character, it considers that he can't commit the offence stated by the Article 4 of the Convention; rather is being possible to engage another form of responsibility in the practice, that is the political responsibility. This approach is based upon the legality of the activity of lobby and existence of interest groups. However, making abstraction of the professional activity of the members

of Parliament [14], they can be either subject of an active corruption, in generally, either is under the provisions of article 13 of the Law 78/2000.

The article 5 is recovered due of the quality imposed to the perpetrator in the article 8^1 (e) and article 8^2 of the Law 78/2000.

The active special subject (article 6 of the Convention), whom is member of public assemblies, falling under provisions of the article 8^1 (f).

The Article 7 and 8 from the Convention refers to the corruption from private sector and it was criminalized by the article 254, 255 from the Criminal Code, as a result of the Law 140/1996, regulation which bring together the legal texts regarding to the notion of "civil servant" and "other employees", stating that the notion of civil servant include also the "public officer" one, as it is regulated by the article 147 of the Criminal Code, and also "any employee that exercises a duty in the interest of a legal[15]entity"; moreover, the Law 78/2000, in the article 1(b, e) refers to this aspect, too.

The Article 9 of the Convention regarding international civil servant is finding its applicability in the provisions of article 8^1 (a, c) of Law 78/2000.

The next article refers also to the quality of the subject, the member of international parliamentary assemblies one, regulated by the article 8^1 (b).

The Article 12 criminalized the conduct of the trafficker and the buyer of influence[16] and are founded in the article 247 from the Criminal Code and article 6^1 from the Law 78/2000, introduced by the Law 161/2003.

Before the intervention of this domestic law (no 78/2000) the person that was buying the real influence or the alleged one of the traffic author couldn't have the active quality of a subject, so he was not criminal responsible [17]. Our criminal code, inspired by other legislation, didn't punish the act of influence buyer(as it is stated in the case of giving bribe offence), which is charged distinctly by the offence of giving bribe, even if in reality, the offence of buying influence have obviously a social danger.

By the formulation of the article 6^1 the rising question is what is the meaning of a person "with influence, or at least making to believe of having influence". To explain this formulation of the legislator, identical to the formulation of the article 257 of the Penal Code, we start from the answer given by the doctrine in the case of this offence. Thus, in a first form, the trafficker has in a concrete way the influence, or he is enjoying in a real way the trust and the respect of that public officer, we are having in the view an objective criterion. This eventually can lead to the influence presumption of the prospective trafficker, a fact that in our conception is unacceptable. Going even further with this suggestion we could say than that every person that enjoys the respect, or is having an important function can be connected by the influence buyers.

The second form (he's letting to believe) [18] is realizing when is created the wrong belief that trafficker can influence a civil servant.

In both forms it is essential that the trafficker is adopting an active attitude and not a passive one, either by an action, or inaction; in the support of the mentions above we refer to the criminal Convention regarding the corruption, from Strasbourg, which in the article 12 imposes the prospective trafficker to "say" or to "confirm" he's able to exercise such an influence. If we wouldn't make such of reference to the behaviour adopted by the trafficker, than we would analyses the existing condition of the offence ("has...influence") through the angle of subjective of the buyer, and the measure in which he had represented the capacity of influencing the trafficker and if it can be proved, he is perpetrator of the offence stated by the Article 6 of the Law 78/2000. And if we would analyse instead in an objective way this condition, the things would complicate even more by considering the effects of the error in which the buyer would be.

Regarding *ferenda law,* we're suggesting the reconsideration of this regulation in consonance with the Law 27/16 January 2002 regarding the ratification of the convention with the one from Convention.

The article 13 imposes the states who have ratified the Convention to incriminate the acts of money laundry [19] caused through performance of corruption offences. In the article 17 of the Law 78/2000, which is represented by offences directly linked with the corruption, at letter *e* are stated acts of money laundry [20] from the Law 656/2002.

In the article 18 of the Convention is established the responsibility of the legal entity for the offences of briber, influence trafficking and money laundry derived from corruption offences.

To stimulate this form of responsibility the physical person must represent, lead and control the activity of such legal entity. "The premise situation"[21] is fulfilled if the person has by the time of committing the offence one of the three qualities.

The responsibility of the legal entity is engaged no matter of his form of participation that the leader/representative is acquiring in committing the offence (author, accomplice, and instigator).

This is applicable also when due to shortage of surveillance or control, another person being under the authority of such person concern by aligns. 1 is committing such an offence. It can be observed the possibility of accumulating the responsibility of the legal entity with the physical person.

In order to pronounce upon the form of responsibility of the legal entity, it must be analyzed the Article 19(2) regarding the penalties and measures to be taken against this person. The formulation proposed by this article contains an extreme large interpretation, making reference only to "efficient sanctions", whether if they have a criminal, civil or administrative feature. However, taking into account the feature of the Convention, the criminal law one, and the fact that the physical person has committed an offence in the name of the juridical person, we can pass in the way of giving criminal responsibility [22] to the legal entity.

This interpretation can be proved through the references of similar dispositions from the Corpus Juris project. Thus, the article 13 establishes the criminal responsibility of the juridical person for the offences of articles 1-8 from Corpus Juris, when the offence was committed in the interest of the entity by any other person that acts in behalf of his name and interest.

On the same line, the dispositions of article 5 and 6 of E.C.H.R. are not excluding the possibility of penal sanction to the juridical person.

This change of vision of the European legislator is reflected also in the domestic law, thus the draft of Criminal Code is setting up the criminal responsibility of the juridical person for the offence of giving bribe and influence trafficking.

4. CONCLUSIONS

The purpose to confer to juridical person a criminal responsibility would be represented by a much strong and consistent punishment, realizing in this way one of the purposes of criminal trials, the general prevention translated by the general and abstract fear of the society toward a criminal result.

The article 20 imposes to the parties of the Convention the establishment of a specialized authority in the fight against the corruption. Through the Ordinance no. 43/2002 it is established the National Anti-corruption Authority which receives, depending on the nature of the offences stipulated by the Law 78/2000 and the prejudice caused by the perpetrator [23] to the state, the exclusive competence to accused the perpetrators of these offences.

