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CONTENTS (click for snap to article)

Democratization and EU decision-making

Frantisek Turnovec (Czech Republic) - How much of federalism in the European Union?

Cristina Dogot, Ioan Horga (Romania) - Le parlement européen et la démocratisation du processus décisionnel européen

Grigore Silaşi & Ioana Vădășan (Romania) - The policies and the governance in the European Union

Civil society and national minorities in the XXI " century

Luigi Moccia (Italy) - Citizenship, the road towards the European Union

Sergiu Mişcoiu (Romania) - Autour d'une impasse structurelle: la représentation politique des Romes en Roumanie

Maria-Cristina Olt (Romania) - Civil society representatives in the EU decision-making process. Interests groups-transparency interests

Multi-level governance and decentralization

Petre Prisecaru (Romania) - Multi-level governance-a theoretical approach

Béatrice Giblin (France) - L’état des lieux de la décentralisation en France : une décentralisation réussie ?

Nicolae Toderaş (Romania) - Governance through conformation: case study regarding the mode of reformation of the central public administration from the Republic of Moldova

EU perspectives in 2020

Jordan Bărbulescu (Romania) - Decision-making in the European Union. The role of the European Commission
HOW MUCH OF FEDERALISM IN THE EUROPEAN UNION?

František Turnovec, Prof. Dr.
Jean Monnet Chair in Economics of European Integration
Charles University in Prague, Institute of Economic Studies

Abstract

The European Union (EU) is not de jure a federation, but after 50 years of institutional evolution it possesses attributes of a federal state. One can conclude that EU is “something between” federation and intergovernmental organization. If we measure “something between” by interval $[0, 1]$, where 0 means fully intergovernmental organization and 1 means de facto federation, the questions are: What is the location of recent EU on this interval? What tendency of development of this location can be observed in time? In this paper we propose such a measure based on game-theoretical model of European Union decision making system.

Keywords
Co-decision procedure, committee system, consultation procedure, European Union decision making, federation, intergovernmental organization, qualified majority, power indices, simple voting committee

JEL Classification
C71, D72, H77

1 Contact address: Frantisek Turnovec, IES Faculty of Social Sciences, Charles University in Prague, Opletalova 26, 110 00 Prague 1, Czech Republic. e-mail: turnovec@fsv.cuni.cz.
1. European Union: an intergovernmental organization or federation?

Unions of states consist of member states with national governments and of some forms of supranational institutions. The constitutional framework of a union follows from Treaties among all member states.

One can consider two forms of governance in the union: Inter-governmental arrangement, when any decision-making is based on consensus of sovereign governments of all member states, and supranational institutions are coordinating execution of unanimous decisions. Federal arrangement, when member states transfer parts of their decision-making sovereignty to supranational institutions.

While intergovernmental arrangement is based on union understood as an international organization, federation is a union comprising a number of partially self-governing states or regions united by a central ("federal") government. In a federation, the self-governing status of the member states is typically constitutionally entrenched and may not be altered by a unilateral decision of the central government.

The form of government or constitutional structure found in a federation is known as federalism. It can be considered the opposite of another system, the unitary state.

A unitary state is sometimes one with only a single, centralized, national tier of government. However, unitary states often also include one or more self-governing regions. The difference between a federation and this kind of unitary state is that in a unitary state the autonomous status of self-governing regions exists by the sufferance of the central government, and may be unilaterally revoked. While it is common for a federation to be brought into being by agreement between formally independent states, in a unitary state self-governing regions are often created through a process of devolution, where a formerly centralized state agrees to grant autonomy to a region that was previously entirely subordinate.

The European Union (EU) is not de jure a federation, but after 50 years of institutional evolution it possesses attributes of a federal state. However, its central government is far weaker than that of most federations and the individual members are sovereign states under international law, so it is usually characterized as an unprecedented form of supra-national union. The EU has responsibility for important areas such as trade, monetary union, agriculture, fisheries, and today around sixty per cent of the legislation in member-states originates in the institutions of the Union. Nonetheless, EU member-states retain the right to act independently in matters of foreign policy and defense, and also enjoy a near monopoly over other major policy areas such as criminal justice and taxation. The proposed Treaty of Lisbon would codify the Member States' right to leave the Union, but would at the same time also provide the European Union with significantly more power in many areas. The European Union is being given "legal personality" and taking unto itself powers that it formerly exercised only in a representative capacity for the Member States. Different concepts of federalism in the EU and problems with Lisbon Treaty are discussed e.g. in Jovanovic (2005, 54-88).

One can conclude that EU is "something between" federation and inter-governmental organization. If we measure "something between" by interval $[0, 1]$, where 0 means fully intergovernmental organization and 1 means de facto federation, the questions are: What is the location of recent EU governance on this interval? What tendency in development of this location can be observed in time?

In this paper we propose such a measure based on game-theoretical model of European Union decision making system. Actors of EU decision making are Council of Ministers (representing
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Vol. 1, no. 1, June 2009

governments of member states), European Commission (representing super-national interests) and European Parliament (composed of European political parties groups, directly elected and representing citizens interests on political basis). While decision making involving Council of Ministers comprises inter-governmental element in European Union governance, decision making involving European Commission and European Parliament represents elements of federal governance of the EU. Then we can look what is an “influence” or “power” of Council of Ministers and national governments in the EU decision making compared to “influence” or power of supranational institutions not directly linked to national governments (Commission and the European Parliament). Location of the EU on the scale of the “fully intergovernmental” and “fully federal” governance can be estimated by comparison of decision making power of its inter-governmental body (Council) and supranational bodies (Commission and the European Parliament).

In discussions about distribution of decisional power in the EU only the distribution of voting weights in the Council of Ministers qualified majority voting is usually taken into account. In contrast to that, in this paper we analyze models of consultation and co-decision procedures in decision-making of the European Union institutions: Commission, Council of Ministers and European Parliament. While consultation procedure is a “game” between Council and Commission with agenda setting role of Commission and consultation role of the European Parliament, co-decision procedure involves all three most important European institution providing each of them with unconditional veto right. Table 1 illustrates broad use of consultation and co-decision procedures in legislative acts decided by European Union institutions during 2000-2006. Consultation and co-decision are usual methods of European governance and Council of Ministers is not an exclusive decision maker in the EU. In this paper, using power indices methodology, a distribution of influence among Commission, Council and the Parliament under different decision making procedures is being evaluated, together with voting power of member states and European political parties.

Table 1. Number of legislative proposals under consultation and co-decision procedures 2000-2006

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
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<th>2003</th>
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<td>126</td>
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<tr>
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<td>84</td>
<td>140</td>
<td>117</td>
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<td>88</td>
<td>112</td>
</tr>
</tbody>
</table>

Source: PreLex database (http://ec.europa.eu/prelex/rech_simple.cfm?CL=en)
CNP = consultation procedure, CDP = co-decision procedure.

The inter-institutional distribution of power (among Commission, Council and European Parliament) in decision making procedures of the EU (consultation procedure, and co-decision procedure) had been analyzed in Widgrén (1996), Laruelle and Widgrén (1997) and Napel and Widgrén (2004). While in the first paper (Widgrén (1996)) traditional committee model is developed for consultation procedure (consultation procedure as a committee of n member states plus Commission with composite voting rule), other models are formulated in terms of three unitary actors (Commission, Council and Parliament) extensive form games, without decomposition of the Council into member states and the Parliament into party factions. European multi-cameral procedures were studied also by König and Bräuninger (2001) by explicit analysis of winning coalitions in multi-cameral decision making, but without formulation of corresponding voting game model. Traditional power indices
approach to disaggregate modeling of consultation and co-decision procedure, allowing express both inter-institutional and intra-institutional influence was presented in Turnovec (2004, 2008a, 2008b). In this paper we extend this stream of models associating influence of member states governments in the Council of Ministers voting with inter-governmentalist attributes, and the influence of Commission and Parliament (European political parties) in basic legislative procedures with federalist attributes of the European Union.

2. Methodology: Committees and voting power

Let \( n \) be a positive integer, \( w = (w_1, w_2, \ldots, w_n) \) be a nonnegative real valued vector and \( q \) be a real number such that

\[
\frac{1}{2} \sum_{i=1}^{n} w_i < q \leq \sum_{i=1}^{n} w_i
\]

By a weighted majority game of \( n \) members (Owen 1982) we mean a triple \([N, q, w]\) in which \( N = \{1, 2, \ldots, n\} \). Number \( w_i \) is called a weight of member \( i \), \( q \) is called a quota, any subset \( S \subseteq N \) is called a coalition in \([N, q, w]\). Coalition \( S \) is called a winning one if \( \sum_{i \in S} w_i \geq q \) and losing one otherwise. Weighted majority game provides a model of a simple voting committee (single camera committee in which each member has one weight).

Models of simple voting committees and committee systems are applicable to political science, as they provide instruments for analysis of a priori voting power of their members. Voting power analysis seeks an answer to the following question: Given a simple voting committee or a committee system, what is an influence of its members over the outcome of voting? Voting power of a member \( i \) is a probability that \( i \) will be decisive in the sense that such situation appears in which she would be able to reverse the outcome of voting by reversing her vote. To define a particular power measure means to identify some qualitative property (decisiveness) whose presence or absence in voting process can be established and quantified (e.g. Nurmi 1997).

Voting power analysis seeks an answer to the following question: Given a simple voting committee \([N, q, w]\), what is an influence of its members over the outcome of voting? Absolute voting power of a member \( i \) is defined as a probability \( \Pi_i[N, q, w] \) that \( i \) will be decisive in the sense that such situation appears in which she would be able to decide the outcome of voting by her vote (Nurmi (1997)), and a relative voting power as

\[
\pi_i[N, q, w] = \frac{\Pi_i[N, q, w]}{\sum_{i \in N} \Pi_i[N, q, w]}
\]

Two basic concepts of decisiveness are used: swing position as an ability of individual voter to change by unilateral switch from YES to NO outcome of voting, and pivotal position, such position of individual voter in a permutation of voters expressing ranking of attitudes of members to voted issue (from most preferable to least preferable) and corresponding order of forming of winning configuration, in which her vote YES means YES outcome of voting and her vote NO means NO outcome of voting in the committee.
Let us denote by \( s_i(N, q, w) \) the number of swing positions of i-th member and by \( p_i(N, q, w) \) the number of pivotal positions of i-th member in simple voting committee \([N, q, w]\).

Assuming many voting acts and all configurations equally likely, it makes sense to evaluate a priori voting power of each member of the committee by probability to have a swing, measured by absolute Penrose-Banzhaf (PB) power index (Penrose (1946), Banzhaf (1965)):  
\[
\Pi_i^{PB}(N, q, w) = \frac{s_i}{2^{n-1}}
\]
(s\(_i\) is the number of swings of the member i and \(2^{n-1}\) is the number of configurations with i).

To compare relative power of different committee members, relative form of PB power index is used:  
\[
\pi_i^{PB}(N, q, w) = \frac{s_i}{\sum_{k \in N} s_k}
\]

Assuming many voting acts and all possible preference orderings equally likely, it makes sense to evaluate an a priori voting power of each committee member as a probability of being in pivotal situation, measured by Shapley-Shubik (SS) power index (Shapley and Shubik (1954)):  
\[
\Pi_i^{SS}(N, q, w) = \frac{p_i}{n!}
\]
\((p\(_i\) is the number of pivotal positions of the committee member i, and n! is the number of permutations of all committee members). Since  
\[
\sum_{i \in N} p_i = n!,
\]

it holds that  
\[
\pi_i^{SS}(N, q, w) = \frac{p_i}{\sum_{k \in N} p_k},
\]
i.e. absolute and relative form of the SS-power index is the same.\(^2\)

Let \(C_1 = [N_1, q_1, w_1]\) and \(C_2 = [N_2, q_2, w_2]\) be a pair of simple voting committees. Then \(w_{ij} (j = 1, 2)\) denotes the weight of member \(i \in N_j\) in \(C_j\) and \(q_i\) is the quota in committee \(C_j\). Let \(N = N_1 \cup N_2\). By \(\overline{w}_1\) and \(\overline{w}_2\) we denote zero extension of weight vectors \(w_1, w_2\) with respect to \(N = N_1 \cup N_2\) such that \(\overline{w}_{ij} = w_{ij}\) if \(i \in N_j\) and \(\overline{w}_{ij} = 0\) if \(i \notin N_j\). Let \(S_1 \subseteq N_1\) be a coalition in \(C_1\) and \(S_2 \subseteq N_2\) be a coalition in \(C_2\), then \(S = S_1 \cup S_2 \subseteq N\) is a joint coalition of members of \(C_1\) and \(C_2\). We assume that the same members (if any) vote identically in both committees. Simple voting committee \(\overline{C}_j = [N_j \cup N_2, q_j, \overline{w}_j]\) we call a zero extension of \(C_j\) with respect to \(N_1 \cup N_2\). Considering an interrelated system of two simple voting committees with different (possibly overlapping) sets of members in which final outcome of voting depends on result of voting in both

\(^2\) Supporters of Penrose-Banzhaf power concept are sometimes refusing Shapley-Shubik index as a measure of voting power. Their objections to Shapley-Shubik power concept are based on classification of power measures on so called I-power (voter's potential influence over the outcome of voting) and P power (expected relative share in a fixed prize available to the winning group of committee members, based on cooperative game theory) introduced by Felsenthal, Machover and Zwicker (1998). Shapley-Shubik power index was declared to represent P-power and as such unusable for measuring influence in voting. We tried to show (Turnovec (2007), Turnovec, Mercik, Mazurkiewicz (2008)) that objections against Shapley-Shubik power index, based on its interpretation as a P-power concept, are not sufficiently justified. Both Shapley-Shubik and Penrose-Banzhaf measure could be successfully derived as cooperative game values, and at the same time both of them can be interpreted as probabilities of being in some decisive position (pivot, swing) without using cooperative game theory at all.
committees we have to substitute the corresponding simple voting committees by their zero extensions with the same sets of members.

The union $C_1 \cup C_2$ of two committees $C_1 = [N_1, q_1, w_1]$ and $C_2 = [N_2, q_2, w_2]$ is the committee $\overline{C_1} \cup \overline{C_2} = [N_1 \cup N_2, q_1 \land q_2, \overline{w}_1, \overline{w}_2]$ with the following composite voting rule: a proposal to be passed has to obtain votes representing at least total weight $q_1$ in committee $C_1$ or at least total weight $q_2$ in committee $C_2$. A coalition $S \subseteq N_1 \cup N_2$ such that $S = S_1 \cup S_2, S_1 \subseteq N_1, S_2 \subseteq N_2$ is a winning coalition in $C_1 \cup C_2$ if $S_1$ is winning coalition in $C_1$ or $S_2$ is winning coalition in $C_2$. The set of all winning coalitions in $C_1 \cup C_2$ is equal to the union of the sets of all winning coalitions in $\overline{C_1}$ and $\overline{C_2}$.

The intersection $C_1 \cap C_2$ of two committees $C_1 = [N_1, q_1, w_1]$ and $C_2 = [N_2, q_2, w_2]$ is the committee $\overline{C_1} \cap \overline{C_2} = [N_1 \cap N_2, q_1 \lor q_2, \overline{w}_1, \overline{w}_2]$ with the following composite voting rule: a proposal to be passed has to obtain votes representing at least total weight $q_1$ in committee $C_1$ and at least total weight $q_2$ in committee $C_2$. A coalition $S \subseteq N_1 \cap N_2$ such that $S = S_1 \cup S_2, S_1 \subseteq N_1, S_2 \subseteq N_2$ is a winning coalition in $C_1 \cap C_2$ if $S_1$ is winning coalition in $C_1$ and $S_2$ is winning coalition in $C_2$. The set of all winning coalitions in $C_1 \cap C_2$ is equal to the intersection of the sets of all winning coalitions in $\overline{C_1}$ and $\overline{C_2}$.

Using union and intersection operations we can construct logical combinations of simple voting committees. For example, $[N_1 \cup N_2 \cup N_3, (q_1 \lor q_2) \land q_3, \overline{w}_1, \overline{w}_2, \overline{w}_3]$ is a logical combination of three simple voting committees $[N_1, q_1, w_1], [N_2, q_2, w_2], [N_3, q_3, w_3]$ with the following composite voting rule: a proposal to be passed has to obtain either at least $q_1$ weights in simple voting committee $[N_1, q_1, w_1]$ and at least $q_2$ weights in simple voting committee $[N_2, q_2, w_2]$, or at least $q_3$ weights in simple voting committee $[N_3, q_3, w_3]$. Logical combinations of simple voting committees provide models of committee systems (committees in which each member has more weights or multi-camera committees consisting of several simple voting committees and complex voting rules).

Definition of swings and pivots can be easily extended for logical combinations of simple voting committees.

**Proposition 1**

Let $C_1 = [N_1, q_1, w_1]$ and $C_2 = [N_2, q_2, w_2]$ be two simple committees, $\overline{C_1} \cap \overline{C_2}$ be their intersection, $\overline{C_1} \cup \overline{C_2}$ be their union, $i \in N_1 \cup N_2$, $s_i$ be the number of swings and $p_i$ be the number of pivots of member $i$, then $s_i (\overline{C_1} \cup \overline{C_2}) + s_i (\overline{C_1} \cap \overline{C_2}) = s_i (\overline{C_1}) + s_i (\overline{C_2})$

and $p_i (\overline{C_1} \cup \overline{C_2}) + p_i (\overline{C_1} \cap \overline{C_2}) = p_i (\overline{C_1}) + p_i (\overline{C_2})$

**Proof:** see in Turnovec (2008a, 158)

From Proposition 1 it follows that $\Pi_i^{PB} (\overline{C_1} \cup \overline{C_2}) + \Pi_i^{PB} (\overline{C_1} \cap \overline{C_2}) = \Pi_i^{PB} (\overline{C_1}) + \Pi_i^{PB} (\overline{C_2})$

and $\Pi_i^{SS} (\overline{C_1} \cup \overline{C_2}) + \Pi_i^{SS} (\overline{C_1} \cap \overline{C_2}) = \Pi_i^{SS} (\overline{C_1}) + \Pi_i^{SS} (\overline{C_2})$
Proposition 2

Len N is the set of members of a simple voting committee and $\pi^{SS}$ is the vector of Shapley-Shubik power indices (by definition its component $\pi^{SS}_i$ is the probability that member i is in pivotal situation). If $R \subseteq N$ is a group of committee members, then $\sum_{i \in R} \pi^{SS}_i$ is the probability that group R is in pivotal situation in the sense that somebody of its members is pivotal.

From Proposition 2 it follows that using SS-power index measure we can evaluate power of any subgroups of members by sum of power in dices of its members. Penrose-Banzhaf power index does not have this property.

3. Models of qualified majority, consultation and co-decision procedures

We shall use concept of logical combinations of simple voting committees for construction of simplified models of the EU decision making and evaluation of influence of different actors (national governments, European political parties) and institutions (Council of Ministers, Commission, European Parliament). In the models we are using the following notations:

- $N$ set of members states ($i = 1, 2, \ldots, n$),
- $N \cup \{1\}$ set of actors in consultation procedure (member states governments plus Commission),
- $M$ set of factions in European Parliament (European political parties),
- $v_i$ number of votes assigned to member state i,
- $s_j$ number of seats of European political party j,
- $v$ vector of member states votes in the Council (vote weights, as defined in Nice),
- $p$ vector of shares of member states population,
- $e$ summation vector (one state – one vote weights),
- $s$ vector of “weights” (numbers of seats) of political parties in the European Parliament,
- $q$ votes quota in the Council (minimal number of votes required to pass a proposal),
- $c$ member states majority quota in the Council (minimal number of member states required to pass a proposal),
- $r$ a population majority quota in the Council (the countries supporting the proposal must represent at least $r\%$ of total population of the member states supporting the proposal),
- $t$ a majority quota in the European Parliament (minimal number of the members of EP required to pass a proposal).

- $x^{(-k)} \in \mathbb{R}^{n+m}$ denotes left zero extension of x (first k components are equal zero),
- $x^{(+k)} \in \mathbb{R}^{n+k}$ denotes right zero extension of x (last k components are equal zero),
- $e_{(n,j)} \in \mathbb{R}^n$ denotes the n-dimensional unit vector with j-th component equal to 1, all other components equal 0.

In Table 2 we provide voting weights and quotas used in different procedures of European Union decision making.
### Table 2, Weights and quotas in EU27

<table>
<thead>
<tr>
<th></th>
<th>Votes</th>
<th>Share (%)</th>
<th>Population (mil)</th>
<th>Share (%)</th>
<th>Country</th>
<th>Share (%)</th>
<th>Seats</th>
<th>Share (%)</th>
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3.1 Council of Ministers: qualified majority problem


3.1.1 Status quo qualified majority, the Nice Treaty

By Nice Treaty (2000) a qualified majority in the Council voting in recent EU is reached if the following three conditions are met:

a) minimum of 255 votes of member states is cast in favor of the proposal, out of a total of 345 votes,

b) a majority of Member states approve the proposal,

c) votes in favor represent at least 62% of the total population of the Union.

Each member state has a fixed number of votes. The number of votes allocated to each country is roughly determined by its population, but progressively weighted in favor of less populated countries (see Table 2).

Let us consider three weighted majority games:

\[ C_1 = [N, q, v] \]
\[ C_2 = [N, r, p] \]
\[ C_3 = [N, c, e] \]

where N is the set of member states (n = card (N) is the number of member states), q is the quota of votes, v is the vector of Member States votes, r is the population quota, p is the vector of Member States shares of population (in %), c = int (n/2) + 1 is the member states quota and e is a summation vector (one state one vote). The Nice qualified majority rule can be modeled as committee system generated by the intersection of C1, C2, and C3:

\[ C_{QMN} = C_1 \cap C_2 \cap C_3 = [N, q \lor r \lor c, v, p, e] \]

In EU27 n = 27, q = 345, r = 62%, c = 14 (member states weights and quotas see in Table 2).

3.1.2 Controversial future, Lisbon Treaty qualified majority

3 In some cases (when the Council is not acting on a proposal of Commission) two-thirds majority is required.
If the Lisbon Treaty (2007) comes into force, qualified majority rule will be simplified. In this case, for passing a proposal in the Council, a “double majority” of at least 55% of the member states⁴ that represent at least 65% of the population of the Union is required. In addition, a proposal backed by n-3 member states is always adopted, even if they do not represent 65% of population.

Let us consider three weighted majority games:

\[ C_1 = [N, r, p] \]
\[ C_2 = [N, c_1, e] \]
\[ C_3 = [N, c_2, e] \]

where \( N \) is the set of member states (\( n = \text{card}(N) \) is the number of member states), \( r \) is the population quota, \( p \) is the vector of Member States shares of population (in %), \( c_1 = \text{int}(55n/100) + 1 \) is the member states quota, \( c_2 = n-3 \) is alternative member states quota and \( e \) is a summation vector (one state one vote). The Lisbon qualified majority rule can be modeled as a committee system generated by the intersection of \( C_1 \) and \( C_2 \), and union of \( (C_1 \cap C_2) \) and \( C_3 \):

\[ C_{QML} = (C_1 \cap C_2) \cup C_3 = [N, (r \lor c_1) \land c_2, p, e, e], c_2 > c_1 \]

In EU27 \( r = 65\% \), \( c_1 = 15 \), \( c_2 = 24 \) (member states weights and quotas see in Table 2).

3.2 Council and Commission: Consultation procedure

We assume that voting in the Commission is not influenced by citizenship of Commissioners and by their ideological preferences, Commission is deciding as a collective body and results of its voting are not known.

The European Commission sends its proposal to both the Council of Ministers and European Parliament, but it is the Council that officially consults Parliament and other bodies. However, the Council is not bound by Parliament’s position, so the Parliament can not change the proposal or prevent its adoption. Then Council either approves the proposal by qualified majority or rejects it by blocking minority, or amends it by unanimity. Depending on the version of qualified majority in the Council we have three models of consultation procedure.

3.2.1 Status quo: Nice version of consultation procedure

From committee system for qualified majority \( C_{QMN} = [N, q \lor r \lor c, v, p, e] \) we obtain the following model of consultation procedure:

\[ C_{CNPN} = [N \cup \{1\}, ((q \lor r \lor c) \lor 1) \land n, v^{(+1)}, p^{(+1)}, e^{(+1)}, e^{(+1)}(n+1,n+1), e^{(+1)}] \]

The proposal is accepted if it is supported by Commission and approved by Nice qualified majority in the Council (not less than \( q = 345 \) votes, at least \( r = 62\% \) of population and at least \( c = 14 \) member states), or changed if it has unanimity support of all \( n \) member states in the Council, even if the change is not supported by Commission.

---

⁴ When the Council is not acting on a proposal of Commission, majority of 72% of member states is required.
3.2.2 Lisbon version of consultation procedure

\[ C_{CNPL} = [N \cup \{1\}, ((r \lor c_1) \land c_2) \land n, p^{(+1)}, e^{(+1)}], e^{(n+1)}, e^{(+1)}] \]

The proposal is accepted if it is supported by Commission and approved by Constitution qualified majority in the Council (at least \( r = 65\% \) of population and at least \( c_1 = 55\% \) of member states, or at least 24 member states even without population quota, or changed if it has unanimity support, even if the change is not supported by Commission).

3.3 Co-decision procedure

Co-decision procedure was introduced in 1992 (Maastricht) and modified in 1997 (Amsterdam).

New legislative proposal is drafted by Commission and submitted to the Council and the Parliament. In the first reading the Council adopts by qualified majority „common position“, including amendments, and EP approves by simple majority its position including amendments. If the two institutions have agreed on the same amendments after the first reading, the proposal becomes law. Otherwise there is a second reading in each institution, where each considers the others’ amendments. If the institutions are unable to reach agreement after second reading, a conciliation committee is set up with equal number of members of Parliament and Council. The committee attempts to negotiate a compromise text which must be approved by both institutions. Both Parliament and Council have the power to reject a proposal either in second reading or following conciliation, causing the proposal to fall. Commission may also withdraw its proposal in any time.

European Parliament of the EU of 27 has 785 members in 8 political groups (European political parties): European People’s Party-European Democrats (EPP-ED), Group of the Party of European Socialists (PES), Alliance of Liberals and Democrats for Europe (ALDE), Union for Europe of the Nations (UEN), European Greens – European Free Alliance (Greens-EFA), European United Left – Nordic Green Left (GUE-NGL), Independence and Democracy (IND-DEM), Identity, Tradition, Sovereignty (ITS), Non Attached (N). Distribution of seats among political groups see in Table 2, national representation in EP is roughly proportional to the population. Voting quota in EP is 393 votes (simple majority).

We assume that the European Parliament represents interests of citizens and acts on the basis of ideological principles expressed by European political parties, hence voting in the Parliament is in not necessarily correlated to the voting in the Council.

3.3.1 Nice version of co-decision procedure

From committee system for qualified majority \( C_{QMN} = [N, q \lor r \lor c, v, p, e] \) we obtain the model

\[ C_{CDPN} = [N \cup \{1\} \cup M, ((q \lor r \lor c) \lor 1) \lor t, v^{(m+1)}, p^{(m+1)}, e^{(m+1)}, e^{(n+m+1)}, s^{(-n-1)}] \]
The proposal is accepted if it is supported by Commission, approved by Nice qualified majority in the Council (more than \( q = 345 \) votes, at least \( r = 62\% \) of population and at least \( c = 14 \) member states), and by required majority in the European Parliament (\( t = 393 \)).

3.3.2 Lisbon version of co-decision procedure

The only difference in Lisbon version of co-decision procedure is in Council qualified majority where:

\[ C_{OML} = (C_1 \cap C_2) \cup C_3 = [N, (r \lor c_1) \land c_2, p, e, e], \quad c_2 > c_1. \]

In this case the model of co-decision procedure will look as follows:

\[ C_{CDPL} = [N \cup \{1\} \cup M, ((r \lor c_1) \land c_2) \lor 1] \lor t, p^{(m+1)}, e^{(m+1)}, e^{(m+1)}_{c_{(n+m+1,n+1)}}, s^{(n-1)}]. \]

The proposal is accepted if it is supported by Commission and approved by Lisbon qualified majority in the Council (at least \( r = 65\% \) of population and at least \( c_1 = 55\% \) of member states, or at least \( c_2 = 24 \) member states even without population quota), and by required majority in the European Parliament (\( t = 393 \)).

4. Empirical findings

In Table 3 we provide Shapley-Shubik power indices calculated for three different procedures (qualified majority, consultation procedure and co-decision procedure) in two alternative settings (Nice, Lisbon). For calculations we applied Proposition 1, to evaluate aggregate voting power (influence) of different institutions, we applied Proposition 2. To follow development of inter-institutional division of influence in time, in Table 4 we provide results of EU15 based on before Nice Treaty decision making arrangement.
Table 3. Inter-institutional and intra-institutional power in EU27 legislative procedures (Shapley-Shubik index in Nice status quo rules and in Lisbon Treaty rules)

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<td>0,000</td>
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<tr>
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<td></td>
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<td></td>
<td>0,000</td>
<td></td>
</tr>
<tr>
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<td></td>
<td>0,000</td>
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<tr>
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</table>
Table 4. Inter-institutional and intra-institutional power in EU15 legislative procedures (Shapley-Shubik power index) before Nice reform (in %)

<table>
<thead>
<tr>
<th>Weights</th>
<th>Qualified Majority</th>
<th>Consultation procedure</th>
<th>Co-decision procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SS power</td>
<td>SS power</td>
<td>SS power</td>
</tr>
<tr>
<td>Germany</td>
<td>10</td>
<td>0,1166</td>
<td>0,0851</td>
</tr>
<tr>
<td>France</td>
<td>10</td>
<td>0,1166</td>
<td>0,0851</td>
</tr>
<tr>
<td>UK</td>
<td>10</td>
<td>0,1166</td>
<td>0,0851</td>
</tr>
<tr>
<td>Italy</td>
<td>10</td>
<td>0,1166</td>
<td>0,0851</td>
</tr>
<tr>
<td>Spain</td>
<td>8</td>
<td>0,0955</td>
<td>0,0704</td>
</tr>
<tr>
<td>Netherlands</td>
<td>5</td>
<td>0,0552</td>
<td>0,0418</td>
</tr>
<tr>
<td>Greece</td>
<td>5</td>
<td>0,0552</td>
<td>0,0418</td>
</tr>
<tr>
<td>Portugal</td>
<td>5</td>
<td>0,0552</td>
<td>0,0418</td>
</tr>
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<td>Belgium</td>
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<td>0,0552</td>
<td>0,0418</td>
</tr>
<tr>
<td>Sweden</td>
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<td>0,0352</td>
</tr>
<tr>
<td>Austria</td>
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<td>0,0352</td>
</tr>
<tr>
<td>Denmark</td>
<td>3</td>
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<td>0,0284</td>
</tr>
<tr>
<td>Finland</td>
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<td>0,0353</td>
<td>0,0284</td>
</tr>
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<td>Ireland</td>
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<td>0,0353</td>
<td>0,0284</td>
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<td>0,0183</td>
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<tr>
<td>Council</td>
<td>87</td>
<td>1,00</td>
<td>0,7519</td>
</tr>
<tr>
<td>Commission</td>
<td>626</td>
<td>0,2481</td>
<td></td>
</tr>
<tr>
<td>Parliament</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EPP</td>
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<td>PES</td>
<td>181</td>
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<td>ELDR</td>
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<td>GGEP</td>
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<td>IEN</td>
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<td></td>
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<tr>
<td>IND</td>
<td>19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NA</td>
<td>8</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Own calculations, Turnovec F. (2004, 2008b)

The qualified majority required at that time was at least 62 votes in the Council of Ministers out of 87 (for Member States weights see column “weights”). A simple majority in the European Parliament (electoral term 1994-2004) required at least 314 votes out of 626, and ideologically motivated voting is assumed (the distribution of seats among 9 factions of the European Parliament see the column “weights,” Parliament section). The rules of consultation and co-decision procedures were (except for the definition of a qualified majority) the same as described in section 3.

In case of consultation procedure Lisbon qualified majority rule increases power of Commission compared to Nice (and power of Council as an aggregate power of member states is declining). In co-decision procedure, where we have three institutional actors - Council, Commission and Parliament, we can observe the same tendency: Lisbon increases power of Commission and Parliament and decreases power of Council compared to Nice and decreases power of Council compared to Lisbon. Moreover, in the co-decision procedure the influence of big European political parties can be compared to the influence of big member states, so the political or ideological dimension of European Union decision making becomes measurably more important than in earlier stages of the EU development. The influence of member states is procedurally dependent and differs from their internal influence in the Council of Ministers internal voting not only by size, but also by structure.

In Table 5 we summarize inter-institutional influence in EU15 and EU27. In EU27 we consider two options: the effects of Nice Treaty rules (status quo) and Lisbon Treaty rules on inter-institutional division of influence.

Table 5. Intergovernmental versus federal elements in European Union decision making

<table>
<thead>
<tr>
<th></th>
<th>EU15 before Nice rules</th>
<th>EU27 Nice rules</th>
<th>EU27 Lisbon rules</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>QM CNP CDP</td>
<td>QM CNP CDP</td>
<td>QM CNP CDP</td>
</tr>
<tr>
<td>Council</td>
<td>1 0,7519 0,5105</td>
<td>0,7631 0,62</td>
<td>1 0,683 0,4708</td>
</tr>
<tr>
<td>Commission</td>
<td>0 0,2481 0,3055</td>
<td>0,2369 0,2547</td>
<td>0 0,317 0,3236</td>
</tr>
<tr>
<td>EP</td>
<td>0 0 0,184</td>
<td>0,1253</td>
<td>0 0,2056</td>
</tr>
<tr>
<td>Intergovernmental power</td>
<td>1 0,7519 0,5105</td>
<td>0,7631 0,62</td>
<td>1 0,683 0,4708</td>
</tr>
<tr>
<td>Federal power</td>
<td>0 0,2481 0,4895</td>
<td>0,2369 0,38</td>
<td>0 0,317 0,5292</td>
</tr>
</tbody>
</table>

Source: own calculations

Results demonstrate changes in inter-institutional influence of the three most important EU institutions – Council, Commission and Parliament.

In EU15 before Nice decision making rules the inter-governmental element of EU governance (power of Council) represent about 75% in consultation procedure and 51% in co-decision procedure. Nice rules in extended EU27 increase inter-governmental character of the EU decision making (76% in consultation procedure and 62% in co-decision procedure). Lisbon Treaty rules decrease inter-governmental character of EU (68% in co-decision procedure and 47% in co-decision procedure) compared both to arrangement before Nice Treaty and Nice Treaty rules.

Comparison of power of Council to power of Commission and Parliament in different procedures provides a very rough proxy of inter-governmentalism and federalism evaluation. Let \( \pi_{CM}^{QM} \) is the power of Council of Ministers in unilateral decision making (not involving Commission and European Parliament), \( \pi_{CM}^{CNP} \) is the Council power in consultation procedure and \( \pi_{CM}^{CDP} \) is power of the Council in co-decision
procedure. In the same way let us denote power of Commission and power of European Parliament in different procedures ($\lambda_{QM}^{Com}, \lambda_{CNP}^{Com}, \lambda_{QM}^{Com}$ for Commission and $\lambda_{QM}^{EP}, \lambda_{CNP}^{EP}, \lambda_{QM}^{EP}$ for Parliament). Denoting by $\lambda_{QM}$ share of issues decided exclusively by the Council, by $\lambda_{CNP}$ share of issues decided by consultation procedure, and by $\lambda_{CDP}$ share of issues decided by co-decision procedure, then the overall evaluation of the Council power equals to

$$\lambda_{QM}^{Com} + \lambda_{CNP}^{Com} + \lambda_{CDP}^{Com}$$

By analogy,

$$\lambda_{QM}^{EP} + \lambda_{CNP}^{EP} + \lambda_{CDP}^{EP}$$

is the overall Commission power and

$$\lambda_{QM}^{EP} + \lambda_{CNP}^{EP} + \lambda_{CDP}^{EP}$$

is the overall European Parliament power. Then the index of federalism in the EU can be defined as follows:

$$\lambda_{QM}^{Com} + \lambda_{CNP}^{Com} + \lambda_{CDP}^{Com}$$

Since power of Commission and Parliament in Council exclusive decision making is zero and power of Parliament in consultation procedure is zero, the index of federalization reduces to

$$\lambda_{CNP}^{Com} + \lambda_{CDP}^{Com}$$

It is difficult to quantify shares of issues decided by different procedures. For example, if

$$\lambda_{QM} = \lambda_{CNP} = \lambda_{CDP} = \frac{1}{3},$$

then, before Nice Treaty arrangement, the index of federalism would be

$$\frac{1}{3} \times 0.2481 + \frac{1}{3} \times 0.4895 = 0.2443$$

i.e. about 25%, Nice Treaty federalism index would be

$$\frac{1}{3} \times 0.2369 + \frac{1}{3} \times 0.38 = 0.2044$$

i.e. about 20%, and Lisbon Treaty federalism index would be

$$\frac{1}{3} \times 0.317 + \frac{1}{3} \times 0.5292 = 0.2821$$

i.e. about 28%. So, the quantitative hypothesis (corresponding to the intuition) is that Lisbon Treaty increases federative elements in the EU. In fact, together with changes of voting weights and quotas we can observe shifts (increase) of shares of issues decided by consultation and co-decision procedures and henceforth the changes toward federalism will be more intensive than follows from our analysis.

5. Concluding remarks

The author is aware of the fact that used models of consultation and co-decision procedures are highly simplified (assumption about equal probability of all possible pivotal positions, they do not reflect multi-stage character of the voting games and complex amendment process). But, under
hypothesis that the models reflect basic features of legislative procedures, they lead to interesting conclusions.

Influence of member states in European Union decision making cannot be reduced to relative voting power in qualified majority voting in the Council independently of used legislative procedures, involving Commission and European Parliament. Consultation procedure (with explicit interaction of Commission and Council, where Commission has agenda setting authority), and co-decision procedure involving Commission, Council and European Parliament (with de facto unconditional veto right of all three institutions) affects distribution of inter-institutional voting power of EU institutions and intra-institutional voting power of decision making actors (member states and European political parties).

