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The Impact of EU Funds on Romanian Finances

Laurian Lungu*

Abstract: *The EU budget negotiations for the 2014-2020 period are of great importance as they set political priorities for future years. As a net beneficiary of EU funds, Romania favours an increase in the size of the EU budget. Adopting such a position, however, would make little sense unless the absorption rate, which in 2012 was by far the lowest in the EU, increased at an impressive pace over the coming years. A higher EU budget would lead to an increase in Romania's financial commitments, with annual domestic budgetary costs raising between 0.1- 0.2% of GDP. This would pose additional challenges in maintaining the Fiscal Pact budget ceiling.*

Keywords: *EU budget, finances, EU funds, Fiscal Pact, employment*

JEL Classification: *C54, E61, H50, J21*

1. Introduction

The EU budget negotiations for the 2014-2020 period are of great importance as they set political priorities for future years. As it often happened during past negotiations, each EU member country will very likely attempt to pursue its own interests as much as it can. The results of the current on-going negotiations over the EU's 2014-2020 budget are bound to be shaped to a great extent by the existing fiscal constraints of the EU member states. The negotiating position of Romanian authorities favours an increase in the size of the EU budget. This stance is not surprising given that Romania is a net beneficiary of EU funds. But, it may look contradictory in the light of the country's poor track record of EU funds absorption. At the end of March 2012, after more than five years into the current fiscal exercise, Romania's certified absorption rate, including pre-financing, stood at 17.8%[1] compared to an EU-average of above 33%. Excluding pre-financing the absorption rate was much lower, at 6.6%.

Systematic irregularities in the public acquisitions processes have led to a suspension

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[1] This refers to the structural funds alone.

of payments from the Regional Operational Programme[2]. This has recently prompted the Romanian authorities to ask the EC for an extension of the *'n + 2'* rule.

There is another aspect which is being consistently overlooked by the authorities in their bid to support a higher EU budget, namely the direct effects that higher EU contributions and committed funds to project co-financing have on the domestic budget deficit. The conditions laid out in the Fiscal Pact, to which Romania is a signatory, set a ceiling for the structural budget deficit at -0.5% of GDP. Given the current structure of government expenditure this target would be extremely difficult to meet on a *consistent* basis in the future. Any increase in the EU budget would place additional (and unnecessary, in the light of the existing low absorption rate) pressures on Romania's budget deficits over the next EU fiscal exercise.

Obviously, higher effective absorption rate alone, even if achieved eventually, will not be sufficient to ensure higher economic growth. The key questions are if EU funds are used for the appropriate projects and if they are successful in meeting the objectives for which they have been conceived.

The primary aim of this paper is to look at the potential consequences an increase in the EU budget would have onto the size of the domestic budget deficits. As the simulations in this paper show, if the EU budget for the 2014-2020 period were adopted in the current form put forward by the EC, the resulting increase in Romania's annual budget deficits would average somewhere between 0.1-0.2% of GDP during the next fiscal exercise.

Another issue addressed is the impact of the EU funds on Romanian GDP and employment. After more than five years this impact appears to be modest and below initial expectations. Part of the reason the full potential of EU funds has remained unfulfilled for so long relates to issues of domestic governance. Sorting out this problem should constitute a priority for the Romanian authorities. Thus, maximising the impact of the EU funds by markedly improving the administrative capacity to control projects and ensuring efficient project allocation and implementation should get pre-eminence. It makes little sense to advocate an increase in the size of the EU budget if there is a high probability that domestic constraints to funds absorption would lead, anyway, to a disengagement of future EU funds[3].

The paper is structured as follows. Section 2 provides an overview of the current state of EU funds absorption and lists some of the main causes which hindered the absorption process. Section 3 highlights the proposed changes to the next MFF and describes briefly the proposed changes in the management of the EU Funding. Section 4 addresses the fiscal implications of the EU Funds on Romania's budget over the 2014-2020 period. It quantifies the direct costs to Romania's budget and assesses the implications for the budget deficit under different scenarios by varying the size of the EU budget, Romanian GDP growth and co-financing rates. Section 5 looks at the impact of the EU funds on Romania's economic growth and employment. The final section concludes and puts forward several policy implications.

[2] In 2012 several operational programmes were interrupted by the EC on concerns about costs misallocation. A part of the funds allocated to the current fiscal exercise will be lost.

[3] There is also a broader question often asked in empirical analyses, namely to what extent the EU funds have helped achieving their stated objective of fostering economic growth and promoting convergence. This aspect is not addressed here.

2. Romania's EU Funds Absorption in the Current Fiscal Exercise

This section provides a brief overview on Romania's net financial position with the EU and the current state of implementation of EU Funds by Romania. Over the 2007-2013 period Romania was allocated EUR 19.67 Bn in structural and cohesion funds and, after more than five years, Romania's payment ratio[4] is one of the lowest[5] among the 10 Central and Eastern European (CEE) countries while the contracting ratio stands below CEE average.

Regarding the latter however, there is a large asymmetry among different operational programmes. According to the data from the Ministry of European Affairs, at the end of March 2012 the contracting ratio for 'Human Resource Development' programme stood at 84% while that for the 'Transport' sector was only 40%.

The EU budget is financed through three main categories of resources: traditional own resources, the VAT-based resource and the GNI-based resource[6]. Table 2.1 below details Romania's contributions to the EU budget for the 2007-2013 financial exercise. Actual data is used for the 2007-2011 period and forecasts for 2012-13.

Table 2.1 Romania's Contributions to the EU Budget, 2007-2013, Mill EUR, current prices

	2007	2008	2009	2010	2011	2012*	2013*
VAT-based own resource	162.1	168.5	156.6	124.1	145.3	148.6	149.6
GNI-based own resource	681.7	741.1	901.8	859.2	965.1	974.1	1,005.1
Corrections[(a)]	86.5	108.1	159.6	58.9	59.9	62.5	64.1
Total national contribution	930.3	1,017.7	1,218	1,042.2	1,170.3	1,185.2	1,218.8
Traditional own resources (TOR) (75%)	159.2	199.9	124.3	100.9	121	138.6	138.9
Total own resources, EUR Mill	1,089.4	1,217.6	1,342.3	1,143.1	1,291.3	1,323.8	1,357.7
Total own resources, as % of GDP	0.87	0.87	1.13	0.92	0.95	0.94	0.90
GDP	124,703	139,710	118,334	124,175	136,510	141,567	150,603

[4] The ratio between the amount actually paid by the EC and the total allocated for the current fiscal exercise.

[5] However, Romania is a net beneficiary of EU funds.

[6] These are supplemented by various correction mechanisms. For more details on how each revenue item is calculated see European Commission (2008).

Avg. Exch.R RON/EUR	3.34	3.68	4.24	4.21	4.24	4.32	4.29

* - forecast, author's calculations and data from the Budget Report 2011.

a – includes the UK correction, the adjustment re-implementation of the 2007 Own Resources Decision, restitution to lump-sum for Netherlands and Sweden and the JHA adjustment for Denmark, Ireland and the UK.

Romania's payments from the EU together with the net balance data are presented in Table 2.2 below. Forecasts for Structural and Cohesion Funds for the years 2012 and 2013 assume a significant increase in the nominal amounts, compared to previous years. This would only be possible if the existing systematic irregularities found by the EC in a series of public acquisitions processes were swiftly addressed. In nominal terms, net payments had been on a rising trend until 2009. Sums received from the EU were marginally higher in 2011 but, given the *'n+2'* rule, representing the years by which funds must be spent, the amounts absorbed should have been much higher[7].

The EU payments of structural and cohesion funds in both 2010 and 2011 was a little over EUR 550 Mill., lower than in the two preceding years. Direct payments to farmers (Pillar 1 of CAP) are expected to increase over the 2011-2013 period when compared to the previous three years.

Table 2.2 Romania's Payments from the EU and the Net Balance, Mill EUR, current prices

		2007	**2008**	**2009**	**2010**	**2011[e]**	**2012[*]**	**2013[*]**
Pre-accession funds		789.1	744.8	618.9	277.8	201.7	0	0
Structural and Cohesion Funds		451	684.8	965.2	566.8	579.7	1,669.3	2,948.9
CAP Payments, *of which*:		6.9	1,620.7	2,098.9	2087	2,749.0	2,812.0	2,628.0
	EAGF[(a)]	6.9	474	596.2	670.8	1,720.0	1,605.0	1,241.0
	EAFRD and EFF[(b)]		1,146.7	1,502.7	1,401.6	771.8	905.3	1,040.3
Total EU payments		1,602.4	2,666.2	2,951.2	2,317.4	3,273.2	4,179.5	5,230.1
Net EU Payments[(d)]	Mill EUR	513.0	1,448.6	1,608.9	1,174.3	1,981.9	2,855.7	3,872.5

[7] It is well acknowledged that programmes rarely start in full flow at the beginning of the year they were budgeted. In general, programmes' expenditure in the early months tends to be slow and this generates more pressure on programmes to perform in subsequent years, in order to avoid the loss of funds through the n+2 rule.

	% of GDP	0.4	1.0	1.4	0.9	1.5	2.0	2.6

* - forecast, author's calculations and data from the Budget Report 2011;. e – estimated.

a – European Agricultural Guarantee Fund (EAGF)

b – European Agricultural Fund for Rural Development (EAFRD) and European Fund for Fisheries (EFF)

d – Obtained by subtracting total own resources (Table 2.1) from total payments from the EU.

As a percentage of GDP, net EU payments for the period 2007-2011 represented a cumulative of a little over 5% of GDP, an average around 1% of GDP per year. Even if net EU payments rose to the equivalent of 2.3% of GDP over the next two years, as forecast in Table 2.2, the total amount absorbed would still fall short of the equivalent of 17% of GDP, which represents an estimate of the overall pre-allocation funds[8].

3. Implications of the EU Funds for Romania's Budget over the 2014-2020 Period

3.1 Introduction

The economic implications of EU transfers are significant. An EU-member country could attract EU-related inflows equivalent to up to 4% of its GDP. This is a large amount which could have profound macroeconomic repercussions. However, assessing the exact effects on the economy is notoriously difficult. Usually first round effects are followed by subsequent rounds effects which would impact domestic demand to different degrees, through various channels, depending on the initial source of funding, the actual amounts disbursed and funds' destination. Timing issues could further complicate the economic assessment results as the effective release of EU funds occurs with a time lag, after the required documentation is approved by the EC. The existence of time lags in impact evaluation exercises implies that EU funds could end up reflecting past economic activity.

Overall however, the EU transfers are expected to represent a significant injection of capital into the Romanian economy so that the medium and long term fiscal effects of the EU financial flows should be marginally favourable. A controversial issue is whether EU funds crowd out or augment domestic public spending. Although the EC imposes the principle of additionality, which implies that the EU funds should not replace the national or equivalent expenditure by a Member State, in practice this is difficult to verify. This additionality principle is extremely relevant as the economy's dependence on EU funding could raise competitiveness issues once the EU funds are phased out.

The fiscal implications of EU funds are rather complex. On estimating the budgetary effects of EU funds, several issues need to be borne in mind:

The distinction between projected and committed flow of funds. This will affect how these funds are recorded in centralised government balances due to existing differences

[8] For a complete evaluation of EU funds absorption over the 20107-2013 period Table 2.2 should have included years 2014 and 2015, as required by the 'n+2' rule.

in the accounting rules[9]. Three year ahead forecasts of government expenditure on EU-related costs are presented in Romania's Convergence Programmes but the ex-post assessments of these show discrepancies between the amounts budgeted and those which were subsequently spent.

Co-financing. The EU requirement of EU projects co-financing from national sources raises the issue of who is the final beneficiary of the funds in practice. Usually, agricultural funds are directed towards the private sector while cohesion funds are directed to the public sector. Regarding the latter however, the end-user private – public distinction is rather difficult to make in practice.

Estimating the net budgetary effect of EU funds. The initial direct effect on government finances is negative as there are costs associated with the national contributions towards the EU budget (although there are offsetting elements), domestic public expenditure to co-finance EU funds as well as advance EU payments to farmers and insufficient absorption capacity of the allocated EU transfers. Subsequently, there might be a marginal positive effect on government revenues via the expected increase in tax revenues generated by higher future output if the EU funds were efficiently used. But such effects could only be evaluated on a longer time period.

One can argue that part of the EU budget transactions could be treated as direct payments between the rest of the world and domestic residents without affecting national budgets. On the revenue side the direct agricultural subsidies fall into the direct payments category. In contrast, on the expenditure side there are the traditional own resources such as import duties and agricultural levies and the VAT resource. On average these flows cancel each other out. This line of argument would stand if the EC's principle of additionality were to be respected in full. In practice, however this is rather difficult to verify.

3.2 Direct Costs to Romania's Budget for the 2014-2020 Period

This section estimates the direct costs to the Romanian budget of EU funds - related expenditure for the 2014-2020 period. There are two main sources of public expenditure which are considered in the current analysis: Romania's contribution to the EU budget and public sector's co-financing contribution to the EU projects. Inherently, there is a significant amount of uncertainty regarding the estimation of these expenditure flows. This uncertainty relates to both the pace of Romania's economic growth and its absorption rate.

The forecasting process is further complicated by the fact that, at the time of writing, the overall 2014-2020 EU budget figure has not yet been agreed by member states. In order to mitigate this shortcoming the analysis takes into consideration two main

[9] The cash-based rule, used in practice by most national governments, including Romania, and the accrual based ESA95 rule, used by the EC. The later is employed to examine compliance with EU deficit limits.

scenarios, one in which there is a freeze[10] in the EU budget and a second scenario which assumes the current EU proposal on the budget (European Commission 2011b). In order to have a broader picture of the outcome distribution of budgetary costs, uncertainties pertaining to both the pace of Romania's economic growth and project co-financing rates have also been considered.

It thus results eight scenarios which are summarised in Table 3.1 below:

Table 3.1 Overview of the Scenario Assumptions

	Freeze in the EU Budget	Increase in the EU Budget	High GDP Growth	Low GDP Growth	Maximum EU co-financing rates	Increased EU co-financing rates
Scenario 1	x			x	x	
Scenario 2	x			x		x
Scenario 3	x		x		x	
Scenario 4	x		x			x
Scenario 5		x		x	x	
Scenario 6		x		x		x
Scenario 7		x	x		x	
Scenario 8		x	x			x

Source: Author's Selection

For instance, under Scenario 1 the 2014-2020 EU budget is frozen, Romanian GDP growth is low and average co-financing rate for cohesion funds is set to 85%, the maximum allowed at this moment.

Estimation on budgetary implications for the 2014-2020 period requires further assumptions on a few macroeconomic variables. Details of these together with the main working assumptions used in the eight scenarios are listed below:

- **Romanian GDP Growth** is assumed to grow at an annual rate of 3% under the 'High GDP Growth' scenario and by 2% in the 'Low GDP Growth' scenario.
- **Inflation and the Exchange Rate**. The GDP deflator, used as a measure of inflation, is set at 4.5% for 2014 and 4% from there onwards. The RON/EUR nominal exchange rate is set at 4.3 for the whole 2014-2020 period[11].
- **Romania's annual contribution to the EU budget** is assumed to be the equivalent of 0.95% of GDP. Arguably, this is a simplifying assumption. However it is closer to the average estimate Romania is expected to pay over the period 2007-2013.
- **The maximum EU co-financing rate scenario** assumes an average co-financing rate of 15% for Cohesion Funds and an average co-financing rate of 30% for EAFRD

[10] A budget freeze implies that the 2014-2020 EU budget remains **unchanged in nominal terms** when compared to the 2007-2013 period. Effectively, this implies a reduction of the budget in real terms.

[11] The benchmark RON/EUR exchange rate chosen might seem too strong in the light of recent exchange rate developments. However, in the medium and long term the RON should appreciate against the EUR, as implied by the economic theory, bringing back the RON/EUR forecast period average to 4.3 from the current rate of 4.5. Even the IMF implicit RON/EUR forecast for 2017 is slightly below 4 (see Romania Country Report 12/73, April 2012).

related projects. However, as the majority of the latter is directed towards the private sector it is assumed that public financing is needed for only 25% of all EAFRD funds. The EU Funds absorption rate is taken to be 100% since assuming a lower rate would bias downwards the estimates of budgetary effects. In **the increased EU-financing scenario** average co-financing rate is assumed to be higher, 30% for Cohesion Funds and 45% for the EAFRD related projects.