The article 22 stipulates the taking of measures in order to protect the witness and the co-operator in front of the corruption offences. The Law 682/2002[24] in the article 2(3) (h) foresees the possibility of taking special measures of the witnesses and their inclusion in the program of witness protection when an offence of corruption is under investigation.

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The EU Roma Strategy and the Involvement of Regional and Local Authorities of Romania in 2010. A Case Study

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Abstract. *Europe needs an effective implementation of a EU Roma Strategy. The involvement of Regional and local authorities is crucial for the success of the EU Roma Strategy. As an example, Mureş County, known as the county with the largest number of officially registered Romas in Romania, was included in vast projects for the Romas' social integration, most of them managed by the Roma National Agency and others developed and financed by the authorities from the local budget. The regional and local authorities implemented several concrete measures for Roma inclusion in Social, Education and Health fields. However, long-term vision, perseverance and active participation of Romas are necessary, for the success of EU Roma Strategy.*
Keywords: *EU Roma Strategy, historical perspective, statistics, social problems, public policies, education, health, EU projects.*

1. FOR A EUROPEAN ROMA STRATEGY

The Roma people constitute the largest ethnic minority in Europe. Member states are now home to approximately 10-12 million Romas, the majority inflicted by social exclusion, discrimination, segregation and deep poverty. Although there is a Roma community living in all the 27 Member States, the largest live in Romania, Bulgaria, Hungary, Slovakia, the Czech Republic and Spain. The agenda of the Spanish-Belgian-Hungarian Presidency sets forth the need to manage the existing problems with efficient measures and instruments[1]. The objective of the Hungarian Presidency is to encourage the EU Member States to adopt a European framework system of their Roma integration strategies (a European Roma Strategy). The framework would be the corner stone of the unified European Roma Policy, on the basis of member states to develop their own Roma integration reform programmes in the future[2].

The President of the European Commission, José Manuel Durão Barroso, stated: „We need increased action by public authorities and majority societies, as well as increased civic responsibility among the Roma. Finally, while we should encourage the Roma to take control of their destiny and responsibility for their lives, we must first offer them real opportunities. What kind of opportunities, then? Mainstream education. Mainstream jobs. Mainstream housing. We must reach out to the Roma."[3]

The 10 Common Basic Principles on Roma Inclusion[4] were presented for the first time at the meeting of the European Platform for Roma inclusion in Prague on 24th April 2009. On 8th June 2009

[1] Hungarian Presidency of the Council of the European Union, Creating a European Roma Policy, in http://www.eu2011.hu/developing-european-roma-policy
[2] *Ibidem.*
[3] José Manuel Durão Barroso, President of the European Commission, *Speech -"European Roma Summit",* Brussels, 16 September 2008, http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/429&format=HTML&aged=0&language=EN&guiLanguage=en
[4] European Commission, *The 10 Common Basic Principles on Roma Inclusion,* in http://ec.europa.eu/employment_social/fdad/cms/stopdiscrimination/downloads/Vademecum_Roma/FDAD_Roma-vademecum-EN.pdf

the Council of Ministers in charge of Social Affairs annexed the Principles to their conclusions and invited Member States and the Commission to take them into account[1]. These 10 principles are:

„1 Constructive, pragmatic and non-discriminatory policies;
2 Explicit but not exclusive targeting;
3 Inter-cultural approach;
4 Aiming for the mainstream;
5 Awareness of the gender dimension;
6 Transfer of evidence-based policies;
7 Use of European Union instruments;
8 Involvement of regional and local authorities;
9 Involvement of the civil society;
10 Active participation of the Romas"[2].

Principle No. 8 focuses on regional and local governance, as actors at local level are essential for Roma inclusion. These authorities play a key role in the practical implementation of the policies[3]. Having in view the size of the Roma minority in Romania, we consider it is important to analyse the involvement of the local authorities in Romania, in 2010-2011, in the county where the largest number of Roma people is officially registered. This is Mureş County. Therefore, we have to analyse the social realities and the public policies in Romania, with precise elements on the field, in Mureş County.

2. HISTORICAL PERSPECTIVE

The Roma community problems have historical origin. The Romas' slavery lasted for more centuries, starting with the Middle Ages to the middle of the 19th century. It has left obvious traces, visible at present, both regarding the structure and the localisation of the different Roma groups, in their economical-social situation and their relationship with the state and the European authorities.

The period between the 14th and the 15th century is considered to be the period of the first Roma migration to Europe. The Romas' presence was first recorded in The Romanian Countries in Moldova around 1400, then in Transylvania and Walachia. [4]

Approximately 450 years of "Gipsy slavery" followed, till the middle of the 19th century. During that slavery period, but especially starting with the 17th-18th century, the Romas were subdued to forced settling policies, the most important being empress Mary Theresa's and emperor Joseph II's policies. Therefore, in the 19th century, in Transylvania, the immense majority of Romas was forced to settle. They settled in villages and towns, beside Romanians, Hungarians, and Germans[5].

The temporary government of the Walachia during the Revolution in 1848 and then Prince Alexandru Ioan Cuza (1859-1864) abolished the Romas slavery. The movement for slavery abolishment in the USA had an influence on the Romas slavery abolishment in Romania[6].

The abolishment laws in the middle of the 19th century constituted the beginning of a great territorial mobility of the Romas, which lasted till the beginning of the 20th century. That period is

[1] *Ibidem.*
[2] *Ibidem.*
[3] *Ibidem.*
[4] Viorel Achim, *The Gipsies in the History of Romania,* Bucharest, Enciclopedica Publishing House, 1998, passim; George Potra, *Contributions to the History of the Gipsies in Romania*, Bucharest, 2002, passim.
[5] *Ibidem.*
[6] *Ibidem.*

considered to be the second great migration of the Romas, also called "the period of the Roma emancipation" for the Romas on Romanian land[1].