Ceteris paribus (constant shares of agenda packages decided exclusively by the Council, consultation procedure and by co-decision procedure), the Lisbon Treaty rules increase federative elements in the European Union compared to Nice Treaty arrangement and before Nice Treaty arrangement. In fact, we can observe growing share of agendas decided by consultation and co-decision procedures, what implies that increase of federalism index is stronger than indicated by our empirical findings.

Qualified majority, consultation and co-decision procedures can be modeled by instruments of weighted majority games and power indices methodology can be used. Power indices methodology has its critics. What exactly power indices are measuring is controversial, see e.g. arguments of Garrett and Tsebelis (1999) about ignoring preferences, and response of Holler and Widgrén (1999), but they are of general interest to political science because they may measure players’ ability to get what they want. Admittedly significant share of decisions under the EU decision making procedures are taken without recourse to a formal vote. But it may well be the case that the outcome of negotiation is conditioned by the possibility that a vote could be taken, and than a priori evaluation of voting power matters. Moreover, analyses of institutional design of decision making could benefit from power indices methodology (Holler and Owen 2001, Lane and Berg 1999). Continuing research and deeper understanding of power indices methodology reflect an actual demand for amendment of traditional legal and political analysis of institutional problems by quantitative approaches and arguments.

Acknowledgements

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LE PARLEMENT EUROPÉEN ET LA DÉMOCRATISATION DU PROCESSUS DÉCISIONNEL EUROPÉEN

Lecturer, PhD, Cristina Dogot
Professor, PhD, Ioan Horga
University of Oradea

Résumé.
Au début du processus de la construction européenne la nouveauté de la démarche était visible non seulement pour le nombre réduit des domaines inclus dans le mouvement progressif d’intégration fonctionnelle, mais aussi dans le numéro réduit des institutions et dans la qualité et les compétences possédées par ceux-ci. L’évolution du processus d’intégration européenne a déterminé plusieurs débats tant sur la démocratie interinstitutionnelle que sur le déficit démocratique général dans l’espace communautaire. Cette étude se propose de démontrer d’une manière descriptive l’importance croissante du Parlement européen dans le système institutionnel communautaire, parallèlement en soulignant la diminution du déficit démocratique décisionnel en ce qui concerne cette institution.

Key words:

En dépit des références à une possible fédération européenne faites dans la déclaration de Robert Schuman, quelque temps après le début du processus de la construction européenne le problème de l’intégration politique de pays membres et, implicitement, de la création de certaines institutions, n’a pas eu une place très importante parmi les préoccupations des leaders politiques européens. Des plus, les premiers deux décennies même les analystes européens ne semblent pas d’avoir eu qu’une approche plutôt historique, juridique ou économique sur le nouveau système qui venait de se créer. C’est la raison pour laquelle on considère que les premières approches de la perspective de l’analyse politique et de relations internationales appartiennent aux chercheurs américains, un des premiers qui a été mentionné étant l’analyste Karl W. Deutsch, avec ses livres *Political community at the international level: problems of definition and measurement* (1954) ; *Political community and the North Atlantic Area : international organisations in the light of historical experience* (1957, ouvrage collectif) ; *Arms Control and the Atlantic Alliance : Europe faces coming policy decision* (1967) ; *France, Germany and the Western Alliance : a study of elites attitude on European integration and world politics* (1967, ouvrage collectif) et *The Analysis of international relations* (1968). Ainsi, c’est cet analyste qui parle pour la

5 Pas par hasard, les chercheurs américains (ayant déjà une vision plus profonde sur l’organisation de type fédérale, que l’Europe envisageait pour elle-même) étaient très réceptifs aux nouveaux structures qui auraient pu jouer un rôle dans l’espace de relations internationales et, pourquoi pas, qui auraient pu constituer une force politique appropriée de celle de l’Amérique.
première fois de l’Europe comme d’une possible « communauté de sécurité », réalisable si certains conditions étaient cumulativement et synchroniquement accomplies : l’amélioration des capacités administratives et politiques et également de l’élite politique ; la compatibilité de valeurs et des comportements politiques (on peut considérer l’ordre démocratique comme une valeur implicite) ; liens économiques étroits et efficientes et de la croissance économique ; la création d’un mode commun de vie et d’une communication sociale entre les groupes (disposant du droit de mobilité) et les différentes régions ; la prédictibilité réciproque de comportements. Toutefois, rien de ces objectives ne pouvait pas se créer au-delà de l’existence des institutions communes européennes.6

Pour les premières deux décennies de l’existence de la Communauté européenne, Karl Deutsch la considérait comme une « communauté pluraliste de sécurité », à savoir une communauté dont les États membres gardaient encore leur souveraineté politique et militaire. La situation pouvait être dépassée si une nouvelle série des objectifs-conditions était accomplie : « interdépendance (mutual relevance), compatibilité des valeurs et espérance de gains commun, solidarité et attention réciproque (mutual responsiveness), sentiments d’identité commune et de confiance réciproque ».7 Assez surprenant, si on tient compte des résistances de certains acteurs politiques devant les idées de l’intégration politique européenne et de la création d’un Parlement européen comme instrument et méthode d’avancer sur la voie de l’intégration, pas du tout curieux si examinons les idées européenistes des intellectuels de l’époque, le lien que K. Deutsch établissait entre l’unité des personnes et le problème de l’intégration politique européenne reste encore d’actualité, comme presque toutes les conditions considérées nécessaires pour l’union politique décelées par l’analyste américain. Un autre aspect très bien saisi par K. Deutsch et d’une grande actualité est celui de l’importance des relations transnationales, interrégionales entre les citoyens européens, ainsi que le rôle de l’éducation pour l’accomplissement de ce type de relations, pour que les gens de différentes nationalités arrivent à se comprendre et se respecter réciproquement, et aussi pour arriver à conscientiser les avantages d’une telle relation.8 Suite à la réalisation de ce type de collaboration-communication au niveau le plus bas, parallèlement à l’évolution de l’approfondissement de l’intégration économique, la création d’une structure institutionnelle supranationale de la communauté européenne devra être moins difficile à réaliser, l’élite et les structures politiques nationales opposant moins de résistance à cette évolution de la communauté. Toutefois, il est bien évident maintenant que cet état de chose est assez difficile à créer. Et toutefois, même si l’intégration politique européenne est encore assez loin d’être réalisée9 et au delà du fait qu’elle ne s’appuie pas sur des fondements assez sommaires, des pas importants ont été faits vers son accomplissement, l’existence d’un système institutionnel de plus en plus complexe et interdépendant, où le Parlement européen est une des institutions fondamentales, étant la preuve de l’évolution (assez lente, dirons les sceptiques) de l’espace communautaire dans la direction envisagée par K. Deutsch.

C’est incontestable le fait qu’on ne peut pas lier le problème de l’intégration politique, celle de la création de la communauté démocratique de sécurité, d’une seule institution, soit-elle directement élue par les peuples des États membres (et en dépit du fait que le Traité de Maastricht considère les partis politiques européens – réunis dans le Parlement – un possible instrument de l’intégration, contribuant « à la formation d’une conscience européenne et à l’expression de la volonté politique des citoyens de l’Union » (art. 138a)). Toutefois, on doit accepter que l’évolution des caractéristiques et des compétences

7 Ibidem, p. 621-622.
9 On doit être honnêtes et reconnaître que même le concept de l’intégration politique a souffert des changements conceptuels dans les différents moments de l’évolution du processus de l’intégration européenne.
de cette institution, son rôle de plus en plus renforcée, à partir de l’*Acte unique européen* spécialement, tant de point de vue de la participation au processus décisionnel que dans les débats sur les problèmes les plus actuels de la Communauté européenne ou du monde, l’accroissement du degré de visibilité des ses actions et, au niveau national10, de ses membres, tous ceux-ci sont des éléments qui ont transformé le Parlement européen dans une des trois institutions les plus importante de l’actuelle Union européenne, le représentant des peuples européens. Le système institutionnel européen actuel est le résultat de plusieurs débats et compromis réalisés avec le but de parachever l’union « de plus en plus étroite », l’unité politique de type fédéral envisagée par les fondateurs et les militants européistes de tous les temps. Au fur et à la mesure de l’avance du processus d’unification européenne, la question de la démocratisation du processus décisionnel11 devient plus souvent invoquée, soit par les adeptes de certaines méthodes de la réalisation de l’intégration, soit par les représentants des États.

*Le Parlement européen : l’évolution d’une institution*

Connu actuellement comme l’institution qui représente les peuples européens, le Parlement européen a eu plusieurs définitions : « Assemblée, composée de représentants des peuples des États réunis dans la Communauté, exerce les pouvoirs de contrôle qui lui sont attribués par le présent Traité »12 ; Assemblée « composée de représentants des peuples des États réunis dans la Communauté » et « formée de délégués que les Parlements sont appelés à désigner en leur sein selon la procédure fixée par chaque État membre »13 ; Parlement européen « composé de représentants des peuples des États réunis dans la Communauté »14 ; Parlement européen « composé des représentants des citoyens de l’Union »15.

Le Parlement européen est débuté ainsi avec le premier traité communautaire, ayant 78 députés délégués ou élus par les États membres, et pouvant établir toute seule, par vote, ses règles de procédures. Les décisions de l’assemblée pouvaient être publiés, mais avant cela elles pouvaient être annulées par la Cour de Justice si ceux-ci faisaient l’objet d’une pétition des États membres ou de la Haute Autorité.16 Comme on a pu observer, le Traité de Rome parle aussi de l’Assemblée européenne, une institution formée des représentants des peuples européens et ayant un rôle délibératif et de contrôle. C’est aussi le Traité de Rome qui accorde à l’Assemblée européenne un rôle plus important dans le processus législatif, celle-ci devant être, à partir de ce Traité, consultée par le Conseil avant toute décision.

10 Et souvent transnational, les actes de différents groupes parlementaires ou les actes individuels des eurodéputés contribuant à la création, encore d’une forme juste naissante on peut dire, la conscience d’un intérêt ou même d’un destin commun, parmi les peuples européens.

11 Et aussi de la relation d’entre les institutions européennes et les États membres et les citoyens de ceux-ci.

12 Art. 20 du „Treaty constituting the European Coal and Steel Community and connected documents“, Luxembourg: Publishing Services of the European Communities, complex pagination, www.ena.lu


16 Titre 2, art. 7; Ch. II, art. 21-25; art. 38; art. 78(4) ; art. 95 du „Treaty constituting the European Coal and Steel Community and connected documents“, Luxembourg: Publishing Services of the European Communities, complex pagination, www.ena.lu
législative qu’il devait prendre.17 Dans ce traité, des différences majeures sont intervenues en ce qui concerne les compétences budgétaires de l’Assemblée commune européenne. Si par le Traité CECA l’Assemblée n’avait des prérogatives budgétaires propres que limitées (de proposer son propre budget administratif à l’approbation de la Haute Autorité) et partageait les compétences en ce qui concerne l’adoption du budget pour les dépenses extraordinaires avec les Présidents de la Cour de Justice, de la Commission européen et du Conseil18, le Traité de Rome, même s’il n’importa pas des changements radicaux, augmente bien le rôle de l’Assemblée dans la prise de décision19.

L’étape suivante concernera le changement du nom de l’Assemblée commune, qui est devenue, en mars 1958, « l’Assemblée parlementaire européen », et en 1962 le « Parlement européen »20. « Grâce » au Conseil, la décennie suivante apportera la possibilité d’organiser des élections directes (décision du 20 septembre 1976), une réalisation importante si on rende compte de plusieurs obstacles qu’on été nécessaire à dépasser jusqu’à l’obtenir.21

Le document qui améliorera, en complétant les dispositions des Traités de la CECA et CEEA, et spécialement ceux du Traité de la CEE, la position du Parlement entre les autres institutions européennes22 et multipliera les compétences de celui-ci sera l’Acte unique européen (1986)23. Ainsi, le Parlement européen gagnera : i./ le droit d’être consulté par le Conseil sur les changements intervenant dans le statut de la Cour de Justice24 ; ii./ le droit d’être le collaborateur25 du Conseil dans la prise de décision sur la libre circulation des travailleurs ; sur la liberté de s’établir sur le territoire communautaire ; sur l’adoption des normes juridiques concernant le statut des ressortissants étrangers ; sur certains aspects économiques et sociaux26 ; iii./ le droit d’avis conforme sur l’adhésion d’un nouveau État membre et sur les accords avec les tiers27 ; iv./ d’être consulté sur « l’harmonisation des législations relatives aux taxes sur le chiffre d’affaires, aux droits d’accises et autres impôts indirects dans la mesure où cette harmonisation » et sur les mesures à adopter afin de faire évoluer le marché intérieur28 ; le droit

17 « Traité instituant la Communauté économique européenne », http://eur-lex.europa.eu/fr/treaties/dat/11957E/tif/11957E.htm, art. 4 ; art. 7, art. 14(7), art. 43(2), art. 54(1,2), art. 56(2), art. 57(1,2), art. 63(2), art. 87(1), art. 126-127, art. 201, art. 203, art. 228(1), art. 235-236, art. 238. « Évolution des compétences législatives du Parlement européen », www.ena.lu/evolution-competences-legislatives-parlement-europeen-012100400.html.

18 Art. 17 et 78. Voir annexe 1.


20 On sait bien que toute cette évolution a connu aussi des périodes difficiles et de temps morts, les décident politiques nationaux, (réunis dans le Conseil, une institution qui dominait alors, a coté de la Commission européenne, l’activité législative communautaire) ayant des réserves sur la perte de souveraineté de leurs États. Toutefois, présenter les différents projets d’un parlement européen (comme ceux d’Altiero Spinelli ou de Schelto Patijn) ne pourrons pas nous aider dans notre démarche sur le processus de démocratisation interinstitutionnelle de la décision communautaire, une raison suffisant pour nous appuyer spécialement sur l’évolution des compétences de l’actuel Parlement européen. Il est évident, pour le lecteur, que dernière toute cette évolution des compétences du Parlement européen se trouve les efforts de plusieurs militants et adeptes de l’idée parlementaire européenne (par exemple, pour que la procédure de codécision être accepté ont été nécessaire plus de vingt ans. Cf. G. Spénale, Évolution du Parlement européen, dans Mélanges Fernand Dehousse. 1979, no Volume 2, la construction européenne, p. 163-166).


22 Le meilleur argument est le déroulement du processus législatif selon le nouveau document, processus synthétisé dans l’annexe 5 de cette étude.

23 Voir l’annexe 4.

24 « Acte unique européen », art. 4-5, 11-12, 26 (140A), 27.

25 Conformément aux anciens traités, l’ancienne Assemblée était seulement consultée, et uniquement en quelques cas.

26 ibidem, art. 6(3-5, 7), 21.

27 ibidem, art. 8-9.

28 ibidem, art. 17-18(1).
d’être consulté sur l’établissement des différents fonds européens (agriculture, social etc.)

Très important pour l’Acte unique européen est le fait que celui-ci institutionnalise le processus appelé Coopération Politique Européenne, initié à l’occasion du summit de Hague, en 1969. L’Acte unique européen parle pour la première fois de la nécessité d’une politique étrangère commune des États membres, le Parlement européen étant considéré comme partenaire dans le processus décisionnel, et par la suite régulièrement informé sur les sujets débattus dans le processus de coopération intergouvernementale.

Même une rapide consultation du document intitulé l’« Évolution des compétences législatives du Parlement européen » (voir la bibliographie) nous offre une image assez complète sur la distribution des compétences législatives et des procédures afférentes à chaque compétence du Parlement européen jusqu’au Traité de Nice.

*De Traité de Maastricht au Traité de Lisbonne*

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29 ibidem, art. 23 (130D, E, Q(1-2), S).
31 « Acte unique européen », art. 30(4).
Toutefois, c’est le Traité de Maastricht qui ouvrira la voie d’une nouvelle portée pour les institutions européennes, le Parlement inclus. C’est grâce à ce nouveau document que le Parlement européen acquiert (art. 138b) le droit d’initiative législative\textsuperscript{32}, en recevant le droit de demander à la Commission européenne de présenter toute proposition législative qu’il considère nécessaire pour faire fonctionner le nouveau traité communautaire et, dans la même mesure, de vérifier le fondement juridique de toute proposition législative de la Commission\textsuperscript{33}. L’annexe cinq démontre très bien le rôle législatif du Parlement européen attribué par le Traité de Maastricht, cette institution disposant de

\textsuperscript{32} Voir l’annexe 5.
plusieurs possibilités d’influencer le processus législatif. Le Parlement reçoit la compétence d’élaborer des projets concernant l’organisation uniforme des élections pour les eurodéputés dans les  

34 L’interprétation de l’annexe se fait dans la clé de l’article 189b et peut être complétée par les articles 189c et 190 du Traité
États membres (art. 138). Bien importantes sont les compétences parlementaires sur l’adoption du budget européen (art. 201 et suivants, plus les Chapitre 7 du Règlement de procédure), mais elles ne font pas l’objet de cette étude.

Le Parlement est aussi l’institution qui nomme l’Ombudsman (art. 138e), une institution de médiation à la disposition de toute personne physique ou juridique ressortissant de l’un des États membres, et l’institution qui approuve le président et les membres de la Commission européenne (art. 158(2)), qui est consultée sur les actions incombant au Tribunal de première instance (art. 168a(2)) et dans les procédures de nomination des membres de la Cour de comptes (188b(3)). De plus, le Conseil doit présenter au Parlement, après toute réunion et annuel, un rapport sur ses activités et respectivement sur l’état de chose dans l’Union (art. D). D’autre côté, la procédure de l’avis conforme du Parlement européen est nécessaire dans plusieurs décisions du Conseil qu’autorasant : pour adopter de nouvelles décisions concernant le droit de la libre circulation (art. 8a (1-2)) ; pour confier des missions supplémentaires à la Banque centrale européenne et pour modifier le statut du Système européen des banques centrales (art. 105(6) ; art. 106(5)) ; pour l’adoption de la monnaie unique par les États membres (art. 109j(2, 4)) ; pour l’organisation et les objectives des fonds structuraux (art. 130d), etc. La plupart de ces principes et règles de fonctionnement seront préservés dans les traités nommés d’Amsterdam et de Nice, même si des compléments et de modifications ont été bien intervenu.

Le dernier document concernant l’évolution générale de l’Union européenne, le Traité de Lisbonne, modifie à son tour deux documents antérieurs, le Traité de l’Union européenne et le Traité de la Communauté européenne. Toutefois, ce document n’est pas encore ratifié par tous les États de l’Union, donc il n’est pas encore arrivé à produire des conséquences. Toutefois, il est bien important de connaître quels seront les effets que ce document produira sur le fonctionnement du Parlement européen. Dans ce contexte il est important de mentionner que l’art. 8A du Traité de Lisbonne spécifie clairement le principe de la représentation démocratique, les citoyens de l’Union étant représentés au niveau de l’Union, dans le Parlement européen. Pour la première fois sont établies des limites minimales (6) et maximales (96) pour le numéro de s eurodéputés pour les États membres, le Parlement ne pouvant pas avoir plus de 750 eurodéputés, élus par vote universel, direct, libre et secret.

Le Parlement préserve encore certaines prérogatives mentionnées dans les Traité de Maastricht : l’approbation du président de la Commission européenne (art. 9D(7)) ; d’être informé, par le Conseil, sur certaines des ses activités et décisions (art. 61D) ; dans la signature de nouveaux accords internationales (art. 188L-N), le nouveau document spécifiant explicitement d’autres compétences législatives et budgétaires du Parlement et du Conseil de l’Union européen (art. 9A(1) ; 9C(1)).

Conformément au nouveau document communautaire, le Parlement approuve (suite à la nomination du Conseil), le Haut représentant de l’Union pour les affaires extérieures et la politique de sécurité ainsi que le président et les membres de la Commission – institution qui est responsable devant le Parlement) ; est consulté, par le Conseil, dans ses décisions concernant l’activité du Haut représentant pour les affaires extérieures et la politique de sécurité ; le Parlement (à coté des États membres ou des autres institutions européennes) peut initier des projets de révision des traités (art. 48 (2, 6)) et est consulté dans les cas des États qui se retirent des structures de l’Union (art. 49A(2)) ; participe, à coté de Conseil, à l’élaboration des normes concernant les données personnelles (art. 16B(2)) ; participe, à coté de Conseil, à l’adoption des mesures concernant les politiques européennes sur les visas, le droit de séjour, le type de contrôles de frontière auxquels sont soumis les citoyens et les conditions de la libre circulation de ressortissants et des citoyens des pays tiers (art. 62(1-3) et art. 63a(2), les mesures de Maastricht et par les articles du Règlement de procédure du Parlement européen. Tratatul de la Lisabona, art. 9D(7-8).
concernant le droit des familles (art. 65(3)) et des mesures concernant le système européen de l’asile (art. 63(2)) ; participe, à coté de Conseil, à l’adoption des mesures concernant le fonctionnement du marché intérieur (art. 65(2)) et dans les domaines de la criminalité (art. 69A-C), la coopération policière (art. 69F-H) les transports, la fiscalité, la propriété intellectuelle, les politiques monétaires etc. Le Traité de Lisbonne fait de précisions supplémentaires concernant le processus législatif et les positions du Parlement et du Conseil dans ce processus (art. 251-254a) et explique en détails les procédures d’adoption du budget communautaire (art. 272 et suivants), auxquelles le Parlement participe à coté du Conseil.

Très important pour ce document est le fait qu’il maintien le « Protocole sur le rôle des parlements nationaux dans l’Union européenne », ajouté premièrement au Traité d’Amsterdam. C’est le document qui démontre le rôle accordé aux parlements nationaux, qui recevront tous les projets législatifs36 élaborés par la Commission ou le Parlement Européen, les autres projets étant transmis par le Conseil. Suite à cette action, les parlements nationaux peuvent se prononcer sur le respect du principe de subsidiarité dans les dits projets législatifs. De plus, le même document envisage la coopération entre le Parlement Européen et les parlements nationaux, même au niveau des commissions parlementaires. En complément vient le « Protocole sur l’application des principes de subsidiarité et de proportionnalité », qui établi l’obligation de respecter et de vérifier le respect du principe de subsidiarité pour toute décision des institutions communautaires.

Par le Parlement, vers la démocratie communautaire

K. Deutsch parlait, il y a presque trois décennies, de l’amélioration des capacités administratives et politiques et également de l’élite politique comme une des conditions nécessaires pour la réalisation de la « communauté de sécurité » européenne. En poursuivant l’évolution de l’institution du Parlement européen on peut observer bien comme ce segment de l’organisation institutionnelle européenne a assumé et a imposé certains règles qui rende l’activité communautaire plus démocratique que jamais. Si au début du processus de la construction européenne les analystes soulevaient le problème de l’unité politique de la Communauté européenne et suggéraient les caractéristiques nécessaires à accomplir afin de réaliser un certain type d’unité, les analystes actuels et les critiques de l’Union européenne soulèvent spécialement deux types d’inconvénients : la manque de démocratie, même intérieur, entre les différents institutions communales, de l’espace communautaire, et la manque d’unité politique. Toute décision concernant un aspect de politique extérieure que l’Union européenne est forcée de la prendre met la question de l’intégration politique dans la lumière de ses limites. Les adeptes les plus passionnés de l’unité européenne ou du fédéralisme européen considèrent que cette unité est encore loin d’être achevée, et il est assez difficile de les combattre.

Le problème de la démocratie dans le cadre communautaire, et particulièrement celui du déficit de démocratie, est lié de plusieurs domaines d’activité, mais actuellement il est lié spécialement aux possibilités de participation à la vie communautaire que se réjouissent les citoyens des pays membres. Pour les membres des différentes institutions, toutefois, le problème du déficit de démocratie a eu souvent des aspects fortement professionalisés. Tel a été le cas du Parlement européen, une institution dont la création et évolution a connu plusieurs obstacles. Toutefois, aujourd’hui le déficit démocratique (dans sont double aspect) représente un aspect qui a connu une forte amélioration, même si beaucoup de choses restent encore à faire : si le Parlement bénéficie maintenant de plusieurs instruments par lesquels

36 Et autres documents et informations qui peuvent être transmises.
il peut influencer le processus décisionnel européen, ses membres, organisés dans les groupes politiques, ne sont pas toujours bien ancrés dans les problèmes soulevés par le processus d’« européanisation ». C’est toutefois un sujet difficilement à l’enfermer dans une phrase…

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THE POLICIES AND THE GOVERNANCE IN THE EUROPEAN UNION

Grigore Silasi, Professor PhD, Jean Monnet Chair, West University of Timisoara

Vadasan Ioana, Senior Lecturer, PhD, West University of Timisoara

Abstract The European Union is a governance model, in today’s more and more opened world, and will have an increasingly important role on the international stage, in order to achieve world-wide efficient governance. In this paper, authors approach the governance concept, and the European Union as a multi-level system of governance. We present the different actors that can influence the European governance system, and study the way different major events had influenced the European governance. The authors will also link the policies to the European Union governance and instruments, in the attempt of showing that the EU is governed through the policy-making process. The governance in the EU is all the time associated to the intergovernmental conferences model, where the states keep their prerogatives, as well as to the supranational model, where a part of the states sovereignty is delegated to the EU. The EU governance model is one of the stakes of influence fights among different European institutions: the Parliament, the Commission and the Council of Ministers. The Parliament, the only direct elected body by the citizens, has obtained, during the EU history, an increased importance in the EU governance. From a simple consultative body, at the beginning, it has obtained a real co-decision power, on a par with the Council of Ministers, in many issues.

Key words: governance, policies, European Union, institutions, decision-making process

I. EU – multi-level system of governance?

The concept of governance designates, according to the European Commission White Paper from 2001, “the rules, processes and behaviors which influence the practicing of powers at the European level, especially from the point of view of openness, of participation, of responsibility, efficiency and coherence”.

One of the early approaches to introduce the concept of governance to the study of the EU was Marks’s (1992) formulation of multi-level governance. Initially developed through his examination of the structural policy of the EU, the concept of multi-level governance emphasizes the fluid and open-ended nature of the EU system within which a broad range of actors operating at different levels, from the local to the international, have the potential to play an influential role. Various studies, meanwhile, conducted in the early 1990s revealed the crucial role which interest groups have played in the EU policy process (Mazey and Richardson, 1993; Greenwood et al. 1992). Other studies demonstrated how

EU institutions have influenced the agenda-setting, policy formulation and implementation processes. Studies highlighted: the role of bureaucratic politics in the EU (Peters, 1992); the role of the Commission as an agenda-setter (Peters, 1994; Pollack, 1995); and the Commission’s role in the promotion of the EU regulatory regime (Majone, 1989, 1991a, 1991b, 1992a, 1992b, 1993; Dehousse, 1993; Cram, 1993; Bulmer, 1994b). Likewise, the role of the European Parliament as “conditional agenda-setter” has been examined (Tsebelis 1994, 1996). Increasingly, too, scholars began to assess the important political role played by the European Court of Justice (Weiler, 1991; Garrett, 1992; Shapiro, 1992; Garrett and Weingast, 1993; Burley and Mattli, 1993; Wincott, 1995a) and, importantly, to examine the critical interactions between the Court and other institutions within the policy process (Alter and Meunier-Aitsahalia, 1994; Wincott, 1995b). Scholars were, meanwhile, forced to recognize the complexity of the role played by EU institutions. Analysts have, for example, cautioned against the over-generalization concerning the role of “the Commission”, which is a highly differentiated structure (Cram, 1994), or of the impact of the European Parliament, as its influence varies between policy sectors (Judge et al, 1994).

These policy-based studies had important implications for evaluations of the most appropriate “conceptual lenses” (Allison, 1971) through which to view the integration process. Peterson (1995), for example, conceptualized the European Union as a multi-tiered system of governance. He distinguished between the different types of decision taken, the different actors which dominate and the different types of rationality which inform their actions, at the various levels of analysis identified within the EU. Peterson concluded that no single theory could explain EU governance at all levels of analysis. Broad “macro” approaches to the issue of integration (such as neo-functionalism or the state-centred “intergovernmentalist” approaches) were particularly useful for explaining the major “history-making” decisions of the EU. When it came to explaining “policy-setting” or “policy-shaping” decisions, however, “macro-theories tend to lose their explanatory power” (Peterson, 1995). Indeed, as our understanding of the EU policy process, and of the process of European integration more generally, became more sophisticated, it increasingly appeared to be the case that “our explanatory goals are best served by specifying the analytic strengths – and limitations – of approaches that work better in combination than alone” (Sandholz, 1993).

II. Governance and the three pillars

The European Union is the most important change agent, regarding the governance and the policies elaboration in the contemporary Europe. The EU is an international, supra-national and intergovernmental organization in the same time, having this name through the Maastricht Treaty in 1993, completing and including the European Community (EC), often called the Single Market (SM). In the present, the EU groups 27 European states. The European Union is based on three pillars, which distinguish themselves through the decision-making process used, referring to the following areas:

Pillar 1: the European Community represents a supra-national pillar, relative to the integrated policies (the Common Agricultural Policy, the Custom Union, the Internal Market and the Euro). Through this pillar, the member states have transferred a relatively important part of their competencies to the European Union.

The second pillar: the Common Foreign and Security Policy (CFSP) expresses the intergovernmental cooperation in matters of foreign affaires and security.

The third pillar: the police and judiciary cooperation is also an intergovernmental cooperation. The relevant issues for this pillar are named JHA (Justice and Home Affairs) issues.

Figure n. 1. The Architecture of the European Union, after the Amsterdam Treaty
### Common principles and objectives

<table>
<thead>
<tr>
<th>Pillar 1</th>
<th>Pillar 2</th>
<th>Pillar 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The European Communities</strong></td>
<td><strong>The Common Foreign and Security Policy (CFSP)</strong></td>
<td><strong>The Cooperation in the Justice and Home Affairs field</strong></td>
</tr>
<tr>
<td><strong>EC (European Community):</strong></td>
<td><strong>Foreign Policy:</strong></td>
<td><strong>New or modified dispositions regarding:</strong></td>
</tr>
<tr>
<td>- Custom Union and Single Market;</td>
<td>- Cooperation, common positions and actions;</td>
<td>- The EU citizenship;</td>
</tr>
<tr>
<td>- Agricultural Policy;</td>
<td>- Peace keeping;</td>
<td>- Education and culture;</td>
</tr>
<tr>
<td>- Structural Policy;</td>
<td>- Human rights;</td>
<td>- Trans-European networks;</td>
</tr>
<tr>
<td>- Commercial Policy.</td>
<td>- Democracy;</td>
<td>- Consumer protection;</td>
</tr>
<tr>
<td><strong>New or modified dispositions regarding:</strong></td>
<td>- Third countries help.</td>
<td>- Health;</td>
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<tr>
<td>- The EU citizenship;</td>
<td></td>
<td>- Research and environment;</td>
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<tr>
<td>- Education and culture;</td>
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<td>- Social policy;</td>
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<tr>
<td>- Trans-European networks;</td>
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<td>- Policy regarding the asylum, external frontiers and immigrations.</td>
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<td>- Consumer protection;</td>
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<td>- Health;</td>
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<td>- Social policy;</td>
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<tr>
<td>- Policy regarding the asylum, external frontiers and immigrations.</td>
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</tbody>
</table>

**Source: Integration after Amsterdam**

The EU is a hybrid system within which, for many areas, the states give up entirely to their sovereignty, while for others, the states prefer the intergovernmental cooperation. The enlarged EU competencies and the strength of the lines between the member states distinguish it clearly from other intergovernmental or non-governmental organizations. Through many aspects, the EU is a Confederation, and through other aspects, it has the characteristics of a Federal State. Often, one prefers to see the EU as a sui-generis entity, as a particular organization, having no resemblance with any other. The issue of its evolution is very discussed through the opinions of member states’ governments, even if since the ECSC High Authority one has noticed a continuous increase of Union’s competencies and prerogatives, in spite of the multiple crisis that have “colored” the project.

Some international and constitutional law specialists consider that the EU is already a state, incorporating sovereign states. In a much broader manner then other international classic organizations, the EU benefits from an attributed competency. This implies that its activities and functions can only unroll upon a limited number of issues, established through Treaties. From this point of view, one can
understand that the EU has a system of specific competencies, which can be exerted under the Treaties conditions. The non-exertion of an attributed competency doesn’t have as an effect the annulment of the EU’s competency. Furthermore, the assignment of an EU competency is equivalent with a competency transfer from member states to the community institutions. Although the Treaties foresee the principle of a competency strictly attributed to the EU, practically an extensive conception regarding EU competency has imposed itself, for the following two reasons:

a) Because the Treaties foresee a subsidiary competency reserve, allowing the EU to take the necessary measures in order to achieve its own pursued goals, even if these measures had not been foreseen through the Treaty (art. 308CE, ex. Art. 235);

b) The European Court of Justice has recognized the existence of unwritten implicit competencies, issued from a global and final interpretation of the Treaties. In most cases, the Union’s competency is a competency which is shared with the member states (these are not rival competencies). The regulator principle of shared competencies is achieved through subsidiarity. The competencies distribution between the European Union and the Member states is an exercise of permanent negotiation. In the same time, in exceptional cases, the EU competency is an exclusive one, in the sense that the member states have virtually lost the enactment and regulation possibility, concerning the matter at issue. In absentia of community regulation, the member states keep their enactment power within their own internal prerogatives (which is called the residual competencies principle, or the limited powers principle). This principle means that the competencies non-attributed to the EU are reserved for the members states, which keep the integrality of their powers. These residual competencies are not without limit though, because the Court of Justice considers that their exertion must not have as a consequence the diminishing of the “useful effect” of a Treaty, i.e. to compromise its finality. In this direction, the Luxembourg Court has specified that, if the member states had effectively kept their competencies in the field of the Common Foreign and Security Policy, they must not exert less these competencies in a limited manner, respecting the community law. Also, they cannot avoid the community law regarding the Commercial Common Policy, using the pretext that they would endorse the CFSP objectives.

In the ‘80s of the last century, about 80% of the social and economic member states legislation was guided based on the commitments assumed within the Treaties, and on political rules and normative acts convened through EU institutions. It is also important to underline the fact that, in the perspective of EU definition (as a multi-level governance system), the EU agreements interweave with the activities of member states policies elaboration.