The pattern of EU funds allocation to Romania across the 2014-2020 period is assumed to be the same as for the period 2007-2013[12]. Although revisions of domestic sector strategies financial 'needs' could see subsequent changes in EU funds' portfolio allocations, the impact of these changes on the overall EU-related budget expenditure is likely to be relatively small[13].

The summary of results assessing Romania's budgetary costs of EU-related contributions and projects co-financing is presented in Table 3.2 below. The budgetary costs for each of the eight scenarios are expressed both in EUR terms as well as in percentages of GDP. A more detailed analysis regarding the expenditure sources that make of these budgetary costs is presented in the tables of Annex 1.

Table 3.2 Summary of Romania's Annual Budgetary Costs, EU Contributions and Projects Co-financing, Forecasts, Current Prices

		2014	2015	2016	2017	2018	2019	2020	Cum. 2014-2020*
Scenario 1	Bn. EUR	1.82	2.01	2.20	2.39	2.53	2.69	2.85	16.49
	As % of GDP	1.13	1.17	1.21	1.23	1.24	1.24	1.24	8.46
Scenario 2	Bn. EUR	2.02	2.29	2.59	2.85	3.03	3.23	3.43	19.44
	As % of GDP	1.25	1.34	1.42	1.47	1.48	1.48	1.49	9.93
Scenario 3	Bn. EUR	1.85	2.05	2.27	2.48	2.65	2.83	3.03	17.16
	As % of GDP	1.12	1.16	1.20	1.22	1.22	1.22	1.22	8.36
Scenario 4	Bn. EUR	2.05	2.34	2.66	2.94	3.15	3.37	3.61	20.12
	As % of GDP	1.24	1.33	1.40	1.45	1.45	1.45	1.45	9.77
Scenario 5	Bn. EUR	1.86	2.07	2.29	2.50	2.67	2.84	3.02	17.25
	As % of GDP	1.15	1.20	1.26	1.29	1.30	1.31	1.31	8.82
Scenario 6	Bn. EUR	2.10	2.41	2.75	3.07	3.30	3.52	3.76	20.91
	As % of GDP	1.30	1.41	1.51	1.59	1.61	1.62	1.63	10.67

[12] The computation of the annual EUR amount estimates for both Cohesion Funds and EAFRD was done in two steps. The first step involved the calculation of the corresponding annual percentages for each category spending. These were obtained by dividing the annual amount allocated to Romania by the overall EU budget amount for each expenditure category. In the second step, the process was reversed. The percentages were used to determine estimates of annual allocation funds to Romania for both Cohesion Funds and EAFRD for the 2014-2020 period, conditional on each of the two EU budget scenarios.

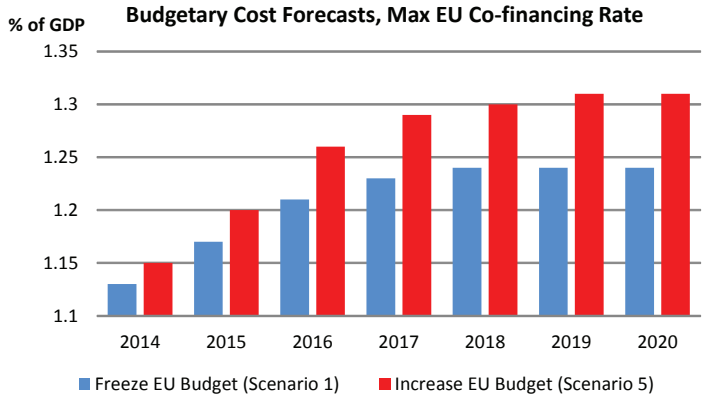
[13] To a certain extent large reallocations of funds among different budget headings are constrained by the requirement to fulfil the assumed 2020 targets.

Scenario 7	Bn. EUR	1.89	2.12	2.36	2.59	2.78	2.98	3.20	17.92
	As % of GDP	1.15	1.20	1.24	1.28	1.28	1.28	1.28	8.71
Scenario 8	Bn. EUR	2.13	2.46	2.82	3.16	3.41	3.67	3.94	21.59
	As % of GDP	1.29	1.39	1.49	1.56	1.57	1.58	1.58	10.46

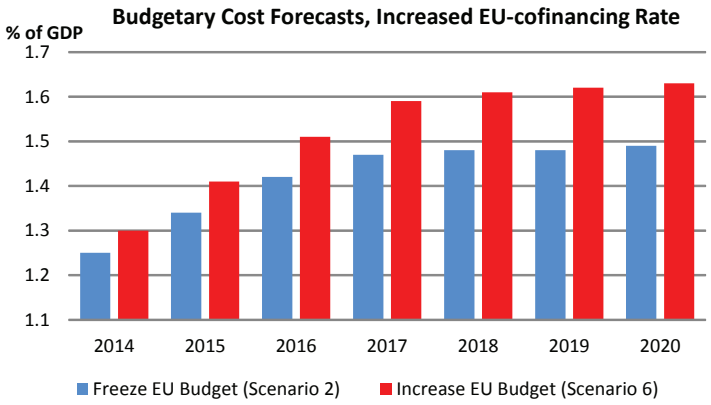
Source: Author's Calculations. * - figures are indicative only as they are expressed in current prices. The last column presents the cumulative effects.

Several remarks could be made by inspecting the figures in the table above:

- The annual direct EU-related costs to the Romanian budget vary between 1.13% and 1.63% of GDP depending on the scenario employed. Given that, on average, the equivalent of 0.95% of GDP represents Romania's EU contribution, the remaining differences account for variations in budget expenditure brought about by changes in Romania's GDP growth rates, differences in project co-financing rates and the size of the overall EU budget.
- An increase in the EU budget would automatically trigger an increase in Romania's financial commitments. These would mainly come from two sources: increased contributions towards the EU budget and higher amounts needed to co-finance EU projects. The two figures below depict projections of budgetary costs under the assumption of the EU-budget freeze/increase and Maximum/Increased EU co-financing rates. *Ceteris paribus* the increase in the EU budget, as it is implied by the current EU proposal, would raise annual domestic budgetary costs by between 0.1- 0.2% of GDP.



- Annual budgetary costs could even go above 1.6% of GDP if the EU budget is passed in its proposed form, which would represent a significant budgetary effort required on a consistent basis.



- Relatively small differences in GDP growth rates would have a relatively limited impact on the budget deficit figure. However, larger variations in the forecast GDP growth rates would have a bigger impact on budgetary costs. The hypothesis of a prolonged period of lower GDP growth should not be discounted. The convergence process of the Romanian economy could run at a slower pace, when compared to the pre-2007 period, given the tensions in financial markets and higher borrowing costs.

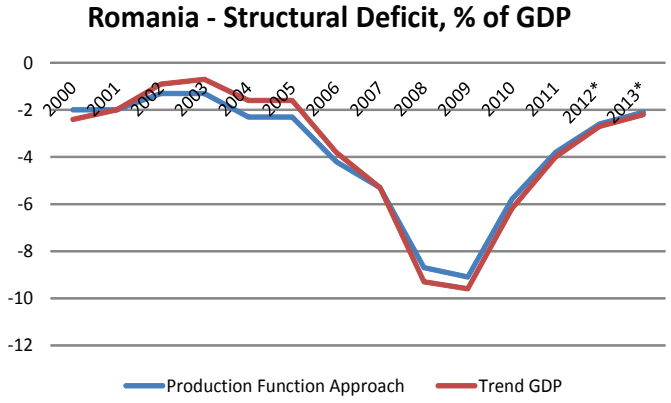
3.3 Implications for the Structural Deficit

The conditions laid down in the Fiscal Pact[14] sets stricter limits for the EU members' budget deficits[15]. The Fiscal Pact is expected to enter into force in 2013. Although Romania endorsed the Fiscal Pact, at the time of writing the Romanian Parliament has yet to decide the date from when it would abide to its rules. Given that the Fiscal Pact envisages a ceiling of 0.5% for member states' structural budget deficit[16], the full compliance with the Fiscal Pact rules from 2013 onwards would put an additional pressure on Romanian public finances.

The calculation of the structural deficit is based on the estimated gap between the so-called 'potential output' (when the economy works at full capacity and inflation is non-accelerating) and the actual output. However, in practice an exact estimate of 'potential output' is rather difficult to assess[17], thus the margin of error for measuring the structural deficit is quite large. As a consequence, the fiscal policy implications of estimation errors could be quite large as the Fiscal Pact's 0.5% budget deficit ceiling would necessarily imply a far greater precision measurement in practice. The figure below shows historical data for Romania's structural deficit, expressed in percentages

[14] The official label is " Treaty on Stability, Coordination and Governance in the Economic and Monetary Union". To be approved the Fiscal Pact requires the support of a minimum of 12 Eurozone member countries.
[15] Apart from setting limits on budget deficits, the Fiscal pact would also allow EU member states to coordinate their budget policies in a closer manner and impose penalties on rule-breakers.
[16] Under certain circumstances the medium term objective of structural budget deficit could reach -1% of GDP.
[17] The estimates of potential output are usually available with a time lag.

of GDP, as computed by the EC. Two things stand out. First, there is a discrepancy between the structural deficits figures which comes from the methodology employed. Although the differences appear to be small, the implication of these would be much larger in practice if the structural budget deficit ceiling was 0.5% of GDP.



Source: Eurostat

Second, Romania's structural budget deficit was consistently larger than 1% of GDP over the last 12 years. The structural deficit widened from 2006 onwards, partly due to higher expenditures in the economic boom years. But, payment contributions to the EU budget and public sector funds aimed at project co-financing played also a role in extending the budget deficit gap. This could lead to emergence of the so-called 'fiscal drag'. Although the EU funds could provide an opportunity to increase investment spending this will widen the budget deficit. The requirement to meet the Fiscal Pact budget deficit criteria would prevent fiscal loosening. Thus, co-financing would need to be provided through reduced spending elsewhere[18].

Bringing the structural deficit below -0.5% of GDP might be achieved sometime after 2014 but maintaining the deficit at that level on a *permanent basis*, would be utterly challenging given the current structure of government spending. Future financial commitments to social security as well as the required financial outlays towards investments in physical infrastructure, health care and education would require more flexibility in running fiscal policy, unless one accepts a permanent level of lower economic growth.

Given these circumstances, any gains obtained through the reducing of the structural deficit would matter. According to the data in Table 4.2 above, an increase in the EU budget would impose a direct cost on Romania's public sector budget equivalent to between 0.1- 0.2% of GDP per year. That represents a significant amount if the structural deficit target is set to -0.5% of GDP. The medium and long-term budgetary effects are less clear due to the fact that an expected increase in government revenues,

[18] In a presentation made by the Fiscal Council (2012) it was argued that the EU funds absorption could provide an enormous stimulus for the economy and that for 'each 1 RON of own resources (budgetary deficit), public expenditure amounting 20 lei can be made'. This overlooked the implications of co-financing on budget deficit.

via higher expected output, could actually lower the budget deficit marginally[19]. But this still leaves open the question to what extent Romania would benefit from a potential increase in the EU budget given the additional short term costs to the budget, the need to meet the Fiscal Pact structural constraints and the dismal rate of EU funds absorption.

4. The Impact of EU Funds on Romania's Economic Growth and Employment

The assessment of the impact of EU funds on economic growth would depend to a great extent on the actual flows to the economy as a whole, the efficiency to which these funds are employed and the methodology employed to analyse their impact on the economy. Although the overall impact of EU funds in the economy should be positive, since, as Table 2.2 shows, these represent a net inflow of capital into the economy, there are a number of factors to be considered. First, there is the issue of timeframe under which the analysis is performed. For certain funds such as those aimed at building both human as well as physical capital, like enhancing infrastructure, there is a spillover effect in the economy which would be felt over time. Second, there is the issue of spending efficiency which is rather difficult to assess. Third, the use of an economic model in a dynamic setting which would capture the relevant interconnections among the economic variables of interest is desirable but difficult to build.

There is a relatively large empirical literature which studies the economic impact of EU Funds and the results are mixed. Boldrin and Canova (2001) for instance find that these are largely ineffective. On the other hand Checherita et al (2009) argue that although EU funds help to reduce, to some extent, income disparities their effect on output growth fails to be observed. In another study, Ederveen et al (2006) conclude that EU funds become effective only when they are accompanied by an appropriate institutional framework. By and large, the evidence that regions receiving structural and cohesion funds are behaving any differently from the remaining ones still needs to be validated in practice. Spain for instance, has been a large recipient of structural and cohesion funds, nevertheless its competitiveness failed to improve to the extent that unemployment is expected to rise to over 24% in 2012.

For Romania the analyses which estimate the impact of EU funds on economic growth are scarce. These are usually considered as direct effects on aggregate demand. The methodology employed here is based on the multipliers method. Arguably, this way of estimation has its limitations. The GDP estimates are obtained by using a static framework so that dynamic effects are not considered. Moreover, the crowding out effect cannot be assessed. This is an important consideration for policy analysis as, at the aggregate level of the economy, the net and redistribution effects would matter. The implications of increased spending sometimes overlook the effect of the economy once this spending ceases. Thus, while the EU funds could provide a small stimulus to the economy in the short term, their medium and long term effects on the economy, from the point of view of the efficient allocation of resources, could be doubtful.

[19] A report by the ECFIN (2005) calculates that the fiscal impact of the EU financial flows in the medium-term should be favourable. However, the report acknowledges the challenges in restructuring budgetary and administrative procedures, to be able to absorb the projected payments, which could have an adverse effect on the expected outcome.

Another drawback of this methodology, which applies particularly to Romania, is the fact that the multipliers might overstate the economic effects of EU funds on the economy due to the observed systematic irregularities in spending EU funds as well as the existing cost misallocation under various operational programmes. There is also the issue of 'leakages'. The EC estimates from input-output (I/O) tables suggest that around a quarter of EU funds expenditure returns to the rest of the EU in the form of increased exports, on machinery and equipment in particular, as GDP and investment grow. This 'leakage' seems to be particularly large for countries which have lower production capacities, for Greece it represents 42% of structural aid and while for Portugal it is 35%. Given Romania's production capacity similarities with Greece and Portugal the 'leakage' is thus likely to be relatively high in Romania as well, and the multiplier methodology would overstate domestic economic effects of the EU funds. When interpreting the results, one needs to bear in mind all the above mentioned shortcomings.

The multipliers methodology uses data from the Romania's I/O table for the year 2008. It considers several sub-sectors which are deemed to be a proxy for EU funds spending under various operational programmes. The multipliers are presented in Table 5.1 below[20]. Essentially they could be interpreted as representing the GDP change in value that results from a 1 RON change in output delivered to a final user by the buying sectors on the left column. These sectors are proxied to represent spending undertaken under the seven operational programmes from Table 2.3. The I/O multipliers link the direct impact on an industry from a policy or investment decision to the indirect impact on its suppliers, suppliers of those suppliers, and so on and so forth. Multipliers can also reflect induced effects on the industrial economy from increased earnings, and thus spending, from wage earners in the directly and indirectly affected industries.

Table 4.1 Romania GDP Multipliers for Selected Sectors

	GDP		
	Direct	**Indirect**	**Induced**
Natural water; water treatment and supply services	0.64	0.29	0.88
Sewerage; waste collection, treatment and disposal activities; materials recovery; remediation activities and other waste management services	0.71	0.25	0.69
Constructions and construction works	0.69	0.26	0.51
Consultancy and related services; information services	0.8	0.16	0.4
Education services	0.83	0.14	0.87

Source: Author's Calculations

[20] It can be observed that the cumulative impact using the multipliers method is higher than the size of the initial spending. It is worthwhile remembering that the methodology overlooks issues related to the crowding out effects, substituted spending, disequilibrium effects or medium and long-term economic implications.

The GDP effects of EU funds can be approximated using the multipliers above and the EUR amounts attracted under each operational programme. Results are presented in Table 4.2:

Table 4.2 Estimated GDP Effects of the EU Funds for the period 2007-2012/Q1

	Cumulative attracted funds[a], 2007-2012/Q1	GDP			GDP
		Direct	Indirect	Induced	Total
	EUR Bn.	EUR Mill.	EUR Mill.	EUR Mill.	EUR Mill.
OP Regional	**1.04**	718	270	530	1518
OP Technical Assistance	**0.02**	17	3	23	42
OP Enhancing Admin. Capacity	**0.03**	25	4	26	55
SOP Increase of Economic Competitiveness	**0.43**	344	69	172	585
SOP Transport	**0.32**	221	83	163	467
SOP HR Development	**1**	830	140	870	1840
SOP Environment	**0.57**	385	154	447	986
Total	**3.42**	2539	723	2232	5494

Source: Author's Calculations; a - including pre-financing

Thus, while the cumulative attracted funds over the 2007-2012/Q1 period amounted to EUR 3.4 Bn. the overall impact of the Romanian economy could have been close to EUR 5.5 Bn. if both the indirect and induced effects were factored in. Table 4.3 below presents the summary of results, including the employment effects[21]. Interval estimates have been used, with the lower bound of the interval being the nominal value of the cumulative attracted funds (column 1 in Table 4.2) and the upper bound being set at the total multiplier value (last column in Table 4.2). The cumulative GDP effects range between EUR 3.4 and 5.5 Bn. which represent between 0.5 – 0.8% of GDP[22].