The inter-war period is considered to be a phase within the Roma integration and inclusion, but the proportion of this process is difficult to establish. According to the census in 1930, in Romania, the largest number of Romas was registered in Transylvania. Mures County (then consisting of Târnava Mică and Mureş counties) has been on the first place concerning the number of Romas ever since[2].

World War II was extremely difficult for the Romas in Romania. The Antonescu regime took harsh measures against the Romas with numerous consequences, including deportation of thousands of people to Transnistria[3].

The communist regime marked a new phase within the Roma social integration. The democratic policy of the communist regime led to a significant increase of the birth rate among the Romas. The Roma community increased considerably. The policy of encouraging the increase of the birth rate also had negative consequences: the abandonment of children and their placement in orphanages, the perpetuation of the social and economical inequities, new problems of marginalisation and ethnic discrimination, the lack of professional training etc[4]

After 1989, Romania began a period of transition, with serious economical and social difficulties, the Roma minority being equally affected. The increase of the economical and social marginalisation and of unemployment, the Roma delinquency and school abandonment are only part of the negative aspects characteristic of this period[5].

Looking back on the Roma history, both old and recent, we can notice that the relatively high percentage of the Roma ethnic minority as part of the Romanian population has its origin in the adopted demographic policies concerning the Romas throughout the time. A good example is the situation created in this area in the 19th century when it became a necessity to constitute free and numerous labour, "beginning by taking measures to settle the Romas, they were that necessary for the economy". Thus, between the 18th-19th centuries while other European states were sending Romas away, in the Romanian Countries, they took measures to settle them. The need for labour in this period made the authorities take "measures to settle the Romas, they were that necessary for the economy". The number of Romas increased in Romania due to the policy of the communist regime which encouraged the increase of the birth rate[6].

3. STATISTICAL DIMENSION

There are at least two different sources referring to the number of Romas in Romania. Therefore, it is compulsory to approach this topic from two different points of view: the formal sources (the Direction of Statistics, the research of different institutions/organisations) and the informal sources (Roma leaders' estimations or the ones made by the representatives of the institutions/organisations with attributions in the areas where Romas live).

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[1] *Ibidem.*

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[3] *Ibidem.*

[4] *Ibidem.*

[5] Viorel Achim, *The Gipsies in the History of Romania,* Bucharest, Enciclopedica Publishing House , 1998, passim; George Potra, *Contributions to the History of the Gipsies in Romania*, Bucharest , 2002, passim.

[6] *Ibidem.*

1. The census in January 2002 recorded 535,312 Romas. Thus, we notice that the people who declared they are Romas are one third more than in the previous census and represent 2.5% of the total population (21,680,974). In 1992, they represented 1.8%[1]

However the Roma organisations estimated a total of 2,500,000-3,000,000 Romas in Romania (11.5%-13.8%), but neither of these numbers has been proved through a scientific calculus method[2].

Within the research made in 2007 by the Research Institute for Quality of Life - as part of the Romanian Academy- with a high level of credibility from the statistical point of view, they estimated that there are 1,515,000 Romas in Romania, which is 6.9% of the total population[3].

2. Most of the people who declared they are Romas live in Mureş County: 7%, that is 40,425 people of the total population in the county (58,851). But the Roma leaders announced a much bigger proportion: at least 20%, many organisations and even institutions agreeing with this percentage[4].

Taking into account both of the estimations concerning the number of Romas, we can approximate their number at 80,000 in Mureş County that is 14.2% of the total population.

In the following lines you can see the most conclusive findings concerning the demographic aspects of the Roma population in Mureş County in 2010:

- The Romas are the second important minority in Mureş County, after the Hungarian minority (39.3%);

- Most of the Roma communities have been identified especially in rural areas, representing three quarters of the total number of Romas in the county;

- The demographic structure is very young comparing to the rest of the population; the average age of the Roma population is approximately 24 years old[5];

- One third of the Roma population in Mureş County consists of children between 0-14 years old, whilst the elders represent 5%. However, due to the tendency towards fertility decrease, concerning the Romas, too (this also concerns the Romanians and the Hungarians), the number of Roma children is decreasing;

- There are two dominant family and household patterns: 56% of the households consist of the basic family (parents and children) and 44% also have other people with them, other than the basic family;

- 91.3% of the 60 and over 60 year-old Romas live with somebody else in the household and 8.7% live alone (as a comparison, taking into consideration the whole Roma population, 26.3% of the Romas over 60 years old live alone) [6]

- From the point of view of the spoken language, in Mureş County there are 3 categories of Romas: speakers of Hungarian and Romani (50%), speakers of Romanian and Romani (30%) and the rest of 20% are "Romas/Gabors with hats" who speak the closest language to the traditional Romani.

- From another point of view, in Mureş County (as well as in the whole of Transylvania), there are 2 categories of Romas: "the Romas/Gabors with hats" (who keep the tradition, the costume and the unwritten laws in an average proportion) and the home Romas (they are the ones who have been integrated and adopted the majority's lifestyle and rules). The main means through which the home Romas adopted a different lifestyle (a normal one, I might add, having in view the characteristics of the century we live in) are: marriage to people who are not Romas, attending a school and thus not

[1] RomaniCRISS Organisation – Bucharest (www.romanicriss.org), The Roma National Agency (www.anr.gov.ro), Mures County Direction of Statistics (www.mures.insse.ro)
[2] *Ibidem.*
[3] *Ibidem.*
[4] *Ibidem.*
[5] RomaniCRISS Organisation – Bucharest (www.romanicriss.org), The Roma National Agency (www.anr.gov.ro), Mureş County Direction of Statistics (www.mures.insse.ro)
[6] *Ibidem.*

keeping in touch with the people in the area they grew up in, working, adapting to the worldwide globalisation and modernisation etc[1].

4. ROMA COMMUNITY SOCIAL PROBLEMS IN 2010

In rural areas, there are often Roma communities at the edge of the villages; there are seldom Roma communities which are isolated from certain points of view: their households are rudimentary, without any building plan and the land they live on is often polluted. There are also the Roma communities in the centre of the village: they occur as a result of occupation (illegally or by buying them) of the houses in villages whose population was on the wane or where there were massive immigrations (firstly, the villages which were left by the Germans in Transylvania)[2].