The launch of Euro, at January the 1st 1999, has marked a decisive stage of the European integration process. The act has been the end of an unprecedented economic and politic cooperation. This process has profoundly transformed the structure and operation of EU’s economy, and has decisively contributed to its prosperity and stability. The introduction of the Euro has given a new enthusiasm to the economic and political integration movement, and has strengthened the EU’s position in the world economy and policy. Due to the new institutional frame and the strengthening of surveillance and coordination instruments, the economic policies elaboration within the Euro zone is based on solid fundaments, leading to substantial and sustainable gains in terms of economic growth and employment. However, the achievement of this potential is not insured. It demands a systemic, decided and coordinated exploitation of the effects of mutual strengthening which can exist between macroeconomic policies based on stability and healthy structural policies. The employment challenge in Europe has become the central priority of the European economic policy. The success of Euro launching and the good operation of the EMU constitute a favorable framework. However, the achievement on the
short term of an economic growth and of a high and sustainable level of employment will pass through a global and coherent strategy, having three important elements, whose effects will mutually strengthen:

a) Healthy macroeconomic policies, favorable for growth, employment and price stability, which assumes a growth and stability pact, fully respected, and with accompaniment measures of wage evolution;

b) Policies which improve the global operation of labor markets, and privilege especially the employment, the entrepreneurial spirit, the adaptation capacity, the equality of chances, thanked to the decided, rapid and transparent implementation of the guidelines regarding the employment, conceived by taking into consideration the situation of each member state;

c) Economic reforms, allowing an increased efficiency and flexibility of goods, services and capitals markets, growth, environment protection, a careful watch of the Single Market, a resolute competition policy, regulation reforms and a more efficient taxation system. The states that are not yet members of the Euro zone are subject to the same macroeconomic constraints as the ones already members, but they keep their national competencies in matters related to their monetary and exchange rate policy, and must not respect all the stipulations of the growth and stability pact; in return, these countries must apply stability macroeconomic policies, as base for economic growth and sustainable employment. Meanwhile, these countries must have monetary and budgetary policies allowing them to be convergent in terms of inflation and budgetary situation in order to adopt the single currency.
Figure n. 2 Policies, modes of governance and instruments

<table>
<thead>
<tr>
<th>Modes of governance</th>
<th>Instruments</th>
<th>Policies</th>
<th>Monetary policy</th>
<th>Trade policy</th>
<th>Single market policy</th>
<th>Fiscal policy</th>
<th>Employment policy</th>
<th>Research policy</th>
<th>Social protection and social inclusion policies</th>
<th>Education and training policies</th>
<th>Enterprise and innovation policies</th>
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</thead>
<tbody>
<tr>
<td>Single policy</td>
<td>Delegation in European bodies, laws</td>
<td></td>
<td>X</td>
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<tr>
<td>Harmonization of national policies</td>
<td>Framework laws</td>
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<tr>
<td>Coordination of national policies</td>
<td>Framework laws, decisions</td>
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<td>Open coordination of national policies</td>
<td>Decision on recommendations with monitoring and opinions</td>
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<td>Community programs</td>
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### Figure n. 3. Providing security for flexibility

<table>
<thead>
<tr>
<th>LEVELS OF GOVERNANCE</th>
<th>EUROPEAN</th>
<th>NATIONAL TO ENFORCE EUROPEAN INSTRUMENTS PLUS</th>
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<tbody>
<tr>
<td><strong>Transition from education to employment</strong></td>
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<tr>
<td>1 European Employment Guidelines</td>
<td>9 Education planning</td>
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<td>2 European Youth Pact</td>
<td>10 Internship</td>
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<td>3 Support to European mobility</td>
<td>11 Financial incentives to recruitment of young people</td>
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<td>4 Skill need foresight</td>
<td>12 Membership to social protection system</td>
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<td>5 Vocational guidance</td>
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<td>6 Partnership for innovation and jobs</td>
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<td>7 European Social Fund</td>
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<td>8 Labor law for young people</td>
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<td></td>
<td>13 European Employment Guidelines</td>
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<td></td>
<td>14 Labor law on antidiscrimination, equitable wage and parental leave</td>
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<td>15 Child and dependants care service</td>
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<td>16 Catch-up training</td>
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<td>17 Progressive individualization of contributions and benefits</td>
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<td><strong>Transition from household to employment</strong></td>
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<tr>
<td>18 European Employment Guidelines</td>
<td>21 Strengthening employment services</td>
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<td>19 Broad economic policy guidelines</td>
<td>22 Vocational and occupational guidance</td>
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<td>20 Labor law on universal minimum protection system</td>
<td>23 Education and training</td>
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<td></td>
<td>24 Decrease non-wage costs for lower-skilled jobs</td>
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<td>25 Enrolment of non-declared workers in social protection systems</td>
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<td>26 Social inclusion measures</td>
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<td>27 Adapting social contributions and benefits in order to make work pay</td>
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<tr>
<td><strong>Transition from unemployment to employment</strong></td>
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<tr>
<td>28 European Employment Guidelines</td>
<td>30 Programs to spread best practices in work organization and human resources management (learning organization, multiskilling, careers and job design, modular lifelong learning)</td>
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<tr>
<td>29 European law on health and safety, individual employment conditions, modernization of work organization, work councils, information and consultation</td>
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<tr>
<td><strong>Functional flexibility</strong></td>
<td>31 European Employment Guidelines</td>
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<tr>
<td>32 Labor law on working time and part-time work</td>
<td>33 Negotiations on working time</td>
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<td>34 Time saving accounts</td>
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<td>35 Job rotation</td>
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<td>36 Learning accounts</td>
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<td>37 Training leave</td>
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<td>38 Social drawing rights</td>
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<td><strong>Working time flexibility</strong></td>
<td>39 European Employment Guidelines</td>
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<tr>
<td>40 Broad Economic Policy Guidelines</td>
<td>42 Agreements on wages, productivity, competence building and jobs</td>
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<tr>
<td>41 Macroeconomic dialogue</td>
<td>43 Innovation agreements</td>
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<td><strong>Wage flexibility</strong></td>
<td>44 European Employment Guidelines</td>
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<tr>
<td>45 Labor law on fixed term work</td>
<td>49 Membership to social protection system</td>
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<td>46 Labor law on part-time work</td>
<td>50 Equalizing social benefits</td>
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<td>47 Labor law on posting of workers</td>
<td>51 Equalizing access to lifelong learning</td>
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<td>48 Labor law on temporary workers</td>
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<tr>
<td><strong>Transition between different types of labor contract</strong></td>
<td>52 European Employment Guidelines</td>
<td></td>
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<tr>
<td>53 Labor law on collective redundancies</td>
<td>59 Raising unemployment insurance</td>
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<td>54 Labor law on corporate restructuring</td>
<td>60 Restructuring management</td>
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<td>55 Labor law on transfer of undertakings</td>
<td>61 Regional development</td>
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<td>56 Social fund</td>
<td>62 Partnerships for innovation and jobs creation</td>
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<td>57 Globalization fund</td>
<td>63 Re-training during unemployment period</td>
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<td>58 Common objectives for social protection</td>
<td>64 Active job search</td>
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<tr>
<td><strong>Transition from employment to unemployment</strong></td>
<td>65 European Employment Guidelines</td>
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<tr>
<td>66 Common objectives for social protection</td>
<td>67 Adapting working conditions</td>
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<td>68 New forms of work organization</td>
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<td>69 Reducing early retirements</td>
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<td>70 Flexible retirement age</td>
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<td>71 Partial retirement</td>
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<td>72 Pension calculation rules</td>
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<td>73 Exchange of expertise between generations</td>
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Figure n. 4. Managing industrial change: levels and stages

<table>
<thead>
<tr>
<th>STAGES LEVELS</th>
<th>PASSIVE</th>
<th>ACTIVE</th>
<th>PRO-ACTIVE</th>
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<td><strong>Company</strong></td>
<td>Lay-off process</td>
<td>Corporate social plans for restructuring</td>
<td>Strategic management of innovation</td>
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<td>Unemployment insurance</td>
<td>(CSR)</td>
<td>Strategic management of human resources</td>
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<td>Early retirements</td>
<td>Competence report and personal plan</td>
<td>Competence building</td>
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<td>Outplacement services</td>
<td>New models of work organization</td>
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<td>Training for new jobs in the region</td>
<td>Innovation agreements</td>
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<td>Incentives for geographic and</td>
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<td>occupational mobility</td>
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<tr>
<td><strong>Sector/Regional</strong></td>
<td>Sectoral programs of restructuring and downsizing</td>
<td>Rapid response system and change managers</td>
<td>Clusters development</td>
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<td>Social programs with minimum income</td>
<td>Sectoral/Regional programs for labor force transfers between companies and sectors with specific training</td>
<td>Networks and partnerships for innovation</td>
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<td>Financial incentives for recruitment by</td>
<td>Innovation poles</td>
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<td>new companies</td>
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<td>Local employment initiatives</td>
<td>Learning regions</td>
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<td>Incentives to new investments, both</td>
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<td>Local partnerships for growth and</td>
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<td><strong>National</strong></td>
<td>Labor law on lay-off</td>
<td>Active labor market policies</td>
<td>Coordination of employment, industrial, innovation, education and trade policies</td>
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<td>Vocational guidance services</td>
<td>Partnership for change involving social partners</td>
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<td>unemployment and retirement</td>
<td>Training programs to tackle labor market mismatches</td>
<td>Foresight system for new sources of job creation</td>
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<td>Coordination of unemployment and</td>
<td>Pro-active programs for education and training</td>
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<td>Labor market regulations: flexibility</td>
<td>Labor market regulations: transitions and</td>
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<td>with security</td>
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<td>Social partners consultation</td>
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<td>Housing market and geographic</td>
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<td>Coordination of employment, competition and</td>
<td>Lisbon Strategy</td>
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<td>information and consultation)</td>
<td>European policies</td>
<td>Partnership for growth and jobs</td>
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<td>Social protection guidelines</td>
<td>European Employment Strategy</td>
<td>European social dialogue (sectoral and cross-sectoral)</td>
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<td>European Social Fund (ESF)</td>
<td>Community programs for R&amp;D, innovation,</td>
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<td>Directive on works councils</td>
<td>employment and lifelong learning</td>
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<td>Directive on portability of pensions</td>
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<td>European foresight system for new</td>
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CONCLUSIONS

The governance in the EU is all the time associated to the intergovernmental conferences model, where the states keep their prerogatives, as well as to the supranational model, where a part of the states sovereignty is delegated to the EU.

In the first case, the community decisions are in fact the Treaties among states, which must be taken unanimously. This model, close to the principle of Bretton Woods institutions, is sustained by the Eurosceptic current. According to it, only the state-heads have the democratic legitimacy to represent their citizens. According to this variant of governance, only the nations must control the EU institutions.

The supranational model is sustained by the Euro-optimists current and the federalist current. According to them, the institutions must represent directly the citizens. For them, through the EU enlargement to 27 member states, the ways of decision-making within the institutions must be adapted, in order to avoid institutional paralysis.

Nowadays, the EU is characterized by a hybrid governance model. The Council of Ministers represents the member states for decisions not requiring unanimity, the voices of each member state are though weighted through their demographic representation, and the Parliament represents the citizens, while the Commission represents the European common interests.

The EU governance model is one of the stakes of influence fights among different European institutions: the Parliament, the Commission and the Council of Ministers. The Parliament, the only direct elected body by the citizens, has obtained, during the EU history, an increased importance in the EU governance. From a simple consultative body, at the beginning, it has obtained a real co-decision power, on a par with the Council of Ministers, in many issues. In 2004, the Parliament could decisively influence the designation of the European Commission members. But its representation is hardly affected by the low rate of vote participation of European citizens.

Figure n. 1. The evolution of citizens’ participation to the European elections
References


11. XXX, Dr. Pablo Podadera Rivera, Jean Monnet Senior Lecturer, Professor in Economics of the EU, University of Malaga, *The Economic and Social governance issue*, Global Jean Monnet Conference/ECSA – World Conference, A Europe of Achievements in a changing world, Brussels, 24-25 November 2008.

1. Introduction: the issue of the legitimisation of the European Union. (*)

At the start of the new century (and millennium), the process of European integration has been marked by two developments. On one side, we have seen a sharp acceleration from an ideal angle, in a quest for values (the 2000 Nice Charter on the basic rights of the Union) and for a constitutional framework (the 2004 Rome Treaty adopting a constitution for Europe). On the other side, we have seen considerable resistance and mistrust towards this acceleration, which has led to an ongoing phase of (ideal and institutional) crisis, highlighted by the negative results of the referenda on the text of the constitutional Treaty held in France and the Netherlands in May-June 2005. The results of the referenda have been followed by the laborious drafting of the latest recent treaty reforming the Union. The ratification of this latter treaty, signed in Lisbon in December 2007, has recently been called into question by another rejection by the people, when the Irish said “no” in the June 2008 referendum.

This clearly means that we need to pay attention to the issue of the Union’s legitimisation. In doing so, we need to consider the true raison d’être of the Union, with an eye to the peoples — or (to use a more fashionable though problematic expression) civil society— of the Union’s member countries, instead of focusing on the institutions of united Europe, i.e. the decision-making and governmental bodies of the Community and the entities they encompass (above all, the “economic community”, now also monetary, or the “market”).

In this respect, we should consider the words contained in the Preamble to the first Community treaty, the 1951 Treaty setting up the European Coal and Steel Community. Whilst declaring their intention to set up a community of interests (i.e. economic interests), the signatory States clearly highlight the more important, or perhaps we should say supreme, objective (not just social and political but also ideal) of creating a community of peoples.

Resolved to substitute for age-old rivalries the merging of their essential interests; to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts; and to lay the foundations for institutions which will give direction to a destiny henceforward shared [italics added].

(*) This text presents and illustrates ideas and subjects that are the subject-matter of other works of mine: some published, should the reader wish to further examine them, in the journal of the Centro Altiero Spinelli (Rome Three University) La Cittadinanza Europea (Rome, Philos edizioni), which comes out every six months (from
Such a scenario can be identified in the European citizenship. By this we mean a space – an organised system of rules regulating economic and social activities and safeguards for the actors involved – in which the difference between “citizens” (nationals) and “foreigners” (citizens of other European Union countries) tends to disappear. Such a space develops as a result of integrating — in specific sectors and for particular purposes — the systems of each member states.

The scenario we have just depicted would however seem doomed to fall apart when faced with the obstacle of scepticism (or even uncompromising rejection) at the idea of a European citizenship seen as being synonymous with a common identity. This situation is the result of a tragic misunderstanding in which people confuse “citizenship” with “nationality”.

Because of this confusion, the general perception of European citizenship – which, judging by public opinion in each of the Union’s countries (as the Eurobarometer statistical surveys show), is already weak – tends to increase the sense of remoteness (or indeed hostility) that so many citizens (nationals) feel towards the Union. The result of this is a growing disaffection towards European institutions.

This makes it difficult to address (the notion of) European citizenship in unequivocally conceptual terms relating to the process of integration: as a process that can be accomplished to the extent only that it is accepted as a common objective by the populations of member countries. The notion of European citizenship is part and parcel of this objective, in that it is a factor that can enhance (or contribute towards enhancing) a sense of belongingness, referred to inter-subjective relations among individuals who operate (across internal borders) in a common space created as a result of integrating internal (national) systems: a space where all such subjects (persons of different nationality) mutually recognize themselves as members (citizens) sharing common values of civilisation as well as fundamental rights of citizenship. A space moreover capable sooner or later of giving rise to a profile of European identity (Europeanness) much stronger than it is today.

Therefore the relevance attributable to (the notion of) European citizenship stems precisely from its capacity to act as a catalyst in the process of integration within civil society, by, specifically, giving greater impetus not just to the hypothesis but to a model of European (common) political and legal system.

This relevance is both functional and substantial. Because of this, we need to examine the issue of European citizenship and, in so doing, clarify its functions, as well as its contents.

2. On the notion of European citizenship: origins, developments and characteristics.

The notion of European citizenship or, to be more precise, Union citizenship, made its first official appearance in the Treaty establishing the European Union (TEU), in the version signed at Maastricht (which was later followed by the Amsterdam and Nice versions). In the TEU, European citizenship is contemplated as one of the basic objectives of the Union. The objective consists of «to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union» as stated by the Treaty on European Union (TEU, Art. 2). But it is also mentioned in the Treaty on the
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Vol. 1, no. 1, June 2009

European Community (TEC). Here, significantly, this notion is included (in Part II) immediately after the definition of principles (objectives) of the European Community and before policies pertaining to the internal market.

This point is particularly important if we consider the origins of the idea of European citizenship as an institution, alongside and beyond the economic community (common market). The idea was conceived way back in the 1970s as a means of rekindling the process of integration, which at that time was losing pace and stagnating. The idea then was to seek a fresh ideal impulse that could point to further goals on the road towards «an ever closer union among the peoples of Europe» (TEU, Art. 1). These goals are first included in the Single Act (1986) and then in the Maastricht Treaty (1992), after which they are repeated in the Amsterdam Treaty (1997). In a sort of crescendo, they are again quoted in the Charter of basic laws of the Union (2000) proclaimed at the Nice summit (but still today formally devoid of legal effect) and in the Treaty (not yet ratified) adopting a European constitution (October 2004), widely known as the constitutional Treaty.

It was during that time, in the mid-70s, that the idea of a “Europe of citizens” first emerged as a way of solving the problem of bringing Community institutions closer to people’s lives. At the 1974 Paris summit (which introduced the practice of periodical meetings of the European Council), an initial list of so-called “special rights” was prepared, rights geared to furthering a sense of belonging to the Community system. Belgian Prime Minister Tindemans was given a mandate to prepare a report on the European Union (in its new form of integration between member States devised at the 1972 Paris summit). The report was presented in 1976. In addition to the freedom of residence and the freedom to stand for election and vote (in municipal elections), the report also recommended broader acknowledgment of basic rights and freedoms, as well as an individual right to apply to the European Court of Justice if such rights and freedoms are violated. All of this was accompanied by measures aimed at encouraging free circulation, such as the abolition of border controls on persons. In its turn, the newborn European Parliament, in adopting these proposals, asked that the basic rights be embodied in Community law. In early 1984, the European Parliament approved (on a large majority) a draft treaty setting up the European Union (the so-called “Spinelli project”), which for the first time heralded a concept of Union citizenship. The same year, the Adonnino Committee (named after its president), which was set up by the European Council at the Fontainebleau summit and given the task of preparing steps towards furthering and reinforcing European identity, presented a structured programme of measures clearly characterised by a “civic” inspiration. The programme included: abolishing customs formalities, mutually recognising qualifications and certificates, establishing the universal right of stay not subject to holding a job, the right to participate in municipal elections for persons coming from other member States, a uniform right to be elected to the European Parliament, the right to make petitions to the European Parliament and the establishment at the European Parliament of the figure of ombudsman/mediator, the right to appeal to the ombudsman, and intensified cultural exchanges.

38 «Nationals of member states are together Union citizens. Union citizenship is linked to the status of national of a member state and cannot be acquired or lost separately. Union citizens take part in the Union political life according to the rules stated in the present draft treaty, hold the rights attributed to them by Union legal system and act accordingly to its rules» (Art. 3 [my own translation of the Italian text published in L’Università raccoglie la lezione dei Padri dell’Europa, edited by Centro interdipartimentale di ricerca e servizi sui diritti della persona e dei popoli dell’Università degli Studi di Padova, 2007]).
The concept of European citizenship thus emerges in the Maastricht Treaty: anyone who has the citizenship of a member State is a European citizen.

The main rights inherent in this form of citizenship include, first and foremost, the right to enter, stay and remain in another member state or to set up there business.

These rights had in fact already been acknowledged in earlier Community legislation (the Treaty of Rome, in 1957, setting up the European Economic Community), but they were reserved for persons operating in the common market, i.e. entrepreneurs and workers, who were thus permitted to exercise their activity in a country other than their own State. The difference is that these rights are now extended to the population of member States as a whole, in direct accordance with a principle of citizenship formulated as a principle *per se*.

There are other rights inherent in holding European citizenship. We refer specifically to (i) the political right to stand for election and vote in both European and local (municipal) elections, a right exercisable in the country of residence insofar as it is different from the country (of origin) of which we are citizens (nationals), (ii) the right to submit a petition to the European Parliament and (iii) the right of recourse to the European mediator (ombudsman).

In the successive Amsterdam Treaty, the nature and content of European citizenship are further defined and enhanced, albeit in what would appear to be a downsized formula. Almost as an addendum to the sharply worded formula of the Maastricht Treaty, the literal effect of which was almost to divest the state of its monopoly over citizenship (by setting up the Union citizenship with a peremptory statement quite close to the one made by the above mentioned Spinelli project of Union treaty: «Anyone who has the citizenship of a member State is a citizen of the Union»), the Amsterdam Treaty makes the following adjustment: «Citizenship of the Union shall complement and not replace national citizenship» [italics added].

In the course of their negotiations, the governments had sought to avoid the risk of excessively divesting the concept of citizenship of its national nature, which might have been the case if a new cross-border citizenship had established itself in place of the more traditional national citizenship. This could have produced the effect of divesting the latter of its relevance, while turning the former into nothing more than a sort of European statelessness.

But the result of this operation to limit the concept from a technical and legal angle has actually been to produce the opposite effect. By making European citizenship “complementary” to national citizenship, this has implied, and implies, acknowledging — alongside the complementary nature of one vis-à-vis the other — the partial, or non-exhaustive, nature of state citizenship. This is because national citizenship alone becomes a necessary, but no longer sufficient, condition for realising the full legal status of the subject (private individual or corporate body) within the European Union. Such full status is, on the other hand, ensured as a result of being integrated with ulterior subjective situations regarding relations between individuals or between private and public subjects within the Union legal system, even though on most occasions such relations have to pass through the internal system (at the national or local level).

It should also be stressed that, while the Maastricht Treaty saw citizenship as a means to achieving the goal of further safeguarding the rights and interests of citizens of member States, the purpose of the Amsterdam Treaty was to reinforce the complementary function of European citizenship. The Amsterdam Treaty established (TEU, Art. 6) that the Union «is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States» and
«shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms [...] and as they result from the constitutional traditions common to the Member States, as general principles of Community law». Consequently, it envisages (TEU, Art. 7) the power of member states (one third at least of them) together with European institution to take action whenever «there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6».

To further reinforce the complementary nature and function of European citizenship, the Maastricht Treaty and, after it, the Amsterdam Treaty, have introduced the objective of giving Union citizens «a high level of safety within an area of freedom, security and justice». To achieve this, it is envisaged that member States should develop «common action… in the fields of police and judicial cooperation in criminal matters» (TEU, Art. 29).

In the Amsterdam Treaty, the notion of Union citizenship has been further bolstered by including the heading on employment as a matter of common interest to member States. In so doing, it gives the concept a distinctly social connotation.

So, from the original idea of a citizenship based on civil rights linked to market freedoms in the framework of the European Community, there has been, with the European Union, a shift towards an idea of citizenship based on participation, that is on political (and electorate) rights, and furthermore towards a “social citizenship” (linked to welfare rights too). The purpose of social citizenship is — potentially at least — to provide a guarantee against exclusion and marginalisation in such a way as to increase economic and social cohesion on solidarity basis. The model we thus see taking shape is the model of a social market economy.

Finally, with the Nice Charter, “citizenship” has been upgraded taking a further step forward to gain a place among fundamental values alongside dignity, freedom, equality, solidarity and justice as one of the basic principles of the Union.

3. Beyond nationality: European citizenship as a “space” (as opposed to status) of belongingness.

At this point we need to recall the semantic misunderstanding we referred to at the start. In some European languages the term “nationality” is used with the meaning of “citizenship”. The use of the term “nationality”— so heavily charged with reasons, passions, ideals and symbols deeply embedded in the history, culture and anthropology of a people — risks causing confusion. It risks making people more suspicious and diffident. This is partly because they are against the idea of a common belongingness (identity) which, whilst not replacing (as the treaties say) our national identity, overshadows it with what is a mere semblance of an artificially created European “nationality”. Therefore, from a linguistic and terminological angle, we need to make a clear distinction between these two words and concepts if we are to avoid creating difficulties in understanding and perceiving (accepting) European citizenship.

If it is true to say that the united Europe – “united in diversity”, as the motto coined by the constitutional Treaty of Rome reads – is a union of peoples, as well as being a union of States.

If it is true to say that, as yet, a European demos does not exist, and that a “European constitution” is not (and cannot be) based on a non-existent demos.
If it is true to say that, apart from being unusable, the classification of a sovereign European people would actually be harmful. Such a classification would indeed imply a (19th century) concept of state and law based on government control. The raison d’être of the European Union, on the other hand, goes beyond the traditional patterns of state sovereignty, in a plural dimension of respect for national diversities based on structuring areas of competence according to a (new and original) multi-level system of organising governmental powers. This multi-level system would appear to be based on the idea of a community of peoples — something akin to the community of peoples expressed in the term respublica christiana, on which the medieval empires were based — as opposed to that of a super State, as a kind of modern empire.

If it is true to say that in the European Union, a union without “internal borders”, the legal and technical notion of “foreigner” is gradually fading. As the Convention implementing the Schengen Agreement 1990 has established, the definition of “foreigner” only applies — as far as persons circulating in the Schengen area are concerned — to a person «who is not a citizen of a member State of the European Communities». In other words, it only applies to persons who come from states outside the Community.

If it is true that on the issue of classifying and treating citizens of other member States (not as “foreigners”, but) as European citizens, we should not forget that one of the basic principles of the Union is the principle of non-discrimination based on nationality (TEC, Art. 12: « any discrimination on grounds of nationality shall be prohibited»).

If it is true to say all this, then it is also true to say that, instead of creating a “European nationality”, an unpopular idea that would be hard to achieve, the Union can create a “space” (we shall come back to this word later) of citizenship. In this space, and thanks to it, we can create a condition (for those operating in it) of belonging to a common system of law (the Union or Community system), with all that this entails especially as far as relations between private individuals from different (national) member States are concerned. As it has been observed: European citizenship does not mean belonging to a European nation. Nor does it in any way imply a nationalistic type of European identity. But, by giving citizens of member States the opportunity to carry out a range of economic, social, cultural, educational, and even political, activities, beyond the traditional territorial borders of the nation-states, European citizenship contributes towards slackening the hierarchy between different allegiances, offering individuals a variety of associative relations, without restricting them to a specific nationality. In this respect, European citizenship can be defined as an extension of rights within a space with a broader territorial extension and a more functional structure (than the national space), rather than as a precise legal status39.

In the end, as I have attempted to explain in the previous chapter, this means that European citizenship – whilst having a meaning different to that of citizenship in terms of nationality – is actually a diversified form of citizenship which impacts, at the political and institutional level, on the plural subdivision of national state systems. State systems are no longer closed internally — in a framework in which their borders, like their citizens, belong exclusively to a specific territory — but participate in an open space, shared with all European Union member countries.

4. The political and institutional functions of Union citizenship.

We therefore need to consider — in a political and institutional perspective — the meanings and functions of European citizenship before we go on to examine its effective or potential technical and legal applications.

We can find these meanings — in summary form but, hopefully, such as to convey their essence — in the answers to four key questions regarding the four main objectives of the Union as a whole. These answers provide us with a series of particular, closely linked specific functions of European citizenship, each with its own relevance.

An initial function of European citizenship is to operate as a framework legitimising the united Europe.

Here, the simple, but crucial, question is: why is the issue of European citizenship (i.e. the relevance of this notion in terms of its capacity to back up the project of European construction) important?

One way of answering this question is to say that the framework legitimising European construction can and must also be based on the fundamental principle (value) of citizenship, alongside the other values and principles stated by the Nice Charter (dignity, freedom, equality, solidarity and justice). This will acquire even greater relevance as, hopefully, we move on from the treaties to the constitution as a “basic law” of the Union. In such a perspective, the Union provides a guarantee of citizenship as a prerequisite of greater freedom, security and justice (which must be) offered by the Union to “its” citizens, whilst the European citizens should in their turn guarantee the Union itself by way of participating “to its political life” (as stated in the terms of the Spinelli’s project of Union treaty mentioned above). This perspective plays a significant role with regard to the composition of the European Parliament. Indeed, in contrast with the present provision according to which the EU Parliament «shall consist of representatives of the peoples of the States» (TEC, Art. 189), the constitutional Treaty envisages that the European Parliament «shall be composed of representatives of the Union’s citizens » (Art. I-20). Such last provision is now maintained by the Lisbon Treaty (Art. 14). Furthermore, one may recall that the same constitutional Treaty in the Heading (VI, Part I) entitled «The democratic life of the Union» introduces the right of people’s initiative under which one million Union citizens having the citizenship of a significant number of member states, therefore representing various nationalities, can invite the European Commission to present a legislative proposal they consider necessary in order to implement the Constitution (Art. I-47). Again, a provision which has been kept alive in the Lisbon Treaty (Art. 11).

In these terms, the basic need for a European citizenship is thus reaffirmed as a need to clarify and deepen the construction of Europe, by involving citizens — meaning the civil society in all its structures and expressions — in matters concerning the Union. To put it another way, whilst acknowledging and safeguarding basic rights for the benefit of citizens, the Union should also envisage ways and forms of participation and the “duties” that accompany them, to use an expression dear to one of the prophets of a modern and democratic Europe based on solidarity (Giuseppe Mazzini).

A second function of European citizenship is to ensure that private individuals have full legal status.
If we are right to consider citizenship as a founding element legitimising the Union and as an aspiration of its citizens to be a constituent part of it, we then have to ask: what it is implied by addiction (to national citizenship) of European citizenship?

One way of answering this question is to say that it implies any aspects inherent in (i) taking forward the process of integration and (ii) the position of citizens as both recipients and protagonists of a European construction founded on a sum of incremental values, i.e. more freedom, more security and more justice. In this respect, a decisive role is played by the formula contained in the so-called constitutional Treaty, where, in defining the objectives of the Union, we read (Art. I-3), as we still read in the Lisbon Treaty (Art. 3) that the Union «shall offer its citizens an area of freedom, security and justice without internal frontiers». This formula, which is innovative compared to the formula quoted above (TUE, Art. 2), in which the Union is seen as a go-between entity safeguarding the rights and interests «of the nationals of its Member States»), indicates, as prime beneficiaries of this objective, not the citizens of the member countries but, directly, the citizens of the Union, bearing in mind the complementary nature of European citizenship: in other words, the one and same national citizens in their further capacity as European citizens.

A third function of European citizenship is to motivate and reinforce the formation of a European cultural identity.

Here, the question is: what kind of action does the need for citizenship require or suggest, and by whom?

One way of answering this question is to say that political and governmental intents have to be followed up by any institutional circles and levels that can foster and support the formation and dissemination of a civic European conscience. These include, for instance, intellectual circles, professional bodies, associations, and the world of education and culture, in other words any entities operating within civil society, which are entrusted with a task that is even more important and decisive than that entrusted to political authorities and institutions (at both national and Community level).

We only have to consider such initiatives as the students’ mobility programmes, the cultural programmes, the freedom of circulation and settlement of operators and the cooperation schemes set in place at local (decentralised) level, to appreciate that the more people (especially young people) and institutions (especially schools, universities and local authorities) are involved, the greater will be the possibility of establishing a space of European citizenship in which these people and institutions come together, a shared, public space to which they all contribute.

Finally, a fourth function of European citizenship is to postulate and justify a capacity to participate in decision-making processes in a European framework on the part of (groups of) individual citizens, i.e. civil society.

Here, the question is: what is it that encapsulates the importance of European citizenship as an exponential factor legitimising and identifying the Union in terms of culture and rights?

One way of answering this question is to observe that, if we consider everything we have just mentioned all in one, this will lead to the gradual emergence throughout society of a critical awareness of the problems and destinies of the Union as a common political and institutional construction, in order that it could be believed and accepted by people as a means to completing and enhancing local and national identities. This will come in the context of a
5. From the “market” to “citizenship”: some final considerations.

Indeed, all that has been said above leads us to switch the focus from the “internal market” to “European citizenship”.

In this respect, a topic of relevance to this point is provided by the envisaged objectives of the Union. We know that the principal objective (or maybe we should say the priority objective even in relation to the internal market) is «to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union» (TEU, Art. 2).

This objective has been further defined in a more innovative wording appearing eventually in the Lisbon Treaty, which has entrusted the Union with the task of offering «its citizens a space of freedom, security and justice» (Art. 3).

In this same framework, we should not forget to also mention the Preamble to the Charter of Fundamental Rights of the European Union (Nice Charter), above all where we read that the Union «places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice».

It follows from this that European citizenship can and indeed should provide a reference framework for the Union political, institutional and legal system, considered in all its branches, competences and policies.

The aim of such measures will clearly be to further safeguard the rights and interests of the citizens of member States, as citizens of the Union, favouring their economic and social relations in the framework of a common space of freedom, security and justice. This is based also on the further assumption that the process of standardisation and harmonisation will be achieved in accordance with the basic rights resulting from the shared constitutional traditions of member States, which are general principles of European law and, as such, accepted and approved by the Nice Charter.

European citizenship is indeed a founding value of the Union (as a Union of peoples, as well as of States). Its value is therefore even greater than that of the market, which is also seen as an «area without internal frontiers» (TEC, Art. 14) based on the four freedoms (the free circulation of goods, people, services and capital) on which it hinges. But, if we take a closer look, these four freedoms centre on the individual (and as Karl Marx used to say, goods do not go to the market on their own; and the same can also be said of capital and services).

From a more technical angle (and not just in terms of value), the benefit of having Union citizenship as a basic reference framework legitimising the jurisdiction of Community institutions to intervene, through measures of standardisation and harmonisation above all in the field of private law, is provided by its nature – as we explained earlier – as a
“complement” to national citizenship. As we have already said, this means that full legal subjectivity in a European framework can be achieved by adding Union citizenship to national citizenship.

The choice for citizenship of the Union – as a reference framework to be preferred to, or placed alongside, the internal market – is further confirmed by its relevance as a plurality of complementary spaces, which follows on from the idea of a multiple or differentiated citizenship. The market — synonymous of a single space or area— is, on the other hand, ultimately associated with a single (i.e. unified) law, applicable as such to all member countries, instead of acting as a law common to them.

In this respect, we should quote the provisions of the constitutional Treaty, where (in Art. 8, dedicated to the “symbols” of the Union) we read that: «The motto of the Union is: United in diversity».

Provided, however, that we turn the motto around into: “diverse in unity”. By doing so, we clear the motto of a sort of centralism — typical of any form of “union of differences” as a union imposed from above, albeit of a constitutional charter (octroyée as it has been defined) — that appears to distort its true and deeper historical, political and institutional significance. By turning the motto around, it becomes a programme of and for citizenship or, perhaps we should say, citizenships. As such, it can form the keystone of a complex system structuring the Union politico-institutional and legal system, in a perspective favouring a bottom-up vision, as opposed to a top-down vision which risks divesting that symbol of its significance.

Clearly, it is one thing to say: “united in spite of diversities”, as the symbol — read as it is written — appears to indicate, in which the emphasis on unity exalts its rhetorical, or even ideological, value as an undisputed and indisputable target over and beyond the differences which are subordinate to it.

But it is another thing to say: “diverse but united”: here, the stress falls on the diversity, and the union acquires, pragmatically, an instrumental value as an intermediary of diversities. As such, the diversities participate in a reality which takes the form of a process rather than an entity (the universally abhorred European super-state), and the aim of this process is to harmonise and also, in this respect, standardise its components. In view of this, instead of using the word union, maybe we should use (or continue to use, in the spirit of the treaties setting up the European communities) the word comm-union, meaning a communion of institutions and policies, a space and law common to all the local and national levels in which the diverse histories, traditions and cultures of European peoples find expression.
AUTOUR D'UNE IMPASSE STRUCTURELLE : LA REPRESENTATION POLITIQUE DES ROMES EN ROUMANIE

Sergiu Mişcoiu,
Lecteur,
Faculté d’Études Européennes,
Université « Babeş-Bolyai » de Cluj

Résumé

Dans cet article, nous nous proposons d’analyser la manière dont les communautés romes de Roumanie sont politiquement structurées et représentées. Pour ce faire, nous allons passer en revue les théories de la représentation des minorités ethniques. Puis, nous allons analyser les prémisses sociales, économiques et culturelles de la représentation politique des Romes de Roumanie. Finalement, nous allons démontrer que le modèle correspond le plus à la représentation politique des Romes de Roumanie est le modèle de la précarité politique, qui résulte, à la fois, à une sous-représentation et à une fausse représentation de cette communauté.

Key words :

Article

L’étude théorique de la structuration et de la représentation politique des groupes ethniques minoritaires connaît déjà une tradition, notamment dans les cercles de réflexion des pays anglo-saxons. Suite à la décolonisation et à l’émergence des pays ayant des multiples groupes ethniques plus ou moins représentés et représentables, la théorie et l’analyse politiques se sont vues confronter à un tout nouveau type de provocation. Celui-ci comporte, grosso modo, deux côtés essentiels. Une première problématique est liée à la possibilité de mesurer et de mettre en relief la correspondance entre les principes défendus par la démocratie moderne « occidentale » (dont, surtout, le respect des droits de l’homme) et les principes issus de la tradition culturelle des groupes qui venaient de se constituer en nations. Le débat sur le relativisme (absolu ou lui-même relatif) – pour n’en donner qu’un exemple – illustre bien les dimensions de ce débat. Le second type de questionnement est lié à un problème plutôt pratique : apprécier la capacité de la science politique d’analyser la manière des groupes ethniques de se structurer et de se représenter politiquement, alors que « l’analyse traditionnelle » a toujours perçu l’espace publique plutôt comme le point de rassemblement des intérêts socio-politiques que celui des croisements des intérêts ethno-politiques ?

C’est plutôt dans ce second type de questionnement que s’encadre notre démarche. Dans cet essai, nous nous proposons de répondre à la question : « Quelle est la nature et la manière de structuration et de représentation politique des Romes en Roumanie ? ». Nous allons démontrer que la structuration et la représentation politique des Romes en Roumanie se soumettent au modèle de la précarité politique. Dans les pages qui suivent, nous allons présenter et explorer ce modèle. Afin de l’établir, nous allons, dans un premier temps, analyser les types d’organisation ethno-politiques et faire le choix du type idéal dans le cas de la minorité rome. Puis, nous allons mettre en évidence les caractéristiques des communautés romes de Roumanie par rapport aux types d’organisation et de structuration socio-politique, afin de construire et d’expliquer le modèle de la précarité politique à travers l’étude d’un certain nombre de variable.

TYPES D’ORGANISATION ETHNO-POLITIQUE

Comment peut-on déterminer une typologie des structurations et des représentations politiques ? Selon les jalons théoriques, brillamment explorés par Richard Gunther et Larry Diamond41, trois critères sont considérés par la littérature de spécialité comme étant relevants :

1. la nature de l’organisation du parti (parti large – parti étroit ; parti d’élites – parti de masse)
2. l’orientation programmatique du parti (parti idéologique – parti clientéliste)
3. le caractère par rapport à la démocratie (parti tolérant et pluraliste – parti proto-hégémonique)

Est-ce que ces critères de classement correspondent à la réalisation d’une typologie des partis qui représentent les groupes ethniques ? Si l’on se tient à l’idée que, même s’ils prétendent représenter des groupes ethniques, les « partis ethniques » sont toujours des organisations qui se constituent, qui agissent et qui se conduisent en tant que partis, ces critères semblent suffire. Quand même, on ignorerait ainsi la spécificité absolue des organisations qui sont censées représenter des groupes ethniques – une spécificité qui relève à la fois du type de composition militante et électorale et du type de message et de conduite politique par rapport aux autres partis. Il est nécessaire donc de trouver des critères qui soient capables de faire le lien entre la nature et les caractéristiques de la minorité respective et sa manière d’organisation et de représentation politique.

Le premier critère mentionné ci-dessus doit sans doute être maintenu, puisque la nature de l’organisation du parti fait état non seulement de la manière dont le parti est structuré, mais aussi des relations qui existent entre le parti et la communauté qu’il prétend représenter, en fonction des caractéristiques de la communauté respective.

Par contre, le deuxième critère se rapporte à des réalités qui correspondent moins aux communautés ethniques. Même si l’on peut avoir des partis ethniques orientés idéologiquement (tels le PKK – Parti des Travailleurs du Kurdistan), le rôle fondamental de ces partis reste celui de représenter une ethnie (on pourrait se demander quelle est, par exemple, l’adhésion des masses kurdes à l’idéologie marxiste du PKK). En même temps, même si l’on peut avoir, au sein d’un certain parti ethnique, une clientèle qu’il est censé représenter – comme c’est le cas, nous allons le voir, du Parti [Socio-Démocrate

« ProEuropa » des Romes de Roumanie – la tendance principale et, d’une certaine manière, naturelle du parti est celle d’essayer de se transformer dans le représentant de l’ethnicité tout entière.

Quant au troisième critère, il faut admettre qu’il est plutôt relevant dans les cas des partis « de la majorité ». Tout en étant totalitaire (au sens étymologique du terme) ou « proto-hégémonique » par rapport à la société nationale, le parti de la minorité est voué à l’interdiction, voire à la dissolution ; c’est, de toute manière, le cas des systèmes démocratiques. Par contre, ce critère est relevant si l’on s’efforce de distinguer, à l’intérieur d’une communauté politique minoritaire, entre les différentes manières de structuration et entre les types de relations qui s’établissent entre les partis de la minorité. On garde donc ce critère comme un outil de differentiation à l’intérieur de l’ethnie.

La même analyse de Gunther et de Diamond nous permet de trouver un quatrième critère qui soit plus convenable pour notre analyse : le degré de centralisation (partis ou groupes politiques polynucléés – partis ou groupes politiques unitaires). Ce dernier critère que nous ajoutons est particulièrement relevant pour les groupes ethniques, puisqu’il nous permet de relier le mode de constitution et de fonctionnement des relations entre les groupes ethniques et les unités politiques qui les représente ; il indique, à la fois, le degré d’unité de l’ethnie et la relation entre ce degré et le nombre et les interrelations des unités qui les structurent et les représentent politiquement.