[21] These were computed using the production function approach.

[22] The GDP and employment analyses consider the effects of Operational Programmes alone. As shown in Table 2.2, net EU payments averaged to close to 1% of GDP over the 2007-2011 period. The latter estimate includes the effects of CAP subsidies.

Table 4.3 Summary of GDP and Employment Effects

GDP				Employment	
Cumulative, 2007-2012/Q1		Yearly Avg.		Cumulative, 2007-2012/Q1	Yearly Avg.
Bn EUR	% of GDP.	Bn EUR	% of GDP	Thous.	Thous.
3.4 – 5.5	0.5 – 0.8	0.65 – 1.05	0.5 – 0.8	100 - 185	19 - 35

Source: Author's Calculations

The cumulative employment effects for the period 2007 – end of March 2012, which measure the number of full time equivalent jobs *maintained* in the economy, range from 100 to 185 thousand. This implies a yearly average of between 19 and 35 thousand jobs.

The GDP effects are not far from estimates observed in other New Member States (NMS). Rosenberg and Sierhej (2007) estimate demand effects of the EU funds in these countries and show that the demand impact ranges from 0.5% of GDP in Central European countries to up to 1% of GDP in the Baltic States, where EU commitments and absorption have been high. It is worthwhile mentioning that the authors estimated a larger demand impact for Romania, which, in hindsight, failed to materialise.

The results in Table 4.3 show that GDP and employment effects of the EU funds on the Romanian economy have been modest so far. This raises another question, namely to what extent the EU funds help achieving their stated objective, namely fostering economic growth and promoting convergence. On the other hand it could be argued that Cohesion policy funds make it possible for Romania to finance projects which would help it achieve 2020 targets in areas such as environment, climate change or renewable sources. The financing of such actions might not be undertaken without external support and thus could have an adverse impact on domestic economic growth perspectives.

5. Concluding Remarks and Policy Implications

In these times of fiscal austerity net contributor countries tend to support a freeze in the EU budget rather that an increase. The former stance is more consistent to the general direction followed by fiscal policies in the EU member countries that pursued fiscal stabilisation programmes. It may appear inconsequent that countries which adopted austerity policies in order to reduce their budget deficits would support an increase in the EU budget. One line of argument in favour of this approach could stress the importance of EU Funds in supporting economic growth. However, this may work for countries which have exceptionally high absorption rates and face serious financing constraints. But this is hardly the case for any EU member country, and in particular for those who benefit the most from Structural and Cohesion funds.

The negotiating position of Romanian authorities is one which supports an increase in the EU budget, favouring the initial proposal put forward by the EC. This stance is less surprising given that Romania is a net beneficiary of EU funds. However, it is at odds

with the country's poor track record of EU funds absorption. Given these circumstances there are a number of issues which need to be carefully considered.

In the first place, there are important fiscal implications for the Romanian budget. An increase in the EU budget would lead to an increase in Romania's financial commitments. These would come mainly from two sources: increased contributions towards the EU budget and higher amounts needed to co-finance EU projects. If the EU budget was approved in the current form, i.e. as it was put forward by the EC in 2011, it could raise annual domestic budgetary costs by between 0.1- 0.2% of GDP, as the analysis in this paper has shown. This increase does not include the advance payments from the budget. Due to the fact that there is a time lag between the moment the advance payments are paid and the moment when the EU funds are actually disbursed, the budget deficit gap could widen, temporarily, even further.

As one would expect, changes in Romania's GDP growth rates or the EU funds co-financing rates could have important budgetary effects. The Fiscal Pact, to which Romania is a signatory, sets a ceiling for the structural budget deficit at -0.5% of GDP. The Romanian authorities may be able to bring its structural deficit below the Fiscal Pacts ceiling sometime after 2014 but, given the current structure of government spending, they could face serious challenges in maintaining the deficit at that level on a *permanent basis*. Future financial commitments to social security as well as the required financial outlays towards investments in physical infrastructure, health care and education would constrain the budgetary policy.

Advocating an increase in the EU budget would make little sense unless the absorption rate increased at such an impressive pace over the coming years that it would get close to 100%[23]. In the light of the country's recent experience this looks unlikely. The whole EU absorption funds process has come to an almost standstill in 2012 as audit exercises performed by the EU revealed numerous irregularities, notably over spending EU funds. Some of the current obstacles in the EU funds absorption are likely to persist as there are constraints which relate, for instance, to human capital development or the institutional set-up. Both would require substantial changes – which are bound to take time – if the process of the EU funds is to become much more efficent.

Improving the absorption capacity substantially should be paramount. This relates to Romania's ability to spend its allocated structural funds in an effective and efficient way. The absorption capacity can be thought along three components: macroeconomic, administrative and financial. Among the three, administrative absorption capacity is clearly the most flawed and could be subject to marked improvement. The Romanian authorities have taken a number of measures recently. There have been defined priority action plans in the areas of project management and financing and public procurement. Standard bidding documents in key sectors have also been developed. However, as mentioned before, there are issues which would take a longer time to sort out, such as enhancing the expertise capacity at central and local administration. The scarcity of qualified personnel at the local level of public authorities also impacts negatively on the quality of strategic planning, designing and enforcement of multi-annual budgets. This

[23] Of course, one could argue that, by simply asking for a larger EU budget Romania follows in fact a negotiating strategy which would give the country more bargaining power. But again, this strategy might work if the EU funds absorption rate was close to 90-100%. What matters in the end is the effective absorption rate.

aspect is strongly related to the financial absorption capacity, which defines the extent to which the supported regions are able to co-finance the projects. The higher the share of EU payments in GDP, the higher the co-financing requirements would be.

The management of EU funding is due to change from 2014 onwards. This would have important implications for the overall process of EU funds absorption. Romania would need to prepare a Partnership Contract with the EC, where it would assess its national development needs and define its priorities for the use of EU funds so that the latter could be used more efficient in meeting the Europe 2020 targets. Thus, Romania would need to commit itself to a set of investment priority plans which would need to be in line with its economic growth objectives. The quantification of these investment needs would be an invaluable input in the evaluation of the country's EU-funding needs. However, the whole process may prove to be a challenging exercise unless sustained efforts are made to improve the whole assessment process. Poor planning and the setting of uncorrelated strategic objectives in the National Development Plan (NDP) 2007-2013 were one of the main causes of the poor absorption of EU funds. They often differed from the objectives laid down in the Operational Programmes leading to a funds allocation mismatch.

Higher effective EU funds absorption alone is not sufficient. These should be directed towards the appropriate projects and be successful in meeting the objectives for which they have been designed. According to the estimates in this analysis, the impact of EU funds on Romanian GDP and employment appear to have been below initial expectations. Part of the reason is the low absorption rate. But their efficient use matters considerably.

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List of Abbreviations Used in the Text

CAP	Common Agricultural Policy
CF	Cohesion Funds
EAGF	European Agricultural Guarantee Fund
EAFRD	European Agricultural Fund for Rural Development
EFF	European Fund for Fisheries
EC	European Commission
EU	European Union
GNI	Gross National Income
MEA	Ministry of European Affairs
MFF	Multiannual Financial Framework
NDP	National Development Plan
NMS	New Member States
TOR	Traditional own resources
VAT	Value Added Tax

Annex 1. Romania's Budgetary Implications of EU Contributions and Projects Co-financing

Scenario 1 assumes a freeze in the EU budget, implying that the EU budget remains unchanged compared to the 2007-2013 period. It also assumes a lower GDP growth for the Romanian economy, averaging 2% per year and maximum co-financing rates.

In all scenarios EAFRD co-financing rate is kept at 30% but assumes that public financing is needed to co-finance only 25% of all funds earmarked for EAFRD. Also, the EU Funds absorption rate is assumed to be 100%.

Table A 1.1 Scenario 1, EU Budget Freeze, Low GDP Growth, Max. EU Co-financing Rate

		2014	2015	2016	2017	2018	2019	2020
GDP	Bn EUR	161.8	171.7	182.1	193.2	204.9	217.4	230.6
Contribution to the EU	Bn EUR	1.5	1.6	1.7	1.8	1.9	2.1	2.2
Cohesion Funds Contribution[a]	Bn EUR	0.20	0.29	0.39	0.46	0.50	0.54	0.58
EAFRD contribution[b]	Bn EUR	0.09	0.09	0.09	0.09	0.09	0.09	0.09
Budgetary Cost, Cohesion & EAFRD only	Bn EUR	0.29	0.38	0.47	0.55	0.59	0.62	0.66
	As % of GDP	0.18	0.22	0.26	0.28	0.29	0.29	0.29
Overall budgetary cost, including EU contribution	Bn EUR	1.82	2.01	2.20	2.39	2.53	2.69	2.85
	As % of GDP	1.13	1.17	1.21	1.23	1.24	1.24	1.24

Source: Author's Calculations

a - Cohesion Funds co-financing rate = 15%, b - EAFRD co-financing rate = 30% but assuming that public financing is needed for only 25% of all EAFRD funds; EU Funds absorption rate = 100%.

Scenario 2 assumes a freeze in the EU budget, implying that the EU budget remains unchanged compared to the 2007-2013 period. GDP growth is also low, averaging 2% per year but co-financing rates are increased as follows, for CF the co-financing rate is set to 30% and for EAFRD to 45%.

Table A 1.2 Scenario 2, EU Budget Freeze, Low GDP Growth, Lower EU Co-financing Rate

		2014	2015	2016	2017	2018	2019	2020
GDP	Bn EUR	161.8	171.7	182.1	193.2	204.9	217.4	230.6
Contribution to the EU	Bn EUR	1.5	1.6	1.7	1.8	1.9	2.1	2.2
Cohesion Funds Contribution[a]	Bn EUR	0.40	0.58	0.77	0.93	1.00	1.07	1.15
EAFRD contribution	Bn EUR	0.09	0.09	0.09	0.09	0.09	0.09	0.09

Budgetary Cost, Cohesion & EAFRD only	Bn EUR	0.49	0.66	0.86	1.01	1.09	1.16	1.24
	As % of GDP	0.30	0.39	0.47	0.52	0.53	0.53	0.54
Overall budgetary cost, including EU contribution	Bn EUR	2.02	2.29	2.59	2.85	3.03	3.23	3.43
	As % of GDP	1.25	1.34	1.42	1.47	1.48	1.48	1.49

Source: Author's Calculations; a - Cohesion Funds co-financing rate = 30%

Table A 1.3 Scenario 3, EU Budget Freeze, High GDP Growth, Max. EU Co-financing Rate

		2014	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
GDP	Bn EUR	165.0	176.8	189.3	202.8	217.3	232.7	249.3
Contribution to the EU	Bn EUR	1.6	1.7	1.8	1.9	2.1	2.2	2.4
Cohesion Funds Contribution	Bn EUR	0.20	0.29	0.39	0.46	0.50	0.54	0.58
EAFRD contribution	Bn EUR	0.09	0.09	0.09	0.09	0.09	0.09	0.09
Budgetary Cost, Cohesion & EAFRD only	Bn EUR	0.29	0.38	0.47	0.55	0.59	0.62	0.66
	As % of GDP	0.17	0.21	0.25	0.27	0.27	0.27	0.27
Overall budgetary cost, including EU contribution	Bn EUR	1.85	2.05	2.27	2.48	2.65	2.83	3.03
	As % of GDP	1.12	1.16	1.20	1.22	1.22	1.22	1.22

Source: Author's Calculations

Table A 1.4 Scenario 4, EU Budget Freeze, High GDP Growth, Lower EU Co-financing Rate

		2014	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
GDP	Bn EUR	165.0	176.8	189.3	202.8	217.3	232.7	249.3
Contribution to the EU	Bn EUR	1.6	1.7	1.8	1.9	2.1	2.2	2.4
Cohesion Funds Contribution	Bn EUR	0.40	0.58	0.77	0.93	1.00	1.07	1.15
EAFRD contribution	Bn EUR	0.09	0.09	0.09	0.09	0.09	0.09	0.09
Budgetary Cost, Cohesion & EAFRD only	Bn EUR	0.49	0.66	0.86	1.01	1.09	1.16	1.24
	As % of GDP	0.29	0.38	0.45	0.50	0.50	0.50	0.50
Overall budgetary cost, including EU contribution	Bn EUR	2.05	2.34	2.66	2.94	3.15	3.37	3.61
	As % of GDP	1.24	1.33	1.40	1.45	1.45	1.45	1.45

Source: Author's Calculations

Table A 1.5 Scenario 5, EU Budget Increase, Low GDP Growth, Max. EU Co-financing Rate

		2014	2015	2016	2017	2018	2019	2020
GDP	Bn EUR	161.8	171.7	182.1	193.2	204.9	217.4	230.6
Contribution to the EU	Bn EUR	1.5	1.6	1.7	1.8	1.9	2.1	2.2
Cohesion Funds Contribution	Bn EUR	0.24	0.34	0.47	0.57	0.63	0.68	0.74
EAFRD contribution	Bn EUR	0.09	0.09	0.09	0.09	0.09	0.09	0.09
Budgetary Cost, Cohesion & EAFRD only	Bn EUR	0.33	0.44	0.56	0.66	0.72	0.77	0.83
	As % of GDP	0.20	0.25	0.31	0.34	0.35	0.36	0.36
Overall budgetary cost, including EU contribution	Bn EUR	1.86	2.07	2.29	2.50	2.67	2.84	3.02
	As % of GDP	1.15	1.20	1.26	1.29	1.30	1.31	1.31

Source: Author's Calculations

Table A 1.6 Scenario 6, EU Budget Increase, Low GDP Growth, Lower EU Co-financing Rate

		2014	2015	2016	2017	2018	2019	2020
GDP	Bn EUR	161.8	171.7	182.1	193.2	204.9	217.4	230.6
Contribution to the EU	Bn EUR	1.5	1.6	1.7	1.8	1.9	2.1	2.2
Cohesion Funds Contribution	Bn EUR	0.47	0.69	0.93	1.15	1.26	1.37	1.48
EAFRD contribution	Bn EUR	0.09	0.09	0.09	0.09	0.09	0.09	0.09
Budgetary Cost, Cohesion & EAFRD only	Bn EUR	0.56	0.78	1.02	1.24	1.35	1.46	1.57
	As % of GDP	0.35	0.46	0.56	0.64	0.66	0.67	0.68
Overall budgetary cost, including EU contribution	Bn EUR	2.10	2.41	2.75	3.07	3.30	3.52	3.76
	As % of GDP	1.30	1.41	1.51	1.59	1.61	1.62	1.63

Source: Author's Calculations

Table A 1.7 Scenario 7, EU Budget Increase, High GDP Growth, Max. EU Co-financing Rate

		2014	2015	2016	2017	2018	2019	2020
GDP	Bn EUR	165.0	176.8	189.3	202.8	217.3	232.7	249.3
Contribution to the EU	Bn EUR	1.6	1.7	1.8	1.9	2.1	2.2	2.4
Cohesion Funds Contribution	Bn EUR	0.24	0.34	0.47	0.57	0.63	0.68	0.74

EAFRD contribution	Bn EUR	0.09	0.09	0.09	0.09	0.09	0.09	0.09
Budgetary Cost, Cohesion & EAFRD only	Bn EUR	0.33	0.44	0.56	0.66	0.72	0.77	0.83
	As % of GDP	0.20	0.25	0.29	0.33	0.33	0.33	0.33
Overall budgetary cost, including EU contribution	Bn EUR	1.89	2.12	2.36	2.59	2.78	2.98	3.20
	As % of GDP	1.15	1.20	1.24	1.28	1.28	1.28	1.28

Source: Author's Calculations

Table A 1.8 Scenario 8, EU Budget Increase, High GDP Growth, Lower EU Co-financing Rate

		2014	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
GDP	Bn EUR	165.0	176.8	189.3	202.8	217.3	232.7	249.3
Contribution to the EU	Bn EUR	1.6	1.7	1.8	1.9	2.1	2.2	2.4
Cohesion Funds Contribution	Bn EUR	0.47	0.69	0.93	1.15	1.26	1.37	1.48
EAFRD contribution	Bn EUR	0.09	0.09	0.09	0.09	0.09	0.09	0.09
Budgetary Cost, Cohesion & EAFRD only	Bn EUR	0.56	0.78	1.02	1.24	1.35	1.46	1.57
	As % of GDP	0.34	0.44	0.54	0.61	0.62	0.63	0.63
Overall budgetary cost, including EU contribution	Bn EUR	2.13	2.46	2.82	3.16	3.41	3.67	3.94
	As % of GDP	1.29	1.39	1.49	1.56	1.57	1.58	1.58

Source: Author's Calculations

The European Law regarding the Impact of Merger on Employees' Rights

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Abstract: *The regulation of the social implications of transfers of undertakings is a topic that has made its way in the European law with quite enough difficulty, but became in time an increasingly discussed topic. Since the transfer of an undertaking from an employer to another could not be achieved with disregard of its human capital, the European legislator has established a legal framework ensuring the safeguarding of employees' rights in the event of transfers of undertakings. Currently, the main legal basis in the field consists of Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses – the Transfer Directive. The paper aims to achieve a critical analysis of European regulations on the protection of employees' rights in the event of transfer of undertakings as a result of a merger. The scope of the Transfer Directive, the obligation to inform and consult employees in advance and the transfer of rights and obligations arising from the contract of employment as a result of a merger are being approached. In the study, matters on which the current European legal framework requires improvements so that the achieving of its objective be possible beyond interpretation and controversy are highlighted.*

Keywords: *European Law, merger, employees, information and consultation, contract of employment, transfer of rights and obligations.*

1. Introduction

In order to protect employees' rights which could be impacted in the context of restructuring of their employer, Article 12 of Directive 78/855/EEC of 9 October 1978 concerning mergers of public limited liability companies and Article 11 of Directive 82/891/EEC of 17 December 1982 concerning the division of public limited liability companies provide the informing and consulting procedure of employees' representatives, in the event of domestic mergers and divisions, in accordance with Council Directive 77/187/EEC of 14 February 1977 on the approximation of laws of the Members States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.

