

IMPLICATIONS OF THE EU MULTI-LEVEL GOVERNANCE IN THE FIELD OF COMPETITION POLICY – A COMPARATIVE ANALYSIS OF THE CHARACTERISTICS OF COHESION AND COMPETITION POLICIES

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Abstract: *The paper aims at analyzing the intrinsic characteristics of the European Union and to show that these characteristics objectively require the implementation of multi-level governance. A comparative analysis of the European Union's cohesion and competition policies is presented from the point of view of these elements. Further on, given the implications of the economic crisis, the paper explores the possible translation from multi-level governance to polycentric governance and its implications for the cohesion and competition policies.*

Keywords: *European Union, multi-level governance, polycentric governance, cohesion policy, competition policy, structural changes of EU*

JEL: F12, F15

Understanding the importance, but also the limits of the multi-level governance in the field of competition policy implies studying this mechanism in the context of the general functioning mechanism of the European Union. In its turn, the functioning mechanism of the European Union can be analyzed and explained only after the understanding of the intrinsic nature of the European Union as an organization.

Beyond the multitude of definitions, at a fundamental level the European Union can be perceived as:

- *an organization*, because it has a number of members, a statute of functioning and a behaviour as an autonomous entity in its relations with third parties;

- *an organization with an inter-state character*, because it is established by states which are members of the United Nations Organization, entities which therefore have their statute recognized worldwide. The inter-state character should not be missed for the inter-national character. If one uses a rigorous approach, the notion "inter-state" refers to relations of any nature among states, while the notion "inter-national" refers to relations of any nature among nations¹. If we take into account these aspects it is clear that the European Union is an organization formed by Member States, not by nations, at least because some of the Member States are multi-national (this aspect is evident in the case of Belgium

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¹ In order to underline this aspect we can think of the meaning of the expression "international relations between Russian Federation and Switzerland" as compared to the expression "inter-state relations between Russian Federation and Switzerland". The two states have been chosen in this example for the explicit purpose of underlining the difference between state and nation, both of them being multinational states.

which was confronted in 2010 with the real risk of disintegration because of national criteria, namely the tensions between Flemish and Walloons, but also the case of Spain, where there are disputes among Castilians, Catalans and Basques, of Great Britain, where there are countries under the name of United Kingdom: England, Wales, Scotland and Northern Ireland. Similar situations can also be found in other parts of the world, for instance in Canada, where the province of Quebec has explicit autonomous tendencies²). The vast majority of analyses regarding the European Union are not so rigorous in making this distinction between “inter-state” and “international” organization. As a result the terms “international” or “supranational” are used with the meaning of “inter-state” or “supra-state”.

- *an organization with elements of supra-state characteristics*, because some of the regulations at organization level have precedence over those of the member states, fact mentioned in their Constitution (the case of Romania). The supra-state characteristics do not refer only to legal aspects, whether they are relations among members or relations between members and third parties. Also, the supra-state characteristic is joined by the aspects of coordination of decisions, policies and positions of Member States, aspect which means maintaining the sovereign autonomy of decisions in certain fields but in correlation with a concerted action from the part of the Member States having as result a unitary action at organization level.

All these characteristics have caused the need for some solutions regarding the managing means for the organization

functioning, solutions which had to take into account the reality that *the European Union is more than an organization and less than a federation*.

From historical and functional considerations these solutions had to take into account at least three levels of decision, namely, the supra-state, the state and the regional levels. The existence of these three levels of decision has led to the formulation of the *subsidiarity principle* (which has tried to avoid a decision mechanism based on centralization which is specific to a federation), as well as to the so-called “*open method of coordination*” which aimed at providing a compromise between the need of unity of action at organization level and the need to recognize the decision prerogatives of the Member States for most of the decisions).

The solution to these requirements, many times contradictory, has been found in the *mechanism of multi-level governance*.

A definition of the multi-level governance mechanisms which is both concise and encompassing is the following: the relocation of some components of state authority towards levels of decision which are superior (supra-state), inferior (regional) and horizontal (based on mechanisms of consultation among states)³.