In urban areas, there are Roma communities which live on the outskirts of the towns: they are usually part of the town. There are sometimes Roma communities inside the towns, in the areas which were left in a state of neglect after the industrial reorganisation after 1989. There are also Roma communities settled in the historical centres of the towns: they are families placed in former nationalised houses, sometimes occupied illegally. These illegalities are due to the fact that part of the Romas does not own identity cards[3].

At present, taking into consideration the Romas in Mureş County, 15% do not own the places they live in, in comparison to 3% of the population, at national level[4].

There are different types of exclusion from settling. The most frequent forms of exclusion can be identified in the areas where poverty prevails.

Poverty is affecting most of the Roma population in Romania. The lack of stable financial resources is one of the causes which trigger social exclusion. It maintains the Romas in a continuous "stand-by", in a state of financial insecurity. More than 50% of the Guaranteed Minimum Income beneficiaries are Romas, which has a special relevance as regarding these Roma families' social situation and standard of living[5].

According to a communiqué of the leaders of the Mureş County Agency for Employment, in 2010, the unemployed Romas represented less than 10%, which is a very low percentage and that is, the Agency thinks, because the problem is they do not have the necessary qualification/s[6].

Specialists notice that many Romas change their job very often. A total of 2,605 Romas are registered at the Mureş County Agency for Employment, 83 of them get the unemployment dole and 2,522 do not. Thus, the serious problem they are facing is the lack of qualification/s- and of studies[7].

According to the data gathered on the field, most of the income obtained by the Roma communities in Mureş County in 2010 can be divided into 2 big categories:

- Formal income: most of the Roma families get income from the state: social doles, children's education doles, pensions for the Romas who had been working before 1989 (in heavy industry or agriculture), unemployment doles; very few have income as a result of employment with an employment contract[8];

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[1] *Ibidem.*

[2] RomaniCRISS Organisation – Bucharest www.romanicriss.org, The Roma National Agency (www.anr.gov.ro),The Direction of Interethnical Relations (www.dri.gov.ro), The Ministry of Education (www.edu.ro), www.studentie.ro

[3] *Ibidem*

[4] RomaniCRISS Organisation – Bucharest www.romanicriss.org, The Roma National Agency (www.anr.gov.ro), The Direction of Interethnical Relations (www.dri.gov.ro), The Ministry of Education (www.edu.ro), www.studentie.ro

[5] *Ibidem.*

[6] Mures County Agency for Employment(www.mures.anofm.ro)

[7] *Ibidem.*

[8] *Ibidem.*

- Informal income: they are the most numerous because of the impossibility of having access to some formal income. Most of the Roma families had to resort to all kinds of marginal activities in order to obtain income. In urban areas, they collect and sell recyclable materials, small trade activities (selling seeds, vegetables, flowers, used products etc), they un/load goods for different companies, and other activities which are barely legal. In rural areas, fewer activities can be performed. Most of the times, Romas have to work "by day", to perform activities for other members of the community; they also leave for other areas of the country in order to work on the fields in summer or they collect ferrous or non-ferrous materials etc[1].

In this context, it is useful to mention the fact that the number of Romas who have left abroad (to work or to perform other activities in order to get formal or informal income) is at least equal to the number of Romas registered by the authorities as being unemployed[2].

5. PUBLIC POLICIES AND EUROPEAN PROJECTS FOR THE ROMAS IN ROMANIA- MURES COUNTY, IN 2010

In the present context of the "Romas problem" in Europe, in 2010, Romania continued and accelerated the projects and public policies implementation in order to improve the Romas' situation and to integrate them in the society. The efforts made by the Romanian authorities are remarkable.

Mureş County, known as the county with the largest number of officially registered Romas in Romania, was included in vast projects for the Romas' social integration, most of them managed by the Roma National Agency and others developed and financed by the authorities from the local budget.

The Roma National Agency obtained financial support for strategic projects co-financed from the European Social Fund through the agency of the Sectoral Operational Programme for Human Resources Development 2007-2013, "Investing in people" [3], projects which will have been implemented by the end of 2011.

As I have mentioned above, most of the Romas live in rural areas, but the ones who benefit from these programmes live in towns: a quarter of the total.

From an objective point of view, it is necessary to mention the local authorities' efforts and especially the benefits generated by the implementation of these projects in Mureş County, good results being achieved concerning Roma integration.

- **Education: problems and solutions**

The lack of education is one of the most serious problems the Roma community faces generally; in Mureş County, there has been significant progress in this respect.

The Mureş County School Inspecting Authority has had a very active policy concerning the Roma community. For instance, they obtained 310 places for Roma children in high-schools and 27 places in universities. 25 of them are in "Petru Maior" University, 1 in the Medicine and Pharmacy University and 1 in the Theatre Art University. There are also 30 Roma teachers teaching Roma pupils, 3 or 4 times a week, in educational institutions throughout the county, institutions where Roma children are registered[4].

[1] Mureş County Agency for Employment (www.mures.anofm.ro)
[2] *Ibidem.*
[3] Sectoral Operational Programme for Human Resources Development 2007-2013, http://www.fseromania.ro/index.php?option=com_content&task=blogcategory&id=6&Itemid=11&lang=en
[4] The Direction of Interethnical Relations (www.dri.gov.ro), The Ministry of Education (www.edu.ro), www.studentie.ro

There is also a job at the Mureş County School Inspecting Authority: an inspector for the Romas.

In 2010, the school mediators assigned to the Roma communities worked with the local authorities. The change was made in such a way that these school mediators' activity could continue at a proper level, their necessity and efficiency in the social integration policy being obvious[1].