Council Directive 77/187/EEC of 14 February 1977 on the approximation of laws of the Members States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses[1], referred by the Merger Directive and the Division Directive, is the first Community legislative act regulating

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[1] Published in OJ L 16, 20 January 1978

the protection of employees in the event of change of employer.

In time, Directive 77/187/EEC, although supplemented by Directive 98/50/EC, proved to be insufficient compared to the subsequent development of the Community legislation, of the legislations of Member States and of the case law of the Court of Justice of the European Communities, therefore a new regulation became necessary.

Thus, in the Community legal framework, Directive 77/187/EEC has been replaced by Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (the Transfer Directive)[2], which is the current legal base of the protection of employees' rights in the event of a transfer of undertakings, *lato sensu*[3].

2. The scope of the Transfer Directive: a critical look

According to Article 1 of Directive 2001/23/EC, any transfer of an undertaking, business, or part of an undertaking or business to another employer falls under the Community legislative act, irrespective of the public or private nature of the undertakings and whether or not they are operating for profit.

In the European legislation, the transfer of an undertaking means the transfer of a business, from one employer to another, as a result of a conventional assignment or a merger. The employer which transfers the undertaking has the capacity of transferor, whereas the one taking over the undertaking has the capacity of transferee.

From the content of Article 1(1)(b) of the Directive, it follows that the transferred undertaking represents an organised grouping of resources which retains its identity and has the objective of pursuing an economic activity, whether or not the activity is central or ancillary. For the sake of clarity, the case law of the Court of Justice stated that an undertaking, business or a part of an undertaking or business should be understood as a stably organized grouping of people and elements, which allows the pursuing of an economic activity in order to achieve a specific objective and retains its identity after the completion of the transfer[4].

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[2] Published in OJ L 82, 22 March 2001

[3] Within the same meaning, recital 12 of Directive 2005/56/EC on cross-border mergers of limited liability companies provides that the employees' information and consultation right with regard to the cross-border merger in which the employer is involved, shall remain subject to the national provisions of domestic merger

According to recital (12) of Directive 2005/56/EC: "Employees' rights other than rights of participation, should remain subject to the national provisions referred to in Council Directive 98/59/EC of 20 July 1998 on collective redundancies, Council Directive 2001/23/EC of 12 March 2001 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (1) and Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees".

[4] The expression of "transfer" and the expression of "undertaking" have been the subject of numerous case law and doctrinaire interpretations. For a detailed analysis, please refer to Tinca, O., "Observatii critice la Legea nr. 67/2006 privind protecţia drepturilor salariaţilor în cazul transferului întreprinderii, al unităţii sau al unei parţi ale acestora" ("Critical observations on Law no. 67/2006 relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses"), *Dreptul* no. 2/2007

For the topic of our research, the merger of companies as modality to implement the transfer within the meaning given by the Directive and its implications in terms of employee protection are of interest. In the event of a merger, the participating companies have the capacity of transferor, whereas the absorbing company and the newly created company, as the case may be, has the capacity of transferee.

Given that the *ratione personae* scope of the merger is clearly provided by Directive 78/855/EEC concerning mergers of public limited liability companies, the concept of undertaking in the event of a transfer as a result of a merger does not raise interpretation issues. The entities participating to the merger, thus subject to the transfer, are companies established according to the national law of Member States, legal entities having their own organizing and patrimony and pursuing legal economic activities for gain.

As a particular aspect, it must be mentioned that in the European case law it was shown that all limited liability companies fall under the scope of the Directive, whether or not under the national law of Member States the shareholders are governed by public or private regulations. Thus, the Court of Justice ruled in one case that "a limited liability company governed by private law, whose sole shareholder is a social assistance association governed by public law, is among entities subject to Article 3(1) and the first sentence of Article 1(1)(c) of Directive 2001/23/EC [...]"[5], for which reason its provisions apply to a subsequent transfer under the Directive.

With regard to the scope, it can be observed that Directive 2001/23/EC does not expressly refer in its content to the division of companies. Are divisions excluded from the scope of the Directive concerning the safeguarding of employees' rights?

In our opinion, although not expressly regulated by the Community legislative act, the division of companies falls under its scope. Our position is based on the following arguments:

a) From the systematic and teleological interpretation of Article 12 of the Merger Directive and of Article 11 of the Division Directive, which refer to Directive 77/187/EEC (currently Directive 2001/23/EC) with regard to the information and consultation of employees, we come to the conclusion that the absence of division from its scope is only a flaw of the legislator. To argue otherwise is equivalent to denying the recitals for which the European legislator adopted provisions for protection of employees. In addition, our opinion relies on the rule of logical interpretation *actus interpretandus est potius ut valeat quam ut pereat*. In other words, the cited Community regulations must be interpreted as to achieve their objective and not as to be inapplicable;

b) The argument by analogy *ubi eadem est ratio, eadem solutio esse debet* also supports the solutions argued by us in the event of divisions. The merger and division are ways of restructuring companies impacting on the contracts of employment and on employment relationships. Or, as the reasons for which the European legislator has regulated the protection of employees in the event of a merger are found also in the

[5] Case C-297/03, *Sozialhilfeverband Rohrbach v. Arbeiterkammer Oberösterreich and Österreichischer Gewerkschaftsbund), http://eurlex.europa.eu We mention that the first paragraph of Article* 3 has the following content: "The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee [...]", whereas the first sentence of Article 1(1)(c) provides: "This Directive shall apply to public and private undertakings engaged in economic activities whether or not they are operating for gain".

case of division we are of the opinion that the same should apply to this operation also; and

c) The special interest given at European level to employee protection and their working conditions is further proof in this regard.

Thus, the enactment of Directive 2001/23/EEC has had as starting point, among other things, the Community Charter of Fundamental Social Rights of Workers, which provides that the information, consultation and participation of employees must be developed and implemented in time, especially in the event of restructuring or mergers that affect the employment of workers. However, the expression "restructuring" also includes division which is a symmetrical operation in relation to merger.

On the other hand, from its preamble it results that the objective of the directive is to protect employees in the event of restructuring the company where the activity is performed and of change of employer. Or, similarly to the merger, the division represents a restructuring involving for part of the divided company, a change of employer.

Similarly to divisions, cross-border mergers are not expressly mentioned in the content of the legislative act. Do the provisions of Directive 2011/23/EC apply to cross-border mergers?

We believe that after the interpretation of recital 12 of Directive 2005/56/EC together with provisions of Article 14(4) of the same Directive and the *ubi lex non distinguit, nec nos distinguere debemus* rule of interpretation, the answer can only be affirmative.

Recital 12 cited above expressly refers to the provisions of Directive 2001/23/EC as concerns the safeguarding of employees' rights in the event of a transfer. Meantime, Article 14(4) of Directive 2005/56/EEC expressly provides that the rights and obligations of the merging companies arising from contracts of employment or employment relationships, existing at the date of coming into force of the cross-border merger are transferred to the company resulting from the cross-border merger, due to the entry into force of this cross-border merger, at the date of coming into force of the cross-border merger. Finally, since it can be observed that Directive 2001/23/EC does not distinguish between domestic and cross-border mergers in terms of employee protection in the event of a transfer, we are of the opinion that cross-border mergers fall within the scope of the Directive with regard to the safeguarding of employee rights.

In conclusion, for all these reasons, we believe that the wording of the law which allows for the possibility that only the merger falls within its scope is more limited than the actual intent of the legislator and that it is necessary to supplement it so as to expressly comprise the division and the cross-border merger.

Consequently, we suggest the correction and supplementing *de lege ferenda* of Article 1(1)(a) as follows: "This Directive shall apply to any transfer of an undertaking, business, or part of an undertaking or business to another employer as a result of a domestic or cross-border conventional assignment or division or merger".

The companies participating to the transfer and the types of operations that fall within the definition of a transfer do not deplete all legal issues raised by the scope of Directive 2011/23/EC.

Ratione loci, the scope provided by Directive 2011/23/EEC is limited to companies located in the territorial applicability of the Treaty establishing the EEC (Article 1 paragraph (2) of the Directive). Or, the directive on cross-border mergers applies to

Members States of the European Union and to the states of the European Economic Area. Will the Directive apply if the statutory registered office of the companies to be transferred is in Norway, Iceland or Liechtenstein?

We are of the opinion that, in this situation, the principle of non-discrimination should prevail and for this reason we believe that the protection of employees' rights must be ensured in all companies participating to a cross-border merger, given that the provisions of the Directive on cross-border merger apply equally to companies from Member States of the EEA.

With reference to the contracts of employment falling within the scope of the Transfer Directive, certain clarifications must be brought.

As a rule, it is for the Member States to establish the definition of the expression "contract of employment", respectively "employment relationship". However, in order to protect employees from potential abuses from employers, Article 2(2) of the Directive expressly provides that the national laws shall not exclude from the scope of the directive contracts of employment or employment relationships solely because:

- of the number of working hours performed or to be performed;
- they are employment relationships governed by a fixed-duration contract of employment within the meaning of Article 1(1) of Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship; or
- they are temporary employment relationship within the meaning of Article 1(2) of Directive 91/383/EEC, and the undertaking, business or part of the undertaking or business transferred is, or is part of, the temporary employment business which is the employer.

The beneficiary of the provisions of the Directive is the employee. The Directive does not contain a definition of the employee, but only refers to the national laws as those laying down autonomously the content of the expression „employee". Employee shall mean „any person who, in the Member State concerned, is protected as an employee under national employment law" (Article 2(1)(d) of Directive 2001/23/EEC).

The first clarifications on the expression „employee" were brought by the case law of the Court of Justice shortly after the entering into force of Directive 77/187/EEC. In contrast with the lack of regulation in the Community law, in one case, it was decided that „the Directive does not require Member States to enact provisions in accordance with which the transferee of an undertaking becomes liable in respect of obligation concerning holiday pay and compensation to [former] employees who are not employed in the undertaking at the date of transfer"[6]. The Court thus established the rule that, in order to enjoy the rights granted by the Directive, the employee must be in an employment relationship with the transferor at the date of the transfer. Subsequently, the opinion of the Court was introduced in the Community legal framework; so that the current regulation expressly stipulates that the employment relationship or the contract of employment must exist at the date of the transfer.

[6] Case 19/83 *Knud Wendelboe and others v L.J. Music ApS, in liquidation. - Reference for a preliminary ruling: Vestre Landsret - Denmark*. - http://eurlex.europa.eu

In another case, the Court held that the Directive does not apply to persons who are employed at the date of the transfer but decide not to work as employee for the new employer. In the same case, it was demonstrated that a person who simultaneously holds the positions as employee and Chairman of the Board of Directors or holds participations to the share capital of the transferor, can not be excluded from the scope of the Directive.

Beyond these specifications, in the opinion of the Court of Justice, „the expression „employee" must be interpreted as covering any person who, in the Member State concerned, is protected as an employee under national employment law"[7] and it is for the national court to establish whether that is the case.

3. Obligation to inform and consult the employees in advance

Community regulation imposed on the transferor and transferee companies the obligation to inform the representatives of the employees affected by the transfer of the following items:

- Established or proposed date of transfer, as the case may be;
- Reasons for the transfer;
- The legal, economic and social implications of the transfer for the employees;
- Measures envisaged in relation to the employee.

According to provisions of Article 1 (2) and (3), the obligation to inform must be fulfilled in good time. What is the meaning of the expression "*in good time*"?

The Directive does not clearly define the expression "*in good time*", but through the interpretation of the legal contents we can obtain a minimal contouring. Thus, the information in good time, under the current regulations, occurs before the transfer, in case of the transferor, or before its employees are directly affected by the transfer in respect of their work and employment conditions, in case of the transferee.

We are of the opinion that the *de lege lata* distinction between the moment when the information is performed in case of the transferor and transferee is not justifiable and is rather confusing. *De lege ferenda*, provision of a certain and mutual term for both transferor and transferee would result in eliminating any controversy on this legal issue and would guarantee equal treatment for all employees involved in the transfer. We believe that the case law solution, according to which the obligation to inform the employees must be met before making any decision on the merger, can be imported into the legislation.

In case the transferor or transferee intends to take actions in connection to their own employees, the directive sets as their obligation, in addition to the obligation to inform, also the obligation to consult the representatives of the employees, the purpose of such consultation being to conclude an agreement on the measures envisaged.

Member States whose laws provide that representatives of the employees may have recourse to an arbitration board to obtain a decision on the measures to be taken in relation to employees may limit the obligations to inform and to consult to cases where

[7] Case 105/84 *Foreningen af Arbejdsledere i Danmark [Association of Supervisory Staff, Denmark], acting on behalf of Hans Erik Mikkelsen, v A/S Danmols Inventar, in liquidation*. -http://eurlex.europa.eu

the transfer carried out gives rise to a change in the business likely to entail serious disadvantages for a considerable number of employees (Article 7(3) of the Directive). Legal limitations of information and consultation obligations can not affect, however, the right of employees to be informed and consulted in good time on proposed measures which concern them. It is worth highlighting that the limitation of the obligation to inform and consult is permitted only within the undertakings which fulfill in terms of number of employees, the conditions for the election or nomination of a collegiate body representing the employees.

If, for reasons beyond the control of employees, there are no representatives of the employees in the undertakings, the transferor and the transferee are bound only by the obligation to inform in advance. Therefore, in situations which fall within this scenario, the obligation to consult does not exist and the obligation to inform may not be limited.

4. Transfer of rights and obligations under the contract of employment as a result of a merger

According to Article (3)(1) of Directive 2001/23/EC "the transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer shall, by reason of such transfer, be transferred to the transferee". In addition, paragraph 3 of Article 3 states that "following the transfer, the transferee shall continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor under that agreement, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement."

Practically, in case of transfer by merger of the undertaking, the individual contracts of employment and collective employment agreements concluded between the transferor and its employees are transferred to the transferee who is bound to safeguard working conditions in force at the time of transfer.

