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The required directions for EU's institutional development (deepening) related to its horizontal development (enlarging)

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I. THE ARGUMENTS FOR THE DEVELOPING OF EU INSTITUTIONS

I.1 The size

The belief that a European Union with 25 or more member states cannot function based on the existing rules was most likely the reason behind the Constitutional Treaty and its institutional innovations[1]. Fischer (2000) underlined the same idea and concluded with the need for political integration of a UE with 27 or 30 member states. However, there are enough reasons to infer that EU could function based on the existing rules, although this conclusion cannot hold true when the union might face problems as, for instance, Iraq war.

It is noteworthy that while size must be accepted as a solid pro enlargement economic argument (the logic of economies of scale), it is itself an obstacle that derives from the very EU enlargement. The enlargement is a political objective and Fisher (2000) defends this idea in two ways. First, the political reality after 1989 constituted itself as a unique opportunity that needed to be seized. The events form the former Yugoslavia proved that within a divided Europe (a Western integrated one and an Eastern one based on the old system of balance), in the medium term, the traditional lines of conflict could be shifted from Eastern Europe to EU again. Second, Germany's interests would be better served within EU and as such the historical German-French conflict would be dissipated. Otherwise, temptations (taking into account Germany's size and Central Europe's situation) are again possible and large scale European conflicts could again occur.

I.2 The democratic deficit

Since 1990 opinion polls have showed a steady decline in voters' satisfaction: the central institutions of EU are considered to be distant, unaccountable, inefficient and interfering. The closing of the democratic deficit has been one of the major objectives in drawing the Constitution, along with the objective of improving EU operation[2]. The rejection of the Constitution, even it was the case of only two member states, proves that this objective has not been reached. Ironically, this failure had a positive effect: the rejection of the Constitution by two founding countries is a powerful argument for the idea that it the EU citizens that control the integration process.

The democratic deficit or the legitimacy deficit should not be a surprise for the academia at least. Ernst Haas, the creator of neo-functionalism – one of the most relevant and earliest integration theories - thought of EU as an essentially elite-driven process, similar to other nation-building projects. This idea is consistent with the fact that identification and support for EU and its institutions are higher among political and social European elites.

EU impressive growth and its becoming of a grand reality while the major integration decisions were taken in a discrete way, without the direct consent of European citizens, are consistent with French and Dutch voters' reasons for voting during the constitutional referenda of their countries. Many of those who voted for „No" were mainly not concerned

[1] For instance, a Brussels-based presidency and the increase of threshold for groups of countries to form blocking minorities

[2] The present EU organization is not consistent with two criteria of a democratic organization. First, a major component of the central EU authority has a significant legislative power, although it consists of national executive powers; as such it goes against the principle of balance of powers even when it comes to the national states. Second, the EU lacks a fundamental law which stems from individuals' direct consent, as it is the case of a constitution. The "treaties" cannot be looked upon as a constitution because a fundamental condition is the existence of a European public, which is not the case (Feld and Kirchgassner 2004).

with Constitution's contents or its integration objectives; they were rather dominated by current economic and political issues.

The French were concerned with the high unemployment (over 10% at the time of their referendum). They perceived the EU enlargement as causing troublesome inflows of cheap labor and outflows of investment capital. The Dutch were mainly discontent because of their country being the highest contributor (per capita) to the EU budget.

I.3 Cultural values – a limit to the reform of EU institutions

Although integration challenges state identity, the „No" and „Nee" votes in France and, respectively, Holland prove that the national state is central to the lives of European citizens in a way EU is not. The European citizens proved that they define their identities in relation to their home countries and that democracy and accountability cannot be divorced from identity and shared values.

The construction of a coherent and strong Europe Union should be based on the construction of a European identity. Some scholars (as for instance, Jimenez 2004) rules out the possibility that a European identity could emerge based on the cultural factor. This new identity should be based on some other factors. The national identity was shaped by cultural factors (cultural heritage, language, myths, symbols and emotional bonds). It is widely spread the idea that EU consists of many different cultures and that they will last for a very long time. At the same time, it is widely spread the idea that national states, which emerged on a solid cultural base, will be to the European citizens much more important than the European institutions.

The possibility of a European identity based on understanding and comparison of the costs and benefits derived from integration or of so-called instrumental identity is downgraded by its own logic and the cultural differences. Even if European policies recorded relatively better economic performance, different cultures would generate different evaluations. It is so because culture evaluates even the economic situations and better off in terms of economic performance could mean everything between better and worse off, depending on the evaluators' specific national culture.

The national identities have a greater cultural component compared to the instrumental component and within Eastern Europe compared to Western Europe the former is even more important than the latter. What does it imply? The Western Europeans are more inclined to accept EU institutions if these are able to bring relatively greater economic benefits. As for the Eastern European countries, the greater the importance of the cultural component, the more resistant they will be to the institutional changes able to bring greater economic benefits as, for instance, a federal organization of EU (Jimenez 2004).

Schauble and Lammers (1999) provide a proof for the idea that political leaders underscore the problem of different cultural values. With them the European nations share specific values rooted in a common culture. Their interests are not a problem either, because they have equal development levels. It is not the interests that diverge but the opinions on the best way to defend them.

There is a solid proof that EU countries do not shares common values: the pre-accession process was clearly led by EU that were telling Central European countries what they would have to do each step in order to avoid the failure to become EU members (Fink and Holden 2002). In other words, with Fink and Holden, the reforms were bought: the EU

support was conditioned on implementing reforms. There is no doubt that this is even truer for Eastern European countries.

There is an important conclusion to be drawn based on this reality: institutional reform of Central and Eastern European countries was not the result of their attachment or consistency with the EU values, but of an exchange or a trade. In the same vein, their attachment to the development of those institutions will be weaker than otherwise. To Central and Eastern European countries further development of the EU institutions will comparatively be in a higher degree a means or object of an exchange.

An integration process that is heavily based on cost-benefits logic can become a dangerous enterprise. Haas made the same point: an integration process based upon expectation of economic gain is an ephemeral and frail process susceptible to reversal (Farrel and Héritie 2005). The implication is that a solid integration process should be based on deep ideological commitment. In my own interpretation this process should be based on values „as desirable" (employing a Hofstedian term) carried by political elites[3].

It is again neo-functionalism, this times its deep logic, which proves that the diverse cultural values are and will continue to be the great challenge to a coherent and efficient EU institutional setting. But what neo-functionalism means and in what way is it relevant to the role of values in European integration? With Haas (Schmitter 2005) states are important in foundation of regional organizations and later on in re-foundation by treaties. In addition to state, a great role is played by two other sets of actors: secretariat and the organized interest which follow from regional organization.

The mechanism of furthering integration is as follows: regional bureaucrats along with organized interest seek to exploit unintended consequences that occur after regional organizations were put in place, that is, the "spill-over effect". Following the spill-over effects, governments will agree to change their original position. Citizens, in turn, will shift their expectations to the union and, provided these are met, they will agree to political integration. Both states and citizens which are the great players of integration game seem to be trapped and involved in an exchange, respectively. The states will change their original position and accept further integration because they are affected by unanticipated developments. Further, citizens are induced to institutional changes by the logic of an exchange, which, like any exchange, is local and temporal and has varying results. The implication is that when confronting a choice among institutional settings viewed as constraints that depict objectives citizen will for sure end up with different institutions.

Kojeve's defense of the idea of a Latin Empire is a proof for Europe's heterogeneous cultural reality. The Latin Empire that includes from the European continent only the Latin countries (France, Spain, Italy) is opposed to the Anglo-Saxon and Slavo-Soviet empires. Germany will eventually join Anglo-Saxon empire as well. That which distinguishes Latin countries is a shared "mentality". This is characterized by the art of leisure, by the aptitude to create the "sweetness of living" and by that "*dolce far niente*". The other two empires excel in economic work and political struggle. In other words Latin empire as opposed to the other two empires can be defined as: leisure instead of work, harmony instead of conflict (Schulman 2005).

[3] While politicians tend to rather ignore cultural differences among European states, the academic economists strive for solutions. Feld and Kirchgassner (2004, p. 216) took over Hug's suggestion to organize union referenda that would have the effect of constructing, according to the Swiss model, of a European public with somewhat homogeneous cultural values.

Identifying three different mechanisms for shifting loyalties to European community[4], Risse accepts that all these can be modeled as an ongoing process by which individuals internalize the values and norms of the community (2005). This is an implicit recognition of the vital importance of shaping new values if European integration is to be complete and lasting.

The different preferences of EU citizens have been consistently shaped with their previous institutional experiences: citizens of federal states prefer a federal organization of EU while those living in unitary states support an intergovernmental institutional make up. In other words, there is a clear correlation between one people's constitutional history and its preferences regarding EU institutional setting.

[4]These are: modeling the new center as an end in and of itself, the newly shaped authority pressures citizen into conformity, and instrumental behavior towards a different ultimate end.

II. THE FUNDAMENTAL ALTERNATIVES FOR EU INSTITUTIONAL SETTING

II.1 The Anglo-Saxon Liberal Model vs. the Social European Model

The Europeans have different opinions on the social-economic model of the EU: the left-wing political spectrum in France and even Netherlands is afraid that the EU is turning into an importing machine of Saxon neo-liberal reforms. At the same time, the French would prefer shifting to the EU their own cultural values. The importance of the dissensions concerning the future socio-economic system became visible during the referenda in France and Netherlands when the fear that the EU was looking more and more as a neo-liberal socio-economic system became an important factor in rejecting the EU constitution.

The socio-economic system of the EU determines not only its economic performance but also the ability to reform its own institutions, especially the political ones. Three quarters of the euro zone consist of countries recording a low economic performance; these countries lag behind respecting the reformation of the informatics as well as the services sector. In order to have a clearer image on the economic performance of the EU, a comparison with the USA could be useful. Since 1995, the average productivity growth in the US was almost double than the euro-zone and this gap is increasing. A better economic performance of the EU states would have made the integration process less difficult: the population would have been much more tolerant towards the arrogance and inefficiency showed by Brussels officials and immigration wouldn't have been an alarming threat to the wealthy countries of the EU.

A prediction on how the economic and social system of the EU will be like is also difficult because of the fact that the economic and social systems prevailing in the main EU member states EU are heterogeneous enough. In England, economic openness, deregulation, a very flexible labor market and a moderate level of taxation are prevailing. In Denmark, there is a combination of flexible hire and fire practices and social protection. In Germany, flexible wages and work practices simultaneously coexist with the maintenance of a relatively high degree of labor force employment. It is not much known about the so-called social-economic model of the EU, except for the fact that it presumes a desire for wellbeing, favorable hiring conditions and keeping in check globalization.

The choice of the social-economic system of the EU follows the same rule: the national states tend to prefer the system that copies their own system. For instance, the Germans view the European model close enough to their German model (Schauble and Lamers 1999); it is a combination of two elements: a liberal economy and a social order based on solidarity. At the basis of EU socio-economic system should lay the "competitive federalism", which consists of two components: (1) the competition between firms, between regions and states in order to attract the firms and (2) the equality and justice based on competition.

The problem of identifying a social-economic system of the EU is also complicated by the fact that the EU integration has different meanings for each member state (Risse 2005). For the German elites, the EU integration means the overcoming of one's nationalist and militarist past. For the French elites, Europe must be built by externalization of distinct French values: republicanism, enlightenment and the *mission civilisatrice*. For the English, the construction of European integration process is correlated with what they mean by the English nation.

II.2 Federalism vs. Interguvernmentalism

The federal element is an implicit integrant part of the existing treaties respecting the EU make up[5]. The arguments are the following: (1) EU laws prevail over the national laws, (2) the Court of Justice can make mandatory decisions based on the interpretation of EU laws and (3) the majority voting is applied in important legislative processes. Yet, this implicit federalism is not satisfactory. For example, the objective of Germany is the one stated by Schuman: the transition from the union states to a European Parliament and Government (Fischer 2000). Because Europe is not a new continent, but a continent made up of different peoples, cultures, languages and histories, the European integration must bring the states to such a federation. This means that, in essence, the integration must be made by dividing sovereignty between a central authority of the EU and the national member states. This is in fact the content of the concept of "subsidiarity".

However, things are not that simple. There is a dual definition of subsidiarity. A first definition refers to dividing the power between central communitarian institutions and states (from this perspective, subsidiarity is not an organizational principle based on efficiency); a second definition consists in the idea that the central authority of the EU should not do what can be done at sub-national and national level (this time, it is the case of an organizational principle based on efficiency).

Taking into account the previous idea, the European Parliament must represent two things: a Europe of national member states and a Europe of citizens. Consequently, the European Parliament should have two houses: one for elected members in the parliaments of member states (in order to avoid disputes between the European Parliament and the national parliaments) and a second house – a senate (with an equal or unequal number of senators for each state) - with senators directly elected by the member states.

A large part of the opposition towards a federal organization of the EU is based on confusing federalism with the federal organization of the USA that is perceived as a unitary country (Ash 2005). However, generally, federalism is nothing more than a division of authority between a central federal authority and the member states. In fact, a more proper benchmark for the EU should not be the USA, nor Germany, but the Swiss federalism (Papadopoulos 2005).

The type of federalism that can have more serious implications for the European integration is the "competitive federalism" that derives from the neo-liberal paradigm[6] (Beyme 2005). Competition generates asymmetries and the population tolerates them as long as it is mostly concerned with its own identity and practicing an autonomy which allows the approach of matters considered to be of maximum interest. In other words, this type of federalism works against the EU's cultural homogeneity.

Intergovernmentalism assumes that the important decisions of the EU lie within the competence of the national states. This implies less important roles for the European Parliament and more important roles for the European Council and for the Council of Ministers. The logic of intergovernmentalism is finally based on the differences in cultural

[5] However, from a different perspective, this implicit-type federalism seems to be rather a result of Brussels' bureaucracy towards centralization, although the likelihood of a centralized Europe is quite small (Buchanan, 2004, p. 27)

[6] The competitive federalism is an ideal based especially on constitutional economic theory and its promoters consists of academic economists (Buchanan 2004, p. 25-26). Its defense framed by two German politicians (Schauble and Lamers 1999) is a rather an exception.

values[7]: federalism is rejected as it generates a democratic deficit. Within its own logic, democracy can be engaged only at a national state level bearing in mind the citizens' devotion to the national states as distinct political entities (Ash 2005). With Feld and Kirchgassner (2004, p. 204), "a democracy can only be called such if it is based on a collective entity, the people or the nation that is constituted by a common culture or common traditions and experiences". Lacking these common elements, the fundamental rule of democracy - decisions made by a majority and compulsory for the entire population - will not be operational because the minorities (consisting of whole nations, in this case) will not accept the decisions of the majority consisting of populations of other states.

[7] Blankart and Mueller consider confederation (which is synonymous with intergovernmentalism) to be the proper organizational structure of EU if citizens' preferences are homogeneous within countries and heterogeneous across countries

III. COMMUNITY GOVERNANCE METHODS

The EU governance or Community polity is based on three methods: a) Community Method; b) Open Method of Coordination; c) Intergovernmental Method or Enhanced Cooperation.

III. 1 Community method

Community method derives its spirit from Jean Monnet's ideas and was put into force at the same time with the creation of ECSC. In the opinion of J. Ziller (2004) it would be characterized of four elements, which are inseparable for understanding the progress of European integration. The first element would be 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. The Rome Treaty raises for discussion the integration of national markets by abolishing the barriers in the way of free movement of inputs (capital, labor) and outputs (goods, services) and by creating a management system of regional market. The grouping of sovereignties, which derives from the grouping of resources, has a strong symbolic value because it involves the preserving of identities and independence of the Member States, the main actors of integration process.

The second element is the institutional triangle specific to European Community. The Community institutions represent 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. The third element is 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. The fourth element is the role played by Community law, which system has three essential features of. The first is that a specific range of instruments was established in order to combine the homogeneity of rules with the flexibility of their implementation. The second is the existence of a juridical court at the Community level (ECJ) accessible to governmental and nongovernmental, public and private actors. The third is 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.

In 1976 Jean Monnet had presented the Community method and the results obtained by its application: "After *a probation period it became a permanent dialogue between a European body responsible for proposing solutions to common problems and national governments expressing national points of view. This method is totally new. It does not require a central government, but it has lead to common decisions within Council of Ministers, especially since the proposal of solutions to common difficulties by an independent European body permits the valid removal of unanimity obligation. The Parliament and the Court of Justice underlines the Community character of this ensemble. This method is the genuine federator of Europe*"

The European Commission accepts the theory of multilevel or multilayer governance system, but Commission referred to Community governance more in the light of Community method whose paternity belongs to Jean Monnet. In one of the White Papers recently published (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 body of*

secondary legislation, which completes the primary legislation represented by the Treaties. Likewise this method provides a modality to arbitrate between various 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."

Under this definition whether the executive is represented by European Commission, which has the monopoly of legislative initiatives and promotes the general interests of European Community, not being yet a government, the legislative power is represented by the Council of Ministers and European Parliament. EU Council promotes and harmonizes the interests of national states, using as a decision procedure mainly the qualified majority and secondary the unanimity, while the European Parliament promotes the interests of citizens mirrored by a certain political option, having an equal power with the Council within the co-decision procedure, extended to the majority of decision domains. 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 Rome Treaty stipulates the competences or powers of Community institutions, their composition and structure, their instruments, the voting system or the decision making procedures, but the following treaties have brought alterations and improvements to Community institutional framework, which is now more developed and more effective within multilevel governance. Article 3 of EU Treaty (TEU) stipulates that there is a single institutional framework which provides the consistency and continuity of activities carried on with the view to attain the objectives, under the conditions of observing and substantiating the Community *acquis*.