Qu’est-ce que l’analyse primaire de ces critères nous permet d’extraire quant à la manière de structuration et d’organisation politique dans le cas des Romes de Roumanie ? A priori, les caractéristiques des communautés romes de Roumanie (dont notamment : l’hétérogénéité culturelle, la diffusion territoriale non-compacte, la stratification sociale rigide et la domination de type coercitif à l’intérieur des communautés) recommandent le modèle de structuration et de représentation politique plutôt élitiste (selon le critère no. 1), polynuclé (critère no. 4) et pluraliste (critère no. 3). On peut appeler ce modèle de structuration le Congrès des élites. Nous allons démontrer que, vu le fait que la manière de la structuration politique des communautés romes après 1990 est plutôt élitiste, mononucléée et hégémonique (Parti dominant), le modèle est plutôt celui de la précarité politique. Celui-ci a comme point de départ l’inaéquation qui existe entre le type idéal et le type réel de structuration et de représentation politique.

LES CARACTERISTIQUES DE LA POPULATION ROME DE ROUMANIE

Le point de départ de notre démonstration est donc l’analyse des caractéristiques de la population rome de Roumanie, ce qui nous permet de dégager un type idéal de structuration et de représentation politique, conforme aux traits de cette population. En ce qui suit, nous allons passer en revue les caractéristiques de la population rome de Roumanie, tout en nous limitant aux dimensions qui sont relevantes pour l’imagination d’un modèle de structuration politique.

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42 L’appellation Congrès a comme point d’origine les noms des fédération ethniques polynucléées telles celle de l’Inde ou celle de l’Afrique du Sud.

Caractéristiques des communautés romes de l’Europe Centrale et Orientale

1. Niveau réduit de la conscience de soi
2. Distribution non-territoriale
3. Organisation sociale traditionnelle
4. Statut économique marginal
5. Immobilité et rigidité sociales et culturelles verticale et horizontale
6. Elites culturellement et politiquement hétérogènes

Tableau no. 1 Caractéristiques des communautés romes de Roumanie

1. La conscience de soi est le critère fondamental de la participation des groupes ethniques à la vie de la communauté nationale, puisque l’identité ethnique assumée ouvertement est le seul moyen qui permette l’identification d’une communauté – l’ethnicité est auto-assumée (par l’auto-identification) et non pas attribuée (par l’alter- ou l’hétéro-identification). Dans le cas des communautés romes, la conscience de soi est particulièrement faible, à cause, entre autres, des nombreux préjugés, comme celui selon lequel l’appartenance à l’« ethnie des Gitans » est perçue du dehors comme étant une honte.

Dans la plupart des pays de l’Europe Centrale et Orientale, les rapports informels montrent qu’il y a au moins deux fois plus de Romes que les recensements n’indiquent ; mais, comme les règles de la démocratie interdisent les campagnes d’hétéro-identification, même si elles ont pour objectif seulement la stimulation de l’identification ethnique, il est donc impossible d’aborder les problèmes spécifiques des communautés romes réelles. En échange, comme nous l’avons montré dans un article précédent, les gouvernements sont obligés de se faire acceptés elles-mêmes comme les seules héritières des premières communautés gitanes qui sont descendues de l’Inde. Les Romes ne partagent pas la même vision sur « l’être Rome », dans un effort de se faire acceptés elles-mêmes comme les seules héritières des premières communautés gitanes qui sont descendues de l’Inde.

44 Les sondages démontrent que les Romes sont encore loin d’être acceptés par la société roumaine. Voir http://www.gallup.ro/romana/poll_ro/releases_ro/pr031016_ro/pr031016_ro.htm
45 Le cas de la Roumanie semble être le plus frappant. Selon certaines estimations (celle du Roi des Romes Florin Cioabă, celle opérée par les analystes de la Banque Mondiale de Roumanie et dirigée par Dr Richard Florescu, de même que pas mal d’autres estimations), il y a entre 1.5 et 2.2 millions de Romes en Roumanie, tandis que seulement 525 000 parmi eux se déclaraient, au recensement de 2001, comme étant des Romes. D’autres recherches et estimations (tels celle de Vasile Ghețău, “O proiectare condițională a populației României pe principalele naționalități (1992 – 2025)” în Revista de Cercetări Sociale, No. 1/1996, IMAS-SA, București, 1996) vont aussi dans le même sens. («Une projection conditionnelle de la population roumaine par les principales nationalités » in Revue de Recherches Sociales)
47 L’analyse de Catalin et d’Elena Zamfir est relevante à cet égard. Ils font état de l’existence de cinq types de perception de l’identité rome en Roumanie : 1. les Romes qui présentent toutes les caractéristiques traditionnelles des Romes et qui s’identifient tous jours et dans toutes les conditions (d’une manière privée et d’une manière publique) s’identifient comme étant des membres de la communauté rome ; 2. les Romes qui présentent toutes les caractéristiques traditionnelles des Romes et qui s’identifient comme étant Romes seulement dans les milieux privés, tout en préférant de se déclarer en publique comme étant des membres de la communauté majoritaire ou de celle d’une autre minorité (notamment de la minorité hongroise) ; 3. les « Romes modernisés » qui ont changé leur façon d’être et qui ne présentent plus d’une manière évidente la « trace » de leur ethnie, mais qui quand même s’identifient comme étant des Romes dans les contextes officiels et administratifs ; 4. les Romes « assimilés et modernisés » qui ne se déclarent plus comme étant des Romes, même si ni eux-mêmes, ni les membres de la majorité n’avaient pas perdu les « traces » de leur origine ; 5. les « anciens Romes » qui ont intégré la population majoritaire jusqu’au point de perdre leur traits et qui avaient renoncé de s’identifier en tant que Romes, ne serait-ce que pour...
ce qui se traduit politiquement par une hétérogénéité extrême des manières d’organisation et de structuration.

2. Les communautés romes de Roumanie sont éparses tout au long du territoire de la Roumanie. Les zones de concentration (telles la Vallée de Mureș ou le Secteur Agricole d’Ilfov) et celles de quasi-absence (telles le Nord de la Moldavie et du Maramureș) sont plutôt rares. Moins de 10 % des Romes sont concentrés dans les régions où ils forment plus de 4 % du total de la population de la région.\(^{48}\) L’absence de la distribution territoriale précise de la communauté rome bloque non seulement la mise en œuvre de l’autonomie locale reposant sur des critères ethniques, mais limite aussi l’organisation communautaire culturelle et politique. A quelques exceptions, les populations romes sont réparties dans toute l’Europe Centrale et Orientale et sont quasiment incapables d’acquérir un degré nécessaire d’unité territoriale afin d’être du moins représentées au sein des administrations locales. L’absence d’une disposition compacte les empêche d’être organisées d’une manière efficiente et de devenir des interlocuteurs qui doivent être pris sérieusement en compte par les autorités et par les ONG intéressées. Les Romes forment donc des communautés plutôt restreintes et répandues d’une manière homogène. Pour être proportionnellement représentées, les communautés romes devraient permettre la constitution des fédérations d’organisations romes, ayant des positions politiques communes et présentant des listes communes à tous les types d’élections ; par contre, les communautés romes tendent à se constituer des partis locaux, régionaux ou nationaux indépendants et rivaux.

3. Les communautés ethniques peuvent être ou ne pas être auto-organisées du point de vue social. Le système démocratique et consensuel de gouvernement permet soit un certain degré d’auto-organisation sociale pour les communautés ethniques (c’est le cas, par exemple, de certaines communautés ethniques ayant une religion spécifique, comme, par exemple, les musulmans maghrébins des Pays-Bas), soit la participation des individus d’une certaine ethnie à l’organisation sociale de la société « majoritaire ». Les deux variantes sont possibles s’il y a un type moderne d’organisation sociale qui suppose l’existence d’une vision partagée sur les droits et les obligations, sur la division des rôles et des fonctions sociaux, d’un régime flexible de relations et d’hierarchies et d’un sens commun des normes fondamentales applicables à l’intérieur et à l’extérieur des communautés. Contrairement à tout cela, les communautés romes se trouvent, généralement, dans un cadre d’auto-organisation basé sur la tradition, notamment sur un sens stricte des hiérarchies et de la distribution des rôles (qui inclut aussi une compétition acharnée pour les positions au sein de l’hierarchy), sur des normes conflictuelles (à l’intérieur, de même qu’à l’extérieur de la communauté)\(^{49}\) et sur l’exclusion sociale mutuelle entre les différentes communautés romes. Systématiquement exclus par les régimes pré-communistes et communistes, les Romes sont généralement restés dans un système traditionnel d’interrelations qui ne permet pas leur participation à la vie sociale d’une communauté nationale plus large. La stratification rigide (de type clanique) et la proportion très élevée des marginaux limitent les possibilités d’intégration sociale extracommunautaire\(^{50}\). De surcroît, les organisations sociales des sociétés « majoritaires » et celles des communautés romes semblent être plutôt conflictuelles que compatibles et peu capables de favoriser la
coexistence harmonique au sein d’une société pluraliste. Cette marginalité sociale a des conséquences essentielles en ce qui concerne la structuration et la représentation politique : elle entraîne une capacité faible de participation politique, ce qui implique, donc, la nécessité d’un système de sélection élitaire capable de substituer l’absence ou la faiblesse de la participation militante. Nous allons voir au point no. 6 que, par contre, les communautés romes ne connaissent pas un tel système.

4. Comme nous l’avons expliqué ci-dessus, les communautés romes sont traditionnellement pauvres ; elles ont été maintenues, d’une manière plus ou moins délibérée, dans un état social et économique marginal. Les leaders riches des Romes défient publiquement la quasi-majorité particulièrement pauvre, tout en étant opulents dans le brandissement public de leurs fortunes ; ils provoquent ainsi, à la fois, les membres de la majorité. Le pluralisme libéral a standardisé l’égalité économique entre la majorité et la minorité ; les succès les plus évidents de l’application de son « menu » se produisent dans les cas où les groupes ethniques des minorités sont au même niveau économique que les majorités ou même dans une meilleure situation économique : les tensions sont ainsi improbables et la coopération pluraliste est soutenue par l’impression d’œuvrer à l’atteinte des intérêts communs.

Dans notre cas, l’image qui règne dans la Roumanie est celle que l’application des principes pluralistes suppose une gestion des ressources reposant sur la redistribution des prélèvements dirigés au profit des communautés romes. A cause des fortes différences, de la polarisation extrême intra- et extracommunautaire et de la perception de la prééminence du « marché noir », les Romes paraissent incapables de devenir des partenaires égaux dans la construction de la société, tandis que ceci semble être une condition incontournable que l’on peut dégager de l’analyse des cas où le pluralisme a porté ses fruits. Politiquement, cette marginalité économique suppose une concentration partisane reposant sur une base sociale ; par contre, les Romes de Roumanie, tout en étant pauvres, ne partagent pas le même type de pauvreté et sont donc loin de pouvoir se constituer dans un bloc politique ayant une plateforme unitaire.

5. La mobilité sociale horizontale et verticale est liée aux conditions économiques et sociales : le partenariat communautaire suppose une grande capacité de changement social au sein de la minorité, de même qu’un haut degré d’inter-connection et d’inter-croisement des rôles entre les membres de la majorité et ceux de la minorité. La mobilité horizontale représente la possibilité d’inter-changer les fonctions entre les membres de la minorité et ceux de la majorité, qui accomplissent, respectivement, des rôles similaires et occupent des positions correspondantes (par exemple, un médecin peut remplir la même fonction au sein de la communauté ethnique et de la majorité). La mobilité verticale réclame une disposition dynamique de la part de la communauté, à entendre l’existence des classes moyennes


fortement représentées dans la majorité de même que dans la minorité et celle d’un circuit social qui permette des changements faciles et plutôt non-conflictuels dans les structures de pouvoir des deux.

Les deux sortes de mobilité sont, malheureusement, quasiment absentes, dans le cas des rapports entre les communautés romes et la majorité dans le cas de la Roumanie. À cause des préjugés solidement encrés dans les consciences collectives des deux parties, la mobilité horizontale est presque absente. Les communautés romes n’acceptent pas les gadji (l’appellation génériques des non-Romes), perçus comme des métèques qui puissent altérer leurs identités. A leur tour, les majorités refusent généralement l’acceptation sociale des Romes, qu’ils considèrent comme étant peu qualifiés professionnellement et particulièrement penchés vers les gains obtenus d’une manière illégale. Les dynamiques verticales sont elles aussi particulièrement basses chez les Romes, comme chez toutes les communautés traditionnelles. Les changements dans les rôles sociaux sont rares, tandis que les fonctions sont plutôt discrétionnairement attribuées que volontairement assumées. Le pouvoir est transmis essentiellement par l’héritage et la prise violente des commandes. La conséquence est que la structuration politique se fait d’une manière quasi-traditionnelle, reposant sur les liens familiaux, ce qui empêche l’extension réelle des structures partisanes au niveau national.

Enfin, on peut parler d’une quasi-absence des élites modernes au sein des communautés romes. Les rapports montrent que le degré d’illettrisme est dix fois plus élevé chez les Romes que chez les membres de la majorité. Dans la conception libérale pluraliste, la communication permanente et les changements entre les élites des communautés ethniques et les gouvernements nationaux sont essentiels, puisqu’ils représentent le terreau de l’établissement d’une culture dialogique entre les deux parties. À quelques exceptions, les programmes de discrimination positive ont abouti à peine à des résultats médiocres; les élites conservatrices des Romes, orientées vers l’intérieur, semblent privilégier la domination autarchique sur leurs groupes. En même temps, même si les représentants des « élites intégrées » participent aux structures du pouvoir gouvernemental, ceux-ci paraissent avoir seulement une influence marginale sur les « communautés profondes ». L’opinion dominante parmi les Romes semble être que l’émancipation équivaut la défection de la communauté par l’individu.

Dans ces conditions, il est particulièrement difficile d’imaginer un système de structuration et de représentation politiques cohérent ; tout système se heurterait au dilemme de l’équilibre entre, d’une côté, l’efficacité donnée par un haut degré d’unité nécessaire, et, de l’autre, l’impératif moral et pratique de la représentation de toutes les couches de la population romes.

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58 Les études empiriques effectuées sur le terrain montrent l’incapacité d’évolution des modalités traditionnelles d’émergence et de consolidation des élites romes. Nous avons fait, avec Adrian Basarabă, quelques observations à cet égard dans « Remarks concerning the sociology of the roma identity and the theoretical framework of the public policies for Roma in Romania », The Works of the Multidisciplinary International Scientific Symposium "Universitaria SIMPRO 2005"– Social Sciences, Petroşani, 2005 ; nous l’avons d’ailleurs directement constaté pendant la recherche ...
LE MODELE DE LA PRECARITE POLITIQUE

Les observations qui résultent de l’analyse d’en haut nous indiquent le fait qu’il y a des pré-
conditions particulièrement sévères qui restreignent la réalisation d’un modèle cohérent de structuration
et de représentation politiques. La recherche d’en haut nous indique le fait que ce modèle doit remplir, à
la fois, deux conditions essentielles :

- donner la possibilité d’une structuration qui soit à même de fédérer les intérêts des
  communautés romes qui sont linguistiquement, culturellement, socialement,
  historiquement et économiquement divisées ;
- permettre la représentation politique cohérente des Romes de Roumanie à travers les
  élites (condition imposée par la situation socio-économique précaire des Romes)

Pour se tenir à la terminologie que nous avons déjà évoquée, le type d’organisation qui
correspond le mieux est le Congrès des élites. Le Congrès devrait être une fédération pluraliste et
polynucléée des organisations des minorités (qui réunissent, dans le cas des Romes, des groupes
ethniques particulièrement hétérogènes). La composition élitare de celui-ci lui conférerait la capacité de
représenter les communautés ethniques romes dans les relations avec l’État et de leur assurer la présence
dans les structures de décision politique de celui-ci.

Est-ce que la structuration politique des communautés romes de Roumanie correspond à ce
modèle ? Pour répondre à cette question, une démarche assez longue et compliquée, reposant sur la
construction d’une histoire analytique de l’évolution du phénomène associatif chez le Romes, devrait
être réalisée. Pour ce qui est du présent travail, nous allons seulement esquisser les lignes principales de
notre modèle, tout en lui fournissant les éléments de base. Le point de départ de la construction de ce
modèle est l’observation de l’inadéquation entre le type idéal, que nous avons présenté en haut, et le type
réel de structuration et de représentation politique des Romes, qui est plutôt celui du Parti des élites. Ce
type suppose, selon les critères présentés ci-dessus, l’existence d’un parti hégémonique et mononucléé
(selon les critères no. 3 et 4), ayant plutôt une composition élitaire (selon le critère no. 1).

Commençons par ce dernier. Malgré les apparences, celui-ci correspond assez difficilement à
l’impératif du type idéal, vu la manière d’émergence et de domination des élites dans la plupart des
communautés romes (comme nous l’avons mentionné au point no. 6 ci-dessus de notre analyse sur les
traits des communautés romes de Roumanie). Il s’agit, en ce qui concerne ce critère-ci, d’une différence
fondamentale entre deux types d’élites chez les Romes : d’un côté, les élites traditionnelles, qui
« règnent » à travers des modalités perpétuées historiquement et maintiennent un contrôle assez rigoureux
sur les « mouvements » à l’intérieur de l’ethnie ; de l’autre côté, les élites « modernisées », qui ont
internalisé les manières « démocratiques » de gestion et de renouvellement, mais qui, pour la plupart, se
sont éloignées des « communautés profondes », tout en s’intégrant dans les groupes élitaires de la
majorité 60. Cette différenciation a eu comme résultat politique un premier clivage entre les groupes
élitaires traditionnels qui ont eu la capacité de fonder des partis politiques et les groupes élitaires qui ont
pu bâtir des organisations non-gouvernementales. Même si, au début des années 1990, les deux groupes
étaient réunis, ils se sont peu à peu séparés, notamment après la consolidation du Parti des Romes de
Roumanie (Partida Romilor din România, PRR) et ses prétentions d’hégémonie au sein de la
communauté rom. Si, au milieu des années quatre-vingt-dix, le clivage se frayait un chemin

60 Une différenciation assez semblable est faite par Cătălin Zamfir et Elena Zamfir, op. cit.
(notamment par la constitution des ONG romes, telles Aven Amentza ou Romani Criss et la collaboration de plus en plus étroite des celles-ci avec des ONG internationales partenaires, telles la Fondation Soros pour une Société Ouverte), le début du millénaire a vu ce clivage s’approfondir, au fur et à mesure que les élites « modernisées » se sont avérées capables d’assurer la gestion des fonds européens et internationaux, tandis que les partis, notamment le Parti des Romes, se sont montrés plus préoccupés de s’assurer la mainmise sur l’électorat démuni et, notamment, sur les subventions nationales attribuées aux partis politiques.

Nous pourrons à ce point nous rapporter aux critères no. 3 et 4. C’est là que la réalité de la structuration et de la représentation politique des Romes se heurte directement au type idéal. Depuis le début des années 1990, le processus de séparation progressive entre les partis politiques des Romes et les autres mouvements associatifs a été complété par un processus d’autonomisation et, puis, de concentration du « pouvoir » au profit du parti les plus important – le PRR. Les études électorales indiquent, pour la plupart, un écartement de plus en plus profond entre le PRR et les autres formations politiques des Romes. Cet écartement est visible non pas seulement dans l’évolution des scores électoraux obtenus par les différentes formations politiques des Romes, mais aussi dans l’analyse du type de relation que les partis des Romes ont su se développer avec les communautés. Si le PRR a eu comme objectif principal la mise en place et le maintien du contrôle des groupes ethniques romes, tout en gardant son unité, les autres formations n’ont pas abouti à se conduire d’une manière assez cohérente, tout en se concentrant sur la captation des zones ethno-électorales particulières. Après 1996, et, notamment, depuis 2000, le PRR s’est débarrassé, peu à peu, des petits partis incommodes, en employant sa position privilégiée de parti dominant et représenté au Parlement pour se frayer un chemin aux côtés du Parti Social-Démocrate (avec lequel le Parti des Romes de Roumanie conclut un accord politique, en 2000, et, puis, une accord gouvernemental, entre 2001 et 2004). Ce dernier pas lui assure, outre les subventions reçues en tant que parti parlementaire, un accès préférentiel aux ressources publiques et aux programmes de développement, ce qui lui permet la constitution d’une clientèle économique assez influente. Selon le critère no. 4 ci-dessus, depuis la moitié des années 1990, le PRR devient un parti hégémonique.

Cet avantage du PRR a été quand même relatif. La capacité hégémonique du PRR consiste plutôt dans la mise à l’écart des ONG et des autres partis politiques qui prétendent représenter les Romes. La possibilité d’une représentation plénière et fédérale, exigée par l’hétérogénéité des communautés romes, est annulée donc par la préemption de l’impératif de l’unité que le PRR a institué et duquel il ne s’est jamais écarté. Limitée par un système électoral proportionnel, avec un seuil de 3 % (1992, 1996) et, puis, de 5 % (depuis 2000), les formations politiques des Romes (y compris le PRR) n’ont pas pu représenter l’ensemble des communautés romes. Le seul député PRR a toujours été élu avec entre 50

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61 L’étude des résultats obtenus lors des élections de 1990, 1992, 1996, 2000 et 2004 montre la monopolisation progressive de l’espace électoral rome par le PRR (qui n’a pas participé en tant que tel à l’élection de 1990). 1996 pourrait constituer une sorte d’exception, puisque le PRR s’est vu concurrencé de peu par un « grand rival », l’Union des Romes (0.67 % pour le PRR, qui conserva ainsi son député sortant, contre 0.58 % pour ce dernier). Voir, à ce propos, l’analyse d’Ana Bleahu, The Emergence of Roma Political Participation in Romania [Draft], pp. 6-7.

62 De nombreux scandales de corruption qui impliquaient les leaders proéminents du PRR ont fait la une des journaux. Voir, par exemple, l’article « Scandal între romi… » in Gazeta de Sud du 28 février 2002. (« Scandale parmi les Romes… » in La Gazette du Midi)

63 Dans le système électoral roumain, on applique la discrimination positive pour les formations politiques des minorités nationales ; l’essentiel que l’on peut extraire des prévisions assez compliquées est que les formations des minorités nationales qui ont obtenu le plus de voix au sein des minorités respectives ont chacune le droit à un mandat de député, s’il est capable d’obtenir un quota minimal de voix. Le système favorise ainsi la constitution du Groupe des Minorités Nationales (autres que la minorité hongroise, qui a son propre groupe, puisque son parti dépasse toujours la barre de 5 %); ce groupe rassemble...
000 et 80 000 voix, tandis que seuls les Romes auto-déclarés en tant que tels au Recensement de 2002 (vivement contesté par toutes les associations et partis des Romes) dépassent les 525 000. En somme, même si l’on opère l’addition des voix éparpillés entre les diverses formations des Romes, on arrive à peine à 1.3 % (ce pinacle fut réalisé en 1996) – donc à moins de la moitié du seuil électoral de l’époque. De surcroît, la rupture entre le PSD et le PRR, qui a eu lieu en 2004 (à la fin du mandat gouvernemental du PSD), a contribué au ralliement direct d’une faction du PRR (groupe autour de son Président d’honneur, le député PSD Mădălin Voicu) au PSD et donc à une défection électorale plus marquée. L’absence de la capacité de fédération du PRR n’a pas empêché seulement l’accomplissement d’une unité politique, mais, de surcroît, a découragé la conscience ethnique des Romes. Selon le critère no. 3, la représentation politique des Romes a emprunté la forme mononucléée – celle du Parti dominant) ; celui-ci reste quand même incapable de se constituer dans le représentant de toutes les factions de l’ethnie.

Le modèle de la précarité politique est donc celui de l’inconsistance entre le type idéal de structuration et de représentation (dans notre cas, le Congrès des élites) et celui réel (dans notre cas, le Parti des élites). Dans la figure d’en bas, nous nous efforçons de surprendre les relations qui se sont établies entre les communautés romes et les diverses formations associatives qui prétendent représenter leurs intérêts.

![Diagramme de la précarité politique](image)

**Fig. no. 1.** Le modèle de la précarité politique dans le cas des communautés romes de Roumanie.

entre 15 et 18 députés, dont certains ont été élu avec moins de 2000 voix (tandis qu’un député non-minoritaire a besoin d’une trentaine de milliers de voix pour se faire écrire).

64 Voir Ana Bleahu, *op. cit.*, p. 9.
Les communautés romes sont représentées en bas. Vu les équivoques de la définition de l’identité rome, les encadrements extérieurs sont ponctués, de même que certaines des délimitations entre les groupes communautaires. Comme règle générale, la différenciation se fait plutôt à l’intérieur de l’ethnicité qu’à l’extérieur de celle-ci. Ceci est mis en évidence par les contours en gras. Les structures de représentation peuvent être groupées en quatre types. Au centre du schéma se trouve le parti dominant, dans notre cas le PRR. A droite, les autres partis et fédérations, que nous avons étiquetés de marginaux, vu leurs faibles effectifs et leur d’autant plus faibles efficacité. Le troisième type de structure est l’ensemble des organisations non-gouvernementales qui sont, en tant qu’influence, plus importantes que les partis marginaux. Enfin, la quatrième catégorie est constituée des partis de la majorité qui s’efforcent de rallier l’électorat des Romes. Même si, à la fin de 2005, le Parti National Libéral s’est exprimé l’intention de se constituer une organisation pour les Romes, seul le Parti Social-Démocrate a abouti à diviser d’une certaine manière le PRR, en lui raflant un segment électoral dont il est très difficile à apprécier la taille.

Les relations qui se sont développées entre les communautés romes, les structures représentatives et les autorités publiques sont mises en évidence à l’aide d’un nombre de variables. Ces dernières sont le résultat de l’analyse des caractéristiques des communautés romes et des modalités de structuration et de représentation politiques opérée ci-dessus.

La légitimité des structures de représentation, connaît, dans le cas des Romes, deux formes – la légitimité électorale et la légitimité traditionnelle. Où en sont les quatre types de structures de représentation des Romes, selon cette variable ? Vu le fait qu’il a obtenu à l’occasion de chaque échéance électorale le nombre de voix romes le plus élevé et qu’il ait pu toujours garder son député sortant, le Parti des Romes de Roumanie semble s’être acquis une légitimité électorale (malgré la faiblesse des résultats par rapport à l’ensemble des membres de l’ethnicité). Il faut tenir compte aussi du fait que, tout en étant lui-même hétérogène, le PRR comprend des leaders qui bénéficient, de surcroît, d’une légitimité traditionnelle, c’est à dire d’une légitimité plutôt héritée ou acquise par la force que d’une légitimité « démocratique ». Il s’agit notamment des leaders romes des régions rurales qui ont adhéré au PRR, vu les frictions et les rivalités entre les autres leaders traditionnels ou les aspirants au leadership local. Il est difficile d’apprécier l’ampleur de cette légitimité dans le cas du PRR ; quand même, étant donné les raisons d’image publique, le PRR reste plutôt concentré vers l’avancement dans la légitimité électorale « à la moderne ».

Pour leur part, les partis marginaux ont du mal à acquérir la légitimité électorale. Eparpillés, ceux-ci ont formé, à deux occasions, des alliances relativement unies pour mettre un terme à l’hégémonie du PRR. Ils ont manqué de justesse la performance, comme nous l’avons montré ci-dessus, avec l’Union des Romes (Unirea Romilor), en 1996 ; par contre, en 2004, leur Alliance pour l’Unité des Romes (Alianța pentru Unitatea Romilor) s’est vue écrasée par un PRR qui rassembla quatre fois plus d’électeurs. Si la légitimité électorale est en souffrance, les « partis marginaux » s’accrochent plutôt aux communautés par les manières traditionnelles de légitimation. C’est le cas des partis religieux ou groupant des communautés religieuses – tels le Centre Chrétien des Romes, mené par le « Roi » Florin Cioabă, qui dirige une communauté néo-protestante pentecôtiste – où la légitimité est gardée grâce à une mixture entre éléments issus de la tradition nomade ou « nomade sédentarisée » et les éléments...
La manière dont le leader de la communauté pentecôtiste de Târgu-Jiu (département de Gorj, au Sud-Ouest de la Roumanie), Ion Ministru, dirige ses ouailles peut être prise pour un exemple. Nous avons participé à la messe où la glossolalie des fidèles tombés en extase l'emportait sur toutes les autres manifestations exprimées lors du service religieux. Et nous avons également pris part à une séance de la fédération départementale du Centre Chrétien des Romes qui était, en fait, une sorte d'allégorie élogieuse de la personnalité du pasteur-président.

68 Ce fut notamment le cas de l’Union des Forces de Droite (de 1998 à 2001).

69 Cette allégation est exemplifiée par le cas du Secteur Agricole d’Ilfov, où les résultats du PSD en 2000 furent particulièrement hauts justement dans les communes ayant des fortes minorités romes et, de surcroît, des fédérations du PRR très puissantes.

Religieux – tels l’obéissance face au pasteur. Ceci explique d’ailleurs le succès que les missions des groupes religieux néo-protestants ont connu auprès les communautés romes, si les missionnaires se sont adressés plutôt à un leader local de certaines communautés.

Les organisations non-gouvernementales des Romes (ou bien créées pour les Romes) sont plus loin de toute forme de légitimité par rapport aux communautés romes. Formées, pour la plupart, par des groupes d’élite, émancipés et plutôt intégrés dans les élites des communautés nationales, les ONG des Romes sont plutôt loin des communautés « profondes » et se conduisent d’une manière qui les rapproche des groupes aisés de la majorité. Si l’on veut quand même trouver des éléments qui puissent nous permettre de faire état d’une certaine forme de légitimité, nous pouvons retenir le prestige dont certains leaders des ONG jouissent auprès d’une certaine couche des communautés romes (c’est le cas, par exemple, du leader de l’organisation Aven Amentza, Vasile Ionescu). Quand même, ce prestige ne se traduit point dans une confiance qui puisse s’exprimer d’une manière militante ou électorale. L’absence de la communication entre les organisations non-gouvernementales et les communautés romes est due, dans une certaine mesure, au précipice entre l’émancipation modernisatrice des premières et la persistance dans le traditionalisme des dernières, qui n’a pas cessé de se béer après 1990, et cela malgré les projets et les programmes que les premières ont essayé de et parfois réussi à mettre en place pour les dernières.

Enfin, le parti politique ayant une offre électorale et gouvernementale pour les Romes, bénéficie d’une certaine légitimité électorale, à la faveur de l’encrage d’un de ses groupes dans les communautés romes. Cette légitimité demeure strictement électorale ; elle est parfois corrélée d’une manière directe et positive avec l’absence de l’intérêt des autres partis pour les problèmes des Romes ou, d’autant plus, avec le degré d’attitude bienveillante de certains partis quant au racisme anti-rome. En 2000, le PRR opéra, selon d’aucuns, des accords tacites avec le PSD. Par ceux-ci, le PRR, tout en étant sûr de garder la députation – transférée de Mădălin Voicu, qui allait représenter dorénavant le PSD, à Nicolae Păun, le Président du PRR – et tout en sachant que le nouveau seuil de 5 % était une cible impossible, donna, dans certaines régions où l’électorat rome était plus compacte, le consigne de vote pour le PSD. Il s’est agi donc plutôt d’un mouvement stratégique que d’une légitimation du PSD auprès de l’électorat rome, ce qui fait la preuve de la précarité de la vision ethno-politique des formations romes (en contraste, par exemple, avec la clarté de la vision de la formation de la minorité hongroise, l’Union Démocrate des Hongrois de Roumanie). Le fait que, vu la rupture de 2004, le PSD n’a plus bénéficié du même soutien de la part du PRR, mais que le PRR n’a pas su récupérer son électorat « transféré » en 2000, montre aussi la précarité à long terme des rapports de structuration et de représentation.

La participation aux structures du pouvoir local et central est une deuxième variable qui nous permet de faire état du type de relation qui existe, cette fois-ci, entre les structures de représentation des Romes et les institutions gouvernementales et civiles.
Le Parti des Romes a participé, entre 2001 et 2004, aux structures du pouvoir central, tout en gérant l’Office pour les Problèmes des Romes, et tout en ayant des représentant auprès de chacune préfecture qui était censé de s’occuper des problèmes spécifiques à la minorité des Romes. Le bilan de cette participation est, naturellement, controversé. En nous gardant de juger son efficacité, nous nous limitons à constater une conséquence négative à long terme : tout en étant attelé au PSD, le PRR a perdu la confiance d’une large couche des élites romes et des autres partis de la majorité ; il a été d’ailleurs sanctionné par les concours administratifs de 2005, au cours desquels le nouveau gouvernement libéral-démocrate s’est efforcé de purger les PRR de l’administration des affaires romes. De surcroît, l’absence de l’expérience dans la gestion (qui a donné lieu à des virulentes critiques de la part des représentants des ONG romes), doublée par nombre de soupçons de corruption, n’a fait que creuser la stéréotypie selon laquelle les Romes sont moins capables et plus vicieux que les autres.

Les partis marginaux ont été, d’autant plus, exclus de toute forme de participation aux affaires qui relèvent de la gestion publique. Ayant une représentativité assez modeste, et, notamment, étant parfois les contestataires acharnés d’un PRR considéré, par ricochet, comme étant gestionnaire, les partis marginaux se sont plutôt contentés d’attirer les dissidents du Parti des Romes. Cette stratégie, qui a été d’ailleurs assez inconstante, n’a pas pu logiquement lui assurer l’accès aux dignités publiques.

Les ONG des Romes semblent s’être acquis le droit de participer à la gestion des affaires publiques ; mais cet accès est directement handicapé par l’absence de la délégation démocratique, que seul l’électorat pourrait leur assurer. Même si la capacité de gestion, notamment en ce qui concerne le déroulement des projets gouvernementaux et européens, est atteinte par les ONG des Romes, celles-ci peuvent s’assurer la participation aux affaires publiques seulement en tant que représentants de la société civile, d’où l’impossibilité de gérer les appareils institutionnels. A plusieurs reprises, la rivalité qui sépare les ONG des Romes les a rendu perdre l’accès à certains programmes de financement. En même temps, comme dans le cas du PRR, les ONG se sont créé des clientèles (surtout des clientèles intellectuelles) qui leurs ont assuré la consistance des campagnes publiques (notamment des campagnes anti-racistes ou des campagnes d’insertion scolaire des enfants romes) à l’échange d’une co-option régulière aux activités fortement financées. En somme, les ONG participent à la gestion publique, mais le font d’une manière qui est parfois informelle et qui se heurte au problème de la légitimité.

Le PSD a eu le mandat gouvernemental de 2000 à 2004 ; dans cette période, il a impliqué, soit directement, soit à travers le PRR, un nombre de Romes qui prétendaient représenter les intérêts des communautés. Dans le cas du PSD, on peut donc poser non simplement le problème de la participation, mais surtout le problème de la participation des représentants des Romes du PSD au gouvernement. C’est à cet égard que le PSD s’est efforcé d’entreprendre une opération d’image, surtout par la présence de Mădălin Voicu sur ses listes parlementaires. L’érosion de l’image de celui-ci, doublée, en 2005, par le passage aux rangs de l’opposition a coupé court à l’idée que les communautés romes peuvent s’assurer la participation à la gestion publique à travers le PSD.

La capacité de gestion est la variable qui met en évidence la différentiation entre les types de structuration politique des Romes en tenant compte non pas seulement des rapports avec le gouvernement, mais aussi des relations endo-organisationnels. Cette variable précise, enrichit et développe la variable de la participation.

En ce qui concerne le Parti des Romes, celui-ci possède la structure organisationnelle la plus développée de toutes les formes de structuration civiles et politiques. Théoriquement, le PRR a des

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70 Aujourd’hui, l’Agence Nationale pour les Romes.
71 Cette image est largement répandue dans l’Europe Centrale et Orientale. Voir Phalet et Poppe, op. cit.
fédérations départementales et locales et un système d’autogestion statutairement mis au point. En réalité, comme on l’a vu lors de diverses affaires de rivalité, notamment au niveau local, le PRR n’est pas trop respectueux de ses propres règles de gestion. La déficience principale de l’autogestion consiste surtout dans l’absence des mécanismes pratiques de sélection des cadres ; vu la domination traditionnelle exercée sur les communautés, les cadres du parti sont surtout les chefs des grandes familles riches qui n’ont pas parfois fréquenté ni même l’école primaire. D’où l’incapacité de faire face aux exigences d’une gestion moderne à l’intérieur et, notamment, à l’extérieur du parti, dans la relation avec les institutions qu’ils sont parfois censés intégrer.

Ces observations sont bien sûr d’autant plus valables si on se rapporte aux leaders des partis marginaux. Ayant tout de même l’avantage des tailles plus réduites, les partis marginaux peinent, par contre, plus que le PRR, en l’absence des ressources de l’Etat et de toute reconnaissance de la part de la majorité. Dans le cas des partis ayant une composante religieuse, l’organisation se fait d’une manière parallèle (les « pasteurs-présidents ») avec l’organisation ecclésiastique. Ceci leurs assure une meilleure capacité de gestion et donc une « paix intérieure » plus marquée. Mais cet avantage est ombragé justement par le caractère sectaire qui oblige les leaders nationaux de choisir des leaders locaux seulement parmi les membres des communautés ethno-religieuses. Ce qui se traduit par un isolement et donc par une marginalité de ces partis qui n’arrivent guère à se trouver dans la situation de recevoir des mandats quelconques pour gérer des affaires publiques.

Les ONG des Romes sont mieux organisées que les partis. Comme elles ne sont pas censées rassembler des masses, les organisations de la société civile parviennent à se constituer des groupes unitaires, dont les membres ont l’expérience intellectuelle et professionnelle nécessaires pour s’imaginer des stratégies à long terme et pour assurer la gestion des projets. Les partenariats que certaines ONG romes ont conclu avec les structures de financement internes et, notamment, internationales, leur ont permis l’accès aux ressources et l’acquiescence du prestige. S’il y a peu d’éléments qui mettent en question la capacité de gestion des ONG, il reste que celles-ci sont assez peu représentatives et qu’elles suivent des intérêts qui tendent de plus en plus de se particulariser.