Within the project called "Education for the Roma children- the way to a stable job", 50 pupils who are part of families with social problems, benefit from social grants and/or studies in this school year (2010-2011), starting with the 29th November 2010. Also, approximately 200 pre-school children in educational institutions in 9 localities in Mures County (Band, Târnăveni, Luduş, Sărmaşu, Petelea, Reghin - Apalina, Hărănglab, Glodeni, Târgu Mureş) will benefit from educational programmes, such as the "Summer kindergarten". Through the agency of its branch, the "School after school" programme, first graders will benefit from financial subventions, clothes and school supplies[2].

The Romas in many localities in Mureş County (Bahnea, Nadeş, Vânători, Băgaciu, Band, Ogra, Sânpaul, Glodeni, Petelea, Ideciu, Suseni, Gurghiu, Hodac, Târgu-Mureş, Târnăveni), both youths and elders who have abandoned school benefit from educational programmes called "A second chance" developed as part of the project "School-a chance for everybody"[3].

In Sighişoara, the project "The involvement of the vulnerable groups in the social economy" was started. The aim of this project is to develop the abilities, the competences, the knowledge, the self-esteem and the social support for the people who belong to vulnerable groups (especially Romas) so that these people's chances to participate in the social economy and to enter and stay on the labour market should increase[4].

In the village Sarateni (near Sovata), they set the basis for organising an activity which is to generate income- a trade firm, based on production. The profit is to be used exclusively for the local Roma community. The activities are developing as part of the "Together for a better society" project.

In 2010, the authorities continued the campaign in education concerning the special places for the Romas in high-schools and universities. Notable positive aspects in this direction were: the Roma teachers and school mediators continued their activity at an optimal level and there were no more cases of school segregation or discrimination of the Roma pupils/students[5].

There is special interest in initialising a project which will train Roma law experts so that they can mediate and counsel Romas concerning judicial problems regarding discrimination.

Through the agency of the project called "Forming a national network of Roma local experts, supporting measures regarding the implementation of the Romas' social inclusion, a vulnerable group subdued to social exclusion", in Mures County there was created a network of 5 local Roma experts, young graduates who work with the authorities in 5 localities (Găneşti, Băgaciu, Bahnea, Glodeni, Solovăstru). Their role is to mediate the relations between the Roma communities and public institutions, to counsel and support the Romas in the problems they face[6].

- **Health protection: problems and measures**

In the context of the economical recession in 2010, the access to health public services is difficult. In fact, the majority of the population is in the same situation. In very many communities, many Roma families' impossibility to pay for the medical services is noticeable and many families are

[1] *Ibidem.*
[2] The Direction of Interethnical Relations (www.dri.gov.ro), The Ministry of Education (www.edu.ro), www.studentie.ro
[3] *Ibidem.*
[4] *Ibidem.*
[5] The Direction of Interethnical Relations (www.dri.gov.ro), The Ministry of Education (www.edu.ro), www.studentie.ro
[6] The Direction of Interethnical Relations (www.dri.gov.ro),

not registered in the social insurance system, which does not allow them to benefit from a doctor's care or from any other medical services[1].

The lack of medical informing sources for Roma families is also an impediment, especially in rural areas, but not only. The existence of certain prejudices or their low education level makes Romas feel somewhat restrained concerning medical services.

Authorities have taken measures to improve this situation: there are 25 sanitary mediators, which have been trained, in part of the Roma communities in Mures County, viewed as problematic from this point of view.

Having this in regard, in 2010, the programme for the Roma students was underway. They study medicine or pharmacy in institutions accredited by the Ministry of Education, Research and Youth in Romania. There are scholarships for a year. The Medicine and Pharmacy University in Targu Mures awarded a place for Romas in the admission session in 2010.

• Other results

Notable results have been recorded in the projects financed from the local budgets. Among these, the ones developed by towns with Roma communities are:

- In Târnăveni, the authorities have succeeded in solving the problems concerning the identity cards, the civil condition, the property ownership and the connection to water-supply and sewage of the households on Rândunelelor Street, area dwelt almost exclusively by Romas[2].

- In Reghin, there have been allocated funds for asphalting the Soimilor Street and the Caprioarei Street in Apalina district- area dwelt almost totally by Romas. The connection to water-supply and sewage in these streets is also worth mentioning[3.]

- In Târgu Mureş, in December 2010, in Valea Rece district, the authorities inaugurated two dwelling complexes for the Romas there. In 2011, funds for two more such complexes are to be allocated[4].

In conclusion, 2010 can be regarded as the most efficient year in the period starting from 1990 to the present day, considering the results and the authorities' interest in supporting Romas' social integration.

It is obvious that the state authorities' involvement in the Roma community problem has increased; obtaining European funds for the Roma social integration programmes has beneficial effects for the Roma community and for the society as a whole.

It is true that through the implementation of these projects, the all problems of a community cannot be solved in so little time. The positive elements, which the measures taken through the agency of these projects introduce, will have a medium or long-term impact.

Beneficiaries must assume the objectives of these policies and projects so that the stipulated effects should occur. There is a need for the Roma community involvement, a need to assume demands and maybe even to change certain mentalities. Otherwise, no matter how much effort the authorities make, the results will be far from the stipulated ones. The active participation of the Roma community is a key principle in the European strategy[5].

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[1] *Ibidem.*

[2] www.punctul.ro

[3] www.punctul.ro

[4] www.punctul.ro

[5] European Commission, *The 10 Common Basic Principles on Roma Inclusion,* in http://ec.europa.eu/employment_social/fdad/cms/stopdiscrimination/downloads/Vademecum_Roma/FDAD_Roma-vademecum-EN.pdf

Interrelationships Between Globalization and Environmental Protection

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Abstract. *Globalization is clearly a catalyst for rapid growth and an uncontrolled and uncontrollable development may take destructive forms. From the perspective of those who fight for environmental protection, globalization is associated with a number of negative phenomena and the currently available data seem to validate and support these fears. A complete impact assessment of globalization on the environmental quality is difficult to realise, and in this context sustainable development should be the foundation and purpose, at least in terms of environmental protection, of the entire complex process of globalization.*
Keywords*: Globalisation, Environment, EU, UN.*

The speed and size of contemporary globalization[1] is yet unprecedented. Several of the characteristic features consist of the emergence of powerful global players[2], increase of the importance and role of non-statal participants and actors, such as national corporations and financial institutions, in shaping the global economic agenda. An additional aspect of globalization, particularly important in view of the topic considered, is the fact that economies become increasingly interwoven and that certain local developments have an impact without taking account of any borders or jurisdictions.