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 States.

A Community institution with an important role in settling the disputes between European institutions, Member States, legal and physical persons, in solving European Commission's claims against implementation failures, in interpreting the provisions of treaties and secondary legislation, in observance of Community law is the European Court of Justice, which may be defined as a juridical power of European Community.

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. Likewise the transparent juridical procedures guarantee the responsibility of involved actors, it is insured the unique representation of Member States in their relationships with third parties which permits rapid and effective actions and it is given priority to general interest of Community based on equal treatment and by protecting the interests of minorities. The European Commission insures the balance between different sector policies (or aggregation of sector interests) and consistency of actions with the system principles, while in its quality as a guardian of treaties together with ECJ as the guardian of Community law insures the guarantee for juridical certainty for economic agents and physical persons. 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. Thus it has been achieved the complete transfer to Community method in the field of custom cooperation (article 135, title X TEC) and the protection of financial interests of Community or fight against fraud (article 280 TEC), inclusively by applying the decision making procedures specific to first pillar. It has also been achieved a partial transfer to Community method through the new title IV TEC in the fields directly linked to free movement of persons: visas and border control, asylum, immigration and juridical cooperation in civil matters.

The debates in the '90s and this decade on constitutional and institutional reform aimed at the consolidation, correct application and extension of Community method within the EU governance. European Commission expressed its position by means of some reference documents, as there are *White Paper on Community Governance* from 25 July 2001, *Communication on the future of EU* from 5 December 2001 *and Communication on a project for EU* from 22 May 2002. These are points of view with a more technical character than a political one, but they are similar to the opinions expressed by prominent political personalities within EU. 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 Community 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. On the line of promoting the general interest it has been proposed a wider opening of Community policies elaboration process, with the aim to insure a larger participation of citizens and NGOs for conceiving and implementing these policies and for encouraging an increasing opening and accountability of all those involved. Thus the citizens should perceive clearer the mode in which the Member States, acting in common inside EU, are able to respond more effectively to their preoccupations. One of the essential messages of White Paper is that the actions of Community institutions should be balanced and proportionate with regard to foreseen political objectives. European Commission deemed that at the ground of a good governance and its improvements proposed in White Paper should lie a number of five principles: opening, participation, accountability, effectiveness and coherence, principles that are specific to democratic system and state of law from Member States and are applied to all types of governance, respectively global, European, national, regional, local.

The five principles pointed out in White Paper are basic principles for achieving a more democratic and more effective governance, but European Commission has appreciated that they may not be transposed into practice through separate actions as it is needed an integrated approach of them. The application of these principles should be found in the manner of conceiving and implementing the Community policy, which cannot be effective on economic and social side without transparent, participative and responsible governance. Applying the five principles aims also at the consolidation of the two fundamental principles specific to Community governance: subsidiarity principle and proportionality principle. The subsidiarity principle sanctioned by Single European Act (SEA) limits the actions of Community institutions to the competences and objectives established by the Treaty. Their

intervention takes into account the fact that certain tasks and actions cannot be fulfilled in an effective mode by the Member States. The proportionality principle has in view the dosing of used instruments proportional to proposed objectives. Before launching an initiative or undertaking a public action at Community level one should ascertain its need, one should establish if the EU level is the most adequate for achieving it and if the foreseen instruments are proportionate to proposed objectives.

The instruments proposed by Commission 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 Constitutional Treaty has not revolutionized the Community governance method but it has only improved it by means of institutional and non-institutional changes. A consistent contribution of European Constitution is the focus on the observance of fundamental principles of Community governance. In article 9, part I, it refers to the fundamental principles which lie at the ground of Community governance, specifying that: "*The use of Union competences is governed by the principles of subsidiarity and proportionality*". In the paragraph 2 it is mentioned that "*under the principle of conferral the Union shall act within the limits of the competences conferred upon by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States*". In the paragraph 3 it is shown:" *Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union 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.*" The Community institutions will apply the subsidiarity principle based on the provisions of the Protocol for application of subsidiarity and proportionality principles annexed to the Constitution. In the paragraph 4 it is specified: "*Under the principle of proportionality, the scope and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution"* The Community institutions will apply the proportionality principle based on the provisions of the annexed Protocol.

In the Protocol for the application of these two principles there are established the conditions for their application and a monitoring system of their application by the Community institutions. Every institution should insure the constant observance of principles. Before proposing legislative acts Commission will undertake large consultations, and when it will be the case Commission will take into consideration the regional and local dimension of the respective action, only in emergency exceptional cases the Commission may not undertake consultations, but it will offer the motivation of decision in its proposal. Commission will submit all legislative proposals and those amended to national parliaments of the Member States as the same time with their presentation to Community legislative institutions. The European Parliament and the Council will send the legislative decisions and common positions to national parliaments of the Member States.

The European Commission shall justify its proposals with regard to the subsidiarity and proportionality principles, every legislative proposal should contain a detailed declaration on the compliance with the respective principles, also an evaluation of financial impact, and in the case of framework legislation on the implications for the regulations put into practice by the Member States, including regional legislation. The motivations for the conclusion that a Community objective may be better achieved at Union level should be argued by means of qualitative indicators and, if it is possible, by quantitative indicators. The Commission shall take into account the need that any financial or administrative burden supported by the Union, national governments, regional and local authorities, economic agents and citizens, will be minimized and fit to the objectives to be achieved.

Any national parliament or chamber of this may send, in six week time from the date of the transmission of Commission legislative proposal, to the presidents of European Parliament, Council and Commission a founded opinion which specifies why the proposal is not complying with the subsidiarity principle. When it is necessary any national parliament or his chamber may consult the regional parliaments having legislative powers. The EP, Council and Commission shall take into account the founded opinions expressed by national parliaments or their chambers. The single chamber parliaments will have two votes, but the two chamber parliaments will have one vote for each chamber. When the opinions on non compliance to subsidiarity principle represent at least 1/3 of all votes allotted to national parliaments and their chambers the Commission will revise its proposal. This threshold will be at least ¼ in the case of a Commission proposal or a initiative emanated from a group of Member States based on the provisions of article 41 concerning area of freedom, security and justice.

The Commission may decide to maintain, amend or withdraw its proposal, offering the motivation of its decision. It is obvious that the new procedure for decision making or for adopting the secondary legislation confers a more legitimate and democratic character to Community legislative activity, with the risk to amplify the already existing bureaucracy and to slow down the decision process. In the juridical disputes on the subject of applying the subsidiarity principle the judge will be the European Court of Justice, which will have the jurisdiction to hear actions on the ground of principle infringement by a legislative act. These actions are brought under the regulations established in article 230 of TEU by the Member States or notified by them in accordance with their juridical order in the name of national parliaments or their chambers. Under the provisions of the same article the Committee of Regions may bring actions regarding the legislative acts which need its consultation for adopting them.

Every year the European Commission will submit a report to European Council, EP, Council of Ministers, national parliaments of the Member States on the application of article

9, which will be also presented to the Committee of Regions and to Economic and Social Committee.

In the articles 11, 12, 13, Part I, there are presented competences conferred to the Union, which may be exclusive or shared with the Member States. The exclusive competences refer to competition rules on internal market, monetary policy, common commercial policy, customs union, the conservation of marine biological resources under the common fisheries policy, international agreements provided for in the legislative acts of the Union. The shared competences refer to internal market, area of freedom, security and justice, agriculture and fisheries, transport and trans-European networks, energy, social policy, economic and social cohesion, environment, consumer protection, public health (safety), research, technological development and space, development cooperation and humanitarian aid. The Union may take supporting, coordinating or complementary actions in the field of industry, protection and improvement of human heath, education, vocational training, youth and sport, culture, civil protection, administrative cooperation (article 16). The legal acts adopted by the Union in these fields cannot entail harmonization of Member States laws or regulations. Article 15 refers to the EU competences in matters of the common foreign and security policy which will be actively and unreservedly supported by the Member States in a spirit of loyalty and mutual solidarity, refraining from actions contrary to the Union's interests.

On institutional level the Constitutional Treaty does not bring essential modifications regarding the classic institutional triangle and Community institutions attributions but only some changes meant to increase the efficiency of their activity in the context of Community enlargement. Thus one may mention the president position for European Council (he or she may be reelected); the presidential troika for the Council of Ministers; the qualified majority vote with two thresholds (55% of the Member States number and 65 % of EU population); foreign minister appointed by European Council and having the position of Commission's vice president; the 25(27) members of Commission (20 before), their number will be reduced by 1/3 after the current mandate; the increase of EP powers by co-decision extension, power to amend and adopt laws, supervision of Commission and Council; specialized courts within ECJ.

III. 2 Open method of coordination (OMC)

Though recognized as an explicit instrument of Community governance by European Council summits in Cardiff, Köln and Luxembourg in the '90s, however the open method of coordination is not explained as a new mode of governance in Lisbon summit, which formally launched it and acknowledged it. Not even Constitutional Treaty makes 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, 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.

Lisbon Strategy represented a major progress for Community governance, through new introduced method – OMC, which allowed the enlargement of European agenda with difficult and delicate matters. European Council has provided the methodological indications for establishing the OMC characteristics/content. Thus 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.

Lisbon European Council has also defined the OMC framework and its functioning based on a decentralized approach, according to subsidiarity principle, which means the implication through various forms of partnership of all actors – Community institutions, national governments, regional and local authorities, and civil society. A method for elaborating the best practices regarding the management of change was going to be conceived by European Commission together (within the networks) with different suppliers and users, that is social partners, Community companies and NGOs (Lisbon European Council, 2000). Broad Economic Policy Guidelines or general orientations of economic policies of the Member States are drawn up under a project form by EU Council at the Commission recommendation and are submitted for analysis and debate to European Council. On the basis of European Council conclusions EU Council adopts a recommendation on these guidelines and informs European Parliament (article 179, part III of European Constitution). In the field of employment policies European Council examines a common annual report of Council and Commission and draws conclusions, and on this basis every year, EU Council, at the Commission's proposal, adopts for the Member States the Employment Policy Guidelines, compatible to Broad Economic Policy Guidelines. Council of EU decides after consulting EP, CR, ESC and Employment Committee (article 206, part III).

The Broad Economic Policy Guidelines and Employment Policy Guidelines are practically adopted by an institutional triangle consisting of Commission (proposes), Council of EU (adopts the guidelines and supervises the implementation of policies) and European Council (analyses and recommends), European Parliament having only a consultative role. Although some authors think that OMC has a rather sophisticated form, it is based on some essential components, such as guidelines, benchmarking and the sharing of the best practices, multilateral surveillance, indicators, repetitive process, implementation through legislation and domestic policies (not being necessary Community legislation). There are a large number of studies on OMC, most of them based on empiric analysis and investigating OMC features and employment policy. Lisbon summit of European Council has acknowledged OMC use, but the policy coordination in various fields had started before. Authors like Radaelli (2003), Hodson (2001), Maher (2001), Goetschy (1999), Trubek (2003), Mosher (2003), Ferrera (2001), Matsaganis (2002), Sacchi (2004) analyzed the OMC use and its components in the fields like: *macroeconomic policy* (Broad Economic Policy Guidelines), *employment* (European Employment Strategy), *social inclusion* (non-compulsory legislation), *business taxation* (code of conduct).

In the opinion of the mentioned authors OMC characteristics would vary considerably depending on involved policy field, but OMC does not rely on a fixed or general formula, the coordination of policies practically involves an extremely large scale. Defining OMC as a

new governance mode, which appeared in the '90s and imposed itself in this decade rests on six characteristics of the method (Radaelli, 2003):

1) *More limited role of Community law*, different than in the Community method (Scott and Trubek, 2002). There is no real demarcation between rule making and rule implementation within OMC and not even juridical accountability before the courts.
2) *A new approach to problem solving.* OMC functions by repetition, multilateral cooperation (government, public and private actors) and standards setting. It has been put into question the nature of learning in OMC problem solving and if it is top-down (Member States implementing the guidelines set at Community level) as Jacobsson (2002) alleges or it is bottom-up, as authors like Trubek (2003), Cohen (1997) and Sabel (1997) affirmed. The last mentioned authors believe that OMC is better connected to the network-type governance, and Lisbon summit conclusions confirm the dual nature of learning, making reference to the goals, convergence and guidelines for Member States, but also to mutual learning and independent development of domestic policies.
3) *Participation together with power sharing between Community authorities, governmental (national) and civil society is essential because it confers legitimacy and effectiveness.* Jonathan Zeitlin (2003) looks at OMC as a radar that taps the benefits of local knowledge and local experimentation. The participation should not be limited to actors operating in EU level committees but it must be extended to local level actors.
4) *Diversity and subsidiarity are inseparable.* OMC is based on acknowledging the diversity, starting from the assumption that different models of capitalism have their own solutions to the problems caused by the factors determining the complexity and competitiveness. The traditional modes of governance, like Community method, focus on the harmonization process on the other hand.
5) *New modes to produce usable knowledge.* OMC acts like a network looking for usable knowledge at all levels. The specific instruments are coherent with the aim of learning, at least in principle. For transnational diffusion of policies there are used benchmarking, peer review, multilateral surveillance, scoreboards, trend-charts and other mechanisms. It is less obvious whether the OMC project contains specific and coherent instruments for bottom-up learning.
6) *Policy learning.* OMC has a great potential in the field of policy learning. Decision makers may learn from local knowledge and may generate its transnational diffusion which may improve their performances in the last.

In-building OMC within Lisbon Strategy, with the aim to transform the Community economy into the most competitive economy in the world, highlights the contradiction between economic competitiveness and European social model. 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. In principle the race for insuring the competitiveness and that for promoting social welfare do not exclude each other (Ferrera, Hemerijck, Rhodes, 2001) but conflicts may appear between employment policy, social policy, pension policy, fiscal policy on one side and policies targeting competitiveness on other side.

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 provided 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, integration processes of different policy fields, analysis and research.

III. 3 Intergovernmental method or enhanced cooperation

For Michel Barnier and Antonio Vitorino (2002) European Commissioners and representatives of European Commission in European Convention, the intergovernmental method involves a decision making process based on diplomatic negotiations between sovereign states. This 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.

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 fortunately coexist with other governance methods like the 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, namely 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. Enhanced cooperation formally introduced by Amsterdam Treaty, but starting 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 an 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 favor the integration progress provided the observance of the conditions set by the Treaties, Community law or Community juridical order, Community institutions integrity, fulfillment of common strategic objectives.

In Amsterdam, in 1997, it has been set off a camp favorable to enhanced cooperation composed of France, Germany, Italy, Benelux, Finland, and another one, more reserved and skeptical, consisting of Great Britain, Sweden, Denmark, Portugal, Spain, Greece. 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.

Still Amsterdam Treaty foresaw the possibility of constructive refraining on the second pillar, where the enhanced cooperation was excluded (article 23 TEU). This mechanism is based on three rules. The first is the official declaration of the refrained state (within EU Council) by which this accepts that the decision is a commitment for the Union, but not for the respective state. The second is the state commitment to refrain from actions which are conflicting or hinder the Union action. The third consists of the rule after which whether the states that refrain represent over 1/3 from weighted votes the decision shall not be adopted. The scope of constructive refrain had covered all decisions aiming at second pillar taken by EU Council in unanimity, including those having a military nature.

Due to its limited scope, strict conditions and procedures, enhanced cooperation was difficult to put into practice and thus it appeared the need as the next Intergovernmental Conference(IC), preceding the Nice Treaty, to revise the legislative and procedural framework. 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 defense. 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. The procedure was relaxed, foreseeing minimum 8 states. 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.

The provisions of Constitutional Treaty on the matters of enhanced cooperation bring in addition the application of this cooperation on the whole range of external and defense EU policy and the removal of veto right. The setting up of European Agency for Armament, Research and Military Capabilities, opened to all members by EU Council and having QMV as a base, is another innovation of Constitutional Treaty. Until a common defense policy is established it will be the case of an enhanced cooperation on common defense matters by close cooperation with NATO, and a multilateral force may be created for supporting common security and defense policy. There are only two procedures, one for CFSP, another one for other matters, being abolished the special procedure for the third pillar. The initial possibility for participating to actions of enhanced cooperation will depend not only on the express desire but also on the respective country capacity to participate. The participation conditions will be the same for the first countries and for the other countries, being strictly settled by Commission and EU Council for CFSP.

Article I-43 refers to the rules of unanimity and qualified majority (3/5 of population of participating countries or 2/3 of votes and 3/5 of population when there is no Commission proposal or an initiative of EU foreign minister). It rests with the Member States to resort to QMV and co-decision in certain fields. The minimum number of 1/3 from Member States may signify an increase of the threshold set in Nice at 8 members.

According to the opinion expressed by Giovanni Grevi from European Policy Centre it is considered that nevertheless the restrictive conditions on enhanced cooperation have been relaxed by Nice Treaty and Constitutional Treaty. The juridical interpretations of texts have remained somehow problematically, which creates larger opportunity windows for this governance method under the auspices of framework set out by Treaties (Grevi 2004). Among the innovations introduced by the Constitution counts also the role played by the minister of foreign affairs in matters related to CFSP and the possibility of QMV use. The precise attributions and responsibilities of Community institutions, the Commission and EU Council, to analyze, approve and concretize the initiatives of enhanced cooperation, inclusively on the line of insuring their coherence and consistency, as well as the modality for achieving the enhanced cooperation confer transparency, effectiveness and legitimacy to this governance method.