Le PSD est le parti roumain le plus large (il nombr e plus de sept cent mille adhérents). Il dispose ainsi d’une infrastructure remarquable et d’une capacité élevée de prendre des décisions à travers ses foires intérieurs. Dans le cas du PSD, il est important de voir à quel point ce parti est capable d’assurer la gestion des questions qui visent directement les Romes. Or, c’est juste à cet égard que le PSD s’est contenté, comme nous avons déjà essayé de montrer, de faire plutôt une opération d’image. Les questions liées aux Romes n’ont pas trop constitué un sujet de débat, mais ont été toujours prises pour des opportunités électorales. Comme, entre 2000 et 2004, le PRR a été appelé à gérer les institutions qui gèrent les problèmes des Romes et que le PSD se soit assumé seulement le management des questions liées aux autres minorités (à travers le Département pour les Relations Interethniques, dont l’Office pour les Problèmes des Romes est issu), ce parti n’a pas été préoccupé par le développement de sa capacité de gestion en ce qui concerne les problèmes des Romes. Dans son cas, il s’agit donc d’une capacité de gestion non-assumée.

Enfin, l’intégration des élites est la dernière variable. Nous avons opté pour l’autonomisation de cette variable, puisque, dans le cas particulier des Romes, nous avons tenté de démontrer que le modèle

72 Le président de la fédération départementale de Bihor du PRR, Iosif Reszmeves nous a déclaré, au cours d’une interview, que « l’objectif essentiel du PRR de Bihor était la lutte contre Balogh Gyöngy » ; nous avons appris plus tard que celle-ci était sa demi-sœur et l’ancienne vice-présidente du PRR de Bihor, qu’il avait chassé du parti sans se donner la peine de consulter les instances statutaires.
de la précarité politique se construit à travers le rôle des élites, ou, plus exactement, à travers une inadéquation de la gestion de leurs interrelations et de leurs relations avec les masses.

Comme nous avons déjà indiqué, les élites du Parti des Romes proviennent des milieux qui sont sociologiquement mixtes. La plupart des leaders centraux sont issus des familles des Romes de Bucarest ou de la région avoisinante, ayant eu comme occupation pendant le régime communiste le petit commerce plus ou moins officiel et qui se sont affranchis toujours par le commerce pendant les premières années post-communistes. Les leaders locaux sont, quant à eux, issus des milieux divers, qui couvrent toutes les catégories financières et les situations sociales. Ce qui est quand même commun à tous ces leaders du PRR est la volonté d’isolement par rapport aux élites de la majorité, perçue comme un moyen de conservation. Même si certains des leaders affranchis entretiennent de bonnes relations avec les politiques de la majorité, ils s’isolent justement pour démontrer aux communautés leur loyauté. Tandis que des élites intégrées dans les élites nationales permettraient un accès nettement supérieur aux ressources du pouvoir et donc une meilleure capacité d’action afin de résoudre les problèmes des communautés, l’isolement des leaders du PRR, doublé par un esprit de clocher, empêche en même temps l’augmentation de la capacité de gestion. Il faut noter, tout de même, les progrès réalisés par une certaine partie des élites du PRR qui, tout en profitant de leur co-option aux affaires des institutions et des programmes nationaux pour les Romes, on abouti à une émancipation sociale et intellectuelle réelle. Toujours est-il que celle-ci concerne uniquement des groupes isolés.

Il est de même avec les élites des partis marginaux. Leur isolement est encore plus prononcé, vu le fait que leur accès à la constitution des « communautés épistémiques » avec les élites politiques de la majorité est davantage faible. En ce qui concerne les élites politico-religieuses, les raisons de l’isolement communautaire sont assez évidentes. Pour le reste, l’isolement est du, à la fois, à leur propre archaïsme et à une stratégie de marginalisation opérée par le PRR.

Les élites qui dirigent les ONG des Romes ont des relations assez privilégiées avec les leaders de la majorité. Pour la plupart, ils ont vécu non pas dans les communautés romes, mais au sein des divers milieux intellectuels et professionnels de la majorité. De surcroît, certains leaders des ONG ont fait des stages prolongés à l’étranger ; ils intègrent donc parfois non pas seulement les élites roumaines, mais aussi les élites européennes. La césure sociale et culturelle avec les communautés identitaires est évidente. L’avantage de l’intégration des « élites non-gouvernementales romes » dans les groupes élitaires de la majorité se transforme ainsi dans le désavantage de l’absence des voies de communication avec les communautés identitaires. Le clivage entre les élites et les communautés semble être particulièrement prononcé dans le cas de la « société civile rome », ce qui empêche toute forme de légitimation des élites ONG par rapport aux masses des Romes.

Dans le cas du PSD, le problème qui se pose est plutôt celui de l’intégration des élites romes dans les rangs du parti et des autres groupes d’élite. Si l’on prend en considération le cas du leader du groupe social-démocrate rome, Mădălin Voicu, on peut conclure qu’il est, en fait, le seul à avoir pu combiné la légitimation ethno-politique, la légitimation idéologique-politique et le prestige (ce dernier prenant la forme de l’excellence professionnelle). Quand même, ce cas assez unique a démontré que, en l’absence d’une détermination personnelle obstinée envers le maintien de l’encrage dans les communautés « profondes » et d’une action permanente de rapprochement envers les autres factions des Romes, le prestige et l’intégration sont loin de suffire. La marginalisation progressive de Mădălin Voicu, qui a succédé à son conflit direct avec le député PRR Nicolae Păun, montre les limites de la stratégie intégrative des élites romes.

73 Les leaders PRR de Râmnicu Vâlcea et de Târgu Jiu sont des riches hommes d’affaires ; le président du PRR de Zalău est maçon, tandis que celui de Caracal est enseignant et vit dans une maison abandonnée sans toit.
74 C’est le cas de Nicolae Gheorghe, qui a vécu pour une longue période à Paris, où il a édité la revue L’Alternative.
CONCLUSIONS

Les variables que nous avons passées en revue ci-dessous nous offrent la possibilité de construire le modèle de la précarité politique comme un « miroitement inverse » du modèle idéal de structuration et de représentation politique. Le type idéal, le Congrès des élites, permet la réunion des structures de représentation politique des Romes (partis divers, organisations religieuses et ONG) dans une fédération. Celle-ci aurait la possibilité de répondre à l’impératif de la légitimation, tout en combinant les formules traditionnelles aux formules électorales. En même temps, le Congrès des élites permettrait d’assurer la participation des élites romes à la direction des institutions publiques qui s’intéressent aux problèmes de ceux-ci ; ces élites participatives auraient une capacité de gestion élevée, assurée par un dosage optimal entre l’intégration dans les communautés nationales et l’enracinement dans les groupes communautaires romes.

Aux antipodes de celui-ci, les Romes de Roumanie ont « adopté » le type de structuration et de représentation Parti des élites, qui suppose un parti dominant (le Parti des Romes de Roumanie) qui gère autoritairement les relations avec les groupes communautaires mais qui arrive peu à les représenter. Sa légitimité électorale, quoique complétée par une certaine légitimité traditionnelle, demeure relative, à cause de la rivalité parfois violente75, avec les autres partis romes et avec les ONG. Ces dernières sont plutôt intégrées dans les sociétés nationales, mais se sont éloignées des communautés romes qui demeurent traditionalistes. Bien qu’elle soit utile et professionnalisée, la participation des ONG aux affaires publiques est handicapée par leur non-représentativité, tandis que la participation des élites du parti dominant aux mêmes affaires est marquée par une faible capacité de gestion. Les relations entre le parti dominant, les partis marginaux, les ONG et le parti majoritaire s’intéressant aux Romes sont plutôt conflictuelles et limitent la représentation des intérêts des Romes ; ces relations éloignent complètement le type du Parti des élites du type idéal de structuration et de représentation politique et confirme, pour ainsi dire, d’une manière nominale, le bien-fondé du modèle de la précarité politique.

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75 En novembre 2004, un haut représentant PRR au Gouvernement a fait usage de l’arme à feu pendant la campagne électorale; voir http://www.ziarul.cn/article/aid/10864
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CIVIL SOCIETY REPRESENTATIVES IN THE EU DECISION-MAKING PROCESS

INTEREST GROUPS- TRANSPARENCY INTERESTS

Maria-Cristina Olt, PhD student
Babeș-Bolyai University Cluj-Napoca

Abstract
A new form of governance at the European Union level is represented by the social dialogue and the democratic participation. By trying to regulate and consolidate the partnership between the European Union’s institutions and the representatives of the interest groups, the European leaders acknowledge the mutual contact and support need. The paper presents a general overview, as well as the Community documents that try to regulate this filed and the reactions and opinions of the different interested parties.

Key words: civil society, EU decision-making, lobby, European Parliament, participation

It is well known the fact that often the European Union’s institutions and decision making procedures are considered to be too complex, bureaucratic and difficult to understand. There are a lot of interests at the European level- supranational, national, regional, local and even those of citizens- that are represented by various actors- European institutions, states, regions and political parties. There are public and private interests both at the European and national levels, and the civil society organizations were often seen as the link, the bridge among all these interests.

The right of citizens to form organizations in order to follow a certain purpose is recognized at the European Union level by the European Charter of Fundamental Rights and is considered to be another expression of the active involvement of citizens in the political life – besides being a member of a political party or voting. The role of the civil society organizations is to facilitate an open dialogue among all the stakeholders, to help reduce the democratic deficit and to legitimize the decision making process of the Union.

The main problem encountered when trying to present the role, the structure and the influence the civil society has in the European Union is that there is no clear definition of the civil society organizations. The European Commission tried to bring some clarification, but in fact it talks about consultations with “the interested parties”, since all “relevant interests” in a society should have the opportunity to express their view. In the White Paper on European Governance it is stated that “Civil society plays an important role in giving voice to the concerns of citizens and delivering services that meet people’s needs […] It is a chance to get citizens more actively involved in achieving the Union’s objectives and to offer them a structured channel for feedback, criticism and protest”. The same document explains that the civil society includes: trade unions and employers’ organizations (“social partners”), nongovernmental organizations, professional associations, charities, grass-roots organizations- organizations that involve citizens in local and municipal life with a particular

The contribution from churches and religious communities. Besides the actors mentioned in the White Paper, we have to say that there are new types of actors, holders of specific interests, like the public-private agencies known as GONGO (governmental organized NGOs) or GINGO (governmental interested NGOs) and other actors known as BONGO (business oriented NGOs) and BINGO (business interested NGOs). As far as a clear definition of the civil society is concerned, the European Economic and Social Committee, who organized the first “European Convention of the Civil Society Organizations” in 1999, didn’t manage to bring more clarifications. The Committee preferred to stress the importance of social dialogue, considered to be a new form of governance, and of the participative democracy. “The "European democratic model" will contain many, but not only, elements of participatory democracy; it is designed as a model for cooperation and allows room to formulate new types of participation while retaining many elements of representative democracy. This European political system is based on relatively recent structures and is thus, overall, more accessible than most Member States' systems. In this context, European governance must above all ensure effective representation of people's interests by giving their representatives a real say in matters”.

We could say that the civil society organizations are actually interest groups, representatives of public or private, national or international interests that play an important role on the European political arena. Thus, from now one we will refer to them as “interest groups” and we will try to highlight their European activity and influence. We will be able to see that there is a difference between the interest groups from the western, southern or central and eastern European countries, or between those from the rich and poor countries. Moreover, we have to say that there is a different perception concerning interest groups on the European and American continents. For example, in the United States of America the first act that regulated the lobby activity was issued in 1946 (Federal Regulation of Lobbying Act), while on in the European Community the first important steps were taken only in the ‘90s. This is due to the fact that for many years the interest groups’ activity was perceived rather in a negative manner. By the various documents issued by the European Commission, the European Parliament or the Economic and Social Committee, the European leaders tried to consolidate the relation between the European institutions and the interest groups and recognized their contribution to the development of the European democracy.

A recent study about the history of the European lobby was published by the European Parliament in 2007. Thus we find out that between 1984 and 1994 more than 200 companies decided to develop direct lobbying capabilities in Brussels, shifting from a national to a European perspective. As a consequence, business changed from reactive and destructive EU lobbying strategies focused on member states and the veto at the Council of Ministers, towards more pro-active EU strategies, focused on the Commission and Parliament. Other important elements that contributed to the explosion of interest groups activity in the ‘90s were the gradual transfer of regulatory functions from member states to the European institutions and the openness showed by the Commission and the European Parliament. It seems that the most important activity increase was not in traditional interest organizations, like trade associations and NGOs, but in individual lobbyist such as companies and law firms. It has been estimated that 40% of the representatives of interest groups at the above mentioned institutions are individual actors: firms (24%), think thanks (4%), governmental and regional authorities (11%), law

78 White Paper on European Governance, General Principles and Minimum Standards for the Consultation of Interested Parties; Green Paper- European Transparency Initiative, etc.
firms, public relations companies, etc. However, the recent policy of the European institutions is to favor those actors that are ready to establish a European identity, through European alliances. Some of the important European lobby actors are: ALTER EU (Alliance for Lobbying Transparency & Ethics Regulation), SEAP (Society of European Affairs Professionals) or EPACA (European Public Affairs Consultancies Association).

In the European Union competences are shared by different institutions and between them and the national and local authorities. Thus, there are several channels for influencing decisions, and in accordance with the political domain or the specific interest of the group, it decides to approach one or the other of the institutions. The European Commission, which has the initiative power, is the main target of the interest groups and the main discussion partner on the policies form the community pillar. It is easier for the interest groups to obtain substantial modification in the formulation phase than once the Commission proposal has already been send to the Parliament and the Council. As for the Parliament, its legislative power increased in time, but it still varies according to the domain and the voting procedure. Some authors think that event though the European Parliament represents supranational interests, its members are elected by a national electorate and thus are more sensitive to national interest and protectionist measures (than are the Commission and the Council) and more open to diffuse interests that rise public debate (the environment, consumer protection, unemployment or pensioners). The lobbying activity addresses mostly the heads of the Standing Committees and the rapporteurs who are responsible for drafting the policy dossiers. The aim of the interest groups is to include their arguments in the observations and proposals sent by the European Parliament to the Commission. The Council case is more complicated, being formed by national delegations and representing national interests. Hence, we can see that interest groups prefer contact the civil servants and the experts working for the Commission, in the European Parliament’s Committees or in the Council’s working groups than the political leaders. It’s a fact, “the European integration is mostly in the technical details”.

There is a variety of informational exchanges between the interest groups and the European leaders, from informal bilateral meetings to institutionalized working committees. For example, the relation between the Commission and the NGOs was regulated through the document “The Commission and NGOs: building a stronger partnership”, in which it is stated that there are three types of contacts: ad hoc meetings, structured dialogue (ex. bi-annual meetings between the Commission services and all member organizations of the Platform of European social NGOs) and formalized consultations (The Consultative Committee for Co-operatives, Mutuals, Associations and Foundations was formally established by the Commission to advise on policy affecting the Social Economy).

Moreover, there is a difference concerning the access patterns and the influence interest groups have, these elements being influenced by the institutional context, resource dependencies, organization and strategies of the group. This is the conclusion of a study made on 800 business associations from Germany, UK and France. The study also shows that the associations active at the European level are preferred to the national one, because the organizations that are continuously in touch with the European officials and politicians are better informed about EU policy making and better able to voice their concerns and proposals. In the end, information is the most powerful European “currency”.

82 R. Eisig, op.cit.
Since the beginning of the ‘90s the number of researches and studies addressing this topic increased, and there are also other authors supporting these ideas. Greer also states that the associations that have their headquarters in Brussels are better organized and more important from a political point of view—almost 60 per cent of the European groups have chosen this location. Of course, there are differences among sectors, a predominance of the social partners (74%) and fewer representatives of the NGOs or of the public authorities. Resources and strategic choices are again considered to be important elements, but not for a national-European comparison, rather for a comparison among countries. The authors focused on one sector only, the health sector, because this sector showed “the fastest growing area of interest group engagement within the EU”. A variation in the level of engagement by groups of countries was noticed. The post-communist countries show a lower level of participation due to the weakness in the civil society and the recency of their accession. A similar situation is also for the Mediterranean countries, which have a lower engagement level than the countries in Western and Northern Europe, which have developed a culture of independent lobbying earlier than the others. The post-communist and Mediterranean countries have around 264-391 affiliates to EU groups per country, whereas north-western countries have around 480. “Interest representation at the European level favors the energetic and well-financed. It is a pluralistic choir, but it has a suspiciously upper-class (Dutch, German or British) accent”.

The European Union did also a study about the European associations in 2005 in order to see how the last enlargement affected them, what their strategy is and how they perceive the success of their own organization. The results show that success is measured mostly by the increase in the member number (71%), the access to high decision-making levels, the increase of representation in different forums, the increase of the budget, etc. As far as the enlargement is concerned, 45% of the associations didn’t change their lobbying priorities after the acceptance of the new members and 24% hadn’t received members from the new member states until the study was completed. The conclusion was that the organizations had to be more aware about the importance of strategic planning and governance, in order to give value to the concept of “member” in a European organization.

This is only one example of the involvement of European institutions in the world of interest groups that are active at the European Union’s level. The willingness to regulate this field derives from the fact that the contact and support need is mutual. Interest groups are key actors in contemporary democracies, which bring expertise and legitimacy, help in policy implementation and represent the bridge between citizens and the governing authorities, reducing thus the democratic deficit. On the other hand, they need access and credibility from the actors that define and implement policies; they need to inform the institutions about their political interests and preferences. European lobbying helps interest groups consolidate their position, financially and also as far as the number of members is concerned, helps them draw the attention of the European political leaders and increase the number of supporters.

The consultation procedure of the Commission with the two consultative bodies, the national governments and parliaments, and the civil society is stipulated in the Treaties. The 7th Protocol annexed to the Treaty of Amsterdam states: “the Commission should consult widely before proposing legislation, and, wherever appropriate, publish consultation documents”. The objective is to ensure that all interested parties are heard in the policy-making process, preferably during the first stages, in order to analyze if

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the new community laws are the best answer to the EU’s problems. Consultations take place at the DG levels and are split on specific domains. The tools used in this process are Green and White Papers, communications, consultation documents, advisory committees, expert groups, ah-hoc consultations and even consultations via the European Union’s web portal- “Your Voice in Europe”.

The first communication of the Commission on this topic was “An open and structured dialogue between the Commission and special interested groups”, published in 1992. The main idea was to combine in one directory all the information about the interest groups that up to then were dispersed throughout the different DGs. The directory was designed to be a working tool and not an accreditation mean. In 1997 was published the first version, which contained more than 600 non-profit organization that were active at the European level, in more than 100 domains. In 199 the electronic version was created, and in 2001 the directory was transformed in a data base, which could be used on-line. The database name was CONECCS (Consultation, the European Commission and Civil Society) and included around 700 associations. CONECCS allowed the general public and the civil society organizations to see who was involved in the consultation process with the Commission.

Afterwards, the Commission designed a series of documents meant to promote good governance and to enhance the general public’s confidence in the European policies, policies based on the collection and use of external expertise. The White Paper on European Governance85, published in 2001, stressed the idea that with rights come also responsibilities for the interest groups. “With better involvement comes greater responsibility. Civil society must itself follow the principles of good governance, which include accountability and openness”. The same document presented the Commission’s will to create an on-line database (CONECCS) and a Cod of Conduct with minimum standards for the consultation process. As a result, the Commission published in 2002 the following document- “General principles and minimum standards for the consultation of interested parties”86. The purpose was to create a coherent framework for consulting external interested parties. Therefore a set of principles (participation, openness, accountability, effectiveness and coherence) and minimum standards were established. These standards apply especially to proposals that undergo an impact assessment before their adoption. The impact assessment represents an analysis of the options and of the economic, social and environmental factors related to the proposal. The consultation standards apply to the stakeholder consultations, in the policy-shaping phase, and require: clear consultation content, opportunity for all relevant parties to express their opinions, sufficient time for response, adequate feedback and publication of the consultations on the Commission’s web portal.

During the last decades there was an increase of the number of NGOs that are part of a European association or network and an extension of the partnership they have with the Commission, NGOs being involved both in the shaping and in the implementation phase of policies. Every year the Commission allocates more than 1000 million Euros to the partner NGOs for different projects: cooperation, human rights, democracy, humanitarian aid, educations, environment, etc. Thus, the Commission decided to publish in 2000 the document called “The Commission and NGOs: building a stronger partnership”87. The paper recognizes the important role NGOs have in stimulating participative democracy, in representing specific groups (ethnic minorities, disabled persons, etc), in contributing to de development

of European policies and in the management of projects. The aim was to analyze the present relations and to find solutions in order to improve and strengthen this partnership.

A special partnership is that between the Commission and the Platform of European Social NGOs (the Social Platform). The Social Platform was created in 1995 and has over 400 member organizations that are active in the social sector. Its members represent over 1700 organizations, associations and voluntary bodies operating at local, regional, national or European level. Through the PROGESS program the Commission funds four European NGO networks, which defend the rights of those exposed to discrimination: AGE (The European older People’s platform), ILGA Europe (International Lesbian and Gay Association-Europe), ENAR (European Network Against Racism) and EDF (European Disability Forum) and organizes, in cooperation with the Social Platform, bi-annual meeting with the NGOs.

All these measures started in the ‘90s, which were meant to diminish the physical and mental distance between the citizens and the European institutions and to decrees the democratic, lead to the European Commission Green Paper “European Transparency Initiative”. The main elements of the initiative referred to increasing transparency on the use of community funds, increasing transparency on the participation and influence of interest representatives on EU decision making, ethics for public office holders and access to documents. After the Green Paper was adopted in May 2006, a series of public consultations followed. The public debate concerned the lobbying activity, the introduction of legal obligations for Member States to publish information about the beneficiaries of the European funds, as well as the consultation practices. Based on the results of the public consultations, the Commission took the first measure in 2007.

The Commission created a voluntary register that was launched in June 2008 and was meant for all those who “carry out activities with the objective to influence the policy formulation and decision-making process of the European institutions”. Registration does not mean accreditation and it grants no access to privileged information, but the organizations benefit of an “alert” function on consultations in their interest areas. Also a Cod of Conduct for the representatives of interest groups was adopted. The Cod contains several principles, like openness, transparency, honesty and integrity, and states seven rules the representatives have to comply with. Some of them are: to identify themselves by name and organization; to declare the clients and interests they represent; to ensure that information provided to the EU institutions is accurate, complete and up-to-date, not to obtain or try to obtain information dishonestly from the EU institutions, etc. moreover, the Commission created a monitoring and enforcement mechanism for the Code of Conduct.

It was considered that all these details concerning the mission, the interests they represent or the financial resources are important because only when having enough information about an organization one can assess its relevance or the importance of its contribution in the consultation process. As for any European initiative, there some people who supported and some who contested it. The same thing happened in the case of CONECCS or when an accreditation system was proposed. Some organizations like UNICE (union of Industrial and Employers’ Confederation of Europe) were in favor of the introduction of some geographical representation and financial criteria. Others, like ECAS (European Citizen Action Service), argued that it would be wrong to introduce any system of accreditation and that the Commission should keep an open door to any NGO.

A present, the main controversy is caused by the disclosure of the financial resources and the interests represented. Those who oppose it say that public disclosure about the clients would be against

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the confidentiality rules (Thomas Tindemans, member of the Council of Bars and Law Societies of Europe). Those who only criticized it, like Jose Lalluoum, member of the European Public Affairs Consultancies Association, said that his association supports the initiative as long as it would apply to every organization; if the registration is voluntary it would affect competition. And other wanted to take the initiative even further. ALTER-EU declared that it would support a shared mandatory registration system for lobbyists at the Parliament, Council and Commission and full financial disclosure.

It seems that the European Parliament move in the same direction. Having a voluntary register and a code of conduct for the interest groups’ representatives for more than ten years, the Parliament thinks that a mandatory registration system for lobbyists at the Parliament, Council and Commission should be created. The representatives should sign up only once in order to gain access to the three institutions, but they would have to comply with a code of conduct and to disclose the name of the clients they represent and the financial resources. This attitude might come from the fact that some MPs said that the interest groups activity is an essential part of the parliamentary process, but the high dependency upon the interest groups a weakness (the ecologist MP, Claude Turmes). In the European political process the 15 000 Commission and European Parliamentary officials face some 20 000 lobbyists on a daily basis.

There are also other registries of the European Commission having the same increasing transparency purpose, but they did not raise some many debates. The web portal “Your Voice in Europe” allows the citizens to take part in the debates and consultations initiated by the Commission. The Comitology Register contains background information and documents relating to the work of these committees. The Expert Groups Register aims at giving a transparent overview of the advisory bodies that assist the Commission in the formulation, implementation and monitoring of policies. The register contains a list of all formal or informal, permanent or temporary bodies that work with the Commission, as well as relevant information about them (mission, group composition and task, etc.). The Commission holds in-house expertise, but a limited capacity and due to the fact that the knowledge required becomes increasingly technical and highly specialized, it must call upon external experts-expertise means both scientific knowledge and practical experience. The expert groups can comprise solely government experts and national official (the Permanent Group on Direct Taxes), or scientist or academics and interest group representatives (the Advisory Group on Food Chain and Animal and Plant Health), or government experts, scientist and civil society representatives (European Research advisory Board).

Expertise is valued in Brussels. We saw how the representatives of interest groups and experts ad value to the European legislative process: from agenda setting and policy shaping, to implementation and monitoring. This activity brings on one hand legitimization to the integration process, but on the other hand it raises controversies about the transparency of the decision-making process. The debates regarding the way this access should be monitored and regulated, without limiting the information exchange, are still open. In the end, the aim of the European leaders is to create a set of rules and regulations in order to ensure a positive and value adding influence and contribution of the interest group representatives in the legislative process.

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MULTI-LEVEL GOVERNANCE- A THEORETICAL APPROACH

Professor Ph. D. Petre Prisecaru
Institute of World Economy, Bucharest

Abstract
The main contribution to the concept of multilevel governance was brought by neoinstitutionalism. The advocates of multilevel governance which have similar views with the advocates of network governance concept identified two dimensions: a political one and a social one and also two major phenomena: a) the transfer of sovereignty or competences from national level to supranational level; b) the application of subsidiarity principles which involves the decentralization of decision making process. A lot of definitions, meanings and interpretations have been set for governance, but World Bank and European Commission definitions are maybe the most suitable ones for understanding and characterizing this concept. Multilevel governance represents a distinctive type of governance and can be characterized by three attributes: a) non-hierarchical institutional design b) non-majoritarian mode of decision making, c) dynamic dispersion of authority. Bob Jessop has identified three major phenomena specific to the evolution of national states which are members of European Community: a) the de-nationalization of territorial statehood; b) de-statization of political system; c) internationalization of policy regimes. Postwar Keynesian welfare national state which was more interventionist and used demand side policies was replaced in the 80’s by Schumpeterian workfare post-national regime, which is more liberal and less interventionist, and focuses on supply side policies. The three governance methods - Community method, Open Method of Coordination and Enhanced Cooperation – reflect how different policies are elaborated and implemented at EU level and at national level based on different institutional arrangements and multilevel governance and its fundamental principle: subsidiarity.

Key words: multi-level governance, jurisdictions, European Union, decentralization, supranationalism

1. Short insights in the concept of multi-level governance

Based on my personal experience I may say that any serious analysis of European integration process should be based on an interdisciplinary approach, so that in my opinion multilevel governance is a concept dealing with political, economic, social and law sciences. This relatively new concept for defining the polity of European Union, introduced by Gary Marks in 1993, is linked to different and recognized doctrines of European integration like federalism, neoinstitutionalism, (liberal) intergovernmentalism and was examined by many well known scholars like Marks, Grande, Kohler Koch, Hooghe, Rhodes, Kerremans, Scharpf, Leibfried, Pierson, Jachtenfuchs, Héritier, Benz, Eberlein, J.Peterson, J.Weiler, Peters, Pierre.

94 Edgar Grande, Institutions and Interests: Interest Groups in the European System of Multi-Level Governance, European Integration online Papers, mai, 2001
While it is difficult to define European Union as a political entity, e.g. a new type of confederation or a federal state, it is obvious we may speak about a specific polity, so called European Community governance. But both polity and governance are terms specific to a political entity and here we have a contradiction. Usually a polity refers to a governing system involving state powers like executive power (government) and legislative power (parliament), governance is a broader concept covering not only major public actors or institutions but also other relevant actors like non governmental institutions, organized interest groups, civil society. Multilevel governance is a concept characteristic not only to European Union which is frequently defined as a supranational economic community, but also to federal entities (states), although its theoretical roots may be found in the management of large corporations (corporate governance).

In the specific case of EU multilevel governance is based on negotiation not on imposition, involves institutional creation and decisional reallocation, new tasks and attributions for public institutions, new role of national state, active role played by private actors, vertical and horizontal networks. Kerremans\textsuperscript{96} pointed to the relationship between multilevel and governance and relationship between multilevel and institutionalism. For Kerremans the first relationship is a contradictory one because on the one hand it increases the participating and negotiating character of governance at European level and on the other hand creates some restrictions or obstacles for the access of national interest groups. As concerns the second relationship the institutionalists introduced and developed the concept of multilevel governance and focused on the interaction between different levels of governance. Simon Bulmer\textsuperscript{97} has remarked in connection with historical neoinstitutionalism paradigms four specific features of EU governance: systemic changes, governance structures, policies evolution, role of values and norms.

On institutional side European Union is a mixture between intergovernmentalism, supranationalism and federalism which creates a certain balance between supranational interests and national interests. That is why Grande sees EU as a multilevel system of joint decision-making based on the institutional interlocking between supranational and national institutions. On decision-making side there are different procedures for European institutions but we may see also many political, economic and social actors taking part in this process which increases the legitimacy of EU governance. Decision-making process may be also related to the methods used within EU governance: community method, open method of coordination and intergovernmental (enhanced cooperation) method.

The concept of multilevel governance may better explain the interaction between different kinds of governance: supranational, national, regional and local governance. Within integration doctrines many scholars and authors have focused on the importance of institutions, institutional structures, institutional changes and developments, institutional interactions and cooperation, institutional procedures and decision-making. While neofunctionalists and neoinstitutionalists have stressed mainly on the role played by European institutions (level), the intergovernmentalists have paid attention especially to the role played by national states and institutions. The advocates of multilevel governance, most of them sharing neoinstitutionalist approach, have revealed two essential problems of EU governance: a) democratic legitimacy of EU political process; b) power distribution and issue solving capability of EU policy makers.

The advocates of multilevel governance have similar views with the advocates of network governance concept, like Börzel(1997), Castells(1998), Kohler Koch(1999), Ansell(2000), at least regarding the institutional architecture and policy making process which are characterized by two dimensions: a) political dimension where there is an interaction between supranational, national and subnational actors; b) social dimension where private actors interact with public actors.

Gary Marks and Liesbet Hooghe have identified two types of multilevel governance, type I characterized by general-purpose jurisdictions (international, national, regional, meso, local) organized in a limited number of levels, non-intersecting membership and a system-wide architecture, type II characterized by task-specific jurisdictions with no limit to the number of jurisdictional levels, intersecting membership and flexible design. While type I was analyzed by federalist scholars, type II was investigated by scholars belonging to neoclassical political economy, public choice theory, federalism, international relations, European studies.

The neoinstitutionalists did not deny the role of national state within EU governance, but this has substantially changed under the influence of regional integration, globalization, economic (regulatory) management, new public management. Two major phenomena may be distinguished in connection with the role played by national state: a) the transfer of sovereignty or competences from national level to supranational level (so called positive integration) which involves the aggregation and/or the transformation of national state interests; b) the application of subsidiarity principles which involves the decentralization of decision making process. The subsidiarity concept is maybe the best theoretical support for multi-level governance concept that tries to explain the attribution of competences and the interaction between different levels within EU. The subsidiarity principle was introduced at Maastricht and was included in a special protocol of Amsterdam Treaty, it was resumed and strengthened in Constitutional Treaty and then in the Treaty of Institutional Reform (Lisbon Treaty), where it is stipulated: Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the EU shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. Subsidiarity principle is mentioned in article 5 (together with proportionality principle) of EC Treaty and its enforcement degree depends on methods used in governance, Community method is based on centralization while OMC relies on decentralization.

Proportionality principle is the second basic principle of EU multilevel governance and under this principle the scope and form of Union action shall not exceed what is necessary to achieve the objectives of Treaty provisions, EU policies and strategies.

2. Defining governance concept

Trying to define the governance concept is not an easy task to perform, due to its interdisciplinary nature, its complexity and scope, its controversial and sensitive aspects. The governance concept based on theoretical foundations of historical neoinstitutionalism became popular in the 90’s and it was used to measure institutional development and to monitor institutional building at national level. A lot of definitions, meanings and interpretations have been set for this concept, e.g. the social sciences attributed six different meanings to governance (R.Rhodes): minimal state, corporate

98 Liesbet Hooghe, Gary Marks, Unraveling the Central State, But How? Types of Multi-Level Governance, Political Sciences Series, Institute for Advanced Studies, Vienna, March 2003
At state or national level the governance includes the behavior and performance of public (central) authorities—parliament, government, ministries, governmental agencies— but this represents a limited and narrow approach. In any polity or governance we also see other important actors like non-governmental public authorities—regional authorities, local authorities, other public agencies and actors. The governance concept covers not only public actors but also private actors, not only traditional polities or different types of hierarchical structures but also networks of public and/or private actors, as well as different arrangements for power or authority enforcement.

For Daniel Kaufman the governance would represent traditions (informal institutions) and formal institutions which exert the authority in a country. The central public authorities have to formulate and implement policies and strategies, but this process should also involve private actors (interest groups) and civil society by means of institutional arrangements meant to ensure their consistent participation in economic and social governing. Daniel Kaufmann sees a major gap in reforming the governance, in the sense of an increasing divergence between the technocratic ability of political decision makers to implement traditional economic policies and inability/lack of willingness to achieve governance reform which would imply radical institutional and policy changes. That is why there is a governance deficit in many countries, as a result economic and income growth do not depend on governance quality. Daniel Kaufmann thinks that the slow progress or poor governance in many countries and regions would require its reevaluation, mainly pointing to the essential role of private sector in supporting public authorities for improvement of public management and policies.

World Bank and European Commission definitions are maybe the most suitable ones for understanding and characterizing the governance concept. While World Bank (1994) has defined governance as the manner in which political power is exerted for the management of economic and social resources, European Commission (2001) has characterized European multilevel governance as a mixture of rules, processes and behaviors which affect the power exerted within EU, but also a complex system of interactions between European institutions and national institutions (vertical level) and between public actors and private actors (horizontal level). The principles of EU good governance defined in White Paper on European Governance (2001) are: openness, participation, accountability, effectiveness, coherence and they apply mainly to European institutions, although other governance levels are not excluded.

The governance is often associated to the management of public resources and any definition of governance may not cover all aspects of this concept. If we take into account the governance performances one may divide the governance into good governance and bad or poor governance. For United Nations Economic and Social Commission good governance means direct or indirect participation of population or civil society to governing system built on freedom of association and

100 For the Institute on Governance from Ottawa, Canada (2003) governance is about interaction between government and other social organizations and how they relate to the citizens and also is about the decision making process. In its opinion there are four areas or zones where the concept is relevant: global space, national space, organization space and community or local space.


102 Institute on Governance has set five principles based on enunciation made by United Nations Development Program in Governance and Sustainable Development (1997) : legitimacy and voice (participation and consensus orientation), direction (strategic vision), performance (responsiveness, effectiveness and efficiency), accountability (accountability and transparency), fairness (equity and rule of law).
speech, rule of law, information transparency and accessibility, institution responsiveness – trying to serve all stakeholders, consensus orientation – mediating and attaining a broad consensus on essential issues and long term development prospects, social equity and inclusion, effectiveness and efficiency, accountability to citizens, partners, other organizations and institutions. Bad governance reflects the excessive interventionism of government in economic and social fields, bureaucratic, ineffective and preferential rules, lack of transparency and accountability, corruption, ineffective policies and strategies, hindering of institutional and political reforms, distorting of competition environment and negatively impeding on economic performance.

A concept introduced by M.Olsen (1965, 1982) state capture points to a certain dramatic dimension of corruption, defined by European Bank for Reconstruction and Development as the influence of official rules by private companies or interest groups in their own interest by means of bribing public officials and employees.

In a transition period good governance is highlighted by the speed, quality and depth of economic and institutional reforms, the consolidation of free market mechanisms and structures, the level of economic and social performances, the raise of living standard. Institutional development and modernization is essentially associated to good governance, as institutions usually play a major role in all governance reforms.

Measuring the institutional quality or good governance by means of specific indicators is frequently used for evaluating the impact of governance upon economic and social development. I may mention the importance of World Bank aggregate indicators, Index of Economic Freedom of Heritage Foundation, Freedom House Indicators, Indicators of Transparency International for measuring the institutional development and also the governance quality (performance).

3. Characteristics of multi-level governance

Gary Marks, Liesbet Hooghe and Edgar Grande believe that EU multilevel governance represents a distinctive type because it can be characterized by three attributes: a) non-hierarchical institutional design b) non-majoritarian mode of decision making, c) dynamic dispersion of authority. Regarding the first characteristic, one could mention that Member States, regions and local communities are not subordinated to the supranational institutions and there is a high degree of institutional and functional interdependence. But there is a predominance of Community law against national law, there is European Court of Justice whose decisions are compulsory for the Member States and European institutions, there is European Council, the supreme decision maker in the field of constitutional, institutional and strategic matters, there are resolutions, decisions and recommendations of EU Council, European Parliament and European Commission that have to be applied or implemented by the Member States.