Hooghe and Marks, the researchers who have linked their name to the birth of the concept of multi-level governance, have explained the creation of this by two phenomena that characterized Europe (especially Western Europe) in the second half of XX century: on the one hand, *the European integration* which has transferred at least a part of the state authority towards European Community

² Philip Resnick, , *Ambiguous Identities: Nationalism in Multinational States*, The University of British Columbia, <http://www.politics.ubc.ca/index.php?id=3444>

³ Liesbet Hooghe, Gary Marks, , *Unraveling the Central State, But How? Types of Multi-Level Governance*, Political Science Series, no.87, Institute for Advanced Studies, Vienna, March 2003

organisms (supra-state level); on the other hand, a phenomenon of contrary sign, *the regionalization* (which did not manifest with the same intensity in all Member States) which has transferred a part of the state authority towards regional levels (sub-state level)⁴.

The multi-level governance in the community space has recognized and formalized the dissipated, dynamic and unequal character of power manifestation by means of interaction among states, community institutions and regional/local authorities. This approach has recognized the differences in the organization of authorities from Member States, has accepted the existence of a diversity of interests and has tried to provide flexibility to the decision making mechanism in the context of some issues relevant to a variable number of interested parties.

In fact, the European Commission has also characterized the European Union as being based on a multi-level governance in which each actor contributes according to its possibilities and knowledge to the success of the organization. In this multi-level type system the main challenge is to establish clear rules regarding the way in which the competences are shared and not separated⁵.

By increasing the number of participants to the decision making process the multi-level governance has initially created the impression that it would lead to reducing the role of state, at least within the community framework.

Far from this, the multi-level governance has brought with it a new approach regarding the role of states as decision

factors at community level, namely that by participating to the community decision mechanism *the member states do not diminish their role but transform it, based on the increase of the number and intensity of consultations among members, as well as between members and community institutions*⁶.

Next we are going to analyze the way in which the implementation of the multi-level governance principles within the European Union has influenced the implementation of two of the *most important community policies, namely the cohesion policy and the competition policy*.

For many decades the multi-level governance has represented the basis for *the cohesion policy* which is a redistribution mechanism aiming at reducing the disparities in development. In this context, the participation to decisions of some regional, state and community (supra-state) actors has appeared as a pre-condition to obtaining efficiency because the local needs and solutions could not be conceived on the basis of some centralized and abstract decisions.

In the field of *competition policy* the characteristics of the area of interest are very different from those of the cohesion policy. The differences between the two fields of regulation are at least the following:

- the beneficiaries of the cohesion policy are regions/areas which are less developed or which are confronted with structural issues. The competition policy has in view the whole internal market;
- the cohesion policy is, in its essence, a redistributive mechanism, while the competition policy is a normative and

⁴ Liesbet Hooghe, Gary Marks, *Multi-level Governance and European Integration*, Rowman and Littlefield Publishers, Inc., 2001

⁵ European Governance, *A White Paper*, Commission of the European Communities, COM(2001) 428 final, Brussels, 25.7.2001

⁶ Francis McGowan, *European Competition Policy as Multilevel Governance*, Sussex University, November 2000.

monitoring mechanism having a goal of general interest. From these aspects results an important difference: while the cohesion policy is, at least on short term, a zero sum game (in the sense that a finite quantity of resources is redistributed according to some rules), the competition policy is a game with a different from zero sum, even on short term (depending on the decision of the participants, the result can be more or less zero. In the second case the result is represented by the observance degree of the interests of a number as large as possible of economic actors and citizens from the European Union space);

- the cohesion policy depends on the size of the community budget and on the share of the budget allocated to cohesion, while the competition policy does not depend on the community budget, meaning that the domain of monitoring and intervention is represented by the European market which is based, to the largest extent, on the resources from the private and public sectors of the Member States, as well as on economic resources and activities belonging to third parties (like foreign investors from outside the community area);
- the real actors of the cohesion policy (those who design and coordinate the implementation of programmes) are the authorities from different levels. The real actors of the competition policy are the institutions with attributions in that field (at member state level and community level) but also the economic actors which are active in the internal market. Although one can argue that the final beneficiaries of the cohesion policy are the citizens of the European Union, a fact that may lead to a very large sphere of application and interests, we cannot overlook the significant difference between the negotiation power

of a citizen who wants a higher level of development for his/her region and the negotiation power of a company which wants to defend its interests against the possible anti-competition manifestations from the internal market;

- the cohesion policy involves an active participation of the local/regional authorities, while the competition policy does not provide for the possibility of a real implication of local authorities (with the limited exception, as sphere of application and decision power, of German lands);

- the almost exclusive field of application of the cohesion policy is the community space. The competition policy has an explicit tendency of expanding its field of application towards the world space, both by regulating the market behaviour of some global actors (like Microsoft), and by establishing agreements and cooperation activities with authorities from outside the community. Also, in the same context, the competition policy witnesses a permanent extension of international consultation and cooperation (for instance with the USA, Canada, countries from South America), including the definition of a multi-level approach at global level⁷.