The enhanced cooperation would be a comprehensive form of flexible integration, directly targeting to the consolidation of integration process by achieving the Community objectives and preserving its interests. The enhanced cooperation is the only form of flexible integration endowed with a strong normative dimension, which confers both force and certain limits to it. It comes out of classical prints of Community method of governance and tries to

turn to better account initiatives or options which belong to diversity or differences existing between the Member States. At the same time it cannot insure major political progresses. In this case there are also conditionalities and limitations, possibility of different interpretations, difficulty to achieve some agreements on more ambitious projects, a relatively limited number of fields suited to initiatives, especially in the scope of Member States competences. The fields more suitable to actions of enhanced cooperation are those from social fields and former third pillar.

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 application prospects in the field of fiscal policy, environmental policy, defense, CFSP, area of freedom, security and justice. Enhanced cooperation is mentioned also by Constitutional Treaty, in Part I and Part III, but the good result of any project depends more on political willingness and competence of involved actors. The accentuation of disparities and gaps within enlarged Union and incomplete and inconsistent institutional reform proposed by Constitutional Treaty may favor the flexible integration process, mainly in the difficult context created by ratification of Constitutional Treaty through national referenda.

The matter of hard core or advanced group (vanguard) of Community states willing to extend and speed up the integration in some fields, based on Treaty provisions or outside them, remains a debated and disputed subject. Is the intergovernmental method effective for fields outside economic area? The experience has proved that especially on second pillar the progresses had been limited and sluggish, only on third pillar there had been recorded some notable progresses. An important matter would be that of initiatives of enhanced cooperation projects, whether a group of states, European Council, or other Community institutions could have initiatives, which may vary as scope, instruments and procedures.

Another problem is that of the relationship between enhanced cooperation and economic and social cohesion, the last one representing a fundamental element of Economic Union. The removal of gaps or diversity and heterogeneity within EU is not possible on short and medium term, and implicitly cohesion insuring either. In these circumstances it would be favored logically the process of enhanced cooperation or flexible integration. Confronted to a crisis period due to failures in the ratification of Constitutional Treaty, disagreements on Community budget and reforming of some common policies, like CAP, divergences on EU external policy, difficulties of fulfillment the provisions of Growth and Stability Pact and attaining the objectives of Lisbon Strategy, European Union should not only re-evaluate the model of economic and social development, but look for a model of political union, which may involve also major changes in the methods of Community governance.

IV. COMPETION POLICY

The competition policy of the EU is one of the most important components of the Community *acquis*, being sometimes referred to as "the fifth freedom" of the single internal market (Mario Monti 2004). Its early promotion was essential for supporting trade liberalization among EC member countries. The elimination of restrictions to intra-EC trade flows could proceed smoother as long as the existence of a competition policy allowed for correcting trade distortions at source, thus acting as an inescapable counterpart to the surrender of the right to use trade defense instruments (antidumping and countervailing measures) to intra-Community trade.

Competition policy enjoys a special status among the various policies of the EU that the draft Constitutional Treaty upholds by including it in the « select group » of the six policies belonging to exclusive Community competence**.** It is to be noted, however, that according to some opinions this area does not fall under the exclusive competence of the EC because Member States have their own legislations in competition matters (Bergh 1997, p. 144). This objection is completely non-applicable to State aid matters and, as far as private anti-competitive practices are concerned, Community rules prevail whenever « trade between Member States is affected » or when the case has a « Community dimension ». Hence, the prerogatives of national authorities are this area cannot lead to dual competencies, since Community competence, when existing, automatically excludes national competencies. The choice for a policy placed under exclusive Community competence rather than within the realm of co-coordinated Member States' positions, is justified by the high probability of conflicts of jurisdiction arising between member states, as well as by the unavoidable suspicions relative to the possibility that a national competition authority can remain absolutely impartial whenever it has to adjudicate cases involving both nationals and foreigners.

Moreover, competition policy is practically the sole exclusive competence policies where not only the formulation, but also the implementation falls primarily under the responsibility of the Community, that is, its executive body, the European Commission.[8] Except the issue of State aids, this does not mean that national authorities have no role whatsoever, but rather that no overlapping exists. In fact, in some areas national authorities contribute to the implementation of EU's competition policy, because the resources of the European Commission are not (any longer) allowing it to deal directly and exhaustively with all the aspects covered by antitrust rules.

While, in practice, it looks as if the Commission's prerogatives in State aid matters (where no competence national authorities exist) seem larger, in legal terms the Commission' as competence used to be larger in antitrust matters, where Council Regulation 17/1962 (superseded by Council Regulation 1/2003) explicitly delegated to the Commission the exercise of prerogatives usually belonging to the Council. Paradoxically, although a similar delegation with respect to State aids only occurred much later (1998), the Commission had assumed even before the right to issue legislation *sui generis* (through *soft law* instruments: communications, recommendations, guidelines, "frameworks" etc), taking advantage of the Council's reluctance to issue regulations in this very delicate area.

Because the Council's involvement in the implementation of EU competition policy is very limited, and that of the European Parliament – practically non-existent, the decision-

[8] Only the European Commission may grant exemptions from the generic interdiction of understandings with anti-competitive potential, and may authorize economic concentrations of "Community dimension".

making process that really matters is the one taking place at the level of the European Commission.

The role played by the judiciary is not crucial, but not irrelevant either. The Commission may take executing decisions without having to pass through the Court of First Instance or the European Court of Justice in order to obtain this seal and several decisions of the Commission are not subject of judiciary review.[9] With respect to a large majority of Commission decisions, the ECJ – although competence to review them – has shown deference, limiting its censorship to aspects such as the reality of factual descriptions and the correctness of legal interpretations, without substituting its own reasoning to the inherently complex economic judgments made in each case by the Commission.

Against this institutional background, the Commission's influence is overwhelming, and has attracted criticisms towards it being « policeman, prosecutor, judge and jury » (Allen 1996, p. 35). Internal decision-making mechanisms assume in this case more significance. There are two elements which are particularly noteworthy in this respect:

a) The distinctive ethos acquired by DG COMP (ex-DG IV) since the end of the '80s, as a result of a narrower specialization of its staff and its stability, coupled with the perception of an own *esprit de corps* within the Commission; the independence of DG COMP is seen by some observers as too large, and disputes with other DGs, typically triggered by their intention to maintain/introduce new levers of market intervention, are not lacking. The negative implication of this development comes in the form of a limited receptiveness shown by DG COM towards the arguments put forward by the economic operators subject to examination, which is particularly criticized in the cases of merger control.

b) The fact that decisions are only made by the College of Commissioners; although in many cases the latter rubber stamps the decisions submitted by DG COMP, the fact that the members of the Commission are, first and foremost, politicians, raises question marks as to their availability/ ability to be guided exclusively by the merits of the case. There are episodes where the Commissioners did not display the required reserve and impartiality, with the consequence of decisions taken by majorities reflecting ideological preferences and national loyalties.

The lack of confidence in the fact that the Commission's decisions can be fully insulated from political pressures is a reason for criticisms coming from some national competition authorities, and a source of initiatives formulated from time to time to the effect of setting up an independent Community antitrust body, distinct from the Commission. So far, such an institutional model was not adopted, but the nature of the relationship between the Commission and the national authorities has changed further to the enactment of Regulation 1/2003, which provides for the decentralization of the implementation of antitrust rules. While it is clear that the interactions between the Commission and these national authorities will become much more intense, it is not similarly clear what their effects will be on the position of the latter. It is possible that collaborative relations lead to more identity of views as concerns the cases investigated, but one cannot rule out that an immoderate use by the Commission of its special prerogatives (including the discharging of national authorities of some cases, and their takeover by the Commission) becomes a source of frictions that would once again bring to the fore the debate concerning the usefulness of establishing and independent antitrust authority in the EU.

[9] For instance, the Commission has entire discretion in rejecting a complaint on grounds that no significant Community interests are affected.

While in antitrust matters, the prerogatives of the Commission co-exist with those of national authorities, in State aid matters the Commission is entrusted with a virtual monopoly. This is exercised:

- inherently, with respect to implementation; and
- via the "self-reserve" shown by the Council, with respect to regulation (more specifically, the so-called "secondary legislation").

The inexistence of national authorities competent in establishing and implementing rules concerning state aids is explainable in view of the fact that the Commission's competencies in State aid matters cannot be otherwise than supranational.

First, the Treaty enumerates the "common interest" among the possible justifications for granting State aids. It is only the European Commission – as neutral body and "guardian of the Treaty" – that can identify this common interest, which is the result of the interaction of a multitude of national interests that are sometimes at odds with one another.

Secondly, the exclusively supranational control of State aids in the EU also reflects the requirement of a uniform and impartial implementation of the rules, equally vis-à-vis all Member States.

Thirdly, supranational control is necessary because of political economy considerations. On the one hand, it allows overcoming the problems of temporal mismatches occurring at national level: national economic decisions may be overturned as a result of changes of government, the emergence of new economic or political priorities, or even a strong display of public opposition. By their very nature, supranational institutions are imposing strict rules, which prevent national authorities from changing their approach as a result of the above-mentioned occurrences (Bertero şi Rondi 2002, p.27). On the other hand, national politicians have an inherent propensity to subsidize in excess. A supranational control is likely to weaken the political motivation for granting State aids, thus rendering the promotion of balanced economic policies more likely (Nicolaides 2003, p. 273).

It has been noted that, until the middle of the 1980s, the European Commission did not have a coherent policy for State aid control and has systematically avoided confrontations with Member States on this subject (Ezrow 1998). Even now, some analysts believe they can discern a certain reluctance of the members of the Commission to enter in disputes with some Member States relative to various State aid cases. This is because, while EU members unconditionally accept that a strict control regime for State aids is indispensable for the proper functioning of the single market, this does not prevent them from challenging both the Commission's policy and its decisions in those cases where important national interests are involved. Moreover, there are examples given of cases where the governments of some Member States have put pressure on their own nationals' members of the Commission in a bid to make them follow the "national line".[10]

All these features are making competition policy the first truly supranational policy of the Union. The influence of Member states over its formulation, thanks to the Regulations delegating to the Commission quite a number of Council prerogatives, is very limited. In some writings, the opinion is expressed that Member States still have at their disposal vehicles through which they can affect the content and the implementation of competition rules: the Advisory Committee for Restrictive Practices and Monopolies (established in

[10] Thus, Michelle Cini (2000, p.9) considers that the opposition of Commission President Jacques Delors, in 1991, to the proposal of Competition Commissioner Leon Brittan for the recovery of the incompatible aid previously granted to RENAULT "had more to do with national feelings than respect for the rules"

keeping with Regulation 17/1962), the Advisory Committee for Mergers (established by Regulation 4064/1989) and the Expert Group for State Aids. All these structures have a strictly consultative role. They are, hence very useful whenever there is a good faith attempt to find the best solutions to some problems, but entirely inadequate if the problem at stake has important repercussions on some Member States.

Against a background where the rules of the game are set, and the actors have no influence over them, question marks may emerge as to how appropriate these rules are for the particular conditions of the countries to which they are addressed, especially when they are an entirely novel experience for these countries.

- The fact that the same competition rules might prove inadequate for countries with uneven levels of development and very different economic structures. The existence of problems deriving from such differences has been acknowledged by the European Commission, but its position – best summarized by than Competition Commissioner Karel Van Miert – was firmly opposed to any dilution of competition rules in order to accommodate such problems: "structural differences between the Western and the Eastern economies must be remedied via macroeconomic policy measures, not by waiving competition rules. These must remain applicable as a guarantee for the functioning of the internal market". (Miert 1997)

- Especially in State aid matters, it is very difficult to replicate the approach prevailing in the EU as long as the extension of state ownership in the economy remains far larger, and capital markets are far less developed and poorly regulated.

- Community competition rules, although meant to help reaching the objective of welfare maximization, have as their priority goal the guaranteeing of fairness. This concept, however, is much too subjective and has a far more powerful cultural load against a background where the change of mentalities requires far more time than even the internalization of sound economic policy principles.

Finally, one should also mention an important advantage that the new EU members may derive from the existence of State aid rules equally applicable to everybody: "a solid state aid control system protects smaller and less developed member countries against the abundant support that rich member states could make available in the absence of such a system" (Monti 2002).

This implication of State aid controls is much more important than it may appear at first glance. This is because the award of State aids in conformity with the relevant EU rules does not necessarily generate the best result for the country in question, and this is even less probable for the less mature economies, as those of the new members and, *a fortiori*, of the remaining candidate countries. Non-distorted competition is not even automatically generating Pareto optimum situations, which is implicitly acknowledged by the existence and development of numerous redistribution levers within the EU. The improbability of an identical usefulness of State aid rules at Community level and national level, respectively, is greater in the case of transition economies, the peculiarities of which may require other emphases in the area of State aid policy. Former Competition Commissioner, Mario Monti, has admitted to this: "the example of East Germany shows that the combination of privatization and industrial restructuring raises very complicate problems for the control of State aids" (Cremona 2003, p.285).

As a result, it is theoretically possible that a new member state would have more to gain from *a different State aid control* than the one applied at the level of the EU (though not from the *absence of any discipline in this matter*). What ultimately tilts the balance in favor

of the necessity of a control system for State aids, even if not perfectly adapted to the needs of the state in question, is precisely the reciprocity element that it entails, which protects against the negative effects of State aids granted by other EU member countries.

This advantage should be set against the relative downside deriving from the fact that a Member State may no longer directly countervail the State aids likely to cause it injury, which are granted to third countries. Instead, it can try to protect itself through the so-called "trade defense instruments" managed by the Commission centrally, where the same mismatch between Community and national interest may occur. On the other hand, the Community-level use of countervailing measures makes them far more effective vis-à-vis the targeted trading partner. In other words, if such measures are taken at EU level, they play a far more dissuasive role than it adopted at national level. The problem is that their institution at Community level is not as certain as at national level.

The perspectives of EU competition policy may be explored at two levels:

a) the scope of the rules;

b) the decision-making level.

As concerns the first aspect, it has to be mentioned that competition rules belong to the category of "negative harmonization" and, as such, do not have a strictly circumscribed scope. In principle, any anti-competitive behavior occurring on the market triggers their application. It is true that several areas, such as liberal professions and network industries, have a special status from the standpoint of competition policy, as many of its rigors are not applied to them. Sometimes this leniency has legal bases, but in many other cases it is just an embedded custom.

The attitude that is to be expected in these matters is not uniform. The European Commission signals that it intends to take a much more active stance vis-à-vis professional monopolies. Strictly speaking, it would not require any empowerment or acquiescence from the Council for doing so. It is likely, however, that its activism in this matter will depend on the willingness of the member states to correct the existing problems stemming from the regulatory frameworks of the respective sectors. In other words, the prerogatives (largely unused) of the Commission may be evoked as a means to entice the member states to agree to a more comprehensive liberalization by way of sector regulation. Such an approach is already noticeable as concerns the tax regimes that are likely to generate harmful tax competition, with respect to which the Commission brandished the threat of actions against incompatible State aids in order to elicit an agreement between the member states in this matter (materialized in the Code of Conduct for Business Taxation).

As regards the network industries, if the telecommunications sector was fully integrated in the sphere to which competition rules are applied unconditionally, other sectors are the object of far more rigid positions taken by some Member States. Unlike liberal professions, where DG COMP is spearheading the liberalization initiatives, "sector" DGs are the *chefs de file* in network industries matters, and DG COMP defers to them.

From the standpoint of the decision-making level, the recent developments highlight two trends:

- the transfer of some prerogatives of the Commission towards national competition authorities, in antitrust matters;
- the conversion of an increasing number of *soft law* elements (frameworks, guidelines etc) into explicit and traditional legal acts (Commission Regulations), in State aids matters.

V. TAXATION POLICY

The taxation area entails an important particularity: it is very intimately linked to the competition conditions within the single internal market, being able to affect decisively the result of market confrontations between economic operators, yet it is regulated at Community level on the basis of rules (decisional prerogatives, decision-making procedures) which are typical for the areas with strong social features, such as health, education and culture, which are seldom (if at all) relevant for the good functioning of the internal market and where, as a result, the freedom of maneuver of EU Member States is much less limited.

Secondly, the Community-level regulation in the area of indirect taxation is much more developed than that of direct taxation, which reflects the acceptance of an assumption which more recent economic research no longer shares without reservation: that the impact of indirect taxes is automatically and fully reflected in the price of the product concerned, whereas the effects of direct taxes are absorbed in full by the producer, without passing them on to the prices of the products.

The particular features are putting their marks on a primary legislation that is both incomplete and imbalanced.

- precise rules only exist with respect to indirect taxes and they refer, on the one hand, to the prohibition of subjecting imported products to higher rates of taxation than those applicable to like domestic products *(Art.90)* and, on the other hand, to the prohibition of reimbursement, when products are exported to other member states, of internal taxes in excess of the taxes which have effectively been imposed on those goods *(Art.91)*;

- direct taxes are not mentioned by name anywhere in the text of the Treaty; the reference closest to them (because *de facto* it can now only concern direct taxation) being the request addressed to the Member States to the effect of concluding among them treaties for the avoidance of double taxation within the Community *(Art.293)*;

- adoption of Community rules in tax matters, i.e. the harmonization of national fiscal legislations, can only be done by unanimous vote in the Council.