Concerning the second characteristic we may say that a consensual mode of decision making like unanimity based on negotiations, mediation and harmonization of interests is no longer the dominant mode once the qualified majority voting is largely used by EU Council and (simple) majority by European Parliament. Maybe the consensual decision making is still predominant within European Council and European Commission, but on medium and long term the qualified majority voting may become important for decisions taken by European Council. Also on long term we may assist to a
replacement of national referenda by European referenda in the process of treaty ratification and other important matters\textsuperscript{103}.

As regards the third characteristic we may see different decision makers at different territorial levels and there is a strong competition for competences because the interactions between different levels of governance are not regulated by constitutional norms. The Constitutional Treaty and then Lisbon Treaty have tried to delimitate more precise the competences between EU level and national level. Dynamic dispersion of authority has been analyzed in correlation with jurisdictional arrangements. The number of jurisdictions is not relevant in respect to competence allocation of policies. Marks, Hooghe\textsuperscript{104}, Schmitter\textsuperscript{105}, Lindberg and Scheingold\textsuperscript{106}, Deutsch, Polack have examined the authority allocation in the field of policies, especially the role played Community authorities and national authorities.

4. National state role in multi-level governance

Are national states key actors in the integration process and are they able to promote and protect their interests at supranational level? Are national states major actors for the integration progress and is this based on intergovernmental cooperation? Andrew Moravcsik, the most known liberal intergovernmentalist, believes that regional integration increases the power and authority of national states. But what kind of national state are we talking about? Is it the liberal state, inspired by classic or neoclassic ideas or the interventionist state, inspired by Keynes ideas? Nowadays national state has a strong regulatory role, a powerful government, a democratic system based on parliament, political parties and local/national referenda. It is the national state that promotes market economy, competition, law enforcement, social welfare, cohesion and protection, elaborate and implement different types of macroeconomic, microeconomic and sectoral policies.

Among the scholars that have investigated the role of national state in the context of globalization and regional integration I may mention the contribution of Bob Jessop, a neo-marxist and institutionalist who tried to investigate the complex relationship between economy, society and state by combining analyses of political economy, social policy and economic geography. For Bob Jessop the evolution of EU governance is tightly linked to the evolution of modern capitalist state and its governance. Bob Jessop\textsuperscript{107} has identified three major phenomena specific to the evolution of national states which are members of European Community. The first one is the de-nationalization of territorial statehood by transferring decision and regulatory powers to supranational level and by decentralization of authority in favor of sub-national levels. The second one is the de-statalization of political system, involving a shift from governmental system to governance on various territorial scales and across various functional fields, implying the replacement of political hegemony by a partnership between government, non-governmental institutions and private organizations. The third one is the internationalization of policy regimes, state action extends to a wide range of international processes, but foreign institutions and actors (as TNC) also influence state policies and actions. It is quite usual to

\textsuperscript{103} The idea of European referenda was largely debated in European Parliament related to the ratification of Constitutional Treaty and reflects the federalist view and support for political integration


\textsuperscript{105} Philippe Schmitter, Representation and Future Euro-Polity, Staatswissenschaften-schaften und Staatpraxis, 3, 1992


\textsuperscript{107} Bob Jessop, Multilevel Governance and Multilevel Metagovernance. Changes in the EU as Integral Moments in the Transformation and Reorientation of Contemporary Statehood, European Integration online Papers, Internet, 2003.
discuss now about global governance, global public policy network, international policy regimes, and about national state implication in shaping international regimes and in implementing their rules and requirements at national level.

Scharpf, Jessop, Shaw and other authors have insisted on meta-governance concept that tries to present the high degree of state involvement and its coordination forms for a large scale of fields and activities, and also different forms of self-organization characteristic to national governance as networks, partnerships and coalitions. Likewise this concept is applied to European polity and to global polity. Multilevel governance deals with EU coordination of a wide range of complex and interrelated problems, policies, strategies. Lisbon Agenda and related policies and strategies are the best example of multilevel meta-governance with the aim to increase the competitiveness of European economy and to better integrate it into global economy.

Bob Jessop and other institutionalists believe that the postwar state in Western Europe was a Keynesian welfare national state aiming at securing full employment and social welfare, pursuing economic and social policies within national boundaries, promoting economic growth and social integration in a mixed economy and focusing on demand side policies. In the 80’s this kind of state would have been replaced by Schumpeterian workfare post-national regime, which is more liberal and less interventionist, promotes innovation and flexibility, competition and competitiveness, focuses on supply side policies. The decrease of importance of national territory is associated with the transfer of some economic and social attributions to supranational level and also with a dual shift from government to governance and from government to meta-governance. While Lisbon Agenda is an example of supply side policies promoted at EU level, the financial-banking crisis is a good example for the failure of demand side policies (liberal or monetarist) applied at national level in USA and EU.

5. Methods of multi-level governance
5.1. Community method

Community method derives its spirit from Jean Monnet’s ideas and in the opinion of J. Ziller (2004) it would be characterized of four elements, which are inseparable for understanding the progress of European integration:

a) the grouping of sovereignties/powers/competences at regional level, for common administration or management of resources with the aim to better regulate the functioning of markets.

b) the creation of an institutional triangle specific to European Community, its institutions representing a mix between the agency model specific to international organizations having a predominant technical character and the democratic model specific to regional organizations, like Council of Europe.

c) the striking influence of functionalist ideas, namely the pragmatic approach of European construction on the way of gradual integration on economic side, in which appears itself the so-called spill over effect.

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108 Metagovernance is a relatively new concept, not frequently used, and refers mainly to the coordination of different specific forms of governance both at national and EU level.

109 Bob Jessop, State Theory: Putting the Capitalis State in its Place, Cambridge,1990

110 Jacques Ziller, The Challenge of Governance in Regional Integration:Key Experience From Europe, Second Annual Conference of ELSNIT, Florence, 2004;
d) the role played by Community law, which system has three essential features: a specific range of instruments; the existence of juridical court at the Community level (ECJ) accessible to governmental and nongovernmental, public and private actors; the possibility of any national court to have a dialogue with ECJ by means of preliminary hearing mechanism and to insure the observance and implementation of Community law based on the principles and jurisprudence established by ECJ.

The European Commission accepts the theory of multilevel or multilayer governance system, but Commission referred to EU governance more in the light of Community method whose paternity belongs to Jean Monnet. In the White Papers on European Governance (2001) European Commission mentioned: “The Community method guarantees the effectiveness and the diversity of Union, insuring a balanced treatment for all Member States, it applies to the single market and common policies and it is based on an important corps of secondary legislation, which completes the primary legislation represented by the Treaties. Likewise this method provides a modality to arbitrate between diverse interests by means of two successive filters: the filter of general interest (at the Commission level) and respectively that of democratic, European and national, representation at the Parliament and Council level, which together constitute the legislative power of the Union.”

Community method means a major role played by the European institutions, inter-correlated and complementary institutions, which insure an effective functioning of a polity at several levels. The EC Rome Treaty stipulates the competences or powers of Community institutions, their composition and structure, their instruments, the voting system or the decision making procedures. While the European Commission insures the balance between different interests and between policies and promotes general interests of EU, the Member States do not have a marginal position or somehow passive within the Community method. They promote their interests by means of EU Council – the main legislative body, and they are involved in implementing the common policies together with the European Commission, assisted by the committees of public employees from Member States111.

The Community method permits the grouping (or transfer) of sovereignties of Member States and promotion of their common interests or EU general interests. As compared to the mode in which classic international organizations act, the Community method offers the advantage that the actions of decision making factors are guided by legal clear rules, decision making process is a transparent one and includes public debates in European Parliament.

The dynamics of Community method means that it has been adjusted and perfected during the time, particularly by means of changes brought to institutional framework, as it is the extension of European Parliament role in legislative and budgetary process, extending the qualified majority vote within Council of Ministers, the significant increase of European Council role and involvement, which affected the inter-institutional balance and diminished somehow the role played by EU Council. In Amsterdam, in 1997, the use of Community method had been extended to a large part of third pillar – justice and home affairs. The debates from ‘90s and this decade on constitutional and institutional reform aimed at the consolidation, correct application and extension of Community method within the EU governance. The absence of a precise definition of Community method, inclusively within the EC Treaty, explains the persistence of obscurities and misunderstandings regarding the sphere of covering and its elements, as well as its relationships with other methods of governance, mainly with intergovernmental method.

According to the provisions or proposals made by European Commission in White Paper on European Governance, EU should combine more effective the diverse instruments of public policy (e.g.

legislation, social dialogue, structural financing and action programs), which would lead to the consolidation of Community method that guarantees the effectiveness and diversity of EU, insuring a balanced treatment for all Member States.

The instruments proposed by Commission\textsuperscript{112} for reforming the Community governance are:

- **the increase of participation degree of actors** to the drawing up and implementing EU policies, mostly of non-governmental ones;
- **better policies and regulations** through the increase of flexibility of Community legislation, enhancing the confidence in expert opinions, combining the policy instruments with the aim to get better results, simplification of Community law, increasing involvement of regulation agencies, improvement of the application of Community legislation at national level;
- **enhanced contribution of EU to global governance** through the increase of legitimacy and improvement of regulations effectiveness at world level, modernizing and reforming the international and multilateral institutions, setting up (strategic) partnerships with other countries, consolidation of representation and role played by EU in international and regional forums, especially in the fields as economic and financial governance, environment, development and competition policy;
- **refocusing of policies**, which means clearer identification of long term development objectives and improvement of their achieving instruments and **refocusing of EU institutions** which implies a revitalization of Community method and concentration of every institution on its essential tasks, being necessary modifications of institutions functioning mode, with the aim to increase the efficiency of their activity.

The decentralization trend of some important common policies or transfer of some competences from Community level to national level does not absolutely involve giving up to Community method or renationalization of some policies, but only the diminishing and simplification of Community regulations, enhancing the co-regulation and implementation role of national authorities, and increasing the co-financing funds of Member States.

### 5.2. Open Method of Coordination

EC Treaty and Lisbon Treaty do not make any express reference to OMC but only to the coordination of economic and social policies. All those who investigated this method come to the conclusion that although OMC characteristics have been defined at Lisbon Summit in March, 2000, nevertheless it is deeply rooted in European Employment Strategy from Luxembourg (December 1997), which in its turn has been inspired by the mechanisms established at Maastricht (1992) for the coordination of macroeconomic policies and their multilateral supervision.

OMC has the objective to help the Member States to gradually develop their own policies and it involves four central elements:

- fixing the guidelines for EU combined with specific timetables for achieving the short, medium and long term objectives;
- establishing the performance indicators (quantitative and qualitative) and benchmarks for sectors and Member States compared to the best practices in the world;
- transposing the guidelines into national and regional policies by establishing specific targets and adopting measures, by taking into consideration the national and regional differences;

periodic monitoring, evaluation and peer review organized as a mutual learning process.

Defining OMC as a new governance mode, which appeared in the 90’s and imposed itself in this decade rests on six characteristics of the method (Radaelli, 2003)\textsuperscript{113}:

a) More limited role of Community law.
b) A new approach to problem solving by EU guidance, multilateral cooperation (government, public and private actors) and standards setting.
c) Participation together with power sharing between Community authorities, governmental (national) and civil society, that is essential because it confers legitimacy and effectiveness.
d) Diversity and subsidiarity are considered inseparable.
e) New modes to produce usable knowledge, by means benchmarking, peer review, multilateral surveillance, scoreboards, trend-charts and other mechanisms.
f) Policy learning (transnational diffusion of local knowledge)

OMC is considered to be an effective potential instrument in the fight to promote competitiveness. But at the same time it is an instrument for building Social Europe. OMC represents a new method of governance, which consists of non-compulsory and decentralized character of regulations, their flexibility and opening, the plurality of involved actors. By its characteristics OMC is obviously in contrast with Community method, which involves the transfer of sovereignty from national level to Community level, adoption of common policies by classic institutional triangle representing a combination between intergovernmentalism and supranationalism, the central role played by supranational institution – Commission – in drawing up and implementing common policies and in supervising the implementation of compulsory regulations by the Member States, the role played by ECJ in solving the Community law infringement cases.

OMC made its début in the employment field in 1997 and gradually extended to the fields of social inclusion, pensions, health care, education and training, environment, immigration and asylum, at the same time becoming an essential instrument for speeding up the transition towards the knowledge based economy and structural economic reforms. Applied to a large scale of fields, OMC implementation presents significant differences as concerns the aims, functioning modes and juridical bases. The objectives may be set on short, medium and long term, with quantitative and qualitative targets, more or less specific, set at Community level or specified at national level. Commission-level monitoring, detailed implementation procedures, evaluation rate of OMC characteristic processes vary to a large extent. There are also major differences as concerns the role played by various political and social actors in every process (Community institutions, Member States, regions, social partners, civil society). Only two implementing fields of OMC, employment (Amsterdam, 1997) and coordination of macroeconomic policies (Maastricht, 1992) enjoyed a juridical basis ensured by the Treaty. Mainly in the social and employment field, where the obstacles in the integration way were difficult to surpass, OMC represents a new method of regulation on the line to create and develop an European social model, being complementary to the other instruments used with the Community governance: legislation, collective agreements and social dialogue, structural funds, support programs, strategies, analysis and research.

5.3. Intergovernmental method or enhanced cooperation

\textsuperscript{113} Claudio Radaelli, The OMC: A new Governance Architecture for the EU?, European Integration online Papers, Internet, 2003.
The intergovernmental method involves a decision making process based on diplomatic negotiations between sovereign states and it allows the complete preservation of Member States sovereignty, implementation of more flexible forms of cooperation and insuring the protection of national interests simultaneously with developing some coordinated initiatives in sensitive areas. The intergovernmental method would allow the cooperation of EU Member States in the fields where the integration progress has been rather modest. It would not be any competition and incompatibility between intergovernmental method and Community method, the reason is connected to the fact that EU is functioning based on a mixture between supranationalism and intergovernmentalism.\textsuperscript{114}

Comparing the two methods involves an analysis of efficiency and democratic legitimacy of both. Achieving the unanimity or veto right characteristic to intergovernmental method is less effective than the decision taken on the basis of qualified majority, which is almost generalized within the Community method. As concerns the democratic legitimacy, EP involvement as representative of European citizens in the co-decision process with EU Council increases the degree of legitimacy in the case of Community method. The reality has demonstrated that the Community method may coexist fortunately with other governance methods like intergovernmental one. However many times the criticisms addressed to the lack of EU effectiveness have hinted to the fields where it had been used the intergovernmental method that is the second and third pillars.

In the ‘90s flexible or differentiated integration had been considered as an adequate instrument for doing away with the obstacles in the road of Western European integration progress. Europe à la carte, two-three speed Europe, Europe with variable geometry, Europe of concentric circles are concepts intensively used in the ‘90s and at the beginning of this decade.\textsuperscript{115} Enhanced cooperation formally introduced by Amsterdam Treaty, but started outside the Treaty provisions through Schengen agreement, was seen rather an instrument used in exceptional circumstances or for testing some bolder initiatives, being opened to all states, including those not participating initially, but that are further attracted by the benefits of this cooperation. Of course, enhanced cooperation would underline the diversity and complexity of the Union, and would lead to the worsening of so-called democratic deficit, which after Maastricht became a central subject of debate in EU. Enhanced cooperation could introduce an important secondary legislation that would affect Community juridical system (law), different Community regulations being applied in various countries. If the flexibility becomes the rule and not the exception then there is the risk of Community fragmentation, because the Member States do not have common objectives and values anymore. The risks are still mitigated by the clear provisions of Amsterdam Treaty.

It has been conferred to European Commission a key role in regulating the use of enhanced cooperation through its decision on the viability and suitability of a demand of enhanced cooperation, but also due to the fact that it proposes the form of this cooperation. In the case of a initiative rejection its opinion is deemed to be a final one. Also the Commission may decide upon a request of a state to participate afterwards to an initiative of enhanced cooperation. In principle Commission would have to support enhanced cooperation in order to favour the integration progress provided the observance of the conditions set by the Treaties, Community law or Community juridical order, Community institutions integrity, fulfilment of common strategic objectives.

\textsuperscript{114} Petre Prisecaru, Community Governance Methods, The Required Directions for EU’s Institutional Development (Deepening) Relating to Its Horizontal Development (Enlarging), Pre-Accession Impact Studies III, European Institute of Romania, 2006.

\textsuperscript{115} Giovanni Grevi, Flexible means to further integration, Integrating Europe, Multiple Speeds – One Direction?, EPC Working Paper No.9, Bruxelles, April 2004.
In Amsterdam, in 1997, there were two opposite camps, one favourable to enhanced cooperation and another one, more reserved and sceptical. The resulted compromise was expressed through taking the initial decision in the Council of Ministers by qualified majority, but due to the important national reasons a Member State could use the “emergency brake” to block the initiative, and EU Council could decide by QMV if the matter was going to be solved by European Council through unanimity. But the veto use was risky due to its effects on mass media and European citizens.

Due to its limited scope, strict conditions and procedures, enhanced cooperation was difficult to put into practice. Nice Treaty had introduced the possibility to use the enhanced cooperation on the second pillar (article 27b TEU), but only for implementing a common action or position decided by EU Council in unanimity, excluding the military field or defence. The enhanced cooperation should not undermine internal market, as well as economic and social cohesion (article 43 TEU). It may be used only as an ultimate solution in a reasonable period of time and by respecting the Community acquis and the rights and competences of non participating countries (article 43 TEU), without mentioning the non discrimination of citizens. On the first and third pillar the possibility of emergency brake was eliminated, being replaced by the notification of European Council, after which EU Council may decide by QMV on any proposal. If the involved field requires the co-decision procedure it is needed the EP accord, if not then the EP may be only consulted. On the second pillar it is necessary the authorization of EU Council after the Commission formulated opinion, EP being informed. In this case it is maintained the possibility of emergency brake. However even after Nice Treaty, the use of enhanced cooperation remained restricted in many respects and there were needed substantial reforms of Treaty provisions on its scope, procedures and conditionalities. Besides Schengen agreement, enhanced cooperation had been used in the case, otherwise disputable, of Western European Union, Social Protocol from Maastricht, Economic and Monetary Union, but it has also some and limited application prospects in the field of fiscal policy, environmental policy, defence, CFSP, area of freedom, security and justice.

6. Conclusions

For Romania the fulfillment of obligations assumed under the provisions of Accession Treaty firstly means the transposing and implementation of Community acquis by strengthening the legislative and institutional framework, and implicitly the raise of public administration performances in the field of common policies. The acquis implementation in the field of internal market and common policies makes easier the coupling to Community method and allows a more effective participation of our country to EU institutional reform and insures her a proper statute in the decision making process of European institutions. Especially within the EU Council Romania’s weight in voting process is not so important due to the number of votes(14), but her voting potential power will be, depending on the differences between the number of winning coalitions formed with our country and the number of coalitions formed without our country (Coleman Index). Likewise the quality of representation in EP, COREPER, working groups, commissions and committees may determine the adequate promotion of our country interests as against the other Member States interests.

As concerns the open method of coordination Romania has to take into account the objectives set by Broad Economic Policy Guidelines and Employment Policy Guidelines and has to transpose them into national reform programs, into national and regional policies. The performance indicators and benchmarks established as compared to the best world practices for economic sectors, and also for social fields, may have a distinct contribution to the increase of the competitiveness of Romanian economy.
As a member of EU Romania may eventually use the enhanced cooperation as an instrument for making use of participation opportunities to projects regarding the deepening of integration in specific fields, but also for assuming precise responsibilities, mainly in the field of European security and defence policy. The rapid improvement of governance at national level under the terms imposed by the requirements of EU governance methods would allow Romania to avoid the position of marginal partner, with an insignificant role within EU governance.

Institutional convergence is the best instrument to attain the convergence of nominal and real economy in Romania. Due to the negative influence of political factors and interest groups the processes of reform, economic development and convergence were delayed and major decisions and effective policies were not properly implemented. In order to record better performances and to enhance their contribution to national and EU governance public institutions must improve their institutional and strategic management. The continuation of the populist, inconsequent and inconsistent economic policies together with the persistence of corruption and the waste of public money would have very negative effects on economic and social development, would preserve great internal and external deficits, and also would delay the economic convergence and would affect the quality of national governance. Any Romanian government faces the dilemma of demand side policies versus supply side policies and the dilemma of accepting IMF support and conditionalities. In the face of economic crisis any responsible government has to combine effective macro-economic measures with sectoral and micro-economic policies meant to promote economic growth, competitiveness and sustainable development.

Decentralization both at regional and local level should be joined by an increased role of private actors and civil society in local, regional and national governance by means of public-private partnership, creation of networks, increased interinstitutional cooperation, better representation and activity within European institutions.

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L’état des lieux de la décentralisation en France : une décentralisation réussie ?

Béatrice Giblin, Professeur
Institute Français de Geopolitique

La gouvernance de la France s’est longtemps caractérisée par une forte centralisation qui atteint son apogée sous la présidence du général De Gaulle dans les années 1960. Cette centralisation avait fini par rendre la gouvernance du pays difficile : lenteur des prises de décision, accentuation du caractère bureaucratique de la gestion administrative et renforcement du pouvoir des hauts fonctionnaires dont, en province, principalement celui les préfets.


Un peu plus de vingt ans plus tard qu’en est-il de la gouvernance de la France ?

Pour faire ce bilan nous avons choisi l’approche géopolitique et non pas celle plus classique de la science politique. C’est pourquoi il nous faut préciser ce que nous entendons par géopolitique.

Rappelons rapidement que le terme avait été proscrit depuis plus de quarante ans pour avoir été utilisé massivement par les nazis, et repris ensuite dans une acception nouvelle : un outil d’analyse pour les citoyens dans les sociétés démocratiques. Il ne s’agit donc pas seulement d’analyser les rivalités entre États, mais celles au sein d’un même État, ce que nous appelons « géopolitique interne » par opposition à la « géopolitique externe » qui s’applique à des situations politiques qui mettent en jeu des États et souvent pour des conflits beaucoup plus graves. Dans ce contexte -là, on est très éloigné des situations politiques que l’on peut rencontrer dans un État aussi démocratique que la France, et pourtant nous pensons que ces dernières peuvent être elles aussi qualifiées de géopolitiques puisque la démarche mise en œuvre pour les analyser ne diffère guère de celle employée pour étudier des conflits d’une toute autre gravité.

La conception de la géopolitique mise en œuvre par l’équipe d’Hérodote et animée par Yves Lacoste est une méthode d’analyse (ou de raisonnement) pour comprendre les rivalités de pouvoirs sur ou pour des territoires. Aussi la démarche géopolitique accorde-t-elle une grande importance aux caractéristiques de ces territoires : grands ou petits, peuplés ou pas et selon quelle répartition, formes de relief, limites politiques (frontières actuelles, mais aussi historiques) caractéristiques socio - culturelles de la ou des population(s) (langue, religion, niveau de formation, activités économiques, type d’urbanisation, etc.). Ces caractéristiques territoriales ont une grande importance pour les acteurs qui agissent sur ces territoires, car s’ils les ignorent, l’échec est presque assuré quelle que soit la nature de l’action entreprise. Agir sur un territoire pour le conquérir, le contrôler, l’exploiter nécessite la mise en
œuvre de stratégies efficaces et donc bien adaptées au territoire considéré. C’est pourquoi mener une démarche géopolitique impose de raisonner en terme stratégique, y compris dans le cadre limité d’une région, d’un département ou d’une agglomération. Comment les acteurs agissent-ils sur le terrain ? Quelles sont les stratégies mises en œuvre pour conquérir telle circonscription électorale, obtenir tel équipement ou infrastructure ? Quels sont leurs adversaires ? Comment les affrontent-ils ? Quelles sont leurs représentations ?

C’est parce que la démarche géopolitique privilégie les territoires et les enjeux qu’ils représentent et qu’elle tente d’expliquer les stratégies et tactiques des différents acteurs qu’elle suscite l’intérêt d’un grand nombre de citoyens.

Dans les conflits ouverts entre États, ce qui est en jeu, c’est la souveraineté politique qui doit s’exercer sur le territoire. Ce qui n’est pas le cas pour nombre de situations géopolitiques qui caractérisent les régions françaises où il est rare que la souveraineté de l’État soit remise en cause. Avec des exceptions toutefois : en Corse où elle l’est par une minorité de Corses nationalistes, au Pays basque où elle l’est par une encore plus petite minorité de Basques nationalistes favorables à une unification des sept provinces basques (les quatre du sud en Espagne et les trois du nord en France) et peut-être aussi en Bretagne, par un tout petit nombre de militants extrémistes qui veulent la reconnaissance du peuple breton. Mais doit-on ne donner le qualificatif de géopolitique qu’à ces situations qui paraissent être en France les seules où se pose la question de la souveraineté ?

En outre, l’écho des discours de ce très petit nombre de militants profondément motivés, nombre symbolique pourrait-on dire, est grand auprès de certains élus et électeurs. En effet, leurs revendications mettent en cause des symboles politiques essentiels, la légitimité de la Nation, celle de l’État, mais aussi celle de la langue française en tant que langue unique, officielle du peuple français. Les militants nationalistes s’appuient sur la langue autrefois parlée dans leur région (et qui ne l’est plus que par un très petit nombre de locuteurs) pour revendiquer une identité qui n’est pas seulement régionale mais nationale pour les militants les plus indépendantistes.

La décentralisation et l’accroissement des pouvoirs des régions ont-ils favorisé le développement de ces revendications nationalistes ?

Sur le plan de l’organisation politique et administrative, la mise en place de la régionalisation a profondément fait évoluer les rapports de pouvoirs entre les différentes collectivités territoriales, communes et département, en bien comme en mal selon les situations. Quoi qu’il en soit, il aura fallu à peine moins de vingt ans pour que ce nouveau territoire de pouvoir s’installe dans le paysage politique français. Si, à leurs débuts, les élections régionales furent des lots de consolation pour les candidats évincés des élections législatives, ce n’est plus aussi fréquemment le cas. De plus, l’accroissement des compétences octroyées à chaque niveau de pouvoir a entraîné celui de la responsabilité des élus et aussi parfois leurs rivalités. En effet, les lois de décentralisation n’ont en aucune façon affaibli les pouvoirs des communes et des départements au profit des régions, bien au contraire. Ce sont les champs de compétences de chacun d’eux qui furent accrus sans que puisse s’exercer la moindre hiérarchie du département sur la commune et de la Région sur le département. Les conseils généraux des départements sont d’ailleurs très loin d’être les perdants de la décentralisation ; on peut même se demander si l’accroissement de leur champ de compétences depuis la régionalisation ne les a pas rendus encore plus puissants.
A cela il faut ajouter de nouveaux territoires de gestion des affaires locales que sont les différentes intercommunalités, et qui sont loin de n’être que des territoires où se règlent des questions techniques (logements, déchets, secours etc.); ce sont aussi des lieux de pouvoirs comme le montre le choix de grands maires qui, pour cause de limite au cumul des mandats, laissent leur fauteuil à un adjoint choisi avec soin, pour prendre la présidence de l’intercommunalité.

Démocratie et géopolitique

Ce qui est donc nouveau ce n’est pas tant l’existence de ces représentations - celles-ci existent depuis longtemps -, mais le fait qu’elles sont désormais largement diffusées et que l’on peut en débattre.

En effet, ces revendications s’expriment d’autant plus facilement que l’on est dans une démocratie où la liberté d’expression est devenue très grande. En France, la multiplication des situations géopolitiques - c’est-à-dire celles où s’expriment de plus en plus ouvertement des rivalités de pouvoirs à propos d’un territoire - est donc liée au développement de la démocratie mais aussi à celui de l’information qui est incomparablement plus complète et diverse qu’autrefois. Et ce d’une part, pour des raisons techniques (les satellites, le numérique) d’autre part, grâce au progrès de la liberté d’expression qui a connu un réel développement dans les trente dernières années. Rappelons que l’autonomie accordée aux radios et télévisions d’État et l’autorisation d’émettre accordée aux « radios libres » ne datent que du premier mandat de François Mitterrand.

Il importe de souligner que les problèmes et les revendications géopolitiques ne se limitent pas aux régions mais concernent aussi les autres collectivités territoriales, le département, la ville comme les espaces ruraux. Ceci traduit une évolution profonde du comportement social qui résulte non seulement de l’accroissement de la démocratie mais aussi de l’élévation du niveau de vie et de la formation intellectuelle qui favorise des prises de parole sur des questions jusqu’alors exclusivement de la compétence des dirigeants d’entreprises et des ingénieurs des grands corps de l’État. Les élus accordent désormais une grande attention aux discours de ces associations car le contexte politique a changé depuis les lois de décentralisation. Celles-ci, en effet, ont donné aux élus locaux de réels pouvoirs sur leurs territoires (commune, département, région) mais aussi de nouvelles responsabilités envers leurs électeurs en matière d’environnement et de développement.

Ainsi les lois de décentralisation ont créé un contexte nouveau qui se traduit par une extension du champ des questions politiques et même géopolitiques au sens où nous l’entendons, c’est-à-dire des rivalités de pouvoirs sur des territoires. En effet, tout comme les élus et les dirigeants d’entreprise, les associations qui se mobilisent pour défendre les intérêts de citoyens et dont les revendications sont relayées par les médias (journaux, radios, télévisions) ont elles aussi un certain pouvoir et les intérêts des uns sont souvent contradictoires avec les intérêts des autres. Or comme les médias rendent compte de leurs débats un grand nombre de citoyens - et donc d’électeurs - sont informés des enjeux, ce qui peut avoir quelques conséquences sur le plan électoral. En effet, la médiatisation des conflits contribue à alimenter alors le débat entre citoyens, du moins entre ceux qui se sentent concernés.

Le débat sur la nécessité ou non de construire un troisième aéroport pour limiter le trafic de Roissy-Charles De Gaulle illustre parfaitement cette évolution. Sur cette question apparemment technique d’aménagement, les positions sont très opposées. Celles-ci ont pu s’exprimer dans le cadre
d’un débat public, organisé par la Commission nationale du débat public (CNDP) créée par la loi Barnier de février 1995 pour permettre la concertation sur les grands projets d’aménagement.\textsuperscript{116} Ainsi, la décentralisation a transformé la politique d’aménagement du territoire en un jeu d’acteurs très complexe.

De nouveaux territoires de pouvoirs

L’intercommunalité est une spécificité française, car depuis la Seconde guerre mondiale, la plupart des pays de l’Union européenne ont procédé à une réduction plus ou moins importante du nombre de leurs communes qui donne à celles-ci la taille et la surface nécessaires à une gestion rationnelle de leur territoire sans qu’il soit nécessaire de les associer pour y mener une politique efficace. Or ce processus n’a jamais pu se faire en France, sans doute parce qu’aucun gouvernement n’en a jamais eu la ferme intention. On sait que la France compte autant de communes à elle seule (36 566 sans compter les communes des DOM) que l’ensemble des quatorze autres États qui faisaient partie de l’Union européenne en 2003.

Avec les lois de décentralisation, le renforcement du pouvoir des maires a rendu encore plus hypothétique la fusion de communes et a donc conforté l’intercommunalité pour permettre une gestion des territoires plus rationnelle et efficace. Les intercommunalités exercent donc une part croissante des compétences des communes celles-ci pouvant difficilement faire face à la complexité croissante des tâches, au financement des équipements ; c’est aussi le moyen de mettre un terme – ou au moins de réduire – la concurrence entre communes pour accueillir les investissements, les emplois et de partager les charges et les ressources fiscales. Malgré toutes ces bonnes raisons de constituer des intercommunalités, il n’en reste pas moins que celles-ci sont toujours l’affaire des élus donc une affaire politique.

Le regroupement de certaines communes n’est pas déterminé selon des critères rationnels, mais dépend des stratégies des élus les plus puissants ou les plus habiles et de leurs relations avec les élus voisins. Les limites compliquées de nombre d’intercommunalités traduisent plus les rapports de force et les affinités politiques que le seul souci de la gestion des territoires. Les rivalités au sein d’une même intercommunalité peuvent aussi être très vives : si chacun veut bien accueillir les bureaux ou les entreprises du secteur des Nouvelles Technologies, il est plus difficile de trouver des candidats pour recevoir l’usine de déchets, les logements sociaux, les aires d’accueil destinées aux gens du voyage, surtout si la taxe professionnelle est unique c’est à dire répartition équitablement entre toutes les communes. Quant à la ville centre, il faut que ses représentants sachent se montrer diplomates pour se faire pardonner sa puissance, démographique, fiscale, technique, administrative qui lui confère une position de force. L’intercommunalité est donc un outil efficace à la condition que les élus sachent habilement utiliser un jeu d’alliances avec les plus petits, avec les communes du même bord politique voire du bord opposé, avec d’autres communes urbaines ou dans un autre contexte avec les communes rurales, en évitant la franche hostilité des communes pauvres s’ils représentent une commune riche.

L’une des plus graves critiques faites aux intercommunalités est de manquer de légitimité démocratique car ses membres sont désignés parmi les élus de chaque municipalité qui sont il est vrai

\textsuperscript{116} Les conflits de plus en plus fréquents suscités par des projets d’aménagement ont contraint l’Etat à mettre en place cette organisation, il est vrai qu’il y était aussi fortement incité selon certains textes européens.
élus au suffrage universel. Or dans les EPCI (Etablissement Public de coopération Intercommunal) on lève l’impôt et ce sans élection au suffrage universel direct de ceux qui décident de son montant, ce qui est une situation exceptionnelle dans notre pays. De plus, on ne sait pas toujours pourquoi certains types d’EPCI ont été choisis plutôt que d’autres et si des compétences sont imposées par la loi d’autres sont optionnelles, donc deux communautés de communes voisines peuvent avoir des champs de compétences très différents. Les lois dites de Chevènement (1999) ont apporté un peu de clarté dans un maquis législatif et technique d’une opacité qui décourage encore le citoyen de bonne volonté. Elles ont ainsi établi en milieu urbain une forme juridique nouvelle, la communauté d’agglomération. L’objectif consistait à unifier les règles pour renforcer la transparence du fonctionnement de ces établissements publics et promouvoir le régime fiscal de la taxe professionnelle unique (TPU), première étape de la grande réforme de la fiscalité locale, souvent annoncée mais très difficile à réaliser, et moyen de réduire la concurrence entre communes voisines. Nouveauté importante : désormais le territoire de ces communautés d’agglomération doit être d’un seul tenant et sans enclave, plus question d’éviter la ville centre ou d’évincer une commune où les problèmes sociaux sont lourds. Malgré cette volonté de structurer et de hiérarchiser les EPCI (les communautés urbaines par exemple ne concernent plus que les grosses agglomérations au moins 500 000 habitants), les formes d’intercommunalités restent encore diverses.

L’Union européenne et les régions

C’est avec le traité de Maastricht (1992), que l’Union européenne affirme clairement la nécessité de renforcer la politique régionale. Pour permettre le passage à la monnaie unique, il est nécessaire d’accroître fortement les aides européennes. Le Traité de Maastricht crée aussi un comité des Régions mais seulement consultatif. Néanmoins, cet organe va logiquement chercher à exister et à obtenir davantage de pouvoirs. C’est d’ailleurs à partir de cette date que se multiplient à Bruxelles les antennes des Conseils régionaux des différents États et ses membres brandissent l’argument de la subsidiarité ou principe de proximité, qui se trouve dans le traité de Maastricht, au nom duquel les décisions doivent être prises au plus près des citoyens, dans le but non avoué d’accroître leurs propres pouvoirs. Certains élus régionaux essaient donc d’avoir les relations les plus directes avec Bruxelles, ce que les représentants de la Commission approuvent d’autant plus que la ratification du Traité de Maastricht a montré un certain désenchantement vis-à-vis de l’Europe. Les membres de la Commission cherchent à améliorer l’image de l’Europe, à la rendre plus démocratique, plus proche des préoccupations des citoyens, et pour cela, il est apparu judicieux de jouer les Régions et de s’appuyer sur les élus régionaux. Pour ceux-ci s’appuyer sur l’Europe est un moyen de s’émanciper du pouvoir de l’État central en particulier pour les élus régionaux qui n’ont pas de grands pouvoirs comme en France. Ainsi, c’est surtout depuis le début des années 1990 que les régions sont devenues sur le plan politique un territoire de référence ; on parle alors de plus en plus de « l’Europe des régions » en faisant référence à l’économie et à la culture, c’est-à-dire, la langue, les traditions historiques, les valeurs supposées spécifiques à la population de chaque région. La politique de l’Union européenne vis-à-vis des régions consiste d’une part, à atténuer leurs disparités économiques et d’autre part, à accroître leurs particularités culturelles, comme si l’accroissement des diversités culturelles ne pouvait en aucune façon fragiliser l’Union européenne à la différence des disparités économiques. La lutte contre les trop fortes inégalités économiques est connotée de façon positive comme l’est la défense des plus faibles sur le plan culturel, c’est-à-dire de ceux qui sont
menacés de voir disparaître leur langue, leur musique, leurs traditions pour cause d’assimilation par et dans la culture d’une nation dominante. Parmi les valeurs sur lesquelles se construit l’Union européenne, il y a le respect des minorités qui doivent pouvoir vivre pleinement et sans entrave leur différence qu’elle soit religieuse, linguistique ou nationale.

Ainsi l’Union européenne est incontestablement un contexte favorable à l’épanouissement des revendications régionalistes.

Les obstacles français à l’accroissement des pouvoirs de la région

La réforme régionale avortée de 2003

Pour les présidents de Région, il est indispensable d’accroître les pouvoirs de cette collectivité territoriale. L’argument toujours avancé pour justifier cet accroissement est toujours le même : rapprocher le pouvoir des citoyens améliore la connaissance des problèmes et des besoins de la population et permet d’y apporter des réponses plus adéquates et plus rapides, de faire des économies, de réformer l’État (ce qui consiste pour l’essentiel à réduire le nombre de ses fonctionnaires et accroître celui des collectivités locales). On affirme qu’ainsi le pays serait « modernisé » par la libération de ses forces vives étouffées par un État nécessairement dominateur puisque centralisateur. La réforme de la décentralisation destinée « à bâtir une République des proximités, unitaire et décentralisée », est ainsi annoncée une première fois, le 3 juillet 2002, dans la déclaration de politique générale de Jean-Pierre Raffarin, nouveau Premier ministre de Jacques Chirac après sa réélection à la présidence de la République. Il était selon ce Premier ministre, ancien président de Région (Poitou-Charentes) urgent de poursuivre la décentralisation et d’accélérer le transfert de certains pouvoirs de l’État aux Régions. Le projet de loi constitutionnelle relatif à l’organisation décentralisée de la République est ainsi soumis le 17 mars 2003, au Parlement réuni en Congrès, (584 voix pour, 278 contre). Sommes-nous alors à la veille d’une grande réforme institutionnelle qui changerait l’architecture bi séculaire de l’organisation des pouvoirs locaux (département/commune) et ferait de la Région « la »collectivité territoriale de référence ? Et plus encore s’agit-il de continuer à mettre en place la démocratie locale, objectif inscrit dans la loi de février 2002 ?