As result of these differences we can highlight some important characteristics of multi-level governance in the field of competition policy which have not been explored in the classical approach.

- a) The economic actors are much more present in the competition field in the context of multi-level governance through frequent interaction with monitoring and regulating authorities, through the action of professional or business associations, the continuous formation of a dynamic competitive behaviour, adapted to the economic outlook.

⁷ Oliver Budzinsky, *The Governance of Global Competition*, Edward Elgar Publishing Inc., 2008

b) The implementation of the competition policy requirements has supported in time the strengthening of the national authorities in the respective field, their power as well as the legal basis deriving from community regulations. As a result, competition is among the very few community areas in which the accession of a country to the European Union led to the consolidation of the respective national authorities, at least in the area related to the effective implementation of community regulations⁸. According to the regulations in force the implementation of the provisions of articles 101 and 102 has to be done by the national competition authorities and national courts of law. A simple explanation of this apparent paradox is that in Europe there has not been a tradition regarding competition regulation previous to Second World War. As a result, in many Member States the implementation of the requirements deriving from competition policy was not confronted to the inertia of some pre-existing state institutions, but required the establishment or consolidation of some new or relatively new institutions according to some community regulations which maintain a central role⁹. These considerations are even more valid for the countries from Central and Eastern Europe (including Romania).

c) The globalization phenomenon raises new challenges in the field of competition, the focus being changed from mostly intra-community analyses to analyses involving extra-community actors or actors which although originate in the community space carry out a large part or most of their activity outside the

community space. A number of new phenomena (at least as dimension), such as the privatizations in Central and Eastern Europe after 1990 or state aid during the economic crisis of 2008 – 2009, have complicated even more the managing of the competition policy and increased the level of implication of the decision makers in the multi-level governance system.

d) In the context of increasing interest for the issues related to environment (the issues of global warming, exhaustion of classic reserves of raw materials and energy) or issues of social interest (public health, education, population ageing) we witness to a gradual extension of the objectives targeted by the competition policy. Thus, if the classic approach considered that the main objective of the competition policy was to secure the welfare of the consumers, nowadays there are more and more opinions that other objectives of public interest must also be taken into account in defining and implementing competition policy¹⁰. In the case of a future inclusion in the community regulations of these debates on the changing of the Regulation on the implementation of rules on competition, the multi-level governance could obtain new dimensions by including new actors from the authorities in the environment, health, labour and even civil society fields in the decision making process. In fact, after the year 2000 more debates have emerged which have analyzed new methods of governance and have proposed concepts based on polycentric governance. As recognition of the importance given to this subject, the Nobel Prize laureate for economy in 2009, Elinor Ostrom,

⁸ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance)

⁹ Manganelli A., Nicita, A., Rossi, M.A., *Multilevel Competition Policy in Europe*, University of Sienna, 2009.

¹⁰ Christopher Townley, *Article 81 EC and Public Policy*, Oxford/Portland, OR, Hart Publishing, 2009

has researched the aspects of polycentric governance, namely the ways in which common resources can be efficiently managed by those who use them rather than governments or private companies¹¹.

The comparative analysis of cohesion and competition policy from the point of view of multi-level governance also shows a very interesting effect of mutual enhancement. This effect can be expressed as follows: *because the resources allocated to the cohesion policy are limited, their granting is done based on a competition among the proposed projects and the implementation is achieved with observance of state aid principles.*

Under these circumstances, the carrying on of cohesion policy programs contributes to the establishment of a culture/mentality regarding competition and allows (at least in principle) the efficient use of funds. At the same time, the carrying on of the programs financed within the cohesion policy may also lead to a competition among regional development policies, which is a positive aspect if it is based on objective evaluations¹².

The comparative analysis of the cohesion policy and competition policy of the European Union, both seen from the point of view of multi-level governance, shows that the two policies belong to different forms of multi-level governance.