The environment is not limited by national borders: there is only one atmosphere, ecosystem, drinking water – shared by the entire world, and pollution spans entire continents and oceans. States have recognized that an answer to global environmental challenges requires also global solutions and international cooperation. All the new environmental problems arising from economic globalization and increasing competition for renewable energy and natural resources, against the background of complex interactions between states, bring a number of interesting challenges for environmental governance both at national and international level[3].

U.N. Environmental Programme. Environment ministers have discussed the issue of globalization and environmental inter-relationship in February 2007 under the UN Environmental Programme. They have recognized that globalization has created and boosted many opportunities to better promote sustainable development. They also agreed that appropriate environmental policies

[1] Globalization has been defined in many ways in the legal literature both Romanian and foreign. See for a comprehensive list of these definitions **Monica Bran, Ildiko Ioan**, "*Globalizarea şi mediul*", "Universitară" Publishing House, Bucharest, 2009. We mention as an example several papers in which various definitions of globalization are tried: "*Dicţionar de economie*", "Economică" Publishing House, Bucharest, 1999; **Ellen Frost**, "*From Rockets to Religion: Understanding Globalization*", Institute for International Economics, no.36 Papers, October 2000; **Falk R.**, "*States of siege: will globalization win out?*", in "International Affairs", no. 73, 1997; **Pronk J.**, "*Sustainability, poverty, and climate*" paper presented at the 9th Conference of "Greening of Industry Network", Bangkok, Thailand, 2001; **Buttel F.H.**, "*Some observations on states, world orders, and the politics of sustainability*", in "Organization and Environment", no. 11, 1998, p. 261; **Ohmae, K.**, "*The Borderless World*", Harper-Collins, London, 1990.

[2] States such as Brazil, Russia, India and China, **O.E.C.D.**, "*Environment and Regional Trade Agreements*", Paris, 2007.

[3] **Najam A., D. Runnals, M. Halle**, "*Environment and Globalization. Five Propositions*", International Institute for Sustainable Development, Winnipeg, Canada, 2007.

and effective institutions are required if these opportunities provided by globalization are intended to be completed and thus risks to be minimized. There was a general agreement on the issue that, although the international community has created a variety of organisms with the ultimate goal of dealing with environmental issues, the damage brought to the natural resources was not successfully stopped, let alone reversed. Lack of coordination characterized not only the UN system, but also state governments, the private sector and the civil society.

The ongoing process of UN reform offers the opportunity to discuss the ways through which environmental governance arrangements could be strengthened. However, a general consensus on the effective means of achieving this goal is proving very difficult to meet. Some member states promote the establishment of a "UN Environment Organization" to provide better guidance, legitimacy and effective coordination in the field of environmental policies. Other member states are not convinced of the necessity or desirability of such an organization, rather seeking to improve the efficiency and coordination of those institutions, actions and programs already existing[1].

Globalization, development and environment. Globalization leads to accelerated economic growth, particularly through increased trade in terms of scale and investment activities. There is no doubt about the positive nature of this development, but on the other hand, it is clear that it must be accompanied by appropriate environmental policies in order to address the negative impact that development and growth of such intensity can have on the environment. Another way in which globalization stimulates economic growth lies in the integration of developing economies into the global one[2].

Developed countries have, in this context, a special global responsibility in the management of environment and sustainable development issues, both historically and in terms of overwhelming importance that they continue to have in the global economy and environmental protection[3]. However, as the economic importance of the newly developed states continuous an upward trend, their contribution to the exercise of pressure on environmental issues will increase in the same upward pace, along with the expectations regarding the actual contribution that these states they will play in addressing contemporary environmental challenges.

Globalization can promote economic development patterns that are more efficient and less polluting: for example, by concentrating production operations in those states that have an advantage in terms of energy and natural resource endowments. Similarly, it can help promote the development and diffusion of "cleaner" technologies. Economic growth and poverty reduction generally leads to a public demand for better environmental quality, and the additional wealth accumulated can be redirected towards ecological investments and the increase of environmental protection capacity.

On the other hand, an increased economic activity raises the overall consumption of energy resources and generates more waste, higher levels of pollution, etc. These negative effects on the environment can find their causes, for example, in the expansion of agricultural areas in order to produce more exportable agricultural products, or in the increase trade of energy, materials, or highly

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[1] See for a detailed presentation "*O.C.D.E. Environmental Outlook to 2030*", paper of **O.E.C.D.**, Paris, 2008.

[2] See on the specific features and possible scenarios on environmental protection in implementing the rules of a market economy to developing states **Petr Pavlinek, John Pickles**, „*Environmental Transitions. Transformation and Ecological Defence in Central and Eastern Europe*", Routledge, London, 2005; „*Environmental Trends in Transition Economies*", Policy Brief, **O.E.C.D.**, Paris, October 1999; **Andonova Liliana**, "*Transnational Politics of the Environment. The EU and Environmental Policy in Central and Eastern Europe"*, Cambridge University Press, Cambridge, 2003; **Andonova Liliana**, "*Openness and the Environment in Central and Eastern Europe: Can Trade and Foreign Investment Stimulate Better Environmental Management in Enterprises*?", „*Journal of Environment and Development"*, no. 12, 2003, p. 177-204; **David Turnock**, „*The East European Economy in Context – Communism and Transition*", Routledge, London, 2005.

[3] **O.E.C.D.**, *cited above.*

polluting goods. The subsidies granted in order to support such economic activities can lead to an increase in these types of negative environmental impacts.