Mais le référendum sur la régionalisation n’aura pas lieu. D’une part, le risque était trop grand d’une abstention massive compte tenu du faible intérêt que cette réforme rencontre dans l’opinion publique, d’autre part, les lobbies hostiles au renforcement des régions (le corps des Préfets au niveau de l’État, et les élus départementaux) se sont fait entendre. Mais le gouvernement n’est, lui-même, plus aussi convaincu du bien-fondé de cette réforme dans la mesure où il est probable, d’après les sondages, que ce soit les forces socialistes qui en tirent avantage. C’est pourquoi cette réforme fut enterrée. La Région ne voit guère ses compétences, et donc ses pouvoirs, accrus, le regroupement des Régions en sept ou huit grandes régions - de taille « européenne » comme il se doit - c’est-à-dire beaucoup plus vaste 117 que celles qui existent actuellement ne se fera pas, et surtout la Région continuera de n’exercer aucun contrôle hiérarchique sur le département et la commune. En effet, si en public chaque élu local loue les bienfaits de la régionalisation, il n’est pas pour autant convaincu qu’il faille ôter quelque pouvoir à la commune ou au département pour accroître celui de la Région, car le risque serait grand de

117 Ce qui est une contre-vérité car les régions européennes ont des superficie très variables y compris en Allemagne, toujours prise comme référence en France, que l’on songe au land de Hambourg ou à celui de Brême comparé à la taille de la Bavière.
voir le pouvoir régional exercer un rôle hiérarchique sur les autres collectivités locales. En vérité, ce que les élus locaux (sauf les conseillers régionaux) souhaitent c’est davantage de décentralisation, c’est-à-dire voir l’État abandonner certaines de ses prérégatives et surtout sans mettre en place une nouvelle hiérarchie qui donnerait à la Région autorité sur les autres collectivités territoriales. Pour certains élus, en effet, ce serait peut-être pire que la situation actuelle où l’État, du fait de sa taille et de ses multiples tâches, n’exerce parfois qu’un contrôle relatif. De plus, l’éloignement de la capitale garantit sa relative neutralité politique en province, mais il n’en serait peut-être plus de même avec un conseil régional beaucoup plus proche. Un des sens premiers de « pouvoir », d’après le dictionnaire Robert, est « avoir de l’importance, de l’influence, de l’efficacité, agir », aussi est-il difficile de croire les élus locaux prêts à abandonner la moindre parcelle de pouvoir.

Ces élus locaux, communaux et surtout départementaux, ont senti le danger que la deuxième étape de la régionalisation pouvait représenter et ont donc réagi en entonnant à leur tour l’argument des libertés locales et en réaffirmant leur indépendance. Déjà lors de la première décentralisation, les compétences accordées aux départements étaient loin d’être secondaires (aides sociales, collèges…) et si les conseillers généraux avaient pu avoir quelque inquiétude au début de la réforme, ils avaient vite compris que ni Gaston Deferre (ministre de l’intérieur) ni Pierre Mauroy, (premier ministre), ne menaçaient leurs pouvoirs bien au contraire. Les budgets des départements sont d’ailleurs très supérieurs à ceux des Régions. Il est vrai que l’importance du budget ne signifie pas automatiquement forte marge d’action car pour l’essentiel les lignes budgétaires sont affectées sans laisser beaucoup de liberté d’action au Conseil général.

Mais deux ans après que le Gouvernement a annoncé que la deuxième étape de la décentralisation serait « la » priorité et se ferait dans les plus brefs délais, la situation politique sur le front de la décentralisation est plus complexe que prévue. D’une part, la droite connaît d’une certaine façon la même mésaventure que la gauche en 1986. En effet, les régions créées par la gauche furent très majoritairement dirigées par la droite à la suite des premières élections des conseils régionaux au suffrage universel. De même en 2004, la réforme de scrutin pensée par la droite pour éviter les majorités instables et les alliances scabreuses avec les petits partis, en particulier le Front national, a largement bénéficié aux socialistes : 20 régions sur 22 un résultat que personne n’avait envisagé.

D’autre part, vingt ans de décentralisation ont aussi donné à réfléchir, d’autant que le contexte économique national et européen a lui aussi beaucoup changé. Le chômage reste un des points douloureux dans nombre de régions, et les solutions pour y remédier ne sont pas des plus simples. Les fermetures de plusieurs entreprises et les difficiles reconversions continuent d’inquiéter à juste titre les élus, surtout de gauche, qui se veulent les défenseurs des travailleurs face au patronat. Or les Régions dans la réforme de Jean-Pierre Raffarin devaient avoir une plus large compétence dans le domaine économique. Mais comment l’assumer ? avec quels moyens ?

L’adhésion sans réserve de la droite libérale au renforcement des pouvoirs des régions commence à susciter quelque inquiétude à gauche. En effet, dans un contexte économique mondial et aussi européen qui pousse à une plus grande libéralisation économique, les élus de gauche s’interrogent de plus en plus sur les risques sociaux de cette évolution et des dangers d’un éloignement de l’État dans ce domaine. En 1982 la régionalisation ne s’était absolument pas accompagnée d’un désengagement de l’État dans le domaine économique, bien au contraire, comme le montraient les nationalisations à 100% du capital de certaines entreprises (banques, sidérurgie). En 2004, le contexte est tout autre : la mondialisation de l’économie s’est considérablement accrue, l’ouverture des marchés européens au sein de l’Union européenne est presque totale, le contrôle de la Commission européenne sur la réelle concurrence entre les entreprises s’est renforcé et l’État n’a plus les mains aussi libres pour soutenir financièrement telle ou telle entreprise en difficulté.
Aussi, la gauche socialiste est-elle beaucoup plus réticente à s’engager dans de plus lourdes responsabilités, car sans réelle compensation financière de la part de l’État ces responsabilités accéléreront inéluctablement les inégalités territoriales entre les régions et si les plus puissantes d’entre elles peuvent y trouver avantage, ce ne sera pas le cas des plus pauvres et des plus petites.

Ainsi, s’amorce une nouvelle réflexion sur le rôle de l’État : si dans les années 1960 – 1970, la gauche a dénoncé sa domination oppressante, il n’en va plus de même désormais et l’État retrouve aux yeux de certains élus son rôle protecteur, en particulier contre la jungle économique libérale. En appellerait-on de nouveau à l’État pour garantir l’égalité entre les citoyens et les territoires de la nation ?

La deuxième tentative de réforme régionale en 2008

Parmi les critiques faites à l’encontre de la gouvernance de la France l’une des plus fréquentes et l’empilement des niveaux de pouvoir de la commune à l’État auquel s’est surajouté comme nous l’avons vu de nouveaux territoires de pouvoir, ceux des intercommunalités. Cela fait désormais presque partout cinq niveaux, c'est-à-dire plutôt plus que chez nos voisins européens 118. Mais "plus" ne signifie pas nécessairement "trop". Pour qualifier cette situation une expression s'est imposée, celle de "millefeuille institutionnel".


Supprimer les départements ?

Officiellement il s'agit de savoir dans quel sens réformer l'organisation territoriale de la France. Faut-il supprimer un, voire plusieurs échelons territoriaux et lequel (ou lesquels) ? C’est surtout le département qui est en ligne de mire. En effet il paraît presque impossible politiquement de supprimer les communes, alors que toutes les enquêtes d'opinion désignent les maires comme les élus les plus populaires, parce que jugés les plus proches des préoccupations des citoyens. De leur côté, les régions sont présentées comme plus "modernes" que les départements et plus adaptées aux enjeux actuels à l'heure de l'intégration européenne et de la compétition entre territoires. Les départements eux sont anciens (plus de deux siècles), leurs dimensions datent de l'époque où l'on se déplaçait à cheval, l'image des conseillers généraux est désuète et ils sont de parfaits inconnus pour leurs concitoyens, sauf en zone rurale (moins de 20% de la population) et pour les électeurs de la commune dont ils sont maires. Bref le département serait ringard.

Cet ensemble d'affirmations pose quelques questions : 1- comment en est-on arrivé à cet empilement institutionnel ? 2- cette situation est-elle préjudiciable et en quoi ? n'a-t-elle pas quelques avantages qui l'emporteraient éventuellement sur ses inconvénients ? 3- est-ce là que se situent les vrais problèmes ?

118 Trois à quatre en Allemagne : Etat fédéral, Länder, des villes (Gemeinden) de la taille de nos communautés urbaines ou d'agglomération et en zone rurale des communes regroupées en districts (Kreise) ; quatre en Italie et en Espagne où l'intercommunalité n'existe pas, mais où le nombre de communes est très inférieur ; à noter que la Sicile a supprimé les provinces ; pas de régions en Angleterre, mais autonomie (dévolution) de l'Ecosse, du Pays de Galles et de l'Irlande du Nord.
La coexistence de cinq niveaux de gestion du territoire France résulte d'une pratique poursuivie avec persévérance et qui consiste à toujours réformer en ajoutant une nouvelle structure et jamais en en supprimant. Non seulement la régionalisation de 1982 n'a pas entraîné la disparition des départements, mais on l’a vu elle s'est accompagnée d'un transfert d'importantes compétences de l'État vers ceux-ci, avec pour conséquence un renforcement de leur légitimité politique. La réforme constitutionnelle de mars 2003 s'est traduite par de nouvelles compétences pour les départements, avec le transfert de 40% du réseau de routes nationales et elle a inscrit dans la constitution l'interdiction de la tutelle d'une collectivité territoriale sur une autre, prévoyant seulement la possibilité pour une collectivité de jouer le rôle de "chef de file" dans un domaine particulier. De même la loi Chevènement n'a pas entraîné la disparition des communes, se contentant de les vider d'une bonne partie de leurs pouvoirs. A la fois pour des raisons de fond et pour des raisons tactiques. François Mitterrand, comme Jean-Pierre Chevènement étaient des modernisateurs, mais profondément imprégnés de la culture politique républicaine la plus traditionnelle, très attachés au rôle des élus locaux, qu'ils avaient été ou étaient l'un et l'autre. Par ailleurs supprimer une institution c'est voir automatiquement se lever contre la réforme un front d'opposants qui en rendra l'adoption plus difficile.

En quoi cette situation est préjudiciable ? Bien que les lois de décentralisation aient précisé pour chaque institution (régions, départements, communes) un "cœur" de compétences, chaque institution a tendance à sortir de ses compétences légales pour aller sur les plates-bandes des voisins, surtout quand il y a un profit politique à la faire. Les départements ont par exemple multiplié les actions dans le domaine économique, c'est principalement dans ce domaine que la tendance est manifeste. Dans certains cas des conseils généraux de droite se sont ligués pour s'opposer à la stratégie d'aménagement du territoire d'une région de gauche (cas de la région Centre et de la Basse-Normandie). Mais l'impact financier de ces pratiques est limité car les budgets des conseils généraux sont à plus de 80% composés de dépenses contraintes (aides sociales, entretien du réseau routier). De plus, cette concurrence entre institutions se traduit par une émulation qui peut être profitable, obligeant chacun à être performant dans son domaine de compétences, s'il ne veut pas que celui-ci soit annexé par une autre institution.

Une question de démocratie

Plus préoccupante est la question de la lisibilité du dispositif politico-institutionnel. En réalité les citoyens n'y comprennent rien et sont incapables de répondre à la question : "qui fait quoi ?". Cela n'est pas bon car ils votent pour un élu sans savoir réellement quel sera son pouvoir et ce qu'on peut attendre de lui et pour cette raison (et quelques autres) les citoyens votent d'ailleurs de moins en moins. La participation politique des citoyens implique la transparence des fonctions et des responsabilités. La complexité et l'opacité de l'organisation territoriale jouent contre la vitalité de la démocratie.

De ce point de vue, le problème que pose le fonctionnement actuel de l'intercommunalité est bien plus grave que celui des rapports entre départements et régions. La loi Chevènement s'est traduite par un glissement du vrai pouvoir au niveau local, des communes vers de nouvelles structures, les communautés (urbaines, d'agglomération et de communes). Il y a donc un divorce croissant entre deux territoires politiques : celui de l'action et de la mise en œuvre des politiques publiques et celui du vote, du débat devant les citoyens et entre eux, de la désignation de qui décidera de l'impôt.

Reste une autre question, qui est une sorte de serpent de mer du débat sur l'organisation territoriale, celle de la taille et du nombre des régions. De manière récurrente, des voix s'élèvent pour dénoncer la taille insuffisante des régions françaises comparées à certaines grosses régions européennes. En réalité le problème n'est pas tant le poids démographique et économique, que la puissance des moyens, l'importance des budgets d'intervention et la légitimité politique, les unes et les autres étant étroitement
liées, car la légitimité naît souvent de la puissance, mais permet aussi de revendiquer et d'acquérir la puissance. Le budget d'investissement d'une région comme Rhône-Alpes (850.000 € en 2006), 2ème région française par la population, pèse par exemple à peine plus de la moitié de celui des huit départements qui la composent.

Deux obstacles majeurs

Au-delà de la question du contenu de la réforme une autre question est tout aussi importante, c'est celle de sa faisabilité politique. L'éventuelle disparition des départements ou leur regroupement (entre eux ou avec leur région), le regroupement des régions actuelles en six ou sept még régions et la désignation par les citoyens eux-mêmes des présidents des intercommunalités se heurtent à deux obstacles majeurs.

D'abord la résistance des institutions elles-mêmes et des élus qui les habitent. On l’a dit le refus des départements de disparaître est compréhensible. La suppression de cent départements signifierait celle d'autant de présidents de conseils généraux, de plusieurs centaines de vice-présidents, des coupes sombres dans la fonction publique territoriale (c'est d'ailleurs sans doute l'un des objectifs de l'initiative de Nicolas Sarkozy, à la recherche d'économies de fonctionnement et d'une baisse de la fiscalité locale) et la disparition de toute une série d'organismes publics départementaux. La technostructure des départements et le corps des élus départementaux cherchent bien sûr conserver ce qui constitue à la fois leur gagne-pain, la base de leur pouvoir, l'espace où ils déploient leurs qualités professionnelles, celui de leurs réseaux, un territoire auquel ils sont liés affectivement, etc. Il en va de même pour les régions qui pourraient être fusionnées. S'y ajoutent les enjeux politiques partisans puisque la redéfinition de la carte territoriale aurait des effets sur le contrôle des institutions locales par les différentes forces politiques.

Le deuxième obstacle renvoie à la question de l'identité locale ou régionale. Les territoires ont en effet plusieurs fonctions. Ils sont le cadre de l'action publique, celui de la vie politique, des rivalités entre courants politiques et entre personnalités. Mais ils ont aussi une fonction d'identification collective. Même si les départements ont pu paraître totalement artificiels lors de leur création, ils se sont enracinés en deux siècles, au point de devenir avec l'Etat-Nation et la commune la référence territoriale la plus marquante des individus. La référence régionale apparaît beaucoup plus faible, à l'exception d'une poignée de régions dotées d'une histoire particulière et surtout d'une langue régionale, comme l'Alsace, la Bretagne, la Corse ou les régions d'outre-mer. Mais elle est pourtant suffisamment installée pour empêcher la fusion de plusieurs régions entre elles.

Le redécoupage de la carte régionale ne peut donc se concevoir avec quelque chance de succès, si l'on ne prend pas en compte, à côté des impératifs fonctionnels, la fonction identitaire du territoire régional. Une région ne sert pas seulement à agir, elle sert aussi à se penser collectivement.

Le "big bang institutionnel" annoncé risque fort de ne pas se produire, étouffé par la complexité du sujet, neutralisé par l'effet des contre-feux allumés par les uns et les autres. Ce ne serait pas la première fois.

119 Ils jouent à ce titre un rôle important dans l'émergence de responsables politiques nationaux, souvent passés d'abord par la case "élus local" ou contraint d'y passer pour conquérir une légitimité personnelle, quitte à être parachutés.
120 En réalité une partie des départements épouse les limites d'anciennes provinces.
121 Peu importe au final que cette langue soit pratiquée ou pas. L'exemple de la Bretagne où le breton n'est parlé qu'occasionnellement que par 1/10ème de la population (chiffre en baisse régulière et rapide) et qui ne l'a jamais été dans toute la moitié est, le pays gallo, montre bien que la fonction identitaire d'une langue est distincte de sa fonction de communication [Loyer, 2005].

Nicolae Toderaș, PhD student
National School of Political Studies and Public Administration

Abstract

The article offers a case study regarding the conformation of the central authorities from Moldova to the previsions/conditions of the EU-Republic of Moldova Action Plan – EUMAP regarding the improvement of the administrative capacity. The study case enlightens the aspect that, giving the fact that the Action Plan does not impose a judicial conditioning, but guides itself after a set of voluntary conformations, the central public authorities from Moldova are constrained to produce systemic and structural reforms with a view to the governance’s principles. The case study demonstrates that the fault of the political volition, identifies through a viable path dependence in the domain of the adhesion to the EU, facilitates a context of elusion from the utilization of the principles of governance in the consolidation of the internal administrative capacity and in the realization of the central public administration (CPA) reform.

Key words: governance, Moldova, central public authorities, reform, EUMAP

Introduction

The institutions and organizations have the capacity to transform during their historical route of accomplishing the objectives for which realization they have been created. These transformations take place through a process of conformation to the requirements that come as a result to the pressures exerted by the actors interested in the evolution of these institutions and organizations. In this way, the institutions (the practices, the stipulations and the agencies) can generate at the same time stagnation, if this is to be wished according to the pressures exerted, and also development. In the case of the states that find themselves in a transitional process from the socialist system to a capitalist one, are visible the institutional modifications with a hybridized aspect: reminiscences specific to the older institutions – elements that are un/partially modified, with new elements, totally opposed and out of the area of the anterior practices and stipulations. In this case, such a superposition generates profound confusions and considerable hesitations regarding the continuation of the reformation process. This is why, in their evolution process, the governmental authorities and agencies, as public organizations, demonstrate the tendency to maintain or to create practices and procedures that might generate stability and security in the domain that they administrate.

Taking all this into account, this article describes the evolution of the transformations suffered by the institutions specific to the central public administration (CPA) from the Republic of Moldova with

regard to a voluntary but conditioned conformation to the principles and acceptations of the governance. At the same time, eloquently speaking, the conditionings of the reformation of the central and local public administration can be identified also in the external pressures. For example, beginning with 2004 could be remarked the requirements, regarding the improvement of the internal public administration capacity, that EU imposed on the Republic of Moldova, which supposes the defining and consolidation of a specific area for the principles of governance. Throughout this article there are treated only certain aspects that are inherent to the process of creation of a horizontal cadre of governance, placing the accent mainly of the way of transforming the CPA from the Republic of Moldova. In this way, the analysis of the transformation process of the CPA is carried out from the new institutionalism perspective of a historical type and is followed by processes that regard transparency, public communication, citizen’s involvement and the way in which the interested factors are implied. Therefore, in the first part it is followed a detailed conceptual development, and in the second part it is analyzed the voluntary conformation to the requirements specific to the improvements of the administrative capacity through the reformation of the central public administration. The case study demonstrates the fact that under the direct or indirect pressures of some internal actors or structures the reforms inherent to the creation of a cadre of governance can be implemented, in the beginning, in an aleatory, differentiated, diffuse and very difficult way.

**Conceptual delimitations**

For many European states, the governance acceptation signifies the totality of the potential mechanism and processes of relating the individuals and public institutions (central and local) in order to satisfy some necessities of the society. Still, the method of creating these mechanisms and processes, takes place in different manners. For example, through the governance concept the Anglo-Saxons states conceive the insurance of efficiency, efficacy and of the quality-price relation, making a full use of the institutions of trust and of the partnership between the participating actors. To define the concept of governance the napoleonian states (like France or Italy) place the accent on a bureaucratic – legalist approach. To ensure the coherence and efficiency of the making of policies, the attributions and interests of the entities that implement the policies are dependent on the central entities, the ones that have the power of decision. On the other hand, for the Germanic states, the concept of governance is equal to applying the rule of law, which is based on the subsidiary mechanism of inter-sectorial cooperation. In this way, in the case of the Germanic states, the attributions and interests of the entities that implement the policies are more important in comparison with the central entities. On the other hand, the Nordic states use the governance concept through favorising the negotiations between the governmental entities, regardless of roles and attributions, with the organizations that represent the citizens. In this final case, governance represents an inter-active framework of cooperation, consultation and social cohesion. Getting out of the typology synthesized above, it is clear the fact that it is difficult to adapt the notion to the administrative cultures specific to the ex-socialist systems, in which it is integrated also the case of the administrative system from the Republic of Moldova. In such a framework of administrative and political cultures, that find themselves in a transitional process, it is obvious why the concept of governance becomes so diffuse, with vague understandings, not only when it comes to the ideological and conceptual nuance, but also in the sense of bringing together the public areas. In a certain way, as Paul Stubbs underlines, in the ex-socialist administrative systems, from the Central and Eastern Europe,

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the understanding of the principles and practices of governance produces in a different and diffuse manner, arousing at the same time diverse anomalies regarding the west-European and American approaches over governance. Still, the administrative systems from this ex-socialist area offer ‘an extraordinary laboratory’ in order to analyse the processes of transformation and adaptation to the new contexts of the realization of the public management and of the creation of the public policies. The study care demonstrates that putting into practice the principles of governance presupposes a radical transformation of the local and central public authorities that starts in the first place, from their democratization, continuing then with the process of conformation to the communitarian meanings in the domain of the improvement of the administrative capacity.

There are many ways in which can be analyzed the process of choosing a governance cadre, under all his meanings. If we analyze governance in an axial manner we will obtain two dimensions. The first dimension refers itself to the vertical governance: some types of public competencies pass from the central authorities’ level to the one of the local ones – process identified as deconcentration, decentralization, and devolution. Some authors, preoccupied for the study of governance did not hesitate to characterize this process as one of a jurisdictional transformation of the state. Therefore, Hooghe and Marks consider that such a jurisdictional transformation of the state produces itself in a fractured and contrasting manner but extends finally to diverse international systems, states and regions. The authors identify two types of such a jurisdictional transformation that identifies itself through processes specific to the principles of governance that is to the participation and implication of the citizens. The first type refers to general – purpose jurisdictions, which are characterized by a small number of jurisdictions in which the tasks are diversified so as to respond to the necessities of making the administrative policies and undertakings. The second type refers itself to task – specific jurisdictions, which are proliferated in number and are specialized on the functional accomplishment of certain undertakings. Both types of governance guide themselves on functional specificity, and also on flexible and policy specific architecture. In the analyzed study case it is showed in which way produces the jurisdictional transformation based on the specificity of tasks with a view to the principles of governance and to the pressures of conformation to the obligations assumed in front of the EU.

The second dimension refers itself to the horizontal governance: yielding certain competencies to certain actors specialized and competent in certain public sectors and domains. In a certain manner, the authors from this area consider that this form of governance identifies itself with a profound reformation of the notions from the public management domain, a process that is identified through the paradigm known as New Public Management. Metaphorically speaking, this form of governance determines a gradual minimization and disintegration of the state and places the accent on the improvement of the quality of services and public management. The dimension of horizontal governance encourages the apparition and development of nongovernmental entities identified as profitable organizations but also as non-profit ones specialized initially on diverse thematic areas and domains of policies that RAW Rhodes named firstly policy networks. This is why, in order to generate a coherent, transparent and efficient framework of connectivity it must be developed an adequate legislation. Still, this presupposes an improvement of the administrative capacity in order to develop the aptitudes to identify clear objectives,
to establish exact priorities, which are focused on the elucidation of the causes, and to make, in a pertinent and efficient manner, public policies. Taking all this into consideration, the transformation of the administrations through the principles of governance presupposes: reliability and predictability (the principle of legal certainty); openness and transparency; financial accountability (public justification of expenditures); efficiency and effectiveness; technical and managerial competence; and citizen participation.\textsuperscript{128} Mostly, these principles are of reference also in the process of conformation to the EU requirements in the public administration domain. This is way these principles are incorporated in the conditions regarding democracy and human rights and only after these in the ones of economic nature. In the case study we will notice that the Republic of Moldova focalized mostly on the economic conformation and less on the one regarding the improvement of the administrative capacity, and naturally on the one regarding the democratization of the central and local public administration.

The particularities of the central public administration from the Republic of Moldova

From the declaration of independence on August 27, 1991, the organization of the Republic of Moldova was originally based on new marxist functionalist models, which gives the possibility of developing a liberal democracy.\textsuperscript{129} Still, during the transition from the planned economy the market economy and also under the pressure of the desiderates to intensify the relations of cooperation with the EU and therefore to adhere to this polity, the system of organization of Moldova has known important modifications that correspond to the new pluralist models. Therefore, like other states from the region, there have been created contexts of hybridization of the models, superposed at the same time with institutions and processes that remained from the socialist period such as: systemic hipercentralism, sectorial organization, docility and bureaucratic politicization, decisional opacity etc. this is way, once the processes of administrative reform were initiated, there were approached several measures that regard the systemic functionality, the way in which the normative acts are elaborated, the public policies are created and the competencies of the central and local public administration are established etc.

Because in the economic specific of the old Moldavian RSS didn’t exist considerable sectors and industrial platforms, and the departments of production from the industrial and agricultural domain were of medium and small dimensions, these could be passed to a foreign entity rather easily. Consequently, this aspect acted as an impulse for passing from an approach of sectorial governance to a functional one that realized itself quite easily in comparison with other ex-soviet states.\textsuperscript{130} Therefore, through this premise of reforming the CPA could be modified a few requirements regarding the way to implement the public policies and to realize the public management. Still, because the internal public area is of a patriarchal civic culture, and the effects of the democratic centralism are still actively present, the reforms were implemented rather on paper than in reality. This in way, at the moment, the administrative system of Moldova characterizes itself with a weak administrative capacity. Moreover, the perpetuation of a dominant political party that, in the first days of his governance, in the years 2001 – 2003, wasn’t co-interested in the complete reformation of the central public administration. Initially, the dominant party created some counter-reforms regarding the administrative decentralization and deconcentration. For example, in 2003 was created the territorial - administrative counter-reform which meant passing from territorial – administrative unities of county-type (adjusted to the reference system NUTS that was implemented in 1998) to the reference soviet system – departments. Practically, this counter reform

\textsuperscript{129} Ion Sandu, „The functionalist approach in the Republic of Moldova state”, in Moldoscopie, Nr. 3 (XLII), 2008, pp. 127.
\textsuperscript{130} Sergiu, Palihovici, „Europeanization the Central Public Administration in the Republic of Moldova”, in Moldoscopie, Nr. 3 (XXXVII), 2007, pp. 33.
cancelled all the reforms implemented in the sense of democratization and improvement of the internal administrative system.

From the perspective of adapting the legal framework to the new tendencies in public administration and of creating public policies it is confirmed a diffuse finalization of the normative and legislative architecture. For example, even though one part of the legislation through which they create the reform of the central and local public administration is adopted and implemented according to the new premises specific to the intensification of the relations with the EU, its base is represented by a law dating from the soviet period - Law no 64 – XII regarding the Government, which was adopted in May 31, 1990. During the last two decades there have been added amendments to this law regarding the functioning of the new cabinets of ministers. Still, the principles, the competencies of the Govern, the way in which the Govern should act and manage his activity, remained mostly particular to the soviet system of administration. Therefore, the reformation of the central public administration took place mostly through the implementation of a series of incoherent measures that created the premises for incomplete and inconsequent transfers and adaptations of principles and requirements that have the purpose to generate mechanism specific to governance. This is way, even the best practices transferred and adapted are likely to fail even from the beginning because of the fact that the legislative architecture is not reformed but it is dominated by practices and mechanisms specific to an ultra centralist and in transparent acception that, at the same time, doesn’t support the idea of the participation of the interested actors in the decisional process of creating the public policies. For example, transparency, as fundamental principle of assuring governance, is not a basic principle of the Govern’s activities, being mentioned only as an activity practice at the organization of the Govern’s activity section. Moreover, it may be ascertained that, during the last 8 years it has been remarked the predominant role of the President’s of the Republic of Moldova Apparatus, which, through his own activity assumed competencies that belong to the one of the Govern and also of some Ministers of Line. Therefore, it has been created a sort of verticality of the power, with a limited number of decisional actors and a quite larger number of actors that transmit information to the executive agencies. In this way, the legislative and administrative propositions implemented more on the top-down principle, rather that on the bottom-up or the horizontal principle. Consequently, this pathologic way of functioning of the CPA made difficult the implementation of the strategies of structural and systemic reformation and those of improvement of the administrative capacity.

In the same context, it must be specified that the process of creation and consolidation of a viable community of public policies was realized rather late. The first expertise groups appear only to the end of the 90’s, being developed mainly by the Soros Foundation. During the last decade the internal community of public policies has known important transformations, regarding both quality and quantity. These structures are more and more present in the activities of partnership with the central and local public authorities. They assume the responsibility to improve the normative and legislative framework, intensively control the evolutions from the domain of the central and local public administration reform. Therefore, with the help of these structures, the internal public administration capacity improves. Nevertheless, the central authorities, but mainly the local ones still show a sort of resistance to openness and avoid considering them equal partners in the processes of the realization of the public management and in those of improving the public administration.

To conclude this paragraph it may be specified that the administrative system from Moldova lacks a path dependency through which the CPA might follow a certain strategic objective – that of thorough closeness to the EU and, finally of adhesion to the European Union. In its first decade of independent existence, the Republic of Moldova didn’t manage to democratize its central and local public administration and this is way it couldn’t function according to the modern principles of the public
administration. In conclusion, neither the principles of governance can have the same meaning as in the west-European states.

**Change through conformation: the role of the EU in the edification of a governance status in the Republic of Moldova**

As we underlined in the anterior paragraphs the transformation of the government in Moldova occurs through the accomplishment of a declared desiderate: the thorough closeness to the EU, economically, politically and socially speaking. Therefore, for this to happen, Moldova voluntarily assumed a desiderate of internal structural and systemic reformation, inclusively in what concerns the improvement of the administrative capacity to assimilate and implement the *acquis communautaire* in diverse public domains and sectors.

The historic of the relations of cooperation between the Republic of Moldova and the EU have started in 1994 when it was signed the EC-Moldova Partnership and Cooperation Agreement. The agreement became operative only in January 1st 1998 and didn’t mentioned political conditionalities through which Moldova could be directly constrained to reform and to adapt its internal policies to the *acquis communautaire*. The document was rather enunciating the necessity to create a corresponding framework of political dialogue between the actors than presuppose the interiorization of a series of principles and ideas of reformation of the internal public administration for the improvement of the administrative capacity. From 1998 to 2003 the relations between EU and Moldova functioned mostly on the basis of this Agreement and this is way the pressures of conformation in the process of reforming the internal public administration came from other parts rather than from the EU. Therefore, an eminent role in the initiation and continuation of the public administration reform through the principle of governance was represented by the Council of Europe, UNDP, the World Bank, and some other donor organizations like the SOROS Foundation, EuroAsia Foundation etc. Evidently, the EU role in the improvement of the administrative capacity evidenced through the implementation of projects financed by Technical Aid to the Commonwealth of Independent States –TACIS.

If in the first phase of the cooperation between EU and Moldova it wasn’t find the express conditionality for the improvement of the administrative capacity through the implementation of the principles of governance, we can find it stipulated in the second phase, that starts in 2004, when began the negotiations for signing the EU-Republic of Moldova Action Plan. EUMAP was signed by both parts in January 22, 2005 for a period of 3 years. This document signifies a first instrument of relation of the EU with Moldova through the European Neighborhood Policy (ENP). Although ENP doesn’t offer the possibility of the EU’s extension, still allows an open cadre of creating relations with the EU in domains like the economic integration, the technical assistance in the implementation of the structural reforms, the improvement and consolidation of the political dialogue etc. in the short evolution of the ENP it has already been distinguished a flank of the EU’s neighbor states that might have a potential to adhere to the EU and states that don’t have this potential, especially the North-African states. This is why, for the Republic of Moldova, ENP signified a first opportunity to demonstrate its capacity of internal transformation so that to further aspire to the status of candidate to adhesion. In this sense, the first document of bilateral relations was EUMAP and the constraint of respecting its stipulations is of a voluntary type.

Since it is not a juridical document, the constraints are rather internal, for the durable economic and political development of the Republic of Moldova. Metaphorically speaking, in the case of this constraint it can be applied the saying “stick and carrot”. Still, procedurally speaking, and taking into account Moldova’s particularities this voluntary constraint was engaging the EU into a thorough
closeness of the relations, in a progressive and conditioned way, with the reforms and also the quality and pertinence of the implemented reforms. From a strategic perspective, this context could offer the perspective of creating a genuine dependence of path in the adhesion to the EU, even though at that moment the official position of the EU was focalizing only on a relation of cooperation and partnership. Therefore, on one part, such an approach was offering the possibility of Europeanization of the internal administrative and public area so that this could be genuinely prepared to bring closer the relations with the EU and even to access the status of a candidate state in a relatively short time. On the other hand, having the experience of the 2004 and 2007 extensions, EU presented itself as being rather fatigued when it came to initiating new processes of bringing closer the Eastern states with a view to new adhesions. Therefore, the Neighborhood Policy proved to be a convenient instrument for both parts, EU and the Republic of Moldova, even though the initial burden fell over the beneficiary of the instrument. At the moment of the negotiation and signature of the EUMAP it was hoped that through the internalization and implementation of the stipulated requirements, the internal reforms will be created in a clear view to the principles of governance. The hope was fed also by the regional context from that time and by the availability of the political power to accept the respective constraints. Rejecting the Kozak Plan of solving the transnistrian conflict through the federalization of the Republic of Moldova, proposed by the Russian Federation in 2003, brought significantly the internal debate closer to the EU and to the establishment of the adhesion aspirations to this polity. This option guaranteed in a certain manner the territorial integrity of Moldova. In this context, it must be specified that the authorities from the Republic of Moldova accepted the EUMAP previsions also due to the economic blocking that was created in 2004 and amplified in 2005 and 2006 by the Russian Federation. EUMAP contained more than 300 actions framed in 80 objectives and qualified in 7 chapters that tackle diverse sectorial and transversal areas like: Political dialogue and reform; Co-operation for the settlement of the Transnistria conflict; Economic and social reform and development; Trade-related issues, market and regulatory reform; Cooperation in Justice and Home Affairs; Transport, energy, telecommunications, environment, and Research, development and innovation; People-to-people contacts.131

Undoubtedly, all the actions stipulated in the EUMAP are viewed by the EU through the principles of governance. In this way, starting from the premise that the European Neighborhood Policy is an instrument to relate with the tertiary states from its immediate neighborhood, it guides itself after the logic that for a coherent and efficient dialogue it is needed firstly to create the premises for the setting up of a context specific to the principles of governance. This logic is confirmed also by paragraph 3 of the Commission Communication on Governance and Development that stipulates the fact that „governance is a key component of policies and reforms for poverty reduction, democratization and global security. This is why institutional capacity-building, particularly in the area of good governance and the rule of law is one of the six priority areas for EC development policy that is being addressed in the framework of EC programmes in developing countries”.132 Therefore, the principles of governance find themselves in a transversal manner in all the 80 objectives of the EUMAP. In its essence, this document might be considered a fundament to consolidate the capacities of the public institutions from the Republic of Moldova through the interiorization of the practices specific to governance and Europeanization.

Differentiated and mimed conformation

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Just like in the other Action Plans signed by the EU with the states included in the ENP, the specific of the EU-Republic of Moldova Action Plan stays in assuming the task to create ample structural reforms in all the public sectors, but without EU offering a certain remuneration that would mean according the status of a candidate state to the adhesion. In a certain way, this aspect proved not to be understood by the governmental authorities from Chisinau. This is way the central public authorities weren’t motivated to guide their politic volition to the adequate assuming of the previsions of this document. Certainly, the governance of Moldova from that time waited much more from the EU. On the other hand, the public speeches of the moldavian officials for the public citizens really offered even deadlines for the adhesion to the EU, creating in this way the sensation of the existence of a path dependency. Nevertheless, it is obvious the fact that the political power from that moment was conscious of the fact that an eventual internal structural and systemic reformation would lead to the erosion of the power that it had in his hands. Therefore, after only a few months from signing the document, it has been noticed that applicable speaking, the acceptance started from the premise that the internal structural reformation can be mimed, especially because the principles of governance were and are still totally opposed to the practices and acceptations of the political power. In this sense, the political volition axed on the miming of the of the internal reformation process, especially since EU was guaranteeing the allocation of some financial stimulants through diverse communitarian programmes and initiatives. This is way, the reforms assumed through EUMAP were slowed down and fulfilled in a partial and differentiate manner, in dependence of sectors and areas of interest. For example, after the expiration of the Plan’s previsions and of the supervising effectuated by the Govern of the Republic of Moldova, by the internal civil society and by the European Commission it can be affirmed the fact that the dimension of the economic reforms registered bigger progresses in comparison with other dimensions of the structural reforms.133 This can be explained through the fact that the authorities were co-interested in bringing closer the relations with the EU more on the economic path. For example, one of the economic desiderates consisted in obtaining some Autonomous Commercial Preferences from the part of the EU and this is why was impelled the process of adequate implementation of some economic reforms of conformation to the conditions scheduled by this status. In 2007 the Moldavian authorities managed to obtain the Autonomous Commercial Preferences from the EU, these becoming applicable starting with March 2008. For example, in 2008 the percentage of the exports made by Moldova in the EU-27 was 51%, and the economic analysts foresee a growth and a diversification of the exports inside the EU-27.134 Therefore, it has been demonstrated that in the context of a certain of external economic pressures (the commercial embargo of the Russian Federation during the years 2005 - 2007) it was generated a premise for the establishment of a dependency of path, in the sense of making stronger the relations of economic integration. In this way, the governmental authorities demonstrated that they dispose of a political volition in the economical dimension and therefore focalized on the realization of a series of conformation reforms in the domain of making stronger the commercial relations with the EU. Nevertheless, this aspect indicates the fact that on the other dimensions, the political power preferred not

134 For example, in 2007 the percentage of the exports made by Moldova in the EU-27 was 50,7%, that represent: a quota of 26,5% to UE-15, a quota of 17,8% to Romania and Bulgarina and a quota of 6,4% to a rest CEE states. From total exports made by Moldova in the EU-27 they effectuate in the next five states: Romania, Italia, Germany, Poland and United Kingdom. To see: Valeriu Prohînchi, Alex Oprunenco, Ana Popa, Matthias Luecke, Mahmut Tekce, Eugen Hristev, Georgeta Mincu, and Victoria Vasilescu, A Free Trade Area between the Republic of Moldova and the European Union: Feasibility, Perspectives and Potential Impact, Expert Grup, Chişinău, 2009, pp. 42-43.
to focalize only because of the erosion of its own political power and stability. This demonstrates undoubtedly a fault of a democratic culture regarding the governance alternation.