The loopholes of the primary legislation could not be covered in spite of successive efforts made especially by the European Commission. Moderate proposals to the effect of extending the qualified majority rule to several aspects, relatively limited in scope (fight against fiscal fraud, avoidance of double non-taxation, fiscal measures destined to protect the environment) have not been accepted by Intergovernemntal Conference concluded in Nice (2000), where the opposition of Great Britain, Sweden and Ireland could not be defeated), nor do they feature in the existing draft Constitutional Treaty.

This notwithstanding, the need for "Community responses" to various problems pertaining to the taxation area is more and more obvious, as indicated by growing disagreements, publicly expressed, of some Member States with the fiscal policy options of other Member States, and by the accelerated growth of the number of taxation disputes which are referred to the European Court of Justice.

Regulating via the "secondary legislation" is very cumbersome, mainly because of the exorbitant unanimity requirement. Consequently, the classical secondary legislation in tax matters is very limited, especially as concerns direct taxes, where only a few legal acts exist, all of them in the form of Directives which, unlike regulations, are not directly applicable by the Member States, but require transposition into domestic legislation.

Under such circumstances, and given that the full exercise of the four freedoms is often dependent on the way taxation matters are dealt with, within the EU a number of non-conventional regulatory means have started to take shape in the taxation area:

♦ the recourse to non-obligatory and informal measures, such as the « Codes of conduct » agreed between the Member States at the « inter-governmental » level of the Union, rather than at its « Community level », the abidance by which is based solely on peer pressure ;

♦ ECJ jurisprudence, which becomes to an increasing extent a source of new rules in the taxation area, against the background of an increasing « activism » of the Court.

There is, also, the theoretical possibility of having recourse to the « flexibility clause » introduced by the Maastricht Treaty – the current « enhanced co-operation » provided for by Article 43-45 of the EU treaty. Even if this is a possibility of last resort, not yet used until now, one cannot rule out its invocation in the future.

None of these alternative solutions is preferable to the classical one, that of enacting traditional secondary legislation. The « enhanced co-operation » is subject to so many requirements meant to avoid transforming the obligations of a Member State into an *à la carte* menu, that it is highly unlikely to unblock the situation. The « Codes of conduct » offer no guarantees that the commitments will be honored, which can only encourage *free riding* attitudes. If these become general, then the Code will have done no good, and if not it is even possible that the Code's effect be negative, as it would have contributed to widening the disparities between the measures of the Member States, rather than to their harmonization.

The insistent recourse to the ECJ is no solution either. First, because the quality of regulation issued in this way is not optimal: the Court can do only « negative harmonization », it cannot build an *acquis* in the area. Moreover, ECJ's rulings have sometimes asymmetric effects for the Member States. Second, because we are faced with the insecurity of regulation, because the rulings are relevant for sure only to those cases in connection with which they were issued, without anything being certain as to their relevance for cases the circumstances of which are not identical, albeit very similar. Even more preoccupying are the legitimacy shortcomings of this modality: issues closely associated to national sovereignty get censored by a body which appears to be producing new rules rather than interpreting and applying impartially the existing ones. The fact that the financial stakes of these disputes have reached impressive amounts (of the order of several tens of billions EUR in a few cases) and that, « armed » with ECJ rulings, multinational companies initiate judicial proceedings before national courts asking for damages of the same order of magnitude is magnifying the legitimacy problem and shows clearly that this instrument will soon have reached its limits.[11]

V.1 The concrete examination of the main initiatives « on the table » in the taxation area

A. Harmonization of the rules of corporate income taxation

Last year, against the background of an insistent media alert concerning « delocalization », several top politicians of Western Europe has expressed their desire to see the introduction of minimum rates harmonized at the European level. The Dutch Finance Minister, Gerrit Zalm, has even suggested what that minimum rate should be: 20%. This detail is very interesting,

[11] For more detailed considerations regarding the problems stemming from the transformation of the ECJ in a lawmaker *sui generis* in taxation matters, see: Alfredo şi Prats (2002); Vanistendael (2002); Craig (2003).

for it allows us to compare, over an interval of about 30 years, the evolution of the degree of exigency in this matter. Thus, in 1975, the European Commission was initiating a draft Directive which would have established the minimum tax rate at 45%, in 1992 the « Ruding Committee » suggested a minimum rate of only 30%, while nowadays the level of ambitions has dropped even further.

As long as unanimity rules, it is very difficult to see how a decision could be taken at EU level with respect to the rate of corporate income taxation. And the extension of the qualified majority system will reach many other areas of taxation policy before integrating that of the tax rates.

B. Harmonization of the tax base for corporate income taxation

This initiative, developed in a dedicated Communication from the European Commission[12], is a very reasonable one. It aims at correcting the problems affecting in a very tangible manner the activity of European companies with transnational activities: the costs of conformation to different national taxation rules; the impossibility of cross-border loss relief; the risks of double taxation; substantial tax charges generated by cross-border restructuring operations (mergers and acquisitions); and problems generated by the measures aimed at countering "transfer prices".

The Commission explored for possible solutions, respectively:

a) Mutual recognition of the tax rules of the home state (*"Home State Taxation" - HST*): the tax base is determined according to the rules of the fiscal jurisdiction where the company's headquarters are located. No pan-EU consolidation of the tax base takes place: there are separate tax bases in each Member State where taxable activities are carried out, but they are all determined according to the same rules.

b) Common Consolidated Tax Base (*CCBT*): a new, distinct, system of determining the tax base, according to which companies would determine on a consolidated basis the amount of their taxable income. The income would be taxed according to the rates of each fiscal jurisdiction and the tax base corresponding to each jurisdiction would be determined in accordance with special rules for the apportionment of the consolidated tax base.

c) European Corporate Income Tax *(EUCIT*): managed by a new fiscal authority, levying the same tax rates over the whole territory of the EU on a pan-European tax base determined according to a single set of rules applicable within the whole EU. The proceeds of this tax would revert to the EU budget.

d) The "Old Approach"[13]: harmonization of taxation rules by setting up a sole system for determining the tax base, mandatory for all fiscal jurisdictions and replacing the national systems.

Of the four variants, the latter two do not stand any reasonable chance of being adopted: the European tax seems to be an idea still well ahead of its time, while the fiscal equivalent of the "Old Approach" is, for effectiveness roughly equivalent to that of option b), less palatable to Member States. As a result, the Commission aims at obtaining the legal

[12] *Towards an Internal Market without tax obstacles. A strategy for providing companies with a consolidated corporate tax base for their EU-wide activities*, Communication from the Commission, 23.10.2001

[13] By analogy with the methods used for the elimination of barriers to the free circulation of goods which derive from standards and technical norms.

enshrinement of the first two variants, of which the first would target primarily (if not exclusively) the SMEs, while the second would apply at least to the companies organized as "European companies" (*Societas Europaea SA*).

C. The application of the 'origin principle' for the collection of VAT

According to the "origin principle", cross-border intra-Community transactions are treated identically to the transactions carried out within national fiscal jurisdictions. Although it was repeatedly proposed by the Commission (1987, 1989, 1996), in different forms, this principle was not yet accepted by the Member States. The costs of inaction are very large in this case, because the current transition system is a compromise solution that is exceedingly complicated (it is based on checking the books of registered companies; import VAT is not charged at the border, but implicitly at the time of the next periodic VAT-return, since the importing firm cannot claim a VAT credit on a VAT-free acquisition TVA – the so-called "deferred payment system") and extremely vulnerable to fraud (export VAT must be paid in the country of destination, but this has no possibility of determining the correct tax liability absent border controls).

Since the *status quo* is unsatisfactory, and going back to the destination principle is no longer possible once border controls at intra-Community borders have disappeared, switching to the origin principle remains the only acceptable solution. One of the most delicate matters raised by the switch over to the origin principle is that of the destination of VAT revenues, because the application of the origin rule means that the tax liability is no longer directly linked to consumption. In other words, VAT revenues would no longer depend on how much a country consumes, but rather on how much it exports, this representing a radical and unacceptable paradigm change.

VI. COMMON COMMERCIAL POLICY

This is the common policy *par excellence* of the EU, the one which gave the first impulse to European economic integration. From the very beginning, it was conceived as a supranational policy, and the EC Treaty defined its co-ordinates in some detail, going as far as explicitly providing for the functioning of a special committee appointed by the Council to assist the Commission within international trade negotiations (the famous "113 Committee", re-baptized "133 Committee" following the re-numbering of the Treaty articles.

From 1 January 1970 (after the conclusion of the transition period provided by the Treaty of Rome), commercial policy became an exclusive Community competency:

- decisions in this area are no longer submitted to the approval of individual Member States;
- the common commercial policy is conducted according to « uniform principles », which all Member States must apply.

The definition of the coverage of the common commercial policy (CCP) has raised and still raises differences of opinions. The competencies of the "Community" as such (which are not to be mistaken for those of the Member States acting independently, at the governmental level) are not all-encompassing. This limitation became visible as the issue areas tackled within the multilateral trade negotiation rounds carried out under the aegis of GATT/WTO widened. The ratification of the set of WTO agreements signed in Marrakesh has led to a major confrontation between the European Commission and some Member States with respect to the distribution of competencies between the Community level and the inter-governmental level. The Opinion (no.1/1994) issued by the ECJ on that occasion marked a change of the established approach, favorable to the *implicit* extension of the Community competencies, and operated distinctions regarding competence by specific areas (services, intellectual property rights) which many find lacking in economic rationality and not conform with the internal logic of the WTO agreements submitted for ratification.

Practically, with the exception of border measures applied in the context of the Common Agricultural Policy, of the tariff measures (in the context of the Common External Tariff) and of the trade defense instruments (antidumping and countervailing measures, safeguards), one cannot say that the common commercial policy displays a flawless unitary character.

In the version pre-dating the amendments brought by the Nice Treaty, Article 133 (ex-113) of the EC Treaty provided that the common commercial policy (CCP) included « *changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies* ». The exact scope of the CCP cannot be "distilled" from the above enumeration and there are, in fact, opinions according to which this lack of precision was deliberate, reflecting the trade off between more liberal stances and the protectionist ones prevailing in different Member States as of the moment of EEC creation. Originally, an informal consensus was reached on the following interpretations:

- the provisions concern trade in goods and some related aspects, such as technical norms standards;
- export promotion is mainly the responsibility of individual Member States.

The adaptation of CCP to the trends and developments in the area of international economic relations, with continuously changing issues of predilection (import tariffs → non-

tariff barriers → measures not operating at the border ; goods → services and intellectual property rights → investments and competition), has occurred with increasing difficulty. The fact that the CCP relies in a larger measure on primary Community legislation (the Treaties) has sometimes represented a handicap from the standpoint of the adaptation to the changes in the nature of international economic relations and, implicitly, in the agenda of multilateral trade negotiations. Paradoxically, it is the very lack of precision of Article 113 which facilitated the adaptation of CCP.

The delegation of competencies in the conception and conduct of CCP can be followed at two levels:

a) in substantive matters : from the individual Member States to the « union » of member states, which express themselves collectively through the EU Council;

b) in procedural terms : from the Council to the Commission.

From the standpoint of political considerations, this virtual conflict of competencies is regarded as an important determinant of the very positive attitude of the EC towards GATT/WTO: the regulation in a multilateral framework of individual practices and of basic rules and principles concerning new areas is bound to offer valid reasons for extending the competencies of the Commission.

The advantages of delegation pertain to the superior efficiency so obtained: more coherence in policy formulation; gaining time; more authority/influence in international negotiations. In the context of external trade relations, the Commission negotiates on the bias of a mandate of the Council, which often has a very general content. As a result, the Commission acts in the negotiation process not merely on behalf of the Council, but as entity acting on the basis of its own prerogatives. The own, autonomous competence of the Commission for the negotiation and implementation of trade policy measures was acknowledged by the ECJ, which interpreted the provisions of Article 133 as pursuing the "defense of the global interest of the Community, in the context of which the particular interests of the Member States have to adjust mutually" (Delacotte 1993, p.12).

The stake of the disputes related to the coverage of the CCP consists, in fact, of the delineation of competencies in this area. The *acquis* determines if a particular issue belongs to the exclusive Community competence or to « shared » competence, or if competence rests with the Member States.

As mentioned earlier, in its Opinion of November 1994 the Court preferred to give a restrictive interpretation which, while accepting the principle of direct Community competence also outside the sphere of trade in goods, has nonetheless restricted it to cross-border movements *which do not involve the circulation of production factors*, where the principle of shared competencies between Community institutions, as well as between these and the Member States, continues to apply. Concretely:

- As regards services, it was considered that exclusive competence only exists for one of the four modes of supply of services, namely the *cross-border supply* (which nevertheless accounts for about 75% of international trade in services), and that transport services cannot be included in the coverage of the CCP.

- With respects to the intellectual property rights, it was considered that they pertain to the exclusive competence only to the extent that they are directly linked to international trade (in fact, exclusive competence was limited to measures countering the trade with counterfeit goods).

Looked at in its entirety, the ECJ jurisprudence has put forward three principles that indicate the existence of an « implicit exclusive competence » of the Community:

a) the competence of the Community is exclusive in the areas where there are common rules the implementation of which might be negatively affected by commitments made in the framework of international agreements;

b) in those areas where the Community is competent to adopt internal rules, international agreements must be negotiated and concluded on behalf of the Community;

c) the mere financial contribution of Member States within an international agreement does not submit the issues governed by that agreement to the rule of shared competence.

The ECJ Opinion of November 1994, justified as an application of the "subsidiarity principle", has formulated the principle of the "specialization of Community competencies", which limits the applicability of the principle of implicit competence to those areas where the non-exercise of the exclusive competence with respect to international agreements affects the implementation of *existing* rules. The mere possibility of issuing internal rules in a certain area, which has not been exercised, does not generate exclusive competence internationally. There are views that the Court has formulated this Opinion in such a manner as to make it palatable to the Member States and to prevent possible attempts to extend the internal competencies of the Community through the "Trojan horse" of international negotiations.

The subsequent attempts to clarify by the "legislative" way this issue had been only moderately successful.

♦ Within the Inter-governmental Conference concluded by the Treaty of Amsterdam (1997), the Commission proposed the explicit extension of the exclusive competence over the *entire* scope of issues belonging to the areas of: trade in services; intellectual property rights; and foreign direct investments. While the number of Member States opposed to this principle had dropped to a minority, the Commission's proposal was not upheld. The compromise solution adopted was to allow the Council to decide, by unanimous vote and on a case-by-case basis, that some issues be included under exclusive Community competence, without requiring Treaty changes.

♦ The Inter-governmental Conference concluded by the Treaty of Nice (2000) has instituted the « parallelism principle », which implies the alignment of the decisional mechanism for international trade negotiations to that applied for the adoption of internal rules. As a result:

a) the mandate for and the outcome of negotiations in the areas of services and intellectual property rights are subject to qualified majority voting, except the case when there are provisions « exceeding the *internal* competencies of the Community »;

b) the unanimous decision of the Council is necessary for approving the mandate for, as well as the result of, negotiations in areas where unanimity is required for adopting internal rules;

c) in the areas with respect to which the Treaty rules out harmonization (culture, audiovisual, education, health, social services), the negotiations and the approval of their results follows the rule of shared competence. .

The draft Constitutional Treaty keeps the « parallelism principle » unchanged.

The analysis of the way trade policy is formulated at EU level is rendered more complicated by the need to take into consideration the developments occurring not only at the level of Community institutions, but also at the level of the Member States, the goals of

which (themselves a result of the functioning of internal political mechanisms) may get transposed in decisions taken at the level of these institutions. The EC is the only economic grouping that is a signatory of the agreements negotiated under the aegis of the GATT/WTO, which illustrates the wide-encompassing prerogatives Community institutions in trade policy matters. The Member States, however, are at their turn signatories of these agreements, which reveal the shared character of these prerogatives.

The participation of the EC to international trade negotiations is handicapped by these institutional constraints. It is theoretically possible that, in the areas covered by WTO agreements which are not yet the object of common policies at EU level, individual Member States exercise a veto right (*de facto* or *de jure*) over the position taken in the framework of international negotiations by the Commission.[14] Even in those areas where the exclusive competence of Community institutions is clearly acknowledged, the formulation of the negotiating mandate, its endorsement by the Council and the approval of the outcome of the negotiations are complex processes which may handicap the position of the Commission during the negotiations.

The dualism between the Commission's decision power and that of the Member States has some merits, but has mainly pitfalls in the successful conduct of international trade negotiations. On the one hand, it can allow the Commission to have recourse to "simulation" in the interactions with external trade partners, as Community decision-makers invoke the constraints they are subjected to by the Member States, hence their impossibility to acquiesce to new concessions. The disadvantages are, however, larger and more numerous. In the very knowledgeable view of Hugo Paemen, who lead for a long time the Commission's negotiating team, they pertain to:

d) the difficulty for the Commission to take an active stance, since its initiatives cannot be bold enough as long as they tend to accommodate the demands (fears) of the Member State which is the most reticent in that particular area;

e) the Commission's room for maneuver is often known to its partners, as a result of the numerous comments made on the occasion of Council meetings during which the negotiating mandate is being approved;

f) the Commission has very limited freedom of movement in the last stages, the crucial ones, of the negotiations, when decisions must be promptly taken (Meunier 2000, p.105-106)

From the point of view of efficiency considerations, the sharing of competencies and (mostly importantly) the fact that the way these get shared is not clear represent handicaps.