The essential legal aspects of the transfer of rights and obligations that form the content of the employment relations from the merging companies to the acquiring company or the newly established are:

a) Transfer of rights and obligations from the transferor companies to the transferee company operates *ope legis*, which means that the execution of an agreement between the parties regarding the transfer of the employment relationships is not necessary in order for this effect to occur. The fact that one of the important aspects of the merger project consists of the employee rights it does not provide it the legal regime of an agreement between the parties producing its effects within the legal frame covered by the Directive. In practice, the transferee is informed, during the merger project step, on the legal status of employees and, if it considers the transfer as burdensome obligations, it may waive the closing of the merger, as a result of the transfer. The negotiation of the transfer of employment contracts and of their content is, therefore, excluded[8].

[8] In case of the merger by forming of a new company, the transparency of legal and economic aspects of the companies involved is guaranteed by the nature of the operation, while the transparency of merger by acquisition is insured by the acquiring company.

b) If national law so provides, each transferor may have the obligation to notify the transferee of all rights and obligations that will be transferred. It is worth mentioning that if, in the event of a merger by acquisition, notification is possible, when the merger takes place through the formation of a new company, such an act cannot be performed in advance because the transferee company begins its existence as a legal entity at the time of transfer, while the transferor company ceases to exist. Nevertheless the Directive provides that failure by the transferor to perform such notification affects neither the transfer of such rights and obligations, nor of the rights of employees. Therefore, the transferee cannot claim the lack of notification to justify its breaches of the obligation to safeguard the employees' rights.

c) The date on which the transfer of rights and obligations arising from contracts of employment or labour relations is given by the date of transfer of the undertaking from the transferor to the transferee.

In the event of mergers, the transfer of business takes place upon registration with the trade register of the addendum to increase the share capital of the acquiring company or the articles of association of the new company. Rights and obligations arising from contracts of employment that ceased before registration of the merger are not transferred to the transferee, even if termination of such contracts has occurred after the beginning of the merger process. A potential transfer of any payment obligations to former employees is not excluded, but it is based on universal transfer of patrimony of the acquired company to the acquiring company. We are of the opinion that the transfer of rights and obligations within the merger, the universal transfer of patrimony is the common law while the Directive providing the transfer of employees' rights in case of transfer is the special law.

d) The obligation to safeguard the employees' rights stipulated by the individual contracts of employment, as well as those stipulated in collective agreements, in case such contracts exist. Observing employees' rights provided by the collective agreements of the transferor companies is limited in time until expiration or termination thereof, or until the coming into force of another collective agreement, as the case may be.

e) The obligation to safeguard employees' rights in case of merger belongs to the transferee company, or the legal entity that becomes the employer as a result of the merger.

In respect of the obligations arising before the date of transfer of a contract of employment or from an employment relationship existing on the date of transfer, the Directive allows Member states to provide that, after the transfer, both the transferor and transferee may be held liable together and separately.

f) The right correlative to the obligation to safeguard belongs to the employee, namely the individual having a contract of employment or employment relations concluded with the transferor, namely the legal entity which stops being the employer as a result of the merger. The Directive is silent on the opposition right of the employee, under which the employee can safeguard employment relations with the transferor. Appealed in cases of employees entitled to object, the Court of Justice ruled that nothing precludes national legislation to provide for such a right. We believe that, in respect of a merger, a right of opposition is not justified, regardless of how the operation is performed. On the other hand, if we admit that the scope of the Directive comprises

also the division, the issue that an employee may elect to continue his employment with the company subject to the division could be raised.

g) The *ope legis* transfer of rights and obligations contained in the contracts of employment as a result of the transfer of the undertaking excludes, in principle, the dismissal due to transfer. However, labour relations can be terminated at the initiative of the transferor or transferee for economic, technical or organizational reasons entailing changes in terms of employment. Moreover, if the transfer substantially affects working conditions at the expense of the employee, the contract of employment may be terminated by resignation. In both methods described, the liability for the termination of the contract of employment belongs to the employer.

h) The provisions of Directive 23/2001 do not apply, except otherwise prescribed by the national law of the Member States, if the transferring participating companies are subject to bankruptcy or other insolvency proceedings for liquidation of their goods. The rule according to which the Directive is not applicable in the case of insolvency of the transferor should not lead to misuse of this procedure to circumvent the provisions on the protection of employees in case of transfer. The Directive imperatively provides Member States obligation to take appropriate measures in this respect.

If national law allows the transfer to take place during the insolvency proceedings, the Member State may provide that the obligations of the transferor company arising from any contracts of employment or employment relations and outstanding prior to the transfer or before the opening of insolvency proceedings are not assigned to the transferee company. Such an exemption from the transfer of all obligations of the transferor is possible only under the condition that the respective Member State is concerned to provide a protection at least equivalent to that covered by Directive 80/987/EEC on the protection of employees in case of insolvency of the employer[9]. Cumulatively with the first condition or alternatively, the Member State may provide the transferor's, transferee's and employee representatives' ability to agree on changes in the working conditions of employees, so as to ensure their employment conditions and to ensure the activity of the undertaking. Member States may extend the possibility of concluding this tripartite agreement in case of any transfer if the transferor is in a serious economic crisis as provided by law.

Directive 23/2001/CEE regulates, through special provisions, representatives of employees protection[10]. Article 6 of the Directive establishes differences in case the undertaking retains or not its autonomy following the transfer.

In case the assigned undertaking remains independent, the employee representatives retain their statute and function in the same conditions that existed before the transfer date, if they meet the requirements for acting as employee representatives. However, provisions for safeguarding the status and function of employees' representatives will not apply and the reappointment of the representatives of the employees or the

[9] Published in OJ L 283, 20.10.1980, p 23

[10] Including the case the transferor is undergoing insolvency proceedings, Member States may take the necessary measures to ensure that the assigned employees are properly represented. If the mandate of the employees' representatives affected by the transfer expires as a result of the transfer, such representatives continue to benefit from the protection provided by the laws, regulations and administrative provisions or practice of the Member States.

reconstitution of employee representation will occur if the legal conditions for this purpose are met.

If, on the contrary, the undertaking loses its autonomy following the transfer, as in the case of merger, Member States are obliged to take the necessary measures to ensure that the transferred employees are properly represented during the period necessary for the reforming of the employees representation or the reappointment of the representatives of the employees, in accordance with national law and practice.

The Directive does not explain the concept of the undertaking's autonomy. Appealed with a claim for preliminary ruling concerning, in essence, the meaning of the concept of safeguarding the autonomy of the undertaking, the Court decided that an economic entity retains autonomy as defined in Article 6(1) of Directive 2001/23/EC "provided that the powers granted to those in charge of that entity, within the organizational structures of the transferor, namely the power to organize, relatively freely and independently, the work within that entity in the pursuit of its specific economic activity and, more particularly, the powers to give orders and instructions, to allocate tasks to employees of the entity concerned and to determine the use of assets available to the entity, all without direct intervention from other organizational structures of the employer, remain, within the organizational structures of the transferee, essentially, unchanged"[11]. Thus, the Court explained the concept of autonomy as the ability of the governing bodies to make independent decisions by organizing and carrying out their activities in the assigned economic entity.

6. Conclusions

Community regulations on the obligation to inform and consult, the obligation to safeguard the rights of employees reflect the Community legislator's concern to protect employees in the context of changing their employer for reasons outside of their will. As an expression of the same concerns, the final provisions of the Directive expressly stipulate the right of Member States to establish a national regime more favourable to the protection of employees' interests and promote or permit collective agreements between social Partners more favourable to employees.

However, we believe that the current EU framework should be improved, in terms of both form and content. In our opinion, legal texts, especially the chapter "Safeguarding employees' rights" are drafted in a negligent manner and their content seems more an amalgam of ideas rather than a coherent sequence of rules of law. In fact, this is our justification for our choice of systematic analysis, that is, from our point of view, the only way to have a clear mirror Community legal framework in the field.

Beyond these issues, future regulation should explicitly extend the scope of the Directive, which certainly is treated *de lege lata* superficially and therefore, incomplete. Meanwhile, normative clarifications of key concepts for the enforcement of the Directive such as undertaking, autonomy, good time are absolutely necessary.

[11] Case C 151/09, Federación de Servicios published by the UGT (UGT FSP) v Ayuntamiento de La Línea de la Concepción, María del Rosario Vecino Uribe, Ministerio Fiscal http://eurlex.europa.eu

Of course, the case rulings of the European Court of Justice can compensate glitches of the European legislator, but the time factor of this approach should not be ignored and also the aspects regarding the mandatory nature of the decision. Also, a case ruling is only a jurisprudential repair, and, certainly for those involved, a lost beginning. Especially in case of a restructuring by merger, which is motivated by goals that require promptitude and which by nature is done in a long time, the claim lodged with the Court of Justice may determine quitting operation.

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The Virtual Enterprise – Citizen of the European Union

Andreea Davidescu (Vasile)*

Abstract: *The Virtual Enterprise is a rather young and unclear concept in the business world. A virtual enterprise is a temporary network of companies that share their different resources in order to reach a given goal (the creation of a new product, or the entry on a new market) and is a powerful tool in the hands of the business community. The question this article raises is whether European Union's businesses are able to take advantage of this opportunity within the European Union. We discuss several obstacles towards the creation of virtual enterprises: regulatory uncertainties, operational management that dismisses the advantage of an excellent infrastructure, the orientation of innovation creators towards theoretical research and the European business culture. The article also looks at research on the virtual enterprise in the European Union, the legal framework and technologies for virtualization.*

Keywords: *virtual enterprise, European Union, network companies, Internet*

The birth of the "virtual enterprise" took place in the 1980s, brought on by the information technology revolution. Business Week magazine published an article on the "hollow corporation" in 1986, describing it as an entity void of any material contents[1]. The virtual enterprise represents a natural step in a Darwin-type evolution towards the best organization in a world reshaped by new technologies like long-distance communication, computers and the Internet.

Nowadays the concept of virtual enterprise is used in a number of situations, from companies that use technology to globally coordinate their projects, to companies with electronic-only assets and products. This paper uses the term virtual enterprise to describe networks of companies, often temporary, that share their different resources in order to reach a given goal: the creation of a new product or the entry on a new market. Our first question is when we can consider a company to be virtual in this interpretation. When do we stop talking about outsourcing and start talking about virtualization? When do we stop talking about global coordination and start talking about networks of companies, or virtual companies?

The point where the classical company-function starts to be external in actual companies is unclear. Companies that outsource their manufacturing have been around

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[1] N. Jonas, The Hollow Corporation, *Business Week*, 3 March 1986, quoted in Cristina Cristureanu, *Economia Imaterialului: Tranzacţii internaţionale cu servicii*, pg. 11

for a long time, even during the golden age of the vertically integrated companies. The real question is about the extent of outsourcing that a company must achieve in order to start discussing about networks of companies.

There are several levels of externalization available for companies in their thrive for efficiency. Starting from a company that coordinates a global network of suppliers for its end-product, passing by a company that coordinates a global network of suppliers to deliver its end-product and limits its activities to leading the network, and ending with a virtual enterprise.

The network configuration's level of flexibility increases as we analyze the different stages above. A company that uses external suppliers for some of its subassemblies usually uses a fixed chain of suppliers.

The network leader does more than the average purchase manager. Without having its own dedicated design, manufacturing, storage or transport facilities, the network manager has the know-how and ability to create its own temporary manufacturing chains based on a pool of selected suppliers. Take the example of Li&Fung, a Hong Kong based company that has a pool of over 8.300 selected suppliers that subcontract in various configurations based on the orders received. Li&Fung has the capacity to divide any order into simple products, manufactured by its pool of suppliers, which can by assembled by third-party companies into finished goods.

The maximum degree of flexibility is achieved by the temporary network of companies. This model is considered the optimum mix of competencies available in the market and can be used to achieve a given objective at a given moment in time. The question is how these networks are created, if they actually exist or they are only a theoretical exercise. Is the virtual company just a concept, is it virtual?

Truth is, virtual companies need a network leader. They need someone to get the ball rolling, to define the overall concept, to coordinate activities. I think it is safe to say the laws of outsourcing no longer apply to such contracts, that virtual companies do exist and will continue to nourish on new technologies, low transport costs and global flattening of consumer preferences provided that business community mentality will accept them. North American and Asian business men and women seem to have embraced our infant. Question is: can the Europeans do the same?

The virtual enterprise - citizen of the New World?

The president of Li&Fung described[2] the virtual enterprise as a Ferrari. A powerful vehicle, capable of reaching its destination fast and safely, provided it runs on flat surfaces. The technological revolution, trade agreements, production globalization, the plunge in transport costs and uniformization of consumers' preferences are all flattening agents. Fung says[3] that while the geographical elements drop in importance, there are now regulations that draw the global business terrain. Regulations and agreements can create mountains that block commerce (by norms, protective measures and other

[2] Fung, Victor K, Fung, William K, Wind, Yoram, *„Concurenţa într-o lume plată"*, Publica Publishing House, 2009, pg 232

[3] Fung, Victor K, Fung, William K, Wind, Yoram, *„Concurenţa într-o lume plată"*, Publica Publishing House, 2009, pg 223

constraints) or tunnels and highways to facilitate it (through bilateral trade agreements). Just like the heads of caravans had to choose the optimal route in the past, organizations today have to choose the optimal route for the production and transport of goods based on national reglementations.

Can the European Union, in this context, provide good soil for the virtual enterprise? Is the European business world open enough and flexible enough to nourish the seeds of such enterprises? Or do the United States, with their generous internal market, lack of linguistic barriers and innovation seeking attitude present a clear advantage? After all, states like Delaware or Vermont have even legislated the limited liability corporation that only exists online, waiving the obligations for physical headquarters or in-person meetings in the boardroom.

Juergen Noll says[4] that virtual enterprises, despite their ability to provide benefits for the collaborating firms and consumers as well, are hampered in Europe due to greater regulatory uncertainties, whereas, for example, there existed some 250 000 cyber businesses in the USA as early as 1997.

Dr Jan Worst from the Maastricht School of Management conducted a study on *Virtual enterprises: the impact of e-business on the European construction industry*[5]. The main question it addresses is: „Is management of the construction industry ready to adopt the virtual enterprise as such?" The paper „quantitatively analyses the opportunities for the development of virtual networks in the West European construction industry with a focus on increased business performance". It starts from the idea that a company's virtuality readiness can be estimated based on four dimensions (independent and dependent variables): business strategy, business culture, technology and performance and tests 3 hypothesis:

"1. General contractors' and project related participants' business strategy is positively related to Internet content aligned to virtual enterprises.

2. General contractors' and project related participants' business culture is positively related to Internet content aligned to virtual enterprises.

3. General contractors' and project related participants' adoption of ICT is positively related to Internet content aligned to virtual enterprises."

The conclusion is that „currently management has to cope with a gap between ICT strategy and the current options to arrive at the adoption of virtual enterprises. There is distance between operational management and ICT management." The most viable model for companies virtual–ready are companies with a strong domestic market and web orientation. However, technology updates are easier for most companies than a business culture update. Managers in the European construction industry look at potential network members as competitors, not partners. They are reluctant to sharing data, to collaborative designing or planning. The management of construction companies is often virtuality-averse.

[4] Noll, Juergen, *Virtual Enterprise Networks in Europe – Economic Opportunities and Legal Challenges*, 2004, Available at SSRN: http://ssrn.com/abstract=549001 or http://dx.doi.org/10.2139/ssrn.549001 on 26 April, 2013

[5] Worst, Jan, "Virtual enterprises: the impact of e-business on the European construction industry" in *Business Leadership Review VI:IV*, 2009, available at http://www.mbaworld.com/blr-archive/issues-64/3/index.pdf on 26 April 2013

It is generally agreed that there are two main prerequisites for the mere being of the virtual enterprise: the infrastructure and the human drive towards collaboration, innovation and the pursuit of profits. However basic these traits may be for the regular business person, there are two clusters very hard to identify or to measure for cultural obstacles that will stand in front of the European business person in his evolution towards virtual enterprises: the orientation of innovation creators towards theoretical research and the European business culture.

On the one hand, the European business culture, or better said the lack of European business culture may hinder the creation of virtual enterprises. Although European, the German and the Italian business partners will not think of themselves as European, but as a German doing business with an Italian – who might as well be Asian or American as far as communication goes. Sure, European Union regulations may be useful for gaining advantages compared to non-EU competitors, but as far as business culture goes, our German will not be better acquainted to his Italian partner thanks to their common affiliation to the European Union. I believe Americans have, in their pure pragmatism, understood better than us what the differences between Europe's business cultures are and there are a large number of articles and books available to explain these differences.