Globalization may also contribute to a series of structural changes in the patterns of economic activity, as well as changes in the distribution sector. These changes can have either positive environmental effects, such as for example a shift from manufacturing processes in the service sector, or may have negative effects on the environment, an illustrative example being the strong expansion of industries based on high consumption energy or raw materials.

An inherent feature of globalization lies in the increased competition which it causes. Questions of whether and how strict environmental standards affect the competitiveness of an economy are not a novelty. Still, globalization and the growing competition between the new entrants in the global marketplace have brought the matter again under the discussion of specialists. At the heart of this debate is the problem of how the nations of the world solve and deal with climate changes and how these arrangements have a bearing on their competitiveness in global trade markets.

In principle, tracking performance of both objectives would be entirely possible and compatible. Trade allows states to maximize production from a given quantity of raw materials available – this mode of reasoning is a step forward in terms of sustainable development and environmental protection.

However, given the current system of economic activity, trade may also harm the environment. As long as environmental externalities are not included in the prices of goods and services and are not taken into account in the decision making process, trade can be a catalyst for exaggerating the unsustainable patterns of economic activity, exacerbating problems related to pollution or the depletion of natural resources.

Additionally, a state that has strict environmental regulations may fear that its economy will be undermined by competition coming from countries more relaxed in terms of environmental regulations (which might for this reason have lower production costs).

States may[1] prohibit or restrict imports of certain products that can harm their environment, so long as the standards applied are non-discriminatory between countries and between domestic and foreign products[2].

[1] The General Agreement on Tariffs and Trade (GATT – Multilateral intergovernmental treaty signed in 1947 in Geneva, with 88 countries as contracting parties. It is applied *de facto* by 29 other countries. It was created under UN auspices and it represents the organizational-legal framework in which most countries negotiate a gradual reduction of customs duties, removal of quantity restrictions and of other non-tariff barriers, with the final goal of trade liberalization.) has as main purpose the liberalization of trade between the Contracting Parties. It however allows some unilateral trade restrictions in particular circumstances related to environmental protection (See provisions of art. XX of the Agreement).

[2] Reasons related to environmental protection and sustainable development have become increasingly invoked as a goal but also as a basis for the development and implementation of restrictive regulations in terms of trade, including here, primarily,

In the current economic environment, states compete in the detention of production centers in their states and in attracting foreign capital. Not few were the cases where certain activities have been relocated, with total or partial closure of production in the State of origin or host accompanied by the establishment of new foreign subsidiaries[1].

The effect of this economic motivated behavior by reasons of cost, consists of a relaxation of the environmental regulations and standards with the aim of attracting or retaining investment or creating competitive advantages for exporters[2].

There are also examples where the hypothesis of "pollution havens" has not turned out to be true and when investments have actually helped raise environmental standards[3]. A possible explanation could be that host-governments are becoming more selective on investments that allow the relocation of polluting industries by refusing or restricting them. Another explanation could be found in the implementation by multinational corporations of environmental standards and severe management practices at all activity points around the globe, accompanied by the request that their subcontractors apply similar standards[4].

International trade is the main engine of global growth, as the number of commercial transactions continues to be in a constant growth. Emerging economies become important actors in the global economy and their market shares grow in this context[5].

U.S. economy is still seen as the most powerful and most important factor of economic growth and international trade, but growth in exports of goods and services from China, India and some other developing countries such as Brazil becomes equally important[6].

Sustained economic development and rising living standards in China and India were accompanied by a dramatic increase in the rate of Asia in world exports of raw materials and supplies. Russia will continue to benefit from higher prices for exports of oil, gas and metal, with increasing domestic demand due to higher incomes and expansionist policies. One of the largest and most influential countries in Latin America, Brazil has become head of the discussions and negotiations in the multilateral regional trade agendas.

Since the 1980, intraregional trade has grown in almost all regions of the world[7]. The expanding and deepening of economic integration of regional trade groups is considered to remain a key feature of globalization for many years to come[8]. The substantial increase in the number of regional trade agreements concluded over the past 30 years has contributed to the increase of trade and has allowed

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measures aimed at controlling air pollution and toxic substances. However, any agreement that allows a restriction of trade is likely to fall prey to protectionist interests that use the environmental protection justification as a mask to hide intentions of a completely different nature. To avoid such situations, there are intense concerns to ensure transparency of the standards set by these sort of measures. See for more details in this subject **Duncan Brack**, "*Trade And Environment: An Update on the Issues*", The Royal Institution of International Affairs, 1997.

[1] "*International Investment Agreements: Survey of Environment, Labour and Anti-corruption Issues*", **O.E.C.D.** , Paris, 2007; **Berger S.**, "*How We Compete. What Companies Around the World Are Doing to Make it in Today's Global Economy*", MIT Industrial Performance Center, Boston, 2005.

[2] "*Environmental Issues in Policy-Based Competition for Investment: A Literature Review*", **O.E.C.D.**, Paris, 2002.

[3] **Porter M.** , "*The Competitive Advantage of Nations*", Free Press, New York, 1990.

[4] "*Environment and the OECD Guidelines for Multinational Enterprises*", **O.E.C.D.**, Paris 2004; "*Trends and Recent Developments in Foreign Direct Investment*", **O.E.C.D.**, Paris, 2007.

[5] "*South-South Trade in Goods*", **O.E.C.D.**, Paris, 2006; "*Trends and Recent Developments in Foreign Direct Investment*", **O.E.C.D.**, Paris, 2006.

[6] " *OECD Environmental Outlook to 2030*", **O.E.C.D.**, Paris, 2008, p. 97. For example, China has absorbed approx. 6% of the total quantity of imports worldwide in 2005 and approx. 3% in 2000.

[7] UNCTAD (United Nations Conference on Trade and Development), "*Globalization for Development: Opportunities and Challenges*", Geneva, 2007.

[8] "*O.E.C.D. Environmental Outlook to 2030*", *above cited.*

states to take advantage of a consireable export in size. A large number of these regional trade agreements contain provisions adressing environmental protection.