There is, however, a strong wave of opinion which appreciates the virtues that this competence sharing has from a legitimacy perspective. This wave of opinion also regrets the *complete lack of any decisional prerogatives of the European Parliament in the area of common commercial policy*. Until now, in spite of increasingly pressing initiatives originating in the parliament itself, its formal involvement in the formulation of common commercial policy was avoided, but the matter will be certainly put back on the agenda if the current draft Constitutional Treaty falls to get adopted, and its rejection comes to be "read" as a sanctioning of the "democratic deficit".

[14] Such an attitude, however, would run counter to the "obligation of co-operation" with Community institutions that falls upon the Member States participating in international economic organizations, which was explicitly mentioned in the (now cancelled) Article 116 of the EC Treaty, but is covered in Article 33 of the EU Treaty. Cf. Leal-Arcas (2004)

The relative lack of transparency of the decision-making process, which is strongly marked by the "diplomatic ethos" of the debates within the "133 Committee", coupled with the very marginal influence exerted on this process by the only elected Community body (the European Parliament) and with the increasing criticisms of the Commission's lack of representativity have made the common commercial policy a special target of all critics of the "democratic deficit". Perversely, this generated increased possibilities of influencing the decision-making process by particular groups of interest. The Commission has begun to cultivate with some insistence the "consultation" processes with various interest groups, that it had integrated into its own decision-making processes, and it developed over time a culture of opening and availability towards their actions. Yet, since ready made interest groups tend to be carrying parochial interests, the aspiration for more democracy can easily lead to enhanced receptivity to protectionist demands.

The absence of the European Parliament from the institutional framework of the CCP means that decision-making within the Council is the only "legislative engine" of the EU in this area. Decisions are taken on the basis of formal voting rules, improved by the Single European Act of 1986, which put an end to the so-called "Luxembourg compromise" of 1966, whereby each Member State could claim "national interest" in order to block some decisions.

The « classical » areas of CCP, as well as those attributed explicitly to CCP by Opinion 1/1994, are the object of qualified majority voting. The unanimity rule applies to the other cases. The draft Constitutional Treaty would restrict the scope of the unanimity rule in audiovisual and cultural matters to only those aspects that could limit linguistic and cultural diversity.

Beginning with 1995, some decisions made within the framework of the CCP, namely those linked to the use of the "trade defense instruments", are taken by simple majority, this less demanding threshold representing the "price" paid for extracting an unanimous agreement for the ratification of the "Uruguay Round" agreements. The decision making process was rendered even more accessible to protection seekers by the changes operated in March 2004 to the Regulations concerning the trade defense instruments, according to which the measures proposed by the Commission (which, in the vast majority of cases, concern the institution of restrictions) will be deemed adopted if no majority exists against them.

The majority voting, however, does not exclude minimalist positions (at the « lowest common denominator »), deriving from the position of the member country that is the most reluctant vis-à-vis a particular initiative. The marked preference of Member States is to adopt decisions by consensus, due to considerations linked to the alteration of the utility functions of the decision-makers: for some countries exercising their vote in the Council, the risk of upsetting a valued partner may well weigh more than the domestic benefits obtained by overcoming the objections of that partner. Nevertheless, the intransigence with which a country defends its minority position is lower when its opposition may legally be overcome by majority voting than when the country has an explicit veto right. In other words, majority voting moves the « lowest common denominator » upwards, but not up to the level that would be reached if it were to accurately reflect the relative voting strength of the competing interests.

Several analysts have tried to decipher the decision-making mechanism of the Council in CCP matters. Some authors have advanced the hypothesis of a disproportionate influence of small states relative to their voting power. Yet others have claimed the existence of a disproportionate influence of some particular member countries, the name of France being the most frequently evoked. The former assertion can rest on the fact that the number of votes

mustered by small members is proportionally larger than their weight in the population and/or the GDP of the Union. The latter hypothesis is supported mainly by anecdotal evidence, as there is no systematic research for confirming or disproving it. Some of the episodes invoked are, nevertheless, very convincing. Thus, after a first proposal of the Commission to the effect of instituting antidumping (upon the request of French producers) duties to the import of raw cotton was defeated by vote in the Council in 1997, the Commission reopened the investigation and, making use of the possibility of applying provisional duties, continued to apply measures which had been explicitly rejected by vote by the majority of the Member States (Cf. Smith 2001, p.792-3).

The majority of analysts consider that decision-making at Community level is "polarized" around two "camps", which are distinguishable by their systematic preferences for protectionism and free trade, respectively. In the first category, France is the unchallenged leader, with Italy, Greece, Spain and Portugal being the usual allies. In the other camp, Great Britain, Sweden, Holland, Denmark, Luxembourg and Ireland (but only for non-agricultural goods) are the most regular presences. It is generally admitted that the anti-protection group is sufficiently strong for blocking the most restrictive initiatives in trade policy matters.

VII. THE INSTITUTIONAL REFORM AT THE LEVEL OF THE MONETARY UNION

VII.1 The new exchange rate mechanism (ERM II)

The institutional dimension

According to the *EU Treaty*, the new member states have the obligation to participate in the Monetary Union. Said obligation entails certain requirements, the most important of which being the regarding of national economic policies as a problem of common interest and the observance of the convergence criteria from Maastricht. Though The Exchange Rate Mechanism (ERM II) is not mentioned as a mandatory stage for adopting the euro[15] currency, Article 121 in the EU Treaty defines the fulfillment of the exchange rate criterion as follows: "*the observance of the normal fluctuation margins provided for by the exchange-rate mechanism (…) for at least two years, without currency devaluation"*. Consequently, according to the official documents, the status of member of ERM II is voluntary, but, at the same time, it is a pre-condition necessary for adopting the euro currency.

The new exchange rate mechanism came into being in 1999, upon launching of the third phase of the monetary integration and marked the end of the former mechanism. Considering that ERM II is a new institution, the experience in this field cannot serve, at least for the moment, as a basis for anticipating the effects over the future members. The only country that was a member in ERM II before the entrance into the Eurosystem was Greece. However, due to its history and special conditions, the above mentioned country cannot offer many lessons for the new member states. The sole modality for anticipating the effects of the transition to the status of member of the euro area is the analysis of the potential mode of functioning of ERM II.

The main difference between the old mechanism and ERM II is one of symmetry within the system. As far as the first mechanism is concerned, none of the currencies had a special position officially, despite the fact that the system was functioning *de facto* as an area of the German currency. In contrast with the above, ERM II is *de jure* a euro area, in which the currencies of the members have, as compared to euro, a fluctuating rate around a fix central parity, and the bilateral exchange rates are flexible. The ERM II members do not independently establish the central parity as to the euro currency. Central parities are commonly agreed by the ministers for finance in the EU, the ECB and the governors of the central banks in the ERM II member states, taking into consideration the proposals of the European Commission. The fluctuation margin is the same as the one applied in the former mechanism: +/- 15% around the central parity.

The minimum term for participating to ERM II is two years subsequently to the accession to the EU. However, independently of the wishes of the new members, there should be expected that the period following the accession to the EU and the pre-accession period to the euro currency will exceed two years. Consequently, the new member states will probably pass through long periods prior to the adoption of euro. According to the European Commission, Slovakia is expected to be the first country to enter ERM II, where the above mentioned will spend at least 3 years. Poland will probably enter ERM II in 2006 and will be able to adopt the euro currency after app. 4 years, in 2010.

According to the official documents, the accession of the new states into the Euro area will take place when each of these states proves the fulfilment of the convergence criteria, the

[15] Article 1.6 of the Council' Resolution regarding ERM II.

so-called Maastricht criteria: a) an inflation rate no more than 1.5 percentage points above the average of the three countries with the lowest inflation rates in the euro area[16]; b) nominal long-term interest rates not exceeding by more than 2 percentage points those for the three countries with the lowest inflation rates; c) a budget deficit not in excess of 3 percent of each country's GDP and a gross debt to GDP ratio that does not exceed 60 percent; d) no exchange rate fluctuation beyond the fluctuation band agreed by ERM for at least two years prior to the accession.

Nevertheless, the accession into the euro area needs the decision of the Council. Consequently, to a great extent independently of the fulfilment of the convergence criteria, the adoption of the euro currency by a new state will be possible only if the old members have an interest in this. Their interest will depend on the extent to which these will be satisfied by the functioning of the exchange rate mechanism as a protection means against the negative effects entailed by the expanding of the currency area. There is a fundamental problem here: as long as the new members from Central and Eastern Europe will continue, in all likelihood, to have economic growth rates significantly higher than the old members, the enlargement of the Eurosystem will complicate more and more the implementation of a common monetary policy.

Possible scenarios regarding the functioning of ERM II

In connection with the vision of the European Central Bank regarding the functioning of ERM II, there must be emphasized a few guidelines for the specific policies in this context. First of all, the European Central Bank does not suggest a unique trajectory to be followed in view of adopting the euro currency. There is not a single strategy to be considered adaptable for all countries and there is not a single ECB policy regarding all the new member states, which means that each state must be treated as an individual case (Papademos 2004). Secondly, due to the fact that the adopting of the euro currency will take place in a multi-lateral context, each stage of the monetary integration process as well as the decisions in this respect will be made by all the member states (or at least by the member states of the euro area) together with ECB.

This vision of ECB corresponds to the realities at the national level where each central bank has already traced its own strategy regarding the adopting of the unique currency, strategy adapted function of the national economic conditions. Thus, even the terms of the objectives regarding the monetary policy and the priority of these objectives are notably different from one member state to another. Certain countries such as Estonia, Latvia, Lithuania, Cyprus and Malta have adopted as a priority the objective regarding the stabilization of the exchange rate, while Hungary, Slovakia and Slovenia - the objective regarding the stabilization of the inflationary rate[17] by accepting certain flexibility at the level of the exchange rate. Two other new member states, Czech Republic and Poland have adopted the inflationary target in a fluctuant rate exchange context. These choices are based on specific conditions of the national economy connected to the functioning of the banking system and the financial markets, the size and the degree of openness of the economy, etc.

The problems which the central banks in the new member states will confront with on the road of adopting the euro currency will depend on the choice of the above mentioned objectives and will reflect the degree to which these have been achieved. But the common

[16] The annual inflation rate in the euro area has oscillated in the latest years around 2% but it is expected to increase in the following period.

[17] The inflationary target is also the option of the National Bank of Romania

problem will be that of obtaining and maintaining the stability of prices in those economies with sustained growth rates and undergoing significant structural reforms, just like in the case of Romania. The integration process, which involves the liberalization of prices and structural adjustments, will inevitably result in inflationary pressures and valuation of the national currencies during the phase that precedes the accession to the monetary union. Moreover, the new member states will confront with pressures at the level of the budgetary deficits because of the need to increase the expenses related to the implementation of the community acquis, social policies etc. Consequently, the increase of the budgetary deficit will generate, on its turn, inflationary pressures, affecting the current account, the exchange rate and finally the exports' competitiveness. In these circumstances, there will be important for the governments of these states to avoid that anti-inflationary policies affect their competitiveness on the foreign markets.

As far as the concrete steps related to the participation to ERM II are concerned, there arise four questions:

i. Which is the optimum moment for entering the ERM II?

ii. At what level there must be stabilized the exchange rate?

iii. How wide the fluctuation band must be?

iv. How long should the participation to ERM II last?

i. The moment of entering the mechanism is not the subject of any pre-determined criterion or formal pre-conditions. As a rule, a member state may request to enter ERM II at any moment, and indeed this was the practice in the case of the new member states. Obviously, the accession and successful participation to ERM II depends on the capacity of each state to previously initiate structural reforms, liberalization and particularly fiscal strengthening. Though the stability of the exchange rate represents the main objective of the participation to ERM II, this should not be treated isolated from the other components of the monetary and fiscal policy.

ii. The establishing of an adequate exchange rate is crucial for a successful participation to ERM II. Theoretically, the central parity should reflect the evaluation of the equilibrium rate upon entering the mechanism, whose estimation is difficult enough. In order to limit the subsequent problems related to readjustments of the rate, it is essential that, before establishing the above, there is analyzed a wide range of economic indicators as well as the evolution of the exchange rate on the market during a certain period of time. Once stated, the central exchange rate must be sustainable and credible, considering the long term macro-economic policies and the possible effects of the above on the level of the export competitiveness. Also, the sustainability and credibility of the rate must be interpreted from the point of view of avoiding speculative attacks[18], too. And, in case that during the participation to ERM, there are necessary certain adjustments required by economic structural evolutions, the rate must be re-aligned[19]. In such case, no matter if there is established the central

[18] Inside ERM, central parities were the object of wide-spreading speculative attacks, as in the case of the English pound and the Italian lira in 1992. Finally the respective countries were incapable to go on sustaining the rate and, consequently, they had to leave ERM.

[19] In such cases the re-alignment of the rate is more than necessary and is used to avoid future perturbations. The two examples in this respect are Greece and Ireland.

exchange rate or there is analyzed the opportunity of re-alignments, the decisions shall be based on an agreement between all parties involved.

iii. As far as the amplitude of the fluctuation band is concerned, this can be established at inferior levels as compared to the standard one, provided that an agreement is reached between the entities involved. Such decisions are taken in connection with each and every case but they are considered exceptional and, in reality, they are possible only in the final phase of the participation to ERM, as in Denmark's case.

iv. As far as the participation period to ERM II is concerned there are no restrictions either, beside the two-year minimum limit. Certain countries have already expressed their intention to adopt the unique currency immediately after the expiry of the two-year period, but the European Central Bank recommends longer periods especially for those countries that were confronted with a striking instability of the rate in the past. As the adopting of the euro currency involves the loss of control over the monetary policy and the exchange rate at the national level, the transition period specific to ERM should lead to strengthening of alternative economic policy mechanisms.

Starting from these considerations, there have been elaborated studies outlining various scenarios regarding the participation of the new member states in ERM II. Thus, the previsions converge to the vision according to which while states like Poland, Czech Republic and Hungary will not adopt the unique currency before 2010, a few of the smaller countries in Central and Eastern Europe have all the chances to become members of the euro area in 2007. Among these countries: Estonia, Latvia and Slovenia, countries which have already fulfilled almost all the criteria from Maastricht: the budgetary deficit is below 3%, the total public debt is well below the allowed level of 60% of the GDP, interest rates are below 5.2% and the exchange rate is stable. All the three countries mentioned above have adopted the currency council, which allowed them to easily obtain a fluctuation of the exchange rate inside the permitted fluctuation band, namely +/- 15%. Only as far as inflation rate is concerned, there are currently certain deviations from the maximum permitted level of 2.4% but these are expected to be eliminated by the second half of the year 2006, which will allow these countries to adopt the Euro currency in 2007.

As far as Poland, Czech Republic and Hungary are concerned, the delay in adopting the euro currency will be due especially to the slow progress on the road of budgetary consolidation in these countries. Though the *Stability and Growth Pact*[20] has been revised in order to allow the partial exclusion from the budgetary deficit calculation of the costs related to the reform of the pension system, the above three countries will surpass the 3% limit in 2005 and will continue to obtain poor results with regard to the decrease of the budgetary deficit below this limit. Moreover, the chances to promote governmental actions in this respect are reduced considering the perspectives of the parliamentary elections in the next years. Slovakia occupies an intermediary position between the two groups and it is expected to enter the Exchange Rate Mechanism II in 2006 and the euro area in 2009 (Kager 2005).

[20] *The Stability and Growth Pact* establishes the limit of 3% as a maximum permitted level for the budgetary deficit.

VII.2 Romania and the euro currency

The perspectives of adhesion to the Eurosystem

Romania's accession to the EU on January 1, 2007 imposes the considering of a scenario for adopting the euro currency within a reasonable period of time subsequently to the moment of accession.

According to the previsions of the National Bank of Romania, our country will be able to adopt the euro currency during the interval 2012–2014 (Isărescu 2005), the period 2010-2012 being to be dedicated to the participation in ERM II.

As shown above, under the conditions in which the new member states are forced to participate to the monetary union, the EU Treaty stipulates the prior observance of certain nominal convergence criteria. Besides the nominal convergence criteria, the adopting of the euro currency also presupposes the observance of certain implicit real convergence criteria related to reduction of the discrepancy between the incomes per inhabitant, conditioned by the increase of productivity and the convergence of relative prices.

However, there should be stated that the evaluation of the real convergence is rather the objective of political interpretation considering that there is no precise economic definition for this phenomenon and no standard set of criteria for its evaluation. Though the income per inhabitant is used for emphasizing the differences in economic structure between countries, there is no evidence that such differences are connected to certain evolutions of inflation and exchange rate. Based on this observation, there have been formulated criticisms with regard to the thesis according to which the poorer candidate states should spend more time in the Exchange Rate Mechanism in order for their low level of economic development not to induce perturbations at the level of inflation and exchange rate subsequently to the accession to the monetary union.