„Just like eating tapas is way different compared to relishing curry wurst; the differences in Spanish and German cultures are just as unique. Germans are known to be extremely business-like, to the point and really into facts and figures. As a business associate please don't expect your client to invite you for beer and sausages at a local restaurant. Instead focus on getting your points across in a crisp manner so there is no room left for confusion. With Germans always plan your meetings at least few weeks in advance; they value their time way too much to accommodate you without a heads up.

Outgoing, warm and friendly, these are three words that can best describe Spanish folks. Expect to be invited for lunch meetings, and don't be surprised if the meetings never start on time. Fairly laidback and relaxed, they also take time to know you before finalizing any business commitment. Also, remember that when approaching them to strike a long term deal, dress appropriately – a blend of chic and smart will be highly appreciated."

One of the bloggers says and he continues his description with different European nationalities[6].

European Union's market proved to be an immense advantage for companies, the next challenge is for different nationalities to make even better advantage of the setup. We need to learn to communicate and to construct a true European business culture which will lead way to better business collaboration, networks of companies and virtual enterprises.

On the other hand, virtualisation goes where innovation lovers go. It is a business model one does not expect to find in closed, obsolete, rigidly regulated environments. Can the European Union prove to be a land where innovation never sleeps? It certainly wants to be. The European Commission's Europe 2020 strategy lists as a priority[7]

[6] http://www.johanvanhamme.com/archives/european-business-culture
[7] http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/priorities/index_en.htm

„delivering growth that is: smart, through more effective investments in education, research and innovation..."

According to a study[8] published in September 2012, which looks at the innovative capabilities and market performances of the European Union in comparison to the US and the BRICS, the European Union has great innovation potential. The study uses several indicators listed under 3 titles (Investment and Human Capital, Infrastructure and Research-Productivity) to asses the Innovation Capabilities of the European Union. Its conclusions show that, although having excellent infrastructure and Theoretical Research-Productivity, the European Union does not rise above its international competitors as far as investments or Patent – Productivity go. It is therefore our opinion that good strategies and valuable research (as described in the following chapter) need to be put into practice should we want the European Union to become the land of innovation and virtualization.

Research on Virtual Enterprise in the European Union

The European Union puts both minds and funds to work on research regarding the concept of Virtual Enterprise. There are several research programmes, completed or in execution, funded by the European Commission presented through CORDIS (Community Research and Development Information Service) with regard to the Virtual Enterprise:

- **Development of a virtual reality technology for SMEs in the "virtual prototyping" of components and assemblies[9],** 1997 – 1999, aimed at developing a Virtual Prototyping System available for European SMEs to use on low cost CAD systems and operated by design engineers instead of real-time programmers. The industrial objective of the research was to help SMEs improve their competitiveness by granting them access to otherwise high cost technology requiring high levels of expertise.
- **Understanding Collaboration in 3D Virtual Environments[10],** 2010-2012, aimed at understanding virtual teamwork in 3D collaborative virtual environments (CVE) that have gained increasing importance in global organizations and higher education institutions, and are subject to an emerging interdisciplinary field of research. CVE have been developed to facilitate cross-border collaboration and to overcome the issues associated with traditional collaboration tools. Team members are embodied as avatars, communicate via chat and audio channels, and can jointly look at and manipulate objects in a shared virtual space. The purpose of the research is to investigate group interaction processes and outcomes in physical and virtual environments in order to examine how different media affect group behaviour and under what conditions which medium is most effective.

[8] Kremer, Jan-Frederik and Below, Katharina, "*Innovative Capabilities and Market Performance: The European Union in International Comparison*", *The Jean Monnet/Robert Schuman Paper Series*, Vol. 12, No. 7, September 2012

[9] http://cordis.europa.eu/projects/index.cfm?fuseaction=app.details&TXT=virtual&FRM=21&STP=10&SIC=&PGA=&CCY=&PCY=&SRC=&LNG=en&REF=43298

[10] http://cordis.europa.eu/projects/index.cfm?fuseaction=app.details&TXT=virtual&FRM=1&STP=10&SIC=&PGA=&CCY=&PCY=&SRC=&LNG=en&REF=96439

- **Policy-Assessed system-level Security of Sensitive Information processing in Virtualised Environments[11],** 2010-2012. Although e-Government can benefit form virtualised service platforms and cloud computing the sharing of resources virtualisation is based on raises concerns regarding the security of data as most e-Government applications handle confidential data. 'The PASSIVE project proposes an improved model of security for such virtualised systems to ensure that: adequate separation of concerns (e.g. policing, judiciary) can be achieved even in large scale deployments; threats from co-hosted operating systems are detected and dealt with; public trust in application providers is maintained even in a hosting environment where the underlying infrastructure is highly dynamic'.
- **European virtual engineering network (EVEN)[12], 2002-2003.** The creation of a virtual institute focused on product design and development and virtual engin**e**ering application, sharing knowledge and making it useable for European SMEs, with a multidisciplinary approach, integrating the various cultures and national characters of European in order to definitely contribute to the improvement of competitiveness. This virtual centre will be focused on exploiting RTD results into industrial applications with a strong market orientation and meeting different needs of research/industrial sectors. In order to do that, the virtual centre will launch and promote dissemination and awareness actions, demonstration projects, tailoring of virtual engineering applications to specific sectors, product categories and type of companies.
- **Business Integrator Dynamic Support Agents for Virtual Enterprise[13], 2000-2002.** The BIDSAVER Project aims at the assessment and development of a framework for the constitution and operation of Virtual Enterprises, with the participation of SMEs searched through web based information agents, dynamically organised according to best-fit criteria. The objectives are for BIDSAVER to develop a methodological, technological and legal frame to support SMEs' competitive potential through the constitution and operation of Virtual Enterprises (VE), joining geographically dispersed SMEs to catch business opportunities, and managed on the basis of competitiveness-oriented criteria by a new entity, the Business Integrator. BIDSAVER covers the dynamic connotation of VE, with the selection of optimised Partners' sets through Internet-based search, and will develop and validate through two pilot projects: A legal frame for the VE, to regulate co-operation and to provide general contractual terms and conditions A code of practice and technological frame, in view of a "Plug and Play" search for co-operation-ready partners and of rapid customisation of commercial solutions for functions like project management A prototype management system, leveraging on e-Commerce and Internet technology, based on the concept of integrated product, project and organisation views**.**

[11] http://cordis.europa.eu/projects/index.cfm?fuseaction=app.details&TXT=virtual&FRM=1&STP=10&SIC=&PGA=&CCY=&PCY=&SRC=&LNG=en&REF=95251

[12] http://cordis.europa.eu/projects/index.cfm?fuseaction=app.details&TXT=virtual&FRM=11&STP=10&SIC=&PGA=&CCY=&PCY=&SRC=&LNG=en&REF=60181

[13] http://cordis.europa.eu/projects/index.cfm?fuseaction=app.details&TXT=virtual&FRM=21&STP=10&SIC=&PGA=&CCY=&PCY=&SRC=&LNG=en&REF=54837

- **Adaptive Virtual Enterprise ManufacTURing Environment[14], 2011-2014.** In order to cope with the demand for flexibility and fast-paced business innovation, there is a need for an integrated, yet framework, environment which is able to establish, manage, monitor, and adapt virtual factories. This needs to be based on the requirements of the manufacturing processes at a deep technical level to provide easy, flexible interoperability with minimal user skills especially to support SMEs. ADVENTURE will deliver this platform and the accompanying tools by providing a holistic environment for plug-and-play virtual factories based on cross-organisational manufacturing processes.
- **Collaborative Virtual Environments[15], 1995 – 1999,** COVEN aims at developing a computational service for teleworking and virtual presence. The main objective of the project is to build the infrastructure for cooperative teleworking systems and to demonstrate the benefits networked VR provides.
- **Virtual Organisations Cluster[16], 2001-2004.** The aim of VOSTER is to collect, analyse and synthesize the results from a number of leading European research projects on Virtual Organisation (VO), i.e. geographically distributed, functionally and culturally diverse, dynamic and agile organisational entities linked through ICT.
- **VIRTUALQ[17], 1997-1998.** The project's objectives are to identify needs, and potential solutions for five SMEs wishing to implement innovative IT solutions into the supply chain of the virtual enterprises to which they belong. Other areas such as concurrent multisite engineering will also be analysed.

Legal point of view

The legal background for European Virtual Enterprises is based on the following European Commission directives:

- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'): "The Electronic Commerce Directive, adopted in 2000, sets up an Internal Market framework for electronic commerce, which provides legal certainty for business and consumers alike. It establishes harmonised rules on issues such as the transparency and information requirements for online service providers, commercial communications, electronic contracts and limitations of liability of intermediary service providers."

- Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures: This Directive lays down the criteria that form the basis for legal recognition of electronic signatures by focusing on certification services. These comprise the following:

[14] http://cordis.europa.eu/projects/index.cfm?fuseaction=app.details&TXT=virtual&FRM=31&STP=10&SIC=&PGA=&CCY=&PCY=&SRC=&LNG=en&REF=100733

[15] http://cordis.europa.eu/projects/index.cfm?fuseaction=app.details&TXT=virtual&FRM=31&STP=10&SIC=&PGA=&CCY=&PCY=&SRC=&LNG=en&REF=30484

[16] http://cordis.europa.eu/projects/index.cfm?fuseaction=app.details&TXT=virtual&FRM=51&STP=10&SIC=&PGA=&CCY=&PCY=&SRC=&LNG=en&REF=59079

[17] http://cordis.europa.eu/projects/index.cfm?fuseaction=app.details&TXT=virtual&FRM=51&STP=10&SIC=&PGA=&CCY=&PCY=&SRC=&LNG=en&REF=35715

- common obligations for certification service providers in order to secure transborder recognition of signatures and certificates throughout the European Community;
- common rules on liability to help build confidence among users, who rely on the certificates, and among service providers;
- cooperative mechanisms to facilitate transborder recognition of signatures and certificates with third countries.

- Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts: The Directive applies to **distance contracts** between a professional and a consumer, for the provision of a service or goods. A distance contract may be concluded by any means (by telephone, e-mail, catalogue, etc.) which do not require the simultaneous physical presence of the parties to the contract. Besides regulations, in practice there exist the problems of liability and trust. Noll[18] looks at several models for liability: liability of the Virtual Enterprise only, liability of the leading company only, liability of all network companies and proposes a hybrid liability model based on the client's easy access to information regarding his/her claims and liability of all participating firms in the production network in addition to that of the virtual enterprise and of the network leader.

Technologies for the virtual enterprise[19]

New technologies are a prerequisite for the concept of virtual enterprise. The use of the Internet is a minimal requirement for the operations of such entities. However, e-mail and the company web site are implicit to all types of organizations nowadays and do not make a company virtual.

New technologies are neither a must for the existence of the virtual company nor are they sufficient. They represent mere instruments available for all companies that can help our virtual citizen function.

The Internet is the first thing that comes into one's mind when discussing virtualization. An important lesson about the Internet is that the Internet is a technology and not a business model. The birth of the Internet brought on more than new sales strategies as the Internet does more than facilitate communications. It influents and can remodel dramatically all processes from hiring and employee communication to coordinating global production. Michael Porter says that the Internet does not represent a derailing element for most industries and companies. It rarely overrides important competitive advantages for an industry. It often makes them more valuable. Therefore, the "new economy" seems more like the "old economy" with access to a new technology than a new economy.

The impact of the Internet is influenced by the way it is used. According to UNCTAD, there is no available data on the way companies use the Internet. There is however information available for individual countries. These show that in Finland for example,

[18] Noll, Juergen, *Virtual Enterprise Networks in Europe – Economic Opportunities and Legal Challenges*, 2004, Available at SSRN: http://ssrn.com/abstract=549001 or http://dx.doi.org/10.2139/ssrn.549001 on 26 April, 2013

[19] Some of the ideas in this section were presented in the Technologies for the Virtual Enterprise paper at The Eleventh International Conference on Informatics in Economy IE 2012, on 10 and 11 May, in Bucharest

where its penetration rate is very high companies use the Internet for complex purposes, while in countries like Egypt or North Korea it is used less and for primary needs, like email.

However used and although essential, the Internet is to our networks of companies nothing more than water to a human: essential and yet insufficient for survival. A virtual company as such will rely on every new technology for even the simplest of tasks. It will have global coverage and globally distributed production sites. It has virtual offices as part of its employees work at home and remotely connect to their work computers. It has virtual factories as components are produced in facilities all over the world. It has virtual research teams as they can work with several universities, or researchers that can share, correlate their findings and brainstorm from different locations. It has virtual meeting rooms as meetings often take place in airport cafes. And it has virtual meetings as they can take place by video calls with people all over the world. It has virtual software as it uses cloud computing.

Companies that have learned the Internet lesson are now reaching for the next best thing: cloud computing. Cloud computing is a new instrument available to companies who want to deal with IT needs more efficiently. It comes as the natural step in the evolution from classical networks and hardware-based applications to virtualization. It brings to the table an intelligent approach to virtualization and a business-mind.

Conclusions

'The virtual enterprise is like a Ferrari: a powerful vehicle, capable of reaching its destination fast and safely, provided it runs on appropriate surfaces[20].' The European Union has the potential of providing such business surfaces and of nurturing lucrative virtual enterprises. It has excellent infrastructure, access to state-of-the-art technologies for virtualization, large budgets for research. Working on its regulation and legal framework, its business culture regarding inter EU members collaborating and virtualization and its research being turned into reality will make the European Union a land of opportunity for virtual enterprises.

[20] Fung, Victor K, Fung, William K, Wind, Yoram, *„Concurenţa într-o lume plată"*, Publica Publishing House, 2009, pg 232

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Germany: Europe's China

Paul Dobrescu, Mălina Ciocea*

Abstract: *The paper analyses Germany's ascent not only as Europe's most important economic power, but also as its leader. Figures show that Germany overcame the crisis; in fact the crisis legitimized its development model. Which would be Germany's main strategic choices, confirmed by the historic evolution of the recent years? First, its option for manufacturing, which allowed Germany to turn into Europe's factory. Second, the option for reform. "Agenda 2010", initiated by Gerhard Schroeder in 2003, is a crucial moment in the country's evolution. Special attention is paid to Germany's position on the single currency. Germany's performance is that it managed to turn the euro into a kind of European Dmark. The euro now formally "obeys" German rules, agreed upon from the very beginning, and is mainly coupled to the evolution of German economy. Germany is now sitting its most important exam: the European one. Today, Germany is Europe's most powerful state, but it must become its leader, whose development model would be accepted throughout the continent. Some German economic options are strikingly similar to China's.*

Keywords: *development model, federal vs. national approach, German reform, dominant/hegemonic power, strategic options, Euro crisis*

1. The crisis in the developed world

Four, five years into the crisis we can ask ourselves: who has benefited most in these difficult times and who has lost most? The obvious answer to the first question seems to be: those countries which have developed constantly (BRIC countries, for instance). Turkey, Mexico, South Africa, Indonesia, South Korea, Poland also join the ranks of those who took advantage of the crisis.

To grow is one thing; to transform growth into a development model is completely different. When can we refer to the beneficiaries of crisis, those states which have acceded to economic success and prestige because of the crisis? Not until the experience of a country has developed into a **model**, which can be inspirational to others, can

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guide development efforts in other parts of the world, can grow into knowledge which can be passed on irrespective of the evolution of source states. From this perspective, we can consider China and Germany as the two most important beneficiaries of crisis.

What brings these countries together? In short, patterns of development, which turned the former into the *world's factory* and the second, into *Europe's factory*. They are also united by their decisive focus on export: China is first and Germany, second, in world export volume. Most importantly, they have been guided by a **vision** of their own development, an effort to adapt, an evaluation and estimation of future developments. Crisis has merely acknowledged the validity of such insight.

Who are the main losers? The US is an obvious choice. At the beginning of the crisis, Germany's former finance minister, Peer Steinbruck, believed the new financial crisis to be "an American problem", a product of "American greed" and inadequate regulations – we would be justified in adding shortcomings in the American development strategy – which would cost the US its "superpower status."[1] Another choice is Europe, which has lost its former glory and faces a leadership crisis, far more dangerous than the economic crisis. The latest developments encourage us to believe that Europe is the favoured seat of crisis. In short, four, five years into the crisis **the main loser is the developed world, with its most representative actors: the US and Europe**.

The paradox lies in the fact that despite the European Union struggling against the crisis, Germany rises as one of the greatest beneficiaries of these difficult times. How can we account for this?

2. "Forget Bruxelles! Berlin has the real power!"