The Organisation for Economic Cooperation and Development has created a future projection of the elements studied in this paper – globalization, trade and environment – basically a reference scenario, by which certain recent developments are designed in the future, excluding from the calculation the adoption of any new policies. Consequently, in this scenario are reflected those policies and agreements that have already been implemented effectively and that will lead to increased trade and investment liberalization. All these factors taken into account led O.E.C.D. experts to the conclusion that until the year 2015 the development and growth of trade will occur at a faster rate than economic growth.

Despite the fact that possible new elements were not taken into account it is very likely, if we take into consideration the current situation, for the current existing ascending trend to continue into the future, and for the number of interstate agreements to increase, along with the liberalization of policies.

Environmental Protection in Other Subject Areas of International Law.The role of European Union.

The European Union, originally consisting of six Western European countries and expanded to 27 states, began as a set of three regional communities, which merged into a single entity (the European Community) that was transformed into the Union. The founding documents, the 1951 Paris Treaty creating the European Coal and Steel Community, the 1957 Treaty of Rome establishing the European Economic Community (EEC), and the 1957 Euratom Treaty, were focused exclusively on building a customs union and other forms of economic integration. There was no mention of environmental matters.

The Stockholm Conference raised the profile of environmental issues in the Communities, as it did elsewhere. Shortly after the Conference, in 1974, the EEC Commission adopted the first Program of Action on the Environment. By this point, economic distortions caused by the different environmental laws in the member states had become evident, as had recognition that the goal of economic integration, to improve the wellbeing of Europeans, could not take place without environmental protection.

Without question, environmental policy of the European Union (EU) has, over the last thirty years or so, evolved into an important integral component within the wide range of the regional international organisation's economic and political objectives.

Over 200 legislative measures have been passed by the EU concerning environmental protection issues, and its constitutional commitment to environmental policy has been entrenched further and more profoundly by a later treaty amendment stipulating that environmental protection requirements must be incorporated within the definition and implementation of the entire range of its economically related policies and

activities. It is true that EU rules on environmental protection account for only part of the legal framework that constitutes environmental law from the perspective of EU Member States. For them, the subject of environmental law also comprises rules binding on them passed at national and other international levels. However, the material range and effects of EU environmental legislation are both wide and deep. Although Member States share competence with the EU in relation to the area of environmental policy, 3 national rules that conflict with the requirements of environmental measures adopted at Union level are required to be set aside, in order to respect the principle of the supremacy of EU law over national law.4 Accordingly, EU environmental law constitutes a very significant element in the overall package of measures adopted by Member States to protect the environment.

Over time, the EC adopted directives of general scope relating to the assessment of the effects of certain public and private projects on the environment (Directives 85/337, 1985 O.J. (L 175), and 97/11, 1997 O.J. (L 5), integrated pollution prevention and control, freedom of access to information on the environment (Directive 90/313, 1990 O.J. (L 158)), and ecolabeling (Regulation 880/92, 1997 O.J. (L 58)). Following the general trend in domestic, as well as in international environmental legislation, its policy shifted from indirect approaches to distinct measures aimed at the protection of water, air, or wildlife. During the 1990s the EC demonstrated a general trend towards integrated protection and most human activities that can have an impact on the environment enter the scope of EC environmental legislation. At the same time, economic aspects of the proposed measures, as well as the generally proclaimed need for sustainable development, are increasingly taken into account. The EU legislation has undoubtedly been an important international and regional instrument of environmetal protection, in the general context of globalization.

Conclusions. Challenges of globalization. Globalization entails a series of challenges on the contemporary society[1]. Opponents argue that globalization will force national governments to a policy of race tot the botoom from all points of view of social life.

In the different countries authorities competition to attract and maintain foreign investment, they will drop minimum wage in the economy, will deter the creation and joining of trade unions, will offer discounts and installments of taxes, subsidies, and, most importantly in terms of our subject, will relax the rules and requirements of environmental protection, labor safety and protection.

Globalization entails a loss of sovereignty and this fact threatens democratic governance and the social achievements obtained over decades if not centuries. Moreover, globalization exacerbates income inequalities, especially in the case of developing states.

The economic changes brought by globalization can lead to social unrest, can threaten cultural identities and may disrupt entire communities. All these can lead to high levels of conflict and political violence, making possible masses of refugees, destabilization at state level, and a strong resentment against the governments of nations that promote and encourage globalization, terrorism as a remedy being then just one step away.

On the other side of the coin, supporters of globalization address these grim scenarios and support the argument that the surest route to growth is the opening and liberalization of the market.

Economic growth leads to a raise in the income of the poor. It is also the surest way of achieving social objectives and goals, such as occupational safety, education, environmental protection.

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[1] See for more details on the opinions for and against globalization , **Khi V. Thai, Dianne Rahm, Jerrell D. Coggburn**, *"Handbook of Globalization and the Environment"*, CRC Press, New York, 2007.

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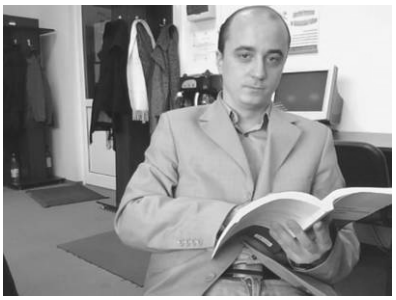

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- « L'Incorporation de la Convention européenne des droits de l'Homme dans l'ordre juridique britannique », *Revue Trimestrielle des Droits de l'Homme*, n° 41, 1er trimestre 2000, pp. 11-42 et *Revue Européenne de Droit Public*, vol. 12, n° 1, printemps 2000, pp. 77-110.
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« L'Europe Unie »/ „United Europe" est une revue academique française et internationale d'études européennes, éditée à Paris par :

- Université Catholique de Lille (France)
- Faculté Libre de Droit de Toulouse (Institut Catholique, France)
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The sole responsibility lies with the authors (not with the EU institutions).

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Editeur: Prodifmultimedia Paris
http://www.prodifmultimedia.com

ISSN: 0248-2851
EAN: 99782749700519

Prix : 4 €