**Conformations in the administrative capacities improvement**

As regards the improvement of the administrative capacity through the reformation of the CPA and the interiorization of the requirements that regard the governance of the public policies and institutions, EUMAP stipulated the two following priorities: „further strengthening the stability and effectiveness of institutions guaranteeing democracy and the rule of law” and „further reinforcing administrative and judicial capacity”. In this way it can be noticed that EU desires to observe the conformation of the Republic of Moldova firstly through the democratization of the CPA, utilizing therefore in a fully manner the principles of governance. In this way, from the EUMAP content can be enounced a few actions afferent to the improvement of the administrative capacity through the reformation of the public administration:

- **Continue administrative reform and strengthening of local self government in line with European standards, notably those contained in the European Charter on Local Self government and drawing in particular on the expertise and recommendations of the Congress of Local and Regional Authorities in Europe, including with regard to management of local budgets by local administrations and attribution of budgetary competence (resources to match responsibilities);**
- **Take concrete steps to improve public expenditure effectiveness, transparency and accountability in consultation with IFIs/EU experts;**
- **Promote the development of appropriate administrative capacity to prevent and fight effectively against fraud and other irregularities affecting national and international funds, including the establishment of well-functioning co-operation structures involving all relevant national entities.**

Due to the fact that EUMAP didn’t stipulate certain consequences, identified as penalties or stimulants, the application of the document’s requirements as regards the reform of the CPA for the improvement of the administrative capacity was made in a diffuse and hardy manner. There could be remarked three categories of attitudes regarding the way of accomplishing the reforms that regard the improvement of the administrative capacity. The first category refers to the attitude that manifested the governments and the central public authorities that took this process more like a general action integrated in other strategic documents of internal programming. A second category refers to the attitude manifested by the civil society and by the internal community of public policies that expected that the process of reformation would be implemented adequately, efficiently and pertinently. According to this category of actors, the effects of the CPA reform would have been perceptible, quantifiable, and at the same time that they would create an ample internal structural and systemic reform. The third category of attitudes was manifested by the international organizations and institutions, especially by the EU that, during the last few years appreciated the evolutions of the central and local public administration reform. Still, on the other hand, these didn’t hesitate to underline the fact that the results obtained are still insufficient, especially that the putting into practice of the adopted normative and legislative acts represents a permanent concern, and this is way it is needed a continuous and assiduous consolidation of the internal administration’s capacities.\(^{135}\) Mostly, the attitudes of the governmental authorities prevailed in comparison with the other two categories of attitudes, so that the reform process was tergiversated and

implemented through tactics that avoid the principles of governance: transparency, implication of the civil society and information of the citizens.

Analyzing the accomplishment of the activities specific to the objectives that regard the consolidation of the administrative capacity stipulated in the EUMAP it can be affirmed that the authorities firstly demonstrated mettle of reformation, elaborating and adopting a few documents in this sense. For example, on December 25th 2005, the Government approved through Governmental Decision no 1402 the Strategy of Reforming the CPA. This strategic document was meant to realize a reform of the CPA through the adjustment to the modern principles in the public management domain. Therefore, the strategic document stipulates the reform of the CPA through the reorganization of the central public administration’s authorities; the optimization of the decisional process; the improvement of the human resources management; the improvement of the financial resources management. Still, the reformative mettle diminished in intensity so that the implementation of the reforms that regard the improvement of the administrative capacity stagnated or have even known antagonist evolutions with a view to what stipulated the EUMAP. For example, the detailed Plan of implementation of the Strategy of reforming the CPA was approved only in January 18th 2007, through the Governmental Decision no. 54. Moreover, during the implementation period of the EUMAP was remarked the fact that the reform of the CPA was decoupled from the process of conformation with the EUMAP requirements. Even though the activities were similar, the specialized authorities didn’t perceive this aspect, which give birth to two parallel processes and contributed to making difficult the reformation process and to an adequate understanding of the reformation tasks.

A first evaluation of the manner of implementation of the Strategy place into evidence the maintenance of two problematic aspects: the reform plans are not included into a strategic framework; some functions and roles of certain ministries and central authorities superpose and are not clearly defined; the tergiversation of the elaboration and defining of a methodological framework of the documents of public policies; the system of reporting in the CPA remains quite inefficient and hardly, there are not elaborated and applied evaluation criteria of the performance of the civil servants and of the stimulants afferent to these performances. On the other hand, the synthetic Report for the implementation of the CPA reforms for the years 2006-2008, reveals the following problematic aspects:

- **Resistance on the part of some civil servants and central specialized bodies because no positive message regarding the CPA reform had been launched. Sometimes the CPA reform was seen as the reduction in number of civil servants;**
- **Not all the central public administration authorities implemented in due time the actions needed to modernize the CPA and did not provide in time and in the requested form the information necessary for the national record keeping;**
- **There were no capacities for absorption of the donors’ financial resources, which lead to delays in the procurement of services.**

It must be specified that the new legislative cadre assumed trough the Strategy of the CPA reformation entered in vigor only in January 1st 2009, which represents a significant delay from the initial plan that was elaborated and adopted in 2006. The new legislative cadre includes the Law regarding the Comportment Code of the Civil Servant, and the Law regarding the public function and the civil servant’s status. In the same context, in 2008 was adopted and entered in vigor the Law

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regarding the conflict of interest. These Laws have the objective to assure professionalism, competence, impartiality, transparency and efficiency in the activity of the public servants. In this way, the implementation of the previsions of these laws will assure the augmentation of the quality of the public services, but also of the credibility of the public institutions, generating therefore an adequate framework for the implementation of the principles of governance. Consequently, it may be considered that the appliance of the new normative and legislative framework is tardy, as concerns the initial previsions, assumed involuntarily through the adopted reformation acts. At the same time, various experts affirmed that the tergiversation doesn’t need to be blamed only on the CPA subordinate to the government, but rather on the legislative that has the tendency to obstruct and make difficult the process of adopting legislative acts. Furthermore during the last few years it has been observed that the legislative institution wasn’t implicated plenary and efficiently in the process of the improvement of the internal administrative capacities through an adequate parliamentary control. Therefore, the reformation process is let in the influence sphere of the executive power that reformates “all alone”, most of the times through spontaneous indications and emerged actions controlled by the Apparatus of the President of the Republic of Moldova.

On the other hand, many non-governmental organizations and consortiums of the civil society that engaged in the process of supervising the way of accomplishment and implementation of the EUMAP requirements and of those of the Strategy of the reformation of the CPA affirm the fact that besides the inherent aspects of the administrative act are coming into the limelight aspect that regard: the transparency of the realization of the public management process, the consultation with the civil society and with the interested citizens, periodical communication, the application of the evaluation practices of the implemented programmes and policies, the depolitization of the administration, the eradication of the conflicts of interests and of the corruption acts, public accountability. Consequently, making a summary analysis of all the reports and studies realized by the internal civil society and by groups of experts from the internal community of public policies, results that the reforms are tergiversated, the new normative and legislative previsions are applied in a faulty manner, and the fundamental principles of the governance are avoided, sometimes even in a conscious manner. Taking all these into consideration it must be specified the fact that the native civil society and also the internal community of public policies, much more active and prepared as regards the supervising of the local and central public administration, and also the participation in the process of consultation and stimulation of creating the reforms. On one hand, the internal administrative capacity becomes stronger indirectly through the civil society’s support and stimulation. On the other hand, it is to be appreciated that the civil society and the groups of independent experts become more and more visible and engaged in the processes of partnership with the local and central public authorities. This is undoubtedly an advantage of reciprocal learning but also a framework of gradual transposition of the principles of governance into the process of making the public management.

To conclude this paragraph, it must be specified the fact that mostly, the way of conformation to the EUMAP requirements depended of the political volition developed by the authorities from the Republic of Moldova.

Diffuse interpretations over transparency in the processes of making policies

During the implementation of the EUMAP it could be observed a certain reticence of the public authorities when communicating and consulting with the internal civil society, the interested factors, the citizens’ groups and initiatives regarding the way of reforming the central public administration. Practically, the public authorities responsible for making the policies of conformation to the communitarian requirements in the administrative capacity domain preferred to create the reform in a unilateral manner enjoying even, in certain cases, the evasive status demonstrated by the legislative institution. The responsible authorities limited themselves to miming processes of consultation with the non-governmental actors interested in the reformation process. On the other hand, mass-media beneficed mostly from filtrated, diffuse information, that were given on preferences of political loyalty. Still, it was noticed that the civil society and the internal mass-media became much more active and decided in implicating themselves into the process of supervision and information of the wide public as regards the improvement of the administrative capacity through the reformation of the local and central administration.

Even though there exist a law that settles the access to public information, from 2000 – it is the first act of this type from the states of the old Soviet Union, the non-governmental organizations indicate the fact that after the supervising processes realized in the last years it has been observed that the public authorities from the Republic of Moldova act refractory regarding the solicitations of the interested factors.\(^\text{141}\) Therefore, these solicited to the executive and to the legislative to adopt a normative and legislative framework of transparency, the hat would create the premises for transforming the governance and applying its principles.

Solicited in 2004, the law that settles the procedures specific to assuring transparency in the decisional process came into force only in March 5th 2009. Mostly, the law is a gain of the civil society from the Republic of Moldova because it managed to impose certain points of view regarding the way of assuring the transparency practices and the ones of the participation of the interested factors in the decisional process. Fundamentally, this law creates real premises for the initiation of a series of systemic and functional transformation of new pluralist origins. Nevertheless, it must be specified that this law settles in a limited manner the assurance of transparency in the consummation of the administrative act because it refers only to a phase of the cycle of making the public policies – the decisional process. The other phases of the cycle (establishing the agenda, formulation, implementation and evaluation of the policies) are omitted to be settled in a unitary manner. This fact only indicates the unavailability of creating a transparent and participative framework for making the public policies. In this way, the transposition of the conditionality of creating a transparent decisional framework, responsible to the citizens is effectuated in a fractured and refractor manner. In the actual case of the Republic of Moldova, it can enjoy the existence of some quality practices from the states that have recently adhered to the EU, states in which the legislation regarding transparency is viewed in a unitary manner. There are also cases in which this aspect is settled in a limited manner, like Romania (Law no 52/2003). Moreover, the victory of the civil society was neutralized by the adoption of the Law regarding the secret of state that would endanger the way of implementing the Law of transparency in the decisional process, and also the Law regarding the access to information.

Furthermore, the aspects of consultation with the civil society and the thematic communities of policies are not mentioned in the Law regarding the Government, although the Govern of the Republic of Moldova created in 2008 a Council of Consultation with the Civil Society. At the moment, it is noticed that the Activity of this forum of consultation is not put into the limelight how it should be and that the

The mechanism of consultation was implemented more for conforming to the conditions stipulated in the strategic documents afferent to the improvement of the administrative capacity.

Conclusions

Taking into account the type of the relations between the Republic of Moldova and the EU, the Union developed neither a prescriptive approach nor a prohibitive one. It guided itself more after an approach of developing the cadre-policies, based on the progressivity of conformation for the preparation of the field in view to the future documents and policies of bilateral relationships. There are expected to be much more compelling and oriented on great structural and systemic modifications. For the moment, it is very important that the legislative area, as regards the improvement of the administrative capacity was elaborated and came into force, even though there were registered significant delays and a sort of intransigencies regarding the sociocentric the desegregation of the public management. Therefore the principles of governance fundament these normative and legislative stipulations and offer a framework of internal transformation for the democratization and Europeanization of the public sphere. From now on, it depends on how participative the civil society will be, the internal community of public policies, the groups of interested citizens, and also the private space in utilizing this normative and legislative framework. Undoubtedly, the normative and legislative framework created can be improved through supervising and continuous and cyclical evaluations, but, from now on, the reform of the public administration must be regarding through a conformation that should make efficient the process of negotiation with the EU and contribute to an eventual association to the EU and finally to a negotiation of adhesion. Although, timely speaking, these processes can take place quite rapidly; we should take into consideration that the regional acceptations over the way of accomplishing the conditionalities don’t correspond to the ones applicable in the communitarian public area. This is why, after putting into practice the new normative and legislative framework in the CPA domain, the principles of governance will facilitate the unwinding of the necessary transformations for the adaptation and conformation to the rigors imposed by the adhesion criteria; firstly, those that regard the accomplishment of the conditions regarding democracy and the human rights. Although, what happened after the parliamentary elections from Aril 5th 2009 demonstrate the contrary, the process of bringing closer the Republic Of Moldova to the EU is though an irreversible one and depends on how rapid the citizens themselves would be or how will take place the internal transformations in its way of becoming a member state of the EU.

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DECISION-MAKING IN THE EUROPEAN UNION. 
THE ROLE OF THE EUROPEAN COMMISSION

Prof. univ. dr. Bărbulescu Iordan Gheorghe
National School of Political Studies and Public Administration

Abstract
The European Commission, as we know, is par excellence an institution independent of national governments, supranational and representing the interests of the EU as a whole. The European Commission has four main functions:

- **The right of initiative.** Commission has the right of initiative in the elaboration of Community normative acts. In developing legislative proposals, the Commission cooperates with interest groups, advisory bodies (the Economic and Social Committee, the Committee of the Regions) and requests the opinion of governments and national parliaments, as well as the opinion of committees and expert groups. Moreover, it has to be applied the principle of subsidiarity, which stipulates that an action should be proposed to be tackled at EU level only if one believes that the problem can not be solved effectively by actions taken at local, regional or national level. In the second (CFSP) and third (police and judicial cooperation in criminal matters) pillar, the right of initiative does not belong exclusively to the Commission, as in the first pillar (European Communities);

- **Managing and implementing policies, programs and the EU budget.** The European Commission oversees the expenditure incurred from the EU budget by the national and local authorities, being in turn supervised by the European Court of Auditors. The Commission also manages the EU policies. For example, in the context of competition policy, the Commission authorizes or prohibits the mergers. Moreover, the Commission manages a series of Community programs in various areas, e.g. Erasmus, in education, the Framework Program for research, etc.;

- **The “Guardian” of the treaties.** The Commission ensures the implementation of the dispositions of the treaties and of the decisions taken by considering them. If the Commission considers that a Member State has not fulfilled any of its obligations in accordance with the Treaties, the Commission may issue a reasoned opinion by sending an official letter to the Government, and if the State fails to take measures to redress the situation, the Commission may refer to the Court of Justice;

- **Representation at international level.** The Commission represents the EU in international fora such as the World Trade Organization. Also, the Commission is responsible with the negotiation of international agreements, on behalf of the EU. The Commission is authorized to initiate and lead, on behalf the Union, negotiations with third countries or international organizations. As regards the agreements concluded with the candidate states, the role of negotiator rest, in practice, with the European Commission. The fact that its is supranational and independent, but also that it has the functions / competencies / tasks mentioned above, does not relieve the Commission from the effort to perform concerted actions with the other actors: the Community institutions (EP, Council, European Council, COREPER, CoR, ESC, etc.), Member States, regions. In the ranks below, we will try to capture the exact relations between the Commission and the other institutions (the inter-institutional ones, hence) and its relations with other actors, especially the Member States.Before we proceed to the analysis, let's not forget that if the EU has experienced a standing progress over a period of 50 years, it is due, among others, to the existence of the so called "institutional balance", but also to the EU ability to avoid - by a complex and
sophisticated system of decision-making - the conflicts between the common institutions and between them and states or regions. Quoin of the decision system was, therefore, its independence and interdependence, and the European Commission has played a special role in this mechanism.

Key words: European Union, EU decision-making, European Commission,

1. THE ROLE OF THE EUROPEAN COMMISSION IN DRAFTING NORMATIVE PROPOSALS

1.1. The analysis of regulatory proposals at the Commission’s level

The process of regulatory decision is typical and already known:
- The Commission drafts the proposal;
- The European Parliament participates, in one of possible forms;
- The legislation is adopted by the Council or, in cases stipulated in the Treaties, by the Council / EP.

great care regarding the inter-institutional collaboration and dialogue. The Community institutions have determined autonomous powers, being protected through the Treaties of being "invaded" by the others institutions, fact which not means also the absence of cooperation. Moreover, the dialogue and the cooperation of the institutions participating in the decision making process are essential, being expressly stipulated in art. 162 TEC which reads; “The Council and the Commission shall consult each other and shall settle by common accord their methods of cooperation”. It cannot be conceived the idea of elaborating a Community legal act or a decision outside the collaboration between the Commission and Council, and in some areas – which are subject of cooperation and / or co-decision - outside the Commission, Council and EP collaboration, i.e. so-called "institutional triangle". The cornerstone of the EU institutional system is the enforcement of the principle of "balance of powers", also called "institutional balance". It is true that without a strict division of powers as in the case of the states, it was not easy to maintain this balance and, therefore, it had a permanent need of legal protection. In addition, the institutional balance based on collaboration was not the same any-time, being a dynamic one, developing in accordance with the evolution of the EC inter-institutional dialogue and collaboration. Relations between the three institutions and the powers each was conferred with by the Treaties have changed radically over the years. Thus, the influence of the European Parliament has increased considerably, but even so, one considers that there is still an imbalance between the legislative powers of the Council and those of the Parliament, since the legislative power is actually shared between the two institutions only in the areas where co-decision procedure applies. We can conclude saying that the institutional balance is characterized by the triad: independence, dialogue, mutual respect (BARBULESCU, I. GH, Procesul decizional în Uniunea Europeană, Editura Polirom, Iași, 2008).
Therefore, it is a process that relies on dialogue and cooperation between the EU's common institutions. Independent of the type of decision, there is a common issue: the Commission’s proposal. At its turn, this proposal is based on meetings of the European Commission with the experts of national administrations and those of socio-professional groups, in order to learn their points of view. When the Commission, under its right to legislative initiative, is acting in an area, the process is made under the mandate established by the Treaties and under criteria of:
- Opportunity;
- Necessity;
- Emergency.
In this phase, when the Commission works to achieve community objectives, it can be said about it that it works independently and in the general interest of the EU.

Once the Commission decided that it will make a regulatory proposal, its General Directorates prepare reports or studies (asking for this purpose information and statistical data), studies of comparative law, and if it's about changing the existing legislation, they assess the impact of these changes.

In this internal phase of the Commission’s activity, the working method is a functionalist one, as its experts are initiating discussions and identifying the problem, determining the common area of interests, establishing the common goal and agreeing on the need for joint action.

The study of the binomial "problem-solution" is progressive, and agreements are defined as the above-mentioned binomial moves from the base to top, i.e. from technical services to the upper rungs of the Commission. In this phase of preparation of the normative proposal, which gives credibility to the action is the technical character of the proposal, its technical and rational language.

1.2. The role of the member states and of the national experts

In parallel with this phase when the experts prepare studies, the Commission takes contact with national administrations, convening the experts proposed by them. The officials appointed by the Member States are not participating in these meetings as domestic servants, but as experts debating the issue, without the express terms or obligations of governments that have called them. The connection of the Commission with the Governments of the Member States is assured, in this phase, through COREPER. At these meetings with national experts, the Commission obtains the information it needs, it learns the rules and administrative practices of Member States, as it is not able to gather and to process data about each state or region.

Cooperation with national administrations is very important because, moreover, its decisions may affect in different aspects the political, economic, social, cultural life of its Member States.

Cooperation with experts and national governments means that, even from this stage, there can be intuited some shortcomings of the regulatory proposal, some obstacles that it might encounter in one

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or more states, the degree of acceptance or reticence that might arise over it. In this way, it increases the effectiveness degree of the Community action in general and of the Commission in particular.

At their turn, the national administrations have a good opportunity to learn the content of future regulatory proposals, being warned about the need to develop a Common Position inside the Council, where they will try, even from this phase of the decision-making process, to influence it.

These activities pointing to train and associate the national administrations to the Commission’s work allow establishing relations based of mutual trust between the Community and national administrations.

1.3. The influence of the socio-economic and professional interest groups

In order to prepare a regulatory proposal or in order to define a sector, the Commission comes into contact with the social, economic and trade interests. These meetings can be organized directly by the Commission, or suggested by it and organized by the groups mentioned above, and they may take the form of colloquia, seminars, workshops, etc. Such meetings also take place without being necessarily talks about a legislative initiative of the Commission. It is the case of those meetings when the Commission wishes, on the one hand, to know the opinion of socio-economic groups, or, on the other hand, when these groups want the Commission to know their concerns or wish to amend the law. The ease with which these groups "slip" to the Commission’s lower levels constitutes an invitation, so they will try to influence future acts at this level and in this phase. We have to admit that we are dealing with a stage suitable for a serious lobbying, given that, as the proposed law "ascends to the top", it will be increasingly difficult to do the same thing. Therefore, at this stage, we meet an intense activity of the socio-professional national and transnational lobby associations which try to convey their ideas and to generate the Commission’s interest in this direction.

At its turn, the Commission is concerned that future regulatory proposals enjoy the acceptance of these interest groups, fact which raises the Commission’s chances of "passing" these proposals by the Council. This happens because these interest groups make pressure on governments to approve the Commission’s proposals in the Council, whenever they are on their taste.

The Council is not comfortable with this relation of the Commission with the economic and socio-professional groups, but the Commission has its arguments, the most important being the compulsoriness of consulting these groups in order to know the opinions of those who are directly affected and concerned. One thing is certain:

- At this stage, when the Commission has not yet formally submitted its legislative proposal, it appears very democratic to know a large number of views, including those of economic and socio-professional groups;
- In that phase, it prevails the technical analysis of the Commission’s specialists, but also the expertise of the national specialists, without losing sight of the pressure of the European, national and multinational economic and socio-professional interest groups.

1.4. Transparency and subsidiarity in developing proposals

1.4.1. Transparency

The access of the national experts and of the economic and socio-economic environment to the Commission’s services is an expression of the transparency of the process of elaboration of normative proposals by the European Commission.

In the Birmingham Declaration, adopted by the European Council on 16 October 1992\textsuperscript{148}, it is accepted the Commission’s proposal regarding the consultations of all stakeholders before drafting regulatory proposals. This consultation of interested parties meant:
- On the one hand, knowing the opinion of Member States on current issues;
- On the other, knowing their opinion on sectoral strategic documents of the Commission, called “Green Papers” and, respectively, “White Papers”.

On the same occasion it was required for the draft regulations to be clear and simple, and the Council adopted a resolution\textsuperscript{149} which obliged COREPER and the Commission to draft concise, simple and unambiguously, to avoid long phrases and abbreviations, the references difficult to follow or inaccurate, as well as any references to other texts than the normative ones.

In addition, the Commission, in its annual program, which is discussed and approved by the EP, makes public its priorities for each legislative period and a quarterly schedule\textsuperscript{150}. This true “Annual legislative program” includes all legislative proposals of the Commission, being notified to governments, ESC, CoR. It may be revised at the beginning of each year’s second semester.

Subsequently\textsuperscript{151}, based on decisions at Birmingham\textsuperscript{152}, the Commission committed itself to publish in OJ the summary of the regulatory initiatives it is preparing, so that interested parties can, in turn, prepare and send any comments and proposals. The Commission undertook, also, to publish its program of activity and legislative schedule, but also to faster translate documents into all languages, and in 1995, it committed, in addition, to treat equally the EP and the Council about the initiative and the legislative schedule.

These measures come into fore, so we see the fulfillment of the Commission’s commitment to publish its normative proposals in OJ, which, eventually, allow all those interested to know the texts on which the Council are initiating discussions, and EP, ESC, CoR are acting. We speak, therefore, about the transparency of the Commission’s action, if we consider the publication of the legislative drafts, fact which is not too happening at the national level.

1.4.2. Subsidiarity

The Commission is the first institution that should decide about the need and size of the Community intervention, i.e., the first that have to submit a proposal of law to analysis in subsidiarity terms\textsuperscript{153}. The Commission must decide whether, because of common competencies\textsuperscript{154}, Community action is needed in one of two situations:

\textsuperscript{152} Extension of the consultation, Green Papers, White Papers.
\textsuperscript{153} It appears explicitly in the preamble of the TEU, art. B of TEU, art.3 of TEC etc. and, on substance, it distinguishes between the competencies of the state level and those of the supra-state, Community level.
\textsuperscript{154} The principle of subsidiarity does not apply when it comes to exclusively national and exclusive Community competencies.
- A transnational dimension of the problem which need to be solved;
- A better solution existing at the Community level than at national level\(^{155}\).

Therefore, the Commission must justify in the explanatory memorandum of each proposal, how subsidiarity is applied\(^{156}\). Do not forget that the application of subsidiarity is not optional, being a part of the EU basic principles and that in this respect, the role of the Commission at this stage of the decision-making process is particularly important, along with the CoR. Do not forget, too, that a legislative proposal that did not follow the procedural ways regarding subsidiarity becomes null and void if subsequently challenged by the ECJ, and the Commission must ensure that this does not happen.

2. THE COUNCIL AND THE DECISION MAKING PROCESS

Once the Commission adopted regulatory proposal by absolute majority, it is sent to the Council in all language versions of the Member States, accompanied by a letter from the President of the Commission. In turn, the General Secretariat of the Council sends it to COREPER and to the permanent representations of Member States. The General Secretariat of the Council also sends the legislative proposal to EP (except co-decision, when the Commission is sending it directly to EP), CoR, ESC. Simultaneously, COREPER prepare formal requests addressed to CoR and ESC, but administratively, it is the General Secretariat which manages this activity. In order to support the Presidency of the Council by formulating qualified opinions, but also the COREPER and its working groups, the General Secretariat of the Council sends the Commission’s legislative proposal also to the internal services of the Council (those juridical, especially).

The simplest decision-making process is known as “single reading”, i.e. the one where EP only participates through an Advisory Opinion. In other words, deliberation and decision are held in the Council, and the EP is required only to give its Opinion.

As regards the other two procedures, the Cooperation and Co-decision, they reproduce, in general, during the “first reading”, the procedure described above, adding what is known as the “second reading” and “third reading”.

3. THE “CLASSIC DIALOGUE” COMMISSION-COUNCIL

The Commission-Council dialogue was, by SEA, the only axis of the decision-making process. Since SEA, EP was added to the decision-making process, fact which has transformed, progressively, the bilateral dialogue Council-Commission, in a decisional triangle EP-Council-Commission\(^{157}\).

The emergence of this decisional triangle did not decrease the importance of dialogue, the Commission-Council cooperation, which begins with the sending of the legislative proposal, drawn up in the official languages of the EC, by the first to the second institution.

3.1. The Commission’s normative initiative, the first stage of dialogue

As it was said before, the Commission’s role does not stop with the formulation of the legislative proposal, as it participates in the entire activity the Council will take regarding the respective proposal\(^{158}\). Therefore, one talks about “the Commission-Council tandem”.

\(^{155}\) Art. 3B TEC.


\(^{158}\) Art. 155.3 TEC.
The Commission and the Council are not parallel institutions, both participate in the decision making process, one without the other not being able to do anything. Thus:
- On the one hand, as I noted above, the Commission has quasi-monopoly on regulatory proposals, without them the Council not having what to decide upon;
- On the other, the Council, in turn, may require the Commission to “deliver” legislative proposals, having regard to its mission, that of adopting them.

The separation of the reflection, elaboration, boosting of the Community law development phase from the decision phase and, especially, its assignment to a transnational institution, by definition a defender of the Community interest, is a form of managing of a public system - the EU - that worked up fairly well by now.

Even if the proposal is being developed independently and autonomously by the Commission, and a decision is taken by the Council, the distribution of power should not be interpreted as successive and independent, but rather as parallel and interdependent. In other words, the Commission remains concerned by its proposal also after sending to the Council for adoption, which, in turn, does not consider the decision as a “simple operation” to be run. Moreover, in the first phase of the decision of the Council, the analysis done is based on the Commission’s paradigm. And it is logical to be so, if we consider that the Council examines the material prepared by the Commission. Therefore, one talks about the influence it has on an act the one which makes the proposal.

The Commission, as proposing institution, becomes thus a “privileged interpreter of the Community interest”, being obliged to give the proposal a vision inspired by it. But, please note, common interest is not the sum of national interests, nor an abstract political concept, but an idea that is based on Community legislation and has as subject of reference the common objectives of the EU. In other words, it appears as a dynamic system in which Community law, common objectives and existing means are participating. Therefore, the Commission must be aware of all interests and to draft the legislative proposal so that all parties to find more represented\textsuperscript{159}, thereby protecting all states, both small and large ones. Moreover, as I said before, the Council, if it wants to amend the Commission’s proposal - in the interests of large States, let’s assume – it can only do that by unanimity, which is difficult to achieve. As you can see, a Commission proposal is adopted in the Council by qualified majority, but changing it requires unanimity. Moreover, the Commission may modify its proposal in all the stages of the Council decision-making process\textsuperscript{160}, fact which grants again the Commission with specific power\textsuperscript{161}. Through this ability to make changes during the decision-making process of the Council, the Commission has a formidable negotiating force in the Council. It may thus contribute to the formation of a “de facto” qualified majority, operating changes whenever it is necessary, and without giving up to the principle regarding the observance of the general interest, as the necessary changes that may unlock the decision are leading towards obtaining the majority required to adopt the piece of legislation. In such an undertaking, the Commission proves flexibility and wisdom, the other alternative meaning institutional blockage.

In fact, the Commission-Council permanent cooperation within the long process of drafting and approval of Community acts, is codified in the Constitutive Treaties in Articles 16.3 TECSC, 162.1 TEC and 131.1 TEAEC which specify that no decision is to be conceived in the Community institutional system, without the cooperation of the Council and the Commission, in accordance with each ones competencies. Given the gradual emergence of the EP in the decision making process, the Commission

\textsuperscript{159} Art. 148 and 189A TEC.
\textsuperscript{160} If the decision was not taken yet.
\textsuperscript{161} Art. 189A TEC.
has introduced the EP in this information-cooperation mechanism which had been institutionalized only towards the Council.

3.2. The presence of the Commission in the sessions of the Council and of COREPER

It is believed that one of the most important organic links between the Commission and the Council is the presence of the Commission in the sessions of the Council, COREPER and the working groups. This link which provides a permanent institutional collaboration has its legal basis in various documents:

- The Treaties which require the Commission’s participation to the Council’s activity when it regards one of its proposals;
- The Treaties which oblige the two institutions to cooperate in the adoption of laws necessary for achieving the Union’s objectives;
- The rules of procedure of the Council, which calls on the Commission to be present at all Council meetings, including COREPER and working groups.

Given that the Council’s deliberation is done on a proposal designed and formulated by the Commission and that it remains “master” of its proposal until the adoption, the Commission, through its presence in the Council, interprets and defends the proposal, adapts it, if it is the case, so that it could be passed without the final text to “move away” from the general interest of the Community, but taking into account the “particular positions” of the Member States. The fact that it is present in the Council allows the Commission to amend the proposal, avoiding this way a negative vote or - conversely - to persuade the Member States on the opportunity brought by this proposal, avoiding, again, a negative vote of the Council.

3.3. The Commission’s initiative, a legal obligation

The Commission’s right of legislative initiative is legally required by the Treaties which stipulate in Article 155 TEC that this obligation is to ensure the functioning and development of the common market. Given the proposal-decision correlation, no proposals mean no decisions and seriously affect the institutional balance. Therefore, the power to issue legislative proposals was expressly attributed to one institution, the Commission, and Court of Justice ensures that it is “doing its job”, i.e. to propose regulations. The Council or the EP can, therefore, denounce the Commission before the ECJ for inactivity. But before they arrive here, there are other mechanisms that “stimulate” the Commission to make regulatory proposals. Thus, according to art. 152 and 138.B.2 TEC, the Council and EP may solicit the Commission to carry out studies that they consider appropriate to achieve common objectives and ask for its approval of all relevant proposals. This invitation does not allow Council, or EP, to take on the exclusive right of initiative of the Commission, but only to assist it in its activity as legislative initiator. Because the institutional system operates on the principle of independence, equality and inter-institutional collaboration, it is desirable, and in practice so happens, that before referring the Commission to the ECJ for inactivity, to “invite” it, to propose it to study the issues in question, but also to ask it to make the relevant proposals the Treaties speak about.

3.4. Extension of the Commission-Council dialogue

162 Art. 4.2. Rules of procedure of the Council of the European Union.
163 Art. 175 TEC.
The dialogue is also preserved after the adoption of the proposal in the Council - or the Council and EP - because, often, as I already noted, the Council assigns the Commission the executive power to implement its rules.\footnote{Art. 145.3 TEC.} This transfer of powers from the Council to the Commission, generated by the Council, does not prevent the latter to check, in different ways, how the Commission works and implements its decisions:
- The Commission has the obligation to inform the Council on the application of the Regulations;
- The Commission has to consult with the Intergovernmental Committee, in accordance with the Council decision on comitology.

4. THE ROLE OF THE PERMANENT REPRESENTATIONS OF THE MEMBER STATES TO THE EC

The existence of the Permanent Representations of Member States is justified by the fact that national administrations have to permanently analyze the Commission’s proposals and prepare the national position documents that they will sustain in the Council.

The mission of these Permanent Representations is, in part, similar to that of an Embassy\footnote{Representing the state, protecting its interests, negotiating with the state / organization to which it is accredited, informing the state on the activities of the state / organization to which it is accredited, etc.}, but, in addition to these activities, the members of this diplomatic mission are included in the Community institutional system. Thus, the chief and the deputy-chief of the mission become members of COREPER, and the remaining members join the COREPER working groups.

The number of the Permanent Representations’ members differs from one state to another, becoming larger during negotiations or during the exercise of the Presidency of the Council. It has to be noted that many of them are not diplomats but representatives of various ministries, particularly the economy, finance, agriculture, labor, industry, commerce, but also transport and social affairs ones.

The Permanent Representations communicate the normative proposals to the national administrations, and the ministries concerned with the issue study them and adopt a position together with the national level coordinating institution.\footnote{At the time I write these lines, it is the Department of European integration from the Government.} The next national phase is adopting a political decision representing the position of that Member State in the Council. Once the political decision taken, it is transmitted to the Permanent Representation for its members to know how to act in Committees and Working Groups. Usually, in Committees and Working Groups, the Permanent Representatives of the State are joined by senior officials of the Member States which know the problem and participate at the elaboration of the national position.

CONCLUSIONS

The European Commission has an important role in the decisional process of the European Union. If the proposal is being developed independently and autonomously by the Commission and the decision is taken by the Council, this distribution of power should not be interpreted as successive and
independent, but rather as parallel and interdependent. In other words, the Commission also supervises its proposal after sending it to Council for adoption, which, in turn, does not consider decision-taking as a “mere technical operation” to be run. Moreover, in the first phase of the decision of the Council, the analysis done is based on the Commission’s paradigm. And it is logical to be so, if we consider that the members of the Council analyze it taking into consideration the proposals drafted by the Commission. Therefore, one talks about the influence it has on an act the one which makes the proposal, i.e. in this case the European Commission. The Commission, as institution which proposes regulatory acts, becomes thus a “privileged interpreter of the Community interest”, being obliged to give the proposal a vision in accordance with the Union’s interest. But, please note, common interest is not the sum of national interests, nor an abstract political concept, but an idea that is based on Community legislation and has as subject of reference the common objectives of the EU. In other words, common interest is a dynamic system in which Community law, common objectives and EU existing means are participating. Therefore, the Commission must be aware of all interests and draft the legislative proposal so that all parties to find better represented\textsuperscript{167}, thereby protecting all states, both small and large ones. In plus, as I said before, the Council, if it wants to amend the Commission’s proposal - in the interests of large States, let’s assume – it can only do that by unanimity, which is difficult to achieve. As you can see, a Commission proposal is adopted in the Council by qualified majority, but changing it requires unanimity. Moreover, the Commission may modify its proposal in all the stages of the Council decision-making process\textsuperscript{168}, fact which grants again the Commission with specific power\textsuperscript{169}. Through this ability to make changes during the decision-making process of the Council, the Commission has a formidable negotiating force in the Council. It may thus contribute to the formation of a “de facto” qualified majority, operating changes whenever it is necessary, and without giving up to the principle regarding the observance of the general interest, as the necessary changes that may unlock the decision are leading towards obtaining the majority required to adopt the piece of legislation. In such an undertaking, the Commission proves flexibility and wisdom, the other alternative meaning institutional blockage.

All these facts show us how an institution apparently without the force held by the High Authority of ECSC remains strong and influent, and states must take it into consideration.

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\textsuperscript{167} Art. 148 and 189A TEC.
\textsuperscript{168} If the decision was not taken yet.
\textsuperscript{169} Art. 189A TEC.
Centrul “Altiero Spinelli”

Cluj-Napoca, România
str. Mihail Kogălniceanu nr. 1
sediul central al UBB
et. 3, sala 311

contact@cassoe.ro

www.cassoe.ro