In a recent article, Gideon Rachman pointed to Berlin as the true capital of the Union.[2] Crucial decisions for Europe are now taken in Berlin. They are then effectively adopted in various European institutions, but their economic and judicial rationale comes from Germany's capital. Crucial decisions in Europe – from the European Central Bank's decision to buy bonds from financially stricken countries to bail-out for southern countries – have met with Berlin's approval first. It was the German Parliament that had the final say on the decision, not the European Parliament. The Union's most important institutions – the Commission and the Council – are still in Bruxelles, but the key decisions are made or at least reached in Berlin. In Rachman's words, "this power shift from Bruxelles to Berlin has been encouraged by the crisis". Encouraged, not created. Therefore, Germany's ascent can be explained through the causes of this power shift in Europe.

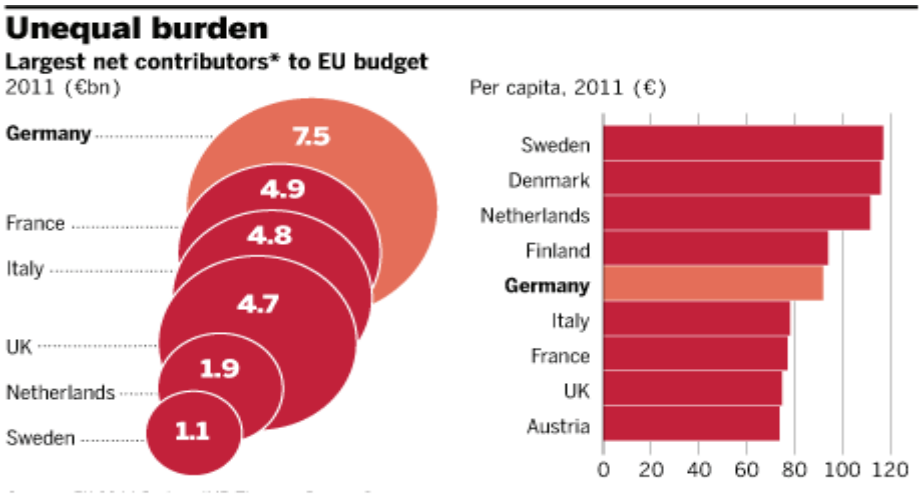
Germany is not only a great power, but a power which has passed the crisis exam successfully. Germany's evolution has been confirmed by the crisis. Germany rejoices not just power, but also **prestige**, which is essential for Germany's new status as a European leader.

Throughout the crisis, Germany has not had real competitors in Europe. Spain and Italy have their own challenges, Great Britain is not part of Eurozone and cannot have a

[1] Joseph P. Quinlan, *The Last Economic Superpower: The Retreat of Globalization, the End of American Dominance, and what We Can Do about it*. McGraw-Hill, 2011, p. 9.

[2] Rachman Gideon, Welcome to Berlin, the New Capital of Europe, *Financial Times*, Tuesday, October 23, 2012.

decisive say. What is left is France. Traditionally, Europe was ruled by a Franco-German partnership. "Merkozy" stood for this *dominant duo*. We find a diplomat's declaration relevant for this situation: "France needs Germany to disguise how week it is. Germany needs France to disguise how strong it is". **Germany has no counterpart** in Europe. It is the main contributor to the European budget in absolute terms, as shown below.



Source: George Parker, Quentin Peel, Exasperated allies, *Financial Times,* November 7th 2012, p. 7.

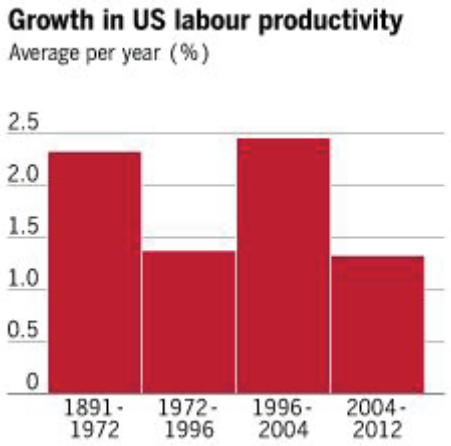
All this and much more have triggered a change in Germany's behaviour, in its self-perception, in its relationship with Europe. "*After reunification the goal was always said to be <a European Germany, not a German Europe> ... But exasperation with rule-breaking and fiscal incontinence elsewhere in Europe is making the Germans less shy about insisting on the need for a more "German" Europe. The price of German financial assistance is, increasingly, going to be the acceptance of rules and laws designed in Berlin*"[3]. From the height of a brilliant academic career, the last representative of the Frankfurt School, Jurgen Habermas, signals the same fact: "*The reunification spurred a change in mentality in Germany which (as studies in political science show) has also affected the self-interpretation and orientation of German foreign policy and lent it a more pronounced self-centred character ... This transformation is also apparent in European policy, especially since the 2005 change of government. Hans-Dietrich Genscher's conception of the 'European vocation' of a cooperative Germany is steadily deteriorating into an undisguised leadership claim of a 'European Germany in a German Europe'*"[4].

[3] Rachman, G., *op. cit.*
[4] Habermas, Jurgen, *The Crisis of the European Union: A Response*, Polity, 2012, p. 132.

3. Context always changes "the model"

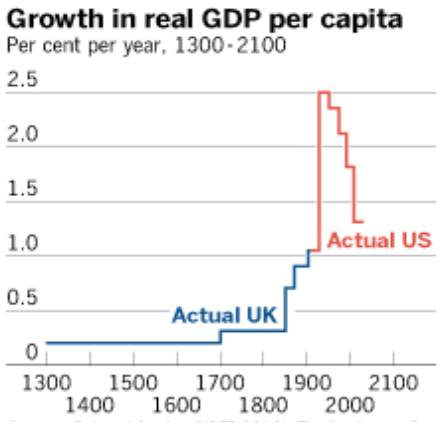
The American model must be ruled out from the talk about development patterns defying the crisis. A model fed by technological innovation, based on leaps in productivity allowed by great technological breakthrough. America impressed and changed the world through excellence in innovation. America was the queen of innovation. It may be said that Germany was on automatic pilot, doing what it could do best: cars, in line with its traditional advantages. It became a significant power, without America's shine, without innovation that could change Germany and the world. Yet context always changes the model.

Martin Wolf recently published an article starting from a talk delivered by Professor Robert Gordon from Northwestern University, a specialist in productivity[5]. The whistle that the professor blows and Wolf amplifies is that for three hundred years, during the three great technological revolutions, technology stimulated productivity and, implicitly, the increase in production volume. Ours is a time of much innovation but no breakthrough: "*What we are now living through is an intense, but narrow set of innovations in one important area of technology. … But the view that overall innovation is now slower than a century ago is compelling*"[6]. There are repercussions in the increase in productivity itself: productivity has been cut away from its roots. This is one explanation for productivity decrease (as shown in the tables below), which negatively influences the general economic outlook.



[5]Gordon Robert, *Is Economic Growth Over? Faltering Innovation Confronts the Six Headwinds,* NBER Working Paper No. 18315, at www.nbr.org.

[6] Wolf, Martin, Is the age of unlimited growth over? *Financial Times*, Wednesday, October 3, 2012.



Sources: Robert J. Gordon (NBER 2012): The Conference Board.

A second repercussion of productivity decrease in the world's first economy is the change at the top of world's economic hierarchy. "*If the rate of advance of the frontier has slowed catch up should now be easier.*"[7] A third is the change in the role of economic stimulus. Economic stimulus and technological development form a **successful couple**. Can economic stimulus compensate for lack of technological breakthrough? „*Transport and energy technologies have barely changed in half a century. Lower taxes are not going to change it.*"[8] A comparison with the relationship between fundamental and applied research is relevant at this point. Fundamental research is groundbreaking. So much so in the case of technology. A slowdown in technological innovation creates tremendous pressure on economic stimulus, which cannot fully operate without major technological breakthrough.

Other authors equally point to the relationship between technology and labour productivity in developed countries. „*I thought for a long time that we would be able to support leadership through technology and innovation, but this thing seems to be an illusion.*"[9] Many years before, Greenspan had warned against productivity decrease as one of the true causes of crisis.

If innovation is scarce indeed, which is the propelling force of rising powers? Classical instruments: hard work, concentration, identification of a niche or a branch which allows performance. This is how present developments cast a new light on classic approaches, on landmarks, on pillars in the equation of economic growth, irrespective of times. A difficult period for innovation – hence, for productivity – can modify the development equation and bring to the fore the classical elements of such development, from work to discipline and management, which are Germany's (and China's) classical advantages. The age-old question launched by the mercantilists can be given an answer: it is not the one who has the wealth that counts; it is the one who **can produce wealth**.

[7] Gordon Robert, *op. cit.*
[8] Gordon Robert, *op. cit.*
[9] Verhofstadt, Guy, *Ieşirea din criză. Cum poate Europa salva lumea*, Bucureşti, Comunicare.ro, p 139.

4. From federal to national approach

Can Germany's position today be accounted for by avoidance of unilateralism and shortcomings or by the development of a model? In reality, Germany had a strategy. The novelty is that this strategy was not built deliberately at once but born gradually, as a result of a process, rather than a starting point.

A crucial moment was, in our view, 1994. Germany had reunited and was paying the costs of reunification, bringing former GDR to the level of FRG; in doing so, it would abide by its engagements towards the Union, but also towards a federal Union, announced by the Treaty of Maastrich. One solid truth is that Germany proposed "fiscal federalism" in the Union that year (states Attali), and France made "the terrible mistake" (in Attali's words) of turning Germany down[10]. In our opinion, this refusal started a debate in German elite's quarters and raised questions about Germany's development. Its economic potential had become increasingly important and it needed strategic guidelines. The federal direction could represent a strategic choice, one which was not shared by France at a crucial moment. Meanwhile, Germany has drifted away from this objective which is now undesirable.

The role of the Franco-German duo in the European Union is emphasized to the point where the two countries' different views of the Union's development are ignored. David Marsh is keen on this fact. "*France and Germany fought long struggles during the post-war era to construct a European framework in line with their predilections: the French wanted European institutions run by European politicians to protect high-growth policies from external monetary disruption; Germany wanted Bundesbank-style principles operating independently of governments to protect Europe from inflation. One of the prime reasons for the deep-seated malaise within the Euro area is that these philosophical differences between France and Germany have remained as strong as ever*"[11].

These are two countries growing apart in the European hard core, whose **different visions** for the Union's growth have weakened the outer layers of the Union. The main result is that strategic decisions have been postponed, because they would increase differences. The Union's lack of strategic dynamism in recent years can be explained in terms of incongruous visions. On the other hand, each proponent has attempted to define its own track as a decisive argument in the dispute over approaches. **Individual responses**, stimulated by different views, have hindered joint solutions. The decisive factor in solving strategic disputes within the tandem and the Union has been the quality of such individual choices. Unfortunately, France, along with other European countries, have been more preoccupied with integrating the German colossus in European structures, rather than **its own development**. Germany made development its main priority, leaving problems and strategic differences for later.

This choice led Germany where it stands today. It was only a matter of time for Germany to develop its power and increase the gap between itself and other powerful European countries. At this moment, the Franco-German tandem is almost blocked, and

[10] Attali, J., *Understand Germany*. 2010. Available at: http://blogs.lexpress.fr/attali/2010/12/12

[11] Marsh, David, *The Euro: the Battle for the New Global Currency,* Yale University Press, 2011, p.278.

Germany's relationship with other European countries, tense. France has been slow in understanding that Germany can be restrained no longer, in Gerard Errera's words[12]. The only solution for France is to rapidly modernize its economy to make it competitive once more[13].

Taking advantage of its traditional, solid background of constant discipline, Germany has evolved along the lines of a strategy which is similar to what happened in this country's past. Paul Kennedy pointed that Germany's rise in the second part of the 19th century took place "right in the centre of the old European states system", under those countries' very eyes (compared to Japan's development, in geographical semi-isolation). In the same time, Germany's rapid development took everyone by surprise.[14] Germany's present development takes place at the very heart of the European Union, at the same astonishing speed. Many years after the reunification, Germany, Europe's main engine, slowed down, due to the assimilation of GDR in the 90s and modernization of economy in 2000. Development boomed at the end of these processes, or so it seemed. In fact, development had been prepared by 20 years' arduous work. Germany's development is astonishing not because it was a success, but because what seemed a major drawback was turned into an advantage. This rare performance shows that Germany not only had a vision, but followed it to the letter.

Three strategic options of Germany encourage us to assert that this country's development efforts have been guided by a singular strategy in Europe.

5. Euro: the new European D-mark

Andrew Moravcsik, the director of EU program at Woodrow Wilson School of Public and International Affairs from the University of Princeton, recently made a historic confession. Immediately after the negotiation of the Treaty of Maastricht, Jacques Dellors, considered "the father of euro", told him that "*he saw the single currency as a failure because he had been unable to persuade the Germans to compromise. Berlin's nonnegotiable demand in exchange for monetary union was a European central bank that would be even more independent in its design and even more anti-inflationary in its mandate than the old Bundesbank. No provision was made for fiscal transfers or*

[12] Errera, Gerard, France Is Running Out of Time to Restrain Germany, *Financial Times,* Wednesday, November 2, 2012.

[13] The French public space is rich in debates on the French economy's low competitiveness. A recent article (French Competitiveness, Shock Treatment. *The Economist*. November 3rd 2012), analyses the Report of a prestigious technocrat, Louis Gallois, who warns against the gap between French and German competitiveness. The World Economic Forum's study on competitiveness places Germany 6th in the world, while France is in 21st position. French public expenses represent 56% of GDP, 10% more than German ones. The volume of French exports in non-euro zone has been taken over by Dutch exports, even though the Netherlands' population is several times smaller than France's. The same publication's issue of November 17th 2012, discusses France as a time bomb at the heart of Europe, the argument being the same low competitiveness and delayed structural reform. Ever since 1981 France has constantly failed to balance its budget, the public debt has continuously increased to its present 90% of GDP, compared to 22% in 1981 (The Time-Bomb at the Heart of Europe, Why France Could Become the Biggest Danger to Europe's Single Currency. *The Economist*. November 17th 2012). Moody's downgrade of France from AAA to AA1 is a confirmation of this fact.

[14] Kennedy, Paul, *The Rise and Fall of the Great Powers. Economic and Military Conflict from 1500 to 2000*. Random House, New York. 1987, pp. 209-210.

bailouts among European states."[15] The story is important not only because it pinpoints the central problem created by the introduction of the single currency, but also because it has been confirmed by the euro crisis and everything it has generated.

Most analysts of the euro crisis identify the political rationale behind the introduction of the single currency as its main trigger. "*The more I read, the more I understood that the single European currency was not really about economics at all. The real truth, sometimes admitted on the Continent but always denied at home, was that it was overwhelmingly a political project. Facts had to give way to the vision of a united Europe and economic logic was not relevant unless it served this purpose*"[16], says David Heathcoat - Amory.

Undoubtedly, the political reasons were of paramount importance in introducing the euro. Joschka Fischer, Germany's former Minister of External Affairs, even asserted that euro introduction "*was not only the crowning-point of economic integration, it was also a profoundly political act, because a currency is not just another economic factor but also symbolises the power of the sovereign who guarantees it*".[17]

Cormick was right to remark that never in the history of humankind did so many sovereign states consent to such an important measure, given that their currencies were part of modern national identity[18]. This truly historical step makes sense within the context of those years. Introducing the euro was the logical step in the Union's evolution, meant to develop a Federal Europe. As Helmut Kohl said, the euro was a matter of "war and peace", a crucial problem that would define the future of the region. In the aftermath of the Cold War, there was a time of change, when the Union had to redefine and reorganize itself, in order to restructure important geopolitical spaces. EU's new political destiny was envisioned by the Treaty of Maastrich, and the euro gave economic and financial support to the project.

Therefore there are two different faces of politics here: when the euro was introduced, politics' strategic dimension was brought to the fore. A new world was being born, and it was right for the political decisions **to leapfrog** stages in evolution and create instruments for desirable development. The English author's highlight of the political reasons behind the introduction of the euro suggests that this was a superficial, hasty, petty decision. Yet a historical moment cannot and must not be explained in such terms.