In the circumstances in which most of the 10 countries that adhered to the EU on May 1, 2004 and especially Poland[21], Czech Republic, Slovakia and Hungary are interested in adopting the euro currency as fast as possible, in Romania's case there will be interesting to analyze the calendar of its entering into the euro area in order to formulate a strategy adapted to the concrete evolution conditions of the Eurosystem. Yet, beyond the coordinates of the European integration and the aspiration of the new states to adopt the euro currency, this will be first of all conditioned by the capacity to administrate the problems related to the functioning of a currency area with 27 members. Two of these problems are presently the concern of the European Central Bank and the current member states of the euro area: the first problem regards the asymmetry of shocks and the second the institutional reform associated to the enlargement of the Eurosystem.

The concerns related to shocks asymmetry refer to the fact that during various periods or even systematically, in certain countries from the euro area there may be economic growth and inflationary pressures, while in others there may occur deflationary tendencies. This situation, present at a relatively reduced scale even at this moment[22], creates difficulties in formulating and implementing the monetary policy. Consequently, the perspective of adopting the euro currency by the new member states and the enlargement of the euro area feed on the one hand the debate regarding the optimum currency area and on the other hand

[21] Poland expressed its wish to be the first of the new members to adopt the euro currency, even in a unilateral manner. However, according to current estimations, the most realist horizon seems to be 2009.

[22] This year, for instance, it is expected a growth of below 0.5% in Germany, while Spain will probably register a growth of over 3%.

the concerns related to the capacity of the new states to fulfill the accession requirements placed by the Eurosystem.

Can Romania be part of the optimum currency area?

Recent research (Grauwe 2004) on the 27[23] states that could be part in the future of the euro area shows on the one hand that in countries like France, Germany or Italy there is a good correlation of shocks with the ones from the euro area, but on the other hand the correlation of shocks between the Central European countries (except for Hungary and Estonia) and the countries from the euro area is reduced. For many of them, like Lithuania, Latvia, Czech Republic, Slovenia and Slovakia, the correlation is negative, which means that it is very possible that once acceding into the Euro area, these states find themselves in different phases of the economic cycle as compared to the other members.

For Romania, the correlation is very close to zero. These studies show that, at least theoretically, the adopting of the euro currency by new states will not lead to an optimum currency area.

Another criterion which is taken into consideration when defining the currency area and, consequently, when evaluating the feasibility of a Eurosystem that should gradually include the new member states, is the degree of commercial openness. This calculated on the basis of the share of the trade with the EU in the commercial balance and based on the percentage represented by the exports to EU in the GDP. For instance, for countries like Belgium, Slovakia, Estonia and Czech Republic this percentage is over 50%, which shows an important openness to the EU. For Romania, the percentage is 27% and the EU share in the foreign trade is 60%. For most of the Central European countries, the commercial openness is big enough so as to qualify them for the status of member of the optimum currency area. This is used by the above as an argument for accelerating the adopting of the euro currency. Moreover, even if at the chapter related to shocks the present situation does not justify the entering into the Eurosystem, the candidate states are invoking the fact that euro adopting will create stabilization and adjustment effects which on their turn will increase the degree of convergence and correlation of shocks.

The positive effects of adopting the unique currency on the economies of states like Poland or Czech Republic have been evaluated as being net and indisputable. This fact justifies the intense efforts made by these states in order to convince the members of the euro area of their capacity to adopt the unique currency. Poland even threatened to unilaterally adopt the euro currency in case it will be hindered in this respect or the process lasts too long. However, while the positive effects for the new states are obvious, for the current members of the euro area the enlargement of the system does not seem to bring the same advantages. In a currency area with 27 members it will be less probable that the monetary policy decisions will be adapted to the economic conditions in the current member states. When these decisions will be based on average economic indicators of the future euro area and the number of the members having the right to vote in the board of directors of the ECB will increase, it will be more difficult to adapt the interest rates established by the European Central Bank to the economic conditions in each country. This explains the resistance and prudence of the current members of the euro area towards the adopting of the unique currency by the new states. The consequences of this attitude are on the one hand the strict applying of the convergence criteria and on the other hand the concentration on the adopting of a new vote system inside ECB.

[23] The current member states of the EU plus Romania and Bulgaria. The euro area is presently composed of the states in the EU save for the Great Britain, Denmark and Sweden.

For Romania the advantages of adopting the euro currency are obvious from the point of view of the degree of commercial openness towards UE. As far as the correlation of shocks is concerned, even if at present this is almost null, it is very likely that in the following years the situation might evolve, especially as a result of the accession of the new states, and subsequently as a result of adopting of the euro currency by these states. On the other hand, the policy of the National Bank of Romania regarding the reducing of the structural disequilibrium in economy will create the favourable conditions for an increase of Romania's capacity to adopt the euro currency. The disadvantages, just like in the case of the other states, will be connected to the loss of autonomy in establishing and implementing the monetary policy and the exchange rate. As far as the monetary policy is concerned, and more precisely the interest rate policy, the difficulties will be the most significant due to the poor correlation with the economic cycles in the EU. As to the exchange rate, the introduction of RON is expected to bring on long term a stabilization of the leu/euro exchange rate, which will allow on the one hand the fulfillment of the convergence criteria in this respect and on the other hand the strengthening of Romania's capacity of entering the exchange rate mechanism.

VII.3 The reform of the decisional mechanism as part of the European Central Bank

The proposal to reform the vote system in the Board of Directors Director

The engagement of the new member states to adopt the unique currency generated, even before the enlargement moment, strong discussions in connection with the institutional reform inside the Eurosystem. The main problem in this respect was related to maintaining the efficiency of the decisional mechanism of the monetary policy after the enlargement of the Union. The accession of the new members has major implications for the institutional reform especially at the level of the Board of Directors of the ECB, the most important decisional body inside the Eurosystem. On long term, as the unique currency will be adopted by the new member states, the number of members of the Board of Directors will raise significantly, which creates the need of an alteration of the vote system.

As a result of the reforms adopted by the European Council in March 2003, there has been reached the conclusion that after the enlargement of the euro area too, all members will have the right to intervene in all the meetings of the Board of Directors of ECB. Nevertheless, beside the seven executive members with permanent right to vote, only 15 governors of national banks will be eligible to vote. The right to vote will be subject to a mechanism of rotation between the members. To this purpose, the member states will be divided in group's function of the GDP level and the dimensions of their financial markets[24]. Starting from the moment when the 16-th member will adhere to the euro area there will be proceeded to the

[24] More precisely, the indicator that will be the basis of these groups contains two components: 1) the gross domestic product at the market prices and 2) the aggregate balance of the financial institutions in the member states. The economic weight of a state, reflected in the GDP level, is an adequate component considering that the impact of the monetary policy decisions is higher in countries with bigger economies. At the same time, the dimension of the financial sector of a member state is relevant for the decisions of the central bank, as long as the actors involved in the monetary policy belong to this sector. When calculating the composite index, a percentage of 5/6 is granted for GDP and one of 1/6 for the size of the financial sector.

applying of the rotation system based on two groups. Once the number of the members in the euro area reaches 22, there will be formed three groups, based on the same criteria.

In both scenarios, the first group will include 5 members that will be assigned 4 votes. The members of the second group, representing half of the members of the Monetary Union, will be assigned 8 votes, while the third group, formed of the rest of the countries, will benefit of 3 votes. In this way, though all members can participate to discussions and contribute to the forming of opinions in the Board of Directors, the number of the ones who decide will remain constant. Moreover, in this way there will be maintained the power balance between the executive members on the one hand and the governors of the national banks on the other hand, as per the provisions of the *Maastricht Treaty*.

When there will be reached the euro area with 27 members, in the first group there will be the governors of the central banks in Germany, Great Britain[25], France, Italy and Spain. The above mentioned will benefit of a vote frequency of 80%. In the second group will enter the governors from the Netherlands, Belgium, Sweden, Austria, Denmark, Poland, Finland, Greece, Portugal, Ireland, Luxembourg, Czech Republic, Hungary and Romania. These will vote 8 times out of 14, which equals a frequency of 57%. The third group, which will include the rest of the governors, will have a vote frequency of 37, 5%.

Consequences of adopting the new system

As mentioned above, the Council has adopted the proposal of the European Central Bank, this decision being made as a result of a positive opinion of the Commission[26] a and despite the rejection of the European Parliament, which, however, had only a consultative role, the Council mentioned that the adopting of this voting system was demanded by the specific conditions regarding decision making in the Board of Directors of ECB. Consequently, this will not represent a model and will not become a precedent for other institutions. This specification met the concerns of the Parliament in particular but not only, motivated especially by the weak reflecting of the democratic representation principle in the new voting system of ECB.

Definitely, the Parliament expressed its criticism with regard to the excessive complexity of the rotation system and the share within the three groups defined in the new voting system. Moreover, there was stated that such system is not justified as long as there is a fundamental principle according to which all the governors of the central banks in the euro area have full and unrestricted voting rights and the decisions of the ECB are made by simple majority.

The Parliament has requested a re-thinking of the voting model and a distinction between the operational and strategic decisions in the future. Operational decisions should be made by the permanent members, whose number could rise to 9 in these circumstances, while strategic decisions and decisions regarding the general orientation of the monetary policy should be made with double majority, based on the size of the population and the composite indicator which takes into account the dimensions of economy and of the financial sector.

[25] The Great Britain, Denmark and Sweden, although EU members, are not part of the euro area yet. They have been included in this scenario as they are expected to adopt the unique currency too.

[26] On February 19, after app. 2 weeks since ECB submitted the proposal, The Commission issued a press release communicating that 'the proposed model represents a step forward on the road of ensuring the efficiency of the decision making process inside ECB in the circumstances of the enlargement perspective' but still went on mentioning the importance of the population principle.

Another problem is connected to the extent to which the vote of each governor follows the objectives of the monetary policy at the level of the euro area on the whole and not from the point of view of a national economy. Past experience shows that the appointing of the governors of the central banks is not without political influences at the national level, which means that it is unlikely for the vote in the Board of Directors of ECB to be free of any consideration of the national interest to the detriment of the European one[27]. Even in connection with the appointment of the permanent members that have a longer mandate than the governors of the national banks and, consequently, should be above current national interests, there are sometimes suspicions of subjectivism in formulating the opinions regarding monetary policy. But as long as the discussions from the meetings of the Board of Directors are kept secret, the decisions being communicated to the public only by a press conference, it is unlikely to reach such a transparency level as to eliminate the influence of the national factor.

But now the concerns and criticism of the Parliament are acquiring new valences considering the rejection of the European Constitution because of the referendums in France and the Netherlands. This situation placed under a question mark both the viability of certain complex decision making systems and the functioning of institutions with a weak representation. In these circumstances, though the chances to revise the voting model inside ECB are extremely reduced, the re-opening of the debate regarding the opportunity to introduce the population criterion in the calculation of the shares and the reconfiguration of the third groups of the Board of Directors is not excluded.

[27] There are studies in which there has been simulated the correlation between certain economic conditions at a national level and the positions of the governors of the central banks in the meetings of the Board of Directors of ECB. In the absence of any information regarding the real positions, there has been started from the hypothesis according to which the inflation rate at the national level determines the position of the governor from the respective country. The result of the simulation was that if each governor were voted according to the national interest, the result of the vote would be identical with the real one, during the studied period, between 1999 and 2003.

VIII. THE INSTITUTIONAL REFORM AT THE LEVEL OF THE EU BUDGET

VIII.1 European budget and the priorities of the Union

The necessity of a radical reform

During the last years and especially after the negative vote for the *European Constitution* pronounced in the two referendums mentioned before, there has been reached the conclusion that the EU budget no longer reflects the current realities and the strategic objectives of the Union. In the past, at the back of the agricultural subventions and structural funds, still dominating the budget of the Union, there was on the one hand the perception that Europe must ensure its means of subsistence from own resources and on the other hand the necessity that poorer states are offered a financial motivation in order to adhere to the EU.

At present, neither of the two hypotheses is still valid and, consequently, there is necessary a radical reform of the Union's budget in order for this to reflect the priorities of the European citizens. Within the current expense structure, over 40% of the funds are allocated to agriculture, a sector in continuous decline. At the same time, research related expenses, research being the main factor of productivity growth, are much too reduced, the same as the expenses for ensuring internal and external security requested by public opinion.

Despite all these, a budgetary reform is almost impossible as long as the decision in this respect is made as a result of intergovernmental negotiations inside the European Council, where the representatives of the member states are first and foremost concerned with national interest and, implicitly, with the net balance of their contribution to European budget. Consequently, the necessity of a reform does not refer only to the budget in itself – with its structure of revenues and expenses – but also the decision-making mechanism at this level. Only in the circumstances of a new procedure meant to favour the promoting of the European interest, it can be reached an optimum budget. A solution in this respect would be to grant the European Parliament, the institution that directly represents the European citizens, the main role in making the decision regarding the budget structure, while the European Council should be granted the role of controlling the excessive expenses. It is interesting to observe that an evolution in this direction is theoretically possible even in the current legal frame, if the Parliament uses its *veto* right for ensuring a better allocation of the funds.

Yet this scenario is unlikely considering that there is a powerful political inertia in maintaining the current budgetary mechanisms which are used rather as instruments of funds redistribution between the member states than instruments for achieving the common objectives. The decisions regarding the maximum ceilings and the allocation of expenses on different chapters in the budget are presented in the Multi-annual Financial Perspectives for a 7-month period. Moreover, the decisions regarding the financing of the agricultural sector and other multi-annual programs are often made beyond normal budgetary procedures and have different time horizons. The negotiations regarding the Financial Perspectives 2007-2013, which failed during the European *summit of June* 2005[28], did not succeed in dealing with these problems. As far as agriculture is concerned, there is even a political agreement between France and Germany which decided in a bilateral arrangement in 2002 not to proceed to a budgetary reform at this chapter and even to block it at the European level up to 2013.

[28] The negotiations took place during the Luxembourg chairmanship and failed because of the veto imposed by the Great Britain, Sweden, the Netherlands, Spain and Finland.

In these circumstances, the proposal of the European Commission to increase the contributions to the European budget up to 1.24% of GDP may lead to an unsustainable increase of the national contributions, without a significant positive impact on the community policies. Starting from this premise, the exorbitant level of agricultural subventions implies the fact that the intention of an increasing number of member states to limit the contribution to the community budget to 1% of GDP inevitably leads to a diminishing of structural funds. This situation will certainly generate separation and strain between the old beneficiaries of the funds and the new member states and, finally, there will be little possibilities of re-allocating the financial resources to research, education, institutional reform, domains which form the basis of economic growth.

Adapting the budget to the necessities of the Union

However, the rejection of the Constitutional Treaty as a result of the referendums in France and the Netherlands may be an occasion to reconsider the necessities of a budgetary reform. The budget needs a reconfiguration both of its revenues and expenses structure and of its decision making procedures, so as to efficiently fulfill community policies. In this respect, the sole modality to involve the citizens in the methods used for allocating financial resources is that of granting the Parliament the main role in the process of budgetary decision making, by complying with the appropriate rules for avoiding excessive expenses.

Another aspect that must be discussed is that related to the financial resources necessary for fulfilling community objectives. The first historical objective of the EU was to open the markets and integrate national economies So far, economic integration was carried out mainly for goods market but not for services market too. This integration process mainly aims the legislative level and does not require special resources, except for the actions for strengthening the supervision and application of laws at the national level. The adopting of the unique currency was also performed and the *Maastricht Treaty* indicates the fact that the monetary union may be administered without a significant central budget, as long as the fiscal policy was clearly left in the competence of the national states. Even if stabilization policies are incumbent on the Union, they do not require special expenses either, a co-ordination of the national budgets[29] being enough.

As far as common agricultural policy is concerned (CAP), there is an agreement according to which all subsidies and price compensations should be gradually eliminated, in order to make room to direct payments for farmers and rural development programs. Moreover it is clear that the member states are in a better position than the EU for applying such an agricultural policy. There should be also mentioned that agricultural subventions represent major disturbing factors in the European economy and a clear obstacle in implementing Lisbon agenda and liberalisation actions. The new member states are susceptible of suffering the most if the current subventions levels will be maintained, considering that agricultural policy stimulates the increase of prices and of the revenues in agriculture, thus discouraging industry and services investments, where the potential for technical progress and productivity growth is higher. Agricultural subventions have always been a major source of strain between the member states, due to the inequalities in allotting the funds and to their impact on the net balance in the relation with the EU. As a result, the gradual elimination of the subventions as part of the CAP could reinstate an environment

[29] Asymmetrical shocks could be, for instance, counteracted by establishing a common insurance fund that will offer financial assistance to the affected countries.

characterized by solidarity and communion of interests in the future negotiations of the budget.

At the same time with the launching of the internal market program and the outlining of the plans for creating the Monetary Union, there was accredited the idea that by the EU budget there should have been compensated the poorer states as a result of their assuming the risk of exposure to the competition in the European plan. Also, the applying of the budgetary discipline rules by the above mentioned requires certain compensations. Consequently, there has been found the solution of the structural funds, which represented the concrete expression of solidarity between the member states[30]. As a consequence, the financing at this level will be maintained, but it must be accepted that this financial aid cannot go on forever and should be diminished as the life standard in the new member states increases as a result of the integration. In this respect, the eligibility criteria must be objective and transparent and ought to include motivation methods for the ones that obtain higher performances.