Marks and Hooghe¹³ proposed a difference between *multi-level governance of Type I* (seen as similar to federalism¹⁴ from many points of view) which implies the existence of some authorities at different

levels with universal competence in their decision at that level (community, state, region, local) and *multi-level governance of Type II* which implies the existence of authorities having competence at the level of a certain policy (one decision area) for the whole geographical area of the respective countries.

The main difference between *Type I and Type II of multi-level governance* is that of delimitation: in the first case the reference unit is the authority, characterized by well defined spheres of power and legal regulations (at state or community level); in the second case the reference unit is a certain policy which involves competences attributed according to some community regulations¹⁵. According to this interpretation the cohesion policy, through its methods of programming and implementation, can be regarded as a manifestation of multi-level governance of Type I, while the competition policy can be regarded as a manifestation of multi-level governance of Type II.

However, from a conceptual point of view multi-level governance involves forms of governance (management) which take into consideration subjects confronted with common problems. This aspect leads to a dynamic (historical) character of multi-level governance because, to the extent to which the subjects intensify in time their methods of informing and communication they also define and perceive more and more clearly their membership to a community (be that even the European citizenship) and then their common problems will be more and

¹¹ Elinor Ostrom, *Beyond Markets and States: Polycentric Governance of Complex Economic Systems*, Nobel Lecture, December 8, 2009.

¹² Arthur Benz, Anna Meincke, *Policy Competition in Multilevel Governance*, Fern Universitat in Hagen, 2006

¹³ Liesbet Hooghe, Gary Marks, *Contrasting Visions on Multi-Level Governance*, in Ian Bache and Matthew Flinders eds. *Multi-Level Governance: Interdisciplinary Perspectives*, Oxford University Press, 2003

¹⁴ Ian Bache, *Europeanization and Britain: Towards Multi-Level Governance?*, University of Sheffield, 2005.

¹⁵ Thomas Conzelmann, *Towards a New Concept of Multi-Level Governance?* University of Maastricht, September 2008.

more clearly identified and will determine a social need for solutions like those defined by multi-level governance of Type II.

For the European Union and for the Member States implicitly such an evolution will mean the orientation towards polycentric, network type power structures, in which the role of the community and state institutions will be that of providing the infrastructure for information, communication and monitoring of the observance of some inter-action rules in a way similar to the global management of the Internet network by World Wide Web Foundation¹⁶.

The above mentioned analysis may get new dimensions in the context of structural changes taking place at world and community level due to the effects of the economic crisis, effects that were felt differently by the states of the world, including the Member States of the European Union. The significant differences in the economic results obtained in the post-crisis period by the Member States of the European Union have also lead to forecasting a polycentric model of decision making. We mention here the distance taken by Germany as an economic power compared to the rest of the European countries and the emergence of the PIIGS Group – Portugal, Italy, Ireland, Greece, Spain – countries that have more or less failed from the point of view of the sustainability of their development model.

Conclusions

To the extent that the disparities among the Member States of the European Union will increase in the future we can estimate a number of possible evolution scenarios based on the assumption that decisions will be taken on economic rationality

criteria. Thus, if the Member States will be confronted with different internal problems and will witness different social reactions, then we can assume they will keep only those elements from the community architecture which are clearly efficient (such as those related to trade in goods and services, free movement of capital and labour), but they will adopt a variable geometry as regards the problems related to agriculture, regional development, energy, security and defence policy.

Based on the analysis concerning the functioning of the internal market of the European Union we consider that even if a variable geometry is adopted within the European Union (that is a *set of rules* accepted and implemented by all members and *temporary groups of members* which apply among them rules with a higher degree of regulation in certain areas of interest) the competition policy will remain one of the policies accepted by all Member States due to the fact that it is intrinsically linked to the observance of the four freedoms. This statement is supported by the fact that the functioning of the states is currently closely linked to the economic exchanges across border so that the developed states of the European Union will not allow and the less developed states of the European Union will not be able to give up the internal market.

As regards the cohesion policy, in case of a post-crisis evolution of the European Union towards a polycentric mechanism of decision making we can assume that there will be serious changes related to the decrease of funds allocated or to the change in the management mechanism or to both. In any case we estimate that the efficient participation in the design, financing and implementation of the cohesion policy will

¹⁶ <http://www.webfoundation.org/>

involve an active participation of the states or regional/local entities. For the states that became members of the European Union at a later moment (like 2004 and 2007) this requirement will imply the change as soon

as possible from the logic of conformation to existing community regulations to the logic of active participation, respectively from the status of passive subjects to the status of participants.

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