The only domain in which the subsidies granted to a state may have an impact at a European level is research. As long as research is a key factor of economic growth, an increase of the European funds designated to research institutes and excellence centres is justified. However, the increase of expenses in this field should aim the correlation with the growth of productivity. The current system in which the priorities of The *Framework programs*[31] are the result of political negotiations in the Council and the funds are distributed by the European Commission, leads to a useless increase of the priorities number and a fragmentation of the granted amounts. Yet, it is obvious that research at a European level cannot achieve the objectives aimed by financing from European funds.[32]

In conclusion, the reform in the budgetary domain should aim a major objective: the expenses from the EU budget are justified only if they serve a European public good. A complete reform needs to finally lead to a total reflection of this principle in the budget structure. Consequently, there will no longer be a justification for the subvention with a significant part of the community budget of a sector in decline like agriculture. The reasons treated so far lead to the conclusion that there is not necessary a major increase of European financial resources. A percentage point from GDP is enough for allowing the creation of an efficient budget.

VIII.2 Possible scenarios of the reform

European objectives and national stakes

While an alteration of the funds volume might not be necessary, a reform of the decision-making procedures is necessary. At present they induce much inadvertence and many anachronisms in the budget structure. The Council approves this by unanimity of votes, at the proposal of the Commission and after consulting the Parliament. The final decision is then proposed to the member states "*in agreement with national constitutional principles*".[33] The decisions regarding annual budget are made by the Council by qualified majority and by the Parliament by absolute majority[34]; The Council has the last word with regard to the "*mandatory*" expenses, including the GDP ones, and the Parliament the last word with regard

[30] According to the principles of the Maastricht Treaty.
[31] *Framework Programme 6* and its successor *Framework Programme 7*.
[32] Over 90% of the funds assigned to research come from national sources.
[33] Art. 269 of the Constitutional Treaty.
[34] Art. 272.

to the rest of the budget. The Commission proposes the budget project but it plays no decisional part though it is responsible with budgetary execution.

The Financial Perspectives System was approved at the end of the 80s, after long disputes between the Council and the Parliament. Within this system, the Council outlines the financial perspectives and the main expense chapters for a period comprised between 5 and 7 years. The Commission formulates the initial proposal but the Council can modify it at any time. The parliament negotiates with the Council and then decides with simple majority to accept or to reject the final formula. However, in practice the parliament has a reduced influence on the amounts from the main chapters like GDP and the structural funds.

This system contains three major disadvantages:

- Firstly, the annual budget, which is the instrument having the value of a law as per the Treaty, is not the real framework of the budgetary decisions.
- Secondly, all significant decisions are practically made by the Council, beyond the community method and are based on inter-governmental negotiations in which each member state holds the *veto power*.
- Thirdly, the Financial Perspectives are adopted for periods that are not correlated with the legislatures of the Parliament or with the mandate of the Commission.

In conclusion, it is clear that the EU cannot dispose of a real budget as long as the decision in this respect is not made by co-decision, between the Parliament and the Council, on the basis of a proposal with the value of a law from the part of the Commission. Despite all these, the decisional power of the European institutions should not be extended so as to go beyond national governs with regard to the establishing of the maximum expense thresholds. This constraint is essential considering that the European Parliament will always have the tendency to outsize the expenses at the European level. In this context there must be remembered the idea that in certain fields European interest could be better served not by increasing the budget but by other measures like favouring the competition or national policies co-ordination.

A solution would be to leave the Council the last word with regard to the total volume of the contributions, but the decision of their allotting on expense chapters to be left to the Parliament. Another useful change, which would not require alterations of the Treaty, would be the synchronizing of the reference period of the Financial Perspectives with the legislature of the Parliament so as to strengthen the connection between those decisions regarding the budget and the results of the European elections. The Financial Perspectives should have a 5 year horizon and should come into force after one year has passed from the election of the new legislative body, in order to leave sufficient time for the deliberation following the elections.

Romania and European funds

The Monitoring Report of the European Commission dated October 2005 mentions the use of the structural funds on the list of the domains of special interest: “it is in the interest of all Romanian citizens to benefit of the structural funds, especially for the major infrastructure projects, so as to create the conditions for Romania’s complete integration in the EU.” The use of these funds is also mentioned in the list of the domains that require increased efforts in relation to the financial control of the methods of spending these funds.

It is therefore a priority to adjust the administrative structures necessary mainly for the administration of agricultural subventions and structural funds after the accession moment as well as for the interaction with the competent institutions at the community level. The delays and dis-functionalities in creating the administrative capacity at this level will negatively affect not only the making of payments but also the commercial mechanisms of export and import, the obtaining of licenses etc. All these may have dramatic repercussions at the level of the agricultural sector and the other sectors in the process of development.

The situation requires more attention as at present the programs in the agricultural domain like SAPARD have not been implemented at their entire potential, being a weak capacity of funds absorption. Consequently, there is necessary an intensification of the efforts for strengthening the administrative capacity in the context of the current programs in order to be able to face the CAP requirements in the following years. The funds from the SAPARD and ISPA programs have already been used to a great extent for significant improvements of the rural infrastructure, but continuous efforts are necessary for using the funds to improve the business environment, for professional training programs etc.

For Romania, the use at the maximum potential of the existent funds should become a priority, considering that the new member states, despite the assurances received, will accept with difficulty the impact at the budgetary level of the accession of Romania and Bulgaria in 2007, just at the beginning of the period corresponding to the budgetary perspectives. Romanian and Bulgarian agricultural population represents almost the equivalent of Poland's agricultural population or half of the population increase corresponding to the enlargement with the 10 states. In these circumstances, the impact on the distribution of the financial resources for agriculture and at the level of the structural funds could be major, especially if there will be frozen the amounts on certain chapters. In conclusion, some of the states that adhered in the first wave could become interested in the delay of the accession of Romania and Bulgaria (Rollo).

The above lead to the conclusion that as far as the allocation of European funds to Romania is concerned, it will be very important to follow the modality in which the blocking majority and minority are formed inside the Council. The Constitutional Treaty stipulates that the votes share will remain unchanged until November 1, 2009. Consequently, the qualified majority will continue to be compose of the member states representing at least 60% of the population in the Union, in those fields in which the Council decides based on a proposal of the European Commission (like in the case of the budget). Though the above mentioned provision is controversial and the Constitutional Treaty was not adopted, if applied this would eliminate any blocking possibility from the part of the new member states representing 16.5% in the Union with 25 members and 21.8% in the EU 27 respectively. Even if there was imagined a coalition of the old member states that benefit in the present of the structural funds, there could not be created a blocking minority. Moreover, even a coalition of France and Italy with the states beneficiary of the cohesion funds, could not result in a blocking minority as a result of the enlargement in 2007 with Romania and Bulgaria.

IX. CONCLUSIONS

IX.1 Conclusions relevant reasons for the development of EU institutions

An increase of the number of member states to 27 or 30 may pose serious problems to the current EU institutional setting, although there are proofs that the union can still function well based on the institutional *status-quo*. It is for sure those crises as the Iraq war will pose real problems. The reason of preserving peace within the European continent seems more actual and more solid. This follows form historical experience (recall the late conflict in the former Yugoslavia) that proves the indivisibility of peace and the danger for conflict generalization irrespective of its initial location. In fact, the initial and fundamental argument for EU set up was and still is the dissipation of the conflict between France and Germany.

The reason of preserving peace within the European continent has direct consequences upon the number of member states and the implied institutional improvement has to solve the problem of very high costs entailed by a significant number of decision makers. We should note that the increased number of member states is not an argument of enlargement due to economies of scale but rather an eventual derived effect.

The democratic deficit of EU, which is perceived as a distant, costly and interfering institution, entail institutional changes that have rather perverse effects. Because the integration project belongs to political elites (the most influential theories follow such logic) citizens' direct implication may pose serious problems to completion of integration (recall pole results in France and Netherlands).

The construction of a European identity for European citizens – a fundamental condition of political integration – brings to the forefront the problem of cultural heterogeneity of Europe. Although it has an important component based on comparing costs and benefits derived from integration, without a solid cultural component (value identity) European identity will remain a very frail reality. This is even more serious a problem for Central and Eastern Europe. The construction of a European identity within the span of time given for the completion of integration by shifting it to political realm is not a feasible objective.

IX.2.1 The Social-Economic Model of the EU

Up until now there has not been identified a social-economic system agreed upon by at least a majority of European states or citizens. Different member states tend to promote, at the level of the EU, their own social-economic systems and these are very different. The establishing of a system based on deregulation, flexibility and low taxation, which is in a higher degree consistent with economic performance and would facilitate the completion of the European integration process, has just been rejected by the French and Dutch.

A system generating a high economic growth is crucial for the viability of the EU, but this is not the fundamental logic of the European integration process. This is not a surprising reality, as the main argument for the European integration is not the economic one.

IX.2.2 Federalism-Intergovernmentalism Alternatives

As in the case of the social-economic system, national states tend to promote at the European level their own political organization: centralized states promote the idea of intergovernmentalism while federal ones, as Germany, for example, promote the idea of

federalism. If the fundamental function of dissipating European conflicts must be implemented, federalism is the desirable alternative. The variant of federalism suggested by different exponents of the German elite raises though some issues.

The competitive federalism can increase the European asymmetries and will for sure have negative effects on the cultural homogenizing of Europe. Even the fragile European identity (vital for constructing federal structures) based on the costs-benefits logic will be negatively affected. On the other hand, the competitive federalism, which does not assume a centralized redistribution on a federal level, is the only one consistent with the cultural heterogeneity of the present Europe. Accepting interstate redistribution by citizens belonging to different European states, that have different identities rather than common ones, is illusory.

IX.3 The prospects for governance methods and the implications for Romania

The analysis of prospects of Community governance and their methods may be done only having in view the provisions of Constitutional Treaty and the directions of evolution for the main common policies. The European Commission, being under the fire of criticisms of European MPs, has promised to publish a White Paper on the subject of a better communication and understanding of European Constitution, but avoiding the sensitive political subjects. In this context European Parliament has to carry out the task to organize political debates and to suggest directions of action for de-blocking the situation.

One of the European MPs, who had to make ready the report of the Commission on Constitutional Problems from December 2005, deems there are 6 possible directions or scenarios. One of them has in view the *resuming of ratification process in the countries where a negative result of referendum was recorded,* but not before 2007 and not in similar political circumstances. There may be added supplementary protocols at Constitutional Treaty to mitigate the opposition of public opinion from the respective countries.

Other less plausible scenarios are: a) *selection of a few number of institutional reforms* included in the Constitution and their implementation not through amendments to EC Treaty (TEC) but by making changes of procedural regulations, inter-institutional agreements, finding new arrangements outside the classical pattern: b) *revising Nice Treaty or amending it with the most institutional provisions,* both being accomplished only by an IC, which may prove to be rather difficult and of long standing; c) *renegotiation of Constitution text* after reflection period, which would involve a new Convention and a new IC, the new text representing only a short declaration upon some principles and regulations, which may be further completed by detailed agreements on problems of non-constitutional nature.

In the context of non-involvement of European Commission in the matters related to the ratification of Constitutional Treaty and non-convincing signals on behalf of European political leaders on this subject, the debate within European Parliament on the occasion of the report presented by the Commission on Constitutional Problems from December 2005 could offer some clues and clarifications on the position of the two great political forces, Christian Democrats and Socialists. These two groups predispose, as it seems, for resuming the ratification process of Constitutional Treaty, eventually by organizing a referendum at EU level in all Member States simultaneously (probably at the same time with the future elections for European Parliament). This is the most plausible scenario on the future of European Constitution.

The researchers from the Centre for European Reform consider that the EU enlargement has determined the intensifying of Union role as an international actor, that may stronger influence the content and dynamics of global governance. However in the field of foreign policy, under the incidence of intergovernmental method, only the large Member States may play an important role, while the small states may participate in the framework of some coalitions based on enhanced cooperation. The extension of Community method in the prejudice of intergovernmental method would accentuate the risk of paralysis in an extended Union up to 30 members. The governance methods are influenced by factors like EU enlargement, relations with third countries, impact of global problems. The enlargement brings new responsibilities at the Community level on the line of insuring the stability and security of EU and its relations with neighboring states, as well as for preventing the instability risks created by underdevelopment and ineffective policies. For EU it is vital to have a better correlation between domestic security policies and external security policies, between Community method and intergovernmental method. At present there is a certain form of cooperation between police forces on each of three pillars, but in different forums and with different aims. The abolition of three pillar system would facilitate this correlation process.

The intergovernmental method is maybe more adequate for insuring a certain flexibility of European integration process and efficiency of Community governance, as the serious divergences persisting in certain fields do not allow the extension of Community method. The extension of QMV may lead to the reconciliation of national interests and increase of the efficiency of Community method, but this process has its limits. That is why the open method of coordination has good prospects to be used in sensitive policy areas, as taxation and labor market are, where insuring the unanimity may prove illusory. On the other hand 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.

For Romania the fulfillment of obligations assumed during the closing of negotiation chapters and 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 Community 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 Council of Ministers Romania's weight in voting process is not 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 will 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 and regional policies. The performance indicators and benchmarks established as compared to the best world practices for economic sectors, and also for social sectors, may have a distinct contribution to the increase of the competitiveness of Romanian economy. In the view of our future membership the enhanced cooperation may

create participation opportunities to projects regarding the deepening of integration in specific fields, but also involves assuming precise responsibilities, mainly in the field of European security and defense policy. The rapid improvement of governance at national level under the terms imposed by the requirements of Community governance methods will allow Romania to avoid the position of marginal partner, with an insignificant role within EU governance.

IX.4 Competition policy

A priori, for a country with an economic strength lower than that of numerous EU partners, a competition policy that is demanding, wide-encompassing and managed at a supranational level is to be preferred:

- because, being a *price taker* rather than a *price maker*, its possibility to manipulate competitive distortions in its own interest is limited, while the likelihood of suffering the negative effects of the distortions generated by strong economies (which are able to manipulate the market in their own interest) is higher;
- because taking into consideration the net external investment position (that is, the high proportion of foreign capital in Romanian companies and the negligible proportion of Romanian capital foreign companies), the eventual excessive profits captured by local companies would have only a marginal contribution to the increase of national wealth.

Under these conditions:

1. It is useful to maintain the strictly supranational character of State aid policy. Against a background where not even the supranational control can ensure the "depoliticization" of State aids, it is obvious that an effective control "at source", i.e. by the authorities of the State in question cannot be taken into consideration. This is why, unlike the trend apparent in the area "antitrust" area, the European Commission does not envisage a decentralization of the State aids control system in place in the EU.
2. The trend towards replacing *soft law* instruments by explicit legal acts is also positive, because it reduces the margin of interpretation of the Commission in a field that – unlike antitrust – cannot be completely insulated from political considerations. One should also encourage the steps towards the clarification of the position of the European commission (and, implicitly, of the EU as well) regarding the specific State aids issues linked to: services of general economic interest; direct taxation; and privatizations.
3. In the antirust area, the transfer of enhanced responsibilities towards national authorities elicits a positive assessment only insofar as the Commission had indeed become unable to manage alone the system, based on *ex ante* notifications of potentially anti-competitive understandings: the weakening of disciplines in this latter case is potentially more damaging than the risk of non-uniform and even biased implementation of the rules by national competition authorities (for instance, in favor of the own "national champions"). This risk is not negligible if we consider the criticisms targeted at the European Commission by countries like France on grounds that a rigid position towards the practices of some companies hampers their efforts to become stronger, and hence fitter to confront the competition coming from non-European countries.

In this same context, it is to recall the criticisms addressed to the Commission's policy of merger control by the Member States with smaller economies (mainly, the Scandinavian ones), which have complained that the small size of their national markets led to the rejection of several planned economic concentrations involving national companies, on grounds that

the resulting entities would have controlled an important part of their domestic markets. These countries considered that the Commission's approach towards economic concentrations is *de facto* discriminating against the small countries. And, since no enhanced decentralization is envisaged, the implementation of this concept only to the repression (not also the prevention) of ant-competitive practices may appear to be contrary to the interests of the small member countries.

On the other hand, it may be worth giving a closer consideration to the application of older ideas concerning the establishment of a specialized independent antitrust agency, distinct from the Commission, which would combine a dedicated mandate and appropriate resources, on the one hand, with independence and impartiality, on the other hand.

IX.5 Taxation policy

The inadequacy and even the risks posed by the alternative regulatory instruments (ECJ jurisprudence and the proliferation of *soft law* instruments) are raising serious doubts as to the rationality of keeping in place the absolute rule of unanimity in the area of taxation. The switch to qualified majority is an option which may have fewer drawbacks than the *status-quo* and, hence, has to be seriously taken into consideration.

A priori, Romania has no reason to be reticent vis-à-vis the replacement of the unanimity rule. This rule is most valuable to those states displaying extreme conditions or conditions close to the extreme among all existing Member States. Despite the signals which derive from the fact that, currently, Romania has among the lowest corporate income tax rates relative to the EU Member States Or, its interests in taxation matters are much closer of the median area: Romania shares with the countries which support the widening of tax harmonization in the EU the characteristics of relatively large country with a relatively underdeveloped financial system, which makes it more of a prospective « victim » of harmful tax competition, rather than its perpetrator; on the other hand, Romania has in common with many of the countries which oppose the narrowing down of fiscal disparities within the EU the fact that societal preference for public goods (and its availability to pay the taxes required for supplying them) is limited. Under such circumstances, it is difficult to imagine a case of a more significant importance where Romania risks being the only dissenting voice (the only situation here the existence of a veto right is really crucial). Given Romania's situation, which is close to the middle ground, it is to expect that she will very often be in a position to find a blocking minority for avoiding the introduction of rules that she would not like.

A. Harmonization of corporate income tax rates

Assuming it would be possible to decide by qualified majority voting the minimum tax rate, it is practically impossible that this level departs significantly from the 20% mentioned by the Dutch Finance Minister: its level would be set approximately at the highest level of tax among the countries composing the most likely blocking minority. If such a decision were to be taken now, this level would be very moderately binding for Romania and even – according to opinions which this author does not categorically disagree with – it might even be more appropriate taking into account the funding requirements that the public budget must accommodate. There are no reasons to believe that, as time goes by, things will change radically in this respect.

B. *Harmonization of tax bases for corporate income taxation*

Unlike the classical form of "mutual recognition", which is a very effective instrument in countering the technical barriers to trade, its fiscal variety is much more demanding.

Actually, it presupposes the transfer of the burden implied by the need to conform to a set of 25 (or 27) fiscal legislations from the level of taxpayers to that of fiscal authorities, which should have at least the ability to check whether the taxpayer from their own jurisdiction which made use of the right to use the fiscal legislation from its own country of origin does apply and interpret it correctly. For countries lacking very competent authorities which are not the place of incorporation for many transnational companies with substantial foreign activities, such as Romania's case, such a method is not appropriate.

On the other hand, because harmonization of the tax rates is a right and advantageous measure for the European business environment, it should be promoted, and the mist appropriate vehicle for this remains the "common consolidated tax base". The concrete solutions chosen for rendering this intention operational, in particular the modalities of apportioning the common base are very important. Romania's interest is to agree on a distribution key that takes into account in a larger measure production factors that are relatively abundant in Romania: employment should thus feature among the criteria used for apportioning the consolidated tax base.

C. *The application of the „origin principle" for VAT collection*

The switchover to this principle is the only reasonable option if one wishes to put a brake to a phenomenon generating an enormous waste of resources: fiscal fraud which amounts, according to the Commission's estimates, to about 8 billion EUR a year (European Commission 2000, p. 5).

Consequently, there is a need to institute are distribution system, at community level, of VAT revenues**.** Such a system could entail either a "micro" compensation, based on the documenting of intra-Community transactions, or a "macro" compensation, based on statistical data regarding aggregate consumption and intra-Community trade. The former system is more laborious and more difficult to manage, but the latter dilutes the responsibility of national fiscal administrations, because the level of collected revenues will no longer be linked to their own efforts. As long as Romania continues to record deficits in its trade balance with EU partners, and its fiscal administration will continue to be relatively inefficient, the choice of a "macro" compensation system, based mainly on production and consumption data, would be *a priori* more advantageous for her.

IX.6 Common commercial policy

The specific interests of one or another country in trade policy matters are very diverse, according to the areas concerned. Because of this, there can be countless « configurations » of the camps in contention, various alliances among Member States being done and undone repeatedly. Unlike the case of competition policy, where the characteristics of a country like Romania unambiguously point to the support of a stricter policy (hence, of a freer competition *within the EU*), the desirability of more competition from *outside the EU*, which would stem from a more liberal commercial policy, is not obvious. On the contrary, in many areas where Romania competes directly with third countries (mainly, developing countries) – such as is the case of textiles – her national interests would be better served if the degree of protection vis-à-vis third countries were higher, allowing domestic goods to capture a larger European market share and to capitalize on the possibility of charging higher prices than the world market level. Also, given its peculiar characteristics (an extended agricultural sector, and a relatively modest contribution to the EU budget), Romania has theoretically more to

gain from a Common Agricultural Policy, the more protectionist this is.[35] From this point of view, Romania does not stand to gain out of a decision process where the "blocking" capacity of Member States is limited.

To a large extent, and even fully in the "traditional" areas of trade policy, this is already an *acquis*, so that there remain only tactical action possibilities, by supporting the positions/interests of some members in exchange for their support in forming a favorable majority in the areas of own interest. A strategic option with tactical implications is that of opposing the extension of the areas of exclusive Community competence in the common commercial policy. As long as the principle of the "single undertaking" prevails within the WTO, the possibility of blocking agreement in areas not belonging to exclusive competence prevents also the reaching of agreements (in the sense of liberalization) in the areas that are sensitive for Romania. The particular characteristics of the new areas themselves are also justifying such an opposition:

- they tend to be areas of "offensive interest" (i.e., where increased external market access is sought) for the more advanced EU countries: within international trade negotiations, these are interested that the EU extracts concessions from trading partners in these fields, by "paying" them with additional market access on the EU market in the traditional areas;
- intellectual property rights are dealt with in the WTO according to a paradigm opposed to the "classical" one (i.e., not in the sense of their liberalization, but rather of their protection) and Romania – which is not and cannot be a big producer of intellectual property– would not stand to gain from strengthening and extending the protection of these rights at international level.

The disadvantages stemming for Romania from the loss of rents associated to its status of privileged supplier (vis-à-vis third parties) of the single market for some industrial products could be balanced by advantages deriving from the opening of the Community market in the services area. Putting in competition the European service producers (which will have already obtained full and unhindered access on the Romanian market by virtue of the Accession Treaty) with third party suppliers may be favorable to Romanian users, potentially resulting in lower prices and higher quality.

The issue of the extension of the prerogatives of the European Parliament is another controversial aspect. From a political economy perspective, an institution with the Parliament's characteristics is likely to generate more protectionism in the international trade relations: the decision makers tend to represent parochial interests, which can best be promoted by "bargaining" the mutual support for protectionist initiatives (the so-called *log rolling*), with the result of an overall stance that is more protectionist than the individual preferences of any decision maker. For these reasons, there is no good reason for Romania to support initiatives aiming at extending the Parliament's prerogatives.

On the other hand, it becomes more obvious that MEPs, because of being farther than national MPs from the places where decisions are taken, have a special responsiveness to the requests of the NGOs to the effect of using the CCP lever as a means of raising the environmental and social standards internationally. Romania could use such measures because, as a Member State, it would be bound anyway by Community standards (which will always be more demanding than universal standards), and if similar standards were to apply

[35] This assertion should be qualified in view of the fact that a "too" generous level of agricultural subsidies risks severely distorting the allocation of resources within the national economy, diverting them from utilizations which would be more productive and, certainly, more compatible with the country's "natural" comparative advantage, not with the "artificial" one, bound to disappear as the CAP changes

to other (developing) countries, a diversion of trade flows would likely occur to Romania's advantage. This latter consideration might justify a favorable position of Romania with respect to the more active involvement of the European Parliament in the formulation of the common commercial policy.

Finally, because the Council's decisions in trade policy matters are taken on the occasion of the meetings attended by the Ministers of Foreign Affairs (the General Affairs Council), a transfer of domestic competencies in trade policy matters to the Ministry of Foreign Affairs would be very useful, since it would allow the overcoming of a co-ordination deficit that is more present in the Romanian public administration than in many EU Member States. Moreover, the MFA has exercised such prerogatives in 2001 and part of 2002, without a drop of the quality of the Romanian commercial policy being noticeable in any other eyes than those of the vectors of very particular interests, only rarely and accidentally convergent with the general interest, which is collectively expressing themselves through the lobby vehicle called ANEIR.

IX.7 The institutional reform at the level of the Monetary Union

The participation of the new member states in ERM II, as a precondition of adopting the euro currency, is in principle meant to lead to a convergence between the economic cycle of the above and the ones in the euro area. However, the observance of the Maastricht criteria which evaluate the degree of convergence of the candidates to the Monetary Union as compared to the member states will be difficult and will require in most of the cases the extension of the transition period for no less than 2 years. This situation will be generated first and foremost by the fact that, during the enlargement, the euro area will become less and less an optimum currency area, which will make difficult the formulation of a monetary policy adequate for all members. Moreover, the structural reforms and the costs of accession will generate inflationary pressures, valuations of the national currencies and increases of the budgetary deficit in the countries that are on the verge of entering the Eurosystem. To these inflationary pressures will also contribute the high economic growth rates in most of these countries, which will maintain high levels of aggregate consumption and request. All these will have repercussions on the exchange rate, which will be the essential element upon adopting the euro currency.

In these circumstances it will be difficult to establish and maintain a fix central parity during the participation to ERM. The central parity and subsequently the exchange rate, with which each country will enter the euro area, must be sustainable on long term, both from the point of view of the economic policies and at the level of the export competitiveness, which entails a compromise between anti-inflationary policies and the policies meant to stimulate the export. During the participation in ERM there will be perfected the macro-economic mechanisms which will allow the renunciation to the autonomy of the monetary policy inherent to the adopting of the unique currency.

Once the new members enter the Eurosystem, it will become imperious the applying of the new decisional mechanism inside ECB and the passing to the new voting system based on the rotation of the members divided into three groups. Romania will be the last of the second group and will dispose of a vote frequency of 57% as compared to 80% for the states in the first group and respectively 37.5% for the ones in the third group. The criticisms of this system have not increased so far the chances of revising the voting model, but there is not excluded the re-opening of the debate on the opportunity of introducing the population criterion when calculating the shares and reconfiguring the three groups of the Board of

Directors. In this case Romania would acquire a more important share but it will not succeed in entering the first group, which means that in terms of voting frequency, the situation will remain unchanged as far as our country is concerned.

IX.8 The institutional reform at the level of the EU budget

The more and more accentuated inadequacy of the European budget to Union's economic conditions and necessities, lead to the conclusion that a reform is more than necessary, both at the level of the budget structure and with regard to the institutions that are the basis of the decisional mechanism at this level. The reduction of expenses with agricultural subventions and the increase of the research and development related expenses, seem to be on long term in the interest of all member states, but so far there has not been reached any political agreement in this respect, considering that agricultural subventions represent important financial sources for certain countries like France.

As far as Romania is concerned, it is unlikely that the planned reform of the European budget has an impact on the chapters of the financial assistance granted from European funds. Rather it should be followed the way in which the new member states will position themselves in the discussions on the Financial Perspectives 2007-2012, considering that the accession of Romania and Bulgaria will entail a certain re-directing of the financial aid, which will have negative effects on the states which massively benefit of this aid at present. In an extreme scenario, this situation could lead even to some pressures representing delays of the accession of Romania and Bulgaria.

However, Romania's main priority is the increase of the administrative capacity for administrating European funds so as to increase the degree of using the financial resources available at present, like SAPARD and FP 6 in the cases of which there is ascertained a weak funds absorption capacity. Also, the perfecting of the administrative structures necessary for administering agricultural subventions and structural funds after the accession moment is a priority. The delays and dis-functionalities in creating the administrative capacity at this level can negatively affect not only the making of payments but also export and import commercial mechanisms, the obtaining of licenses etc.

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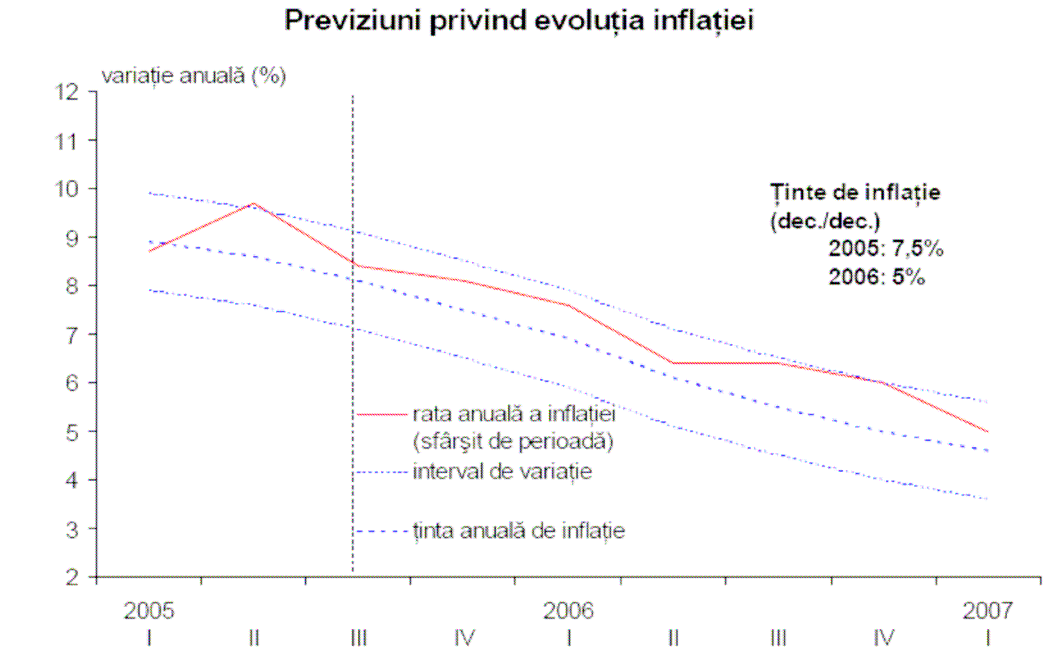
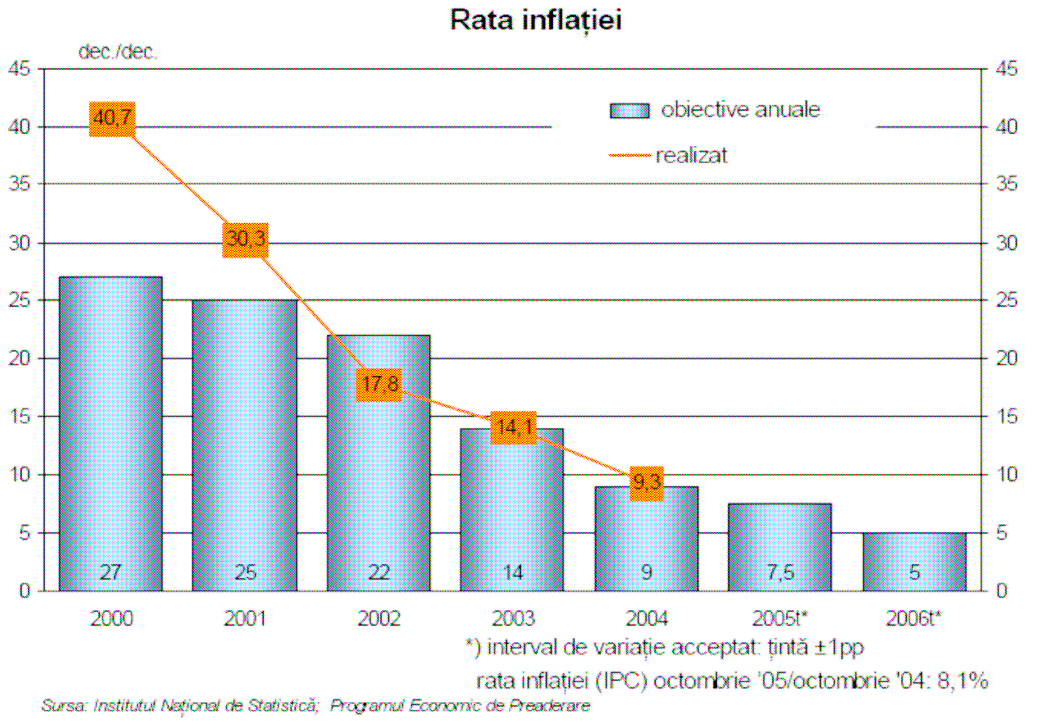
ANNEXES



Sursa: INS, BNR



Sursa: Institutul Național de Statistică; Programul Economic de Preaderare

Criteriile de la Maastricht: Indicatori de convergență nominală

Indicatori de convergență nominală	Criterii Maastricht	România	
		2004	2005
Rata inflației (medie)	<1,5 pp peste media celor mai performanți 3 membri	11,9	8,1[1)]
Ratele dobânzilor pe termen lung (procente pe an)	<2 pp peste media celor mai performanți 3 membri	…	6,75[2)]
Cursul de schimb față de euro (variație procentuală maximă față de media anuală)	+ / -15 procente	+7,9/-2,2	+3,0/-7,0[3)]
Deficitul bugetului consolidat (procente în PIB)	sub 3 la sută	-1,4[4)]	…
Datoria publică (procente în PIB)	sub 60 la sută	18,5[4)]	…

1) prognoză, 2) la emisiunea din aprilie 2005; 3) 1 ianuarie - 19 iulie 2005, 4) conform metodologiei ESA95

Sursa: EUROSTAT, Institutul Național de Statistică, Banca Națională a României

Calendar privind integrarea în zona euro

Țara	Data intrării în UE	Data intrării în ERM II (obiectiv)	Data-țintă pentru intrarea în zona euro
Polonia	2004	2006	2009-2010
Republica Cehă	2004	2006-2007	2009-2010
Slovacia	2004	2006 (prima jumătate)	2008-2009
Ungaria	2004	2007-2008	2010-2011
România	2007	2010-2012	2012-2014

Sursa: bănci centrale, BCE, Comisia Europeană

Fonduri structurale anuale pentru România

2007	1,399 M€ (2,4% GDP)
2008	1,972 M€ (3,2% GDP)
2009	2,603 M€ (4% GDP)
2010	2,603 M€ (4% GDP)
2011	2,603 M€ (4% GDP)
2012	2,603 M€ (4% GDP)
2013	2,603 M€ (4% GDP)