There is a grain of truth in the euroskeptics' criticism: to flourish, the single currency (with its implicit identical measures and standards – value, exchange rate and so on) must benefit from homogeneous economic reality. Otherwise, there is a high risk for the single currency to widen the gap between countries with vastly different economic performance or even **create such gaps**. The case of Greece is illustrative in these respects: gaps between Greece and Germany have increased, for instance. Does this mean that the single currency should not have been introduced? In our opinion, this

[15] Moravcsik, Andrew, Europe after Crisis, How to Sustain a Common Currency, *Foreign Affairs*, May/June, 2012.
[16] Heathcoat – Amory, David. Confession of a Eurosceptic Pen&Sword. *Politics*. South Yorkshire. 2012, pp. 75-76.
[17] Fischer, Joschka, in John McCormick, *European Union Politics,* Palgrave MacMillan, 2011, p. 344.
[18] It is conclusive that these currencies appeared either during national organization of the states or in particular moments of their evolution: the Greek drachma was born in 1832, the Dutch guilder in the 17th century, when the Netherlands was one of Europe's great powers, the Italian lira when the national state was born, the German mark in 1948, replacing the former Reich mark and later becoming a symbol of Germany's postwar rebirth.

is not the case. There were strong reasons behind its introduction. Yet once the euro was introduced, the European politics should have developed **cohesion programs** to prevent widening gaps and ensure (quasi-) similar development levels among members. What missed from the birth of the euro should have been implemented later, based on clear vision.

We are raising question marks about the **subsequent** period. First, the Union's budget was not designed in such light or in view of reaching the higher, grander objective, to turn the Union into a federation, "the United States of Europe". Let us look at the federal budget sums in other countries. "The American federal budget accounts for some 24% of GDP; the Swiss one is roughly 12%. The EU budget, by contrast, amounts to just 1%[19]. 1% of EU GDP is simply not enough for cohesion objectives. It is then legitimate to ask: does the EU still aspire to become a federation? The size of the budget gives a decisive 'no'.

The lapse of several years has shown that the euro was introduced for a fundamentally political reason, beside economic ones. In David Marsh's words, "*The Euro was designed to shackle Germany*"[20]. Germany's reunification in the early 90s announced the rise of the Union's first economic power. France and Europe in its entirety were preoccupied with Germany's evolution and dominance.

What choices were open to Germany as Europe's first economic power when the euro was introduced? The first precaution was to regulate the functioning of the new currency. The rules bore the print of inflexible German position: no bail out, no political interference and so on. One special, highly symbolic condition was to establish the European Central Bank in Frankfurt. The currency was European, but its traits, as Moravcsik said, were German, which makes David Marsh assert: "*the D-Mark may have been sacrificed, but its spirit appears still to be alive*"[21].

A question arises. Regulations have a major, yet formal influence. Currency is the financial expression of a country's economic power. In a federal organisation, real influence in finance is eventually given by position within the Union's economic power. Consequently, in order to increase this influence, formal regulations must be **doubled** by an increase in economic power. Germany's impressive work for its own development and modernization can be read in this key as well. The 20 years following its reunification are a period of maximum effort towards economic power and competitiveness increase. Germany is nowadays the main beneficiary of the Union and the single currency. It sacrificed its own currency, symbolising the success of postwar German reconstruction, but, because it developed constantly, because it understood faster that it is powerful economies that are financially powerful, it managed to change the euro into a new mark. Today we can call the euro **the new European mark**.

What seemed to be a disadvantage, the euro designed to "shackle Germany", has become a great advantage. The euro now formally "obeys" German rules, agreed upon from the very beginning, and is mainly coupled to the evolution of German economy. The euro's very existence is fundamentally influenced by Germany's attitude. All this is

[19] Autumn renewal? Having Survived a Difficult Month, the Euro Zone is Grappling with its Taboos, *The Economist,* September 15th 2012.
[20] Marsh, David, *op. cit.*, p. 277.
[21] *Ibid.*, p. 278.

an undoubted proof of vision. It is a great performance to develop in a European context which is more suspicious than it was in the 19th century, and in a system which was projected to contain you, and finally succeed in making the system dependent upon you. This is a performance no lesser than Bismark's, back in the 19th century.

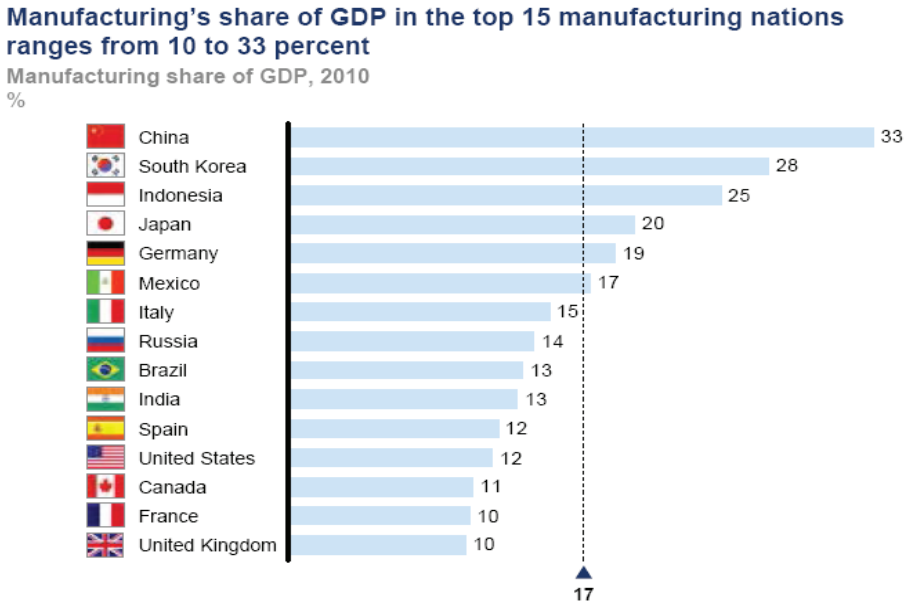
6. The option for industry

The secret of Germany's transformation into the Union's first economic power lies in its option for industry and manufacturing. Axel Weber, former president of the Bundesbank, talks explicitly about this option of Germany but also about the fact that it deliberately left other European states to specialize in services and become real powers in this field: "*a move to Germany specializing in industrial activity, leaving other countries to be strong in services. Countries have the ability of altering the economic conditions that will attract certain industries by making changes to their economic structures. Germany has embarked on this path, and this provides a model for others to follow. There is really no alternative to this path that Germany has taken*"[22]. In his turn, Steven Rattner underlined that "*Germany embraced manufacturing, and much of its economic success is thanks to that decision*"[23]. This is the open acknowledgement of an economic option which was confirmed by contemporary evolutions.

Nowadays, the option for manufacturing reveals its strategic implications. In a recent study from McKinsey Global Institute, one chapter reads: 'Why manufacturing matters'. This is the significance attached to the field by this Report: "*Manufacturing still matters a great deal, but its primary importance is as a driver of productivity growth, innovation and trade. Manufacturing continues to make outsize contributions to research and development, accounting for up to 90 percent of private R&D spending in major manufacturing nations. The sector contributes twice as much to productivity growth as its employment share, and it typically accounts for the largest share of an economy's foreign trade; across major advanced and developing economies; manufacturing generates 70 percent of exports*" [24]. This is a relevant picture of advantages triggered by the option for manufacturing.

This choice is not automatically linked to development indices. It is true that the more a country develops, the less this sector counts in overall GDP; yet this tendency varies widely with the country's vision on the role of industry in its development. That is why there are wide differences among developed countries as to the manufacturing's share of GDP. In developed countries like Great Britain, France and the US, this figure is very low, while in other developed countries – such as Japan, South Korea or Germany, manufacturing's share is much higher, as the table below shows.

[22] *Ibid.*, p. 279.
[23] Rattner, Steve, The Secrets of Germany's Success, What Europe's Manufacturing Powerhouse Can Teach America, *Foreign Affairs,* July/August 2011.
[24] McKinsey Global Institute, Manufacturing the Future: The Next Era of Global Growth and Innovation.

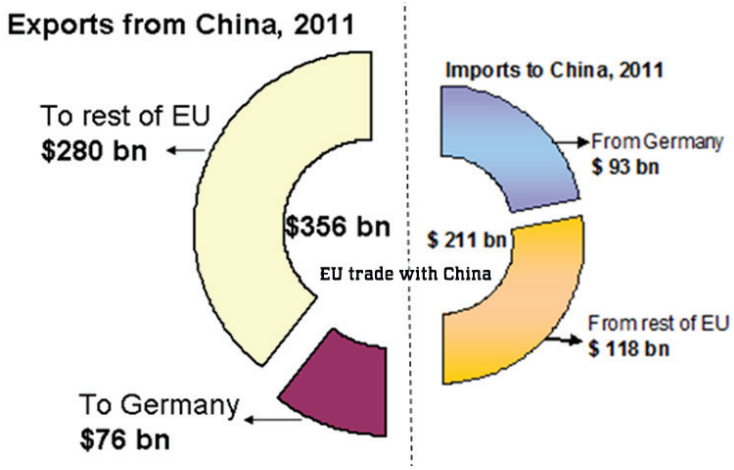


Source: McKinsey Global Institute, Manufacturing the future: The next era of global growth and innovation, November 2012, p. 24.

Recently, there has been a shift in the importance of manufacturing. It is significant that countries which maintained and stimulated manufacturing export more and generally have higher competitiveness. Manufacturing, as McKinsey Report shows, directly influences vital indicators in any economy, from productivity to innovation and research. That is why future years will see a shift in perspective, and the countries which maintained and encouraged this field already have the edge in today's economic competition.

The increase in exports is what stands out in Germany's recent evolution. The issue of export as a prominent trait in a country's development philosophy is much more complex than it appears at first sight, because export relies heavily on organisation and internal performance. Germany is now the world' second largest exporter, after China, with exports accounting for two thirds of the country's development in the last ten years. This is the result of efforts for internal modernization, increase in competitiveness, identification of branches where Germany could perform well, but mostly the result of a decisive option for manufacturing. Many countries believe the real trigger of growth is consumption and consequently encourage this direction. Germany's evolution today says that growth can occure by stimulating the country's capacity to produce wealth. Germany's GDP per capita grew faster than in any other developed country, due to massive exports and competitiveness.[25]

[25] Rattner, Steven, *op. cit.*



Source: A special relationship, *Financial Times,* August 29, 2012, p 2.

This is a significant synthesis of Germany's role in Europe's import-export structure. We have chosen China because it is a highly competitive economy in exports and has significant surplus (approximately 150 billion dollars) with Europe. In import terms, Germany behaves like other important European countries (with a fifth of European imports from China). In export terms, it exports almost as much as the whole Europe. In the bilateral China-Germany relationship, Germany has a trade surplus of 17 billions, which is a performance in itself. Europe's trade deficit with China has increased three-fold in the last ten years[26]. The great Asian power became a trade competitor, rather than a partner. This imbalance is not relevant in itself, but it announces a worrying tendency: Europe turns into another victim of China's production machine, after the US.

The option for manufacturing, correlated with efforts for competitiveness increase, ensures a strategic advantage for Germany in its balance of trade with the Union and reveals the Union's structural economic problems. Some members – most notably Germany and the Netherlands – have had large surpluses in trade with other EU member states and large current account surplus year after year. Both currently enjoy current account surpluses in excess of 5 per cent of gross domestic product. Others – most notably, Greece, Italy, Spain, Portugal, and France – have had large deficits in trade with other EU member states and large current account deficits year after year. Over the past 10 years, the Greek current deficit has averaged more than 13 per cent of GDP. That in Portugal has averaged almost 10 per cent. In France and Italy, the current account deficit has increased from less than 1 per cent of GDP in 2002-2006 to more than 3 per cent this year[27].

Such imbalance has its root in economic competitiveness differences. Consequently, while Germany can invest this sum, the countries with trade deficit must borrow huge

[26] Chaffin, Joshua, Tempestuous Trade Winds, *Financial Times*, Tuesday, May 29, 2012.
[27] Cameron, David R., Three Ways - All Painful - to Increase Competitivness. *Financial Times*. Tuesday, November, 15. 2011.

amounts of money if they wish to maintain their imports level. For instance, the sum invested by Germans will evidently contribute to higher increase in productivity, which will widen the competitiveness gap. **A spiralling of trade deficit increase** has started.

In this context, one other problem is worth discussing: the option for manufacturing is met in the Asian space as well (an argument used to suggest similarities between Germany and the countries in Asia, especially China[28]). Without ruling out such influences and connections, we believe that this option is not the result of mimetic behaviour, but of close "reading" of the present and realistic design of a medium and long-term development model. Neither Germany, nor China has been inspired by the other (although this would not constitute a fault in itself). The close reading of reality by the leaders of the two nations, who asked themselves what future to build for their countries – this was the common root of the two development strategies which are now successfully applied on two different continents.

It is clear that German strategy represented a different option than the uncritical promotion of services and their transformation into a top priority for contemporary society. Germany now has all the data to become **a model**. Its options have been confirmed by historical evolution. Which country should the Union follow, objectively speaking?

7. The option for reform and modernization

Little is known about former German Chancellor Gerhard Schroeder's launch, in 2003, of a fundamental document for Germany's development today: "Agenda 2010". The former chancellor's words in an article from 2012 are the best definition of the program: "*With the help of the Agenda 2010 we adjusted the welfare systems in order to make it possible to pay for the welfare state and to enable it deal with the challenges of the future*"[29].

To better understand the significance of Agenda 2010, we need to consider the context of its launch. This was several years after the introduction of the single currency, when Germany's economic development was very modest. 13 difficult years had passed from Germany's reunification, with high levels of unemployment, of current account and "long – lasting strains of reunification". At one point, Germany had even been called "Europe's patient". At such a time, Schroeder rethinks not only Germany's productive capacity, but the whole system of public expenditure, and configures a lean, competitive economic and social profile, which allowed a speedy recovery after the 2009 downturn.

Following a discussion with the former German chancellor, David Marsh confesses: "*The new currency would tend to weakness; the Germans would keep their costs down and thus achieve a powerful competitive edge over countries that could no longer devalue within Europe. This development, Schroeder forecast, would make it easier*

[28] For instance, in literature, Germany is referred to as "a second China".

[29] Gerhard Schroeder, Agenda 2010 – The Key to Germany's Economic Success, *Social Europe Journal*, http://www.social-europe.eu/2012/04/agenda-2010-the-key-to-germanys-economic-success/

for Germany companies not only to boost their exports throughout Europe, but also to acquire firms in other countries that had been weakened by the effect of the euro."[30] In other terms, it takes a period of austerity to increase competitiveness of German products and gain a net exports advantage over European partners. Taking this road, Germany would not only amplify the force of its exports, but economic domination over exports as well.

There is another side of the former chancellor's vision: the ascent of "market forces", in fact, financial markets, which are now more powerful than states and promote economic criteria while ignoring social considerations, which national states are bound to take into account. If we wish to preserve our capacity to maintain the welfare system, says Schroeder, then we must rapidly modernize it, by becoming more competitive. Failure to do so results in incapacity impacting socially and economically. Rarely have we met with such acute characterization of the devastating impact of uncontrollable market forces on the life of peoples. Not to mention that such plead for competitiveness increase came from a social democrat: "*Either we modernize ourselves, and by that I mean as a social market economy, or others will modernize us, and by that I mean unchecked market forces which will simply brush aside the social element*"[31].

Agenda 2010 consolidated Germany's classical orientation for manufacturing. Seeking to save the social factor of economic activity, he prioritises economic performance to ensure the effectiveness and financeability of the welfare state. That Germany regarded these sides as inseparable allowed it to adopt a more flexible position throughout crisis in comparison with the US, as Steven Rattner[32] shows. To preserve export competitiveness, German economy should have made people redundant. It opted instead for an ingenuous solution, the "short program". The total number of working hours was decreased to avoid redundancy, and the government compensated for part of the decrease in salaries by allotting 5 billion euro. Unemployment increase was thus avoided (500.000 jobs were kept), even though this measure impinged upon competitiveness and GDP as well. This shows a realistic vision harmonizing the demands of long-term growth with short-term gain and the natural tendency for maximizing productivity (of paramount importance for massive exports) and maximizing employment. "*The tension between maximizing productivity, or competitiveness and maximizing employment is something almost all developed countries face. In some ways, Germany and the United States are on opposite ends of the spectrum. Germany maximized employment, and its GDP suffered; the flexible US economy tends to maximize productivity, and it has a higher unemployment rate as a result.*"[33]

The evolution of important economic indicators in the two most powerful countries in Europe, Germany and France, is relevant. They show the effects of timely reforms on performance. France hesitated to promote radical reforms on labour market, which were made in the Netherlands, Norway and Sweden in the 1990s and in Germany, in the 2000s. The direct consequence was evident in 1999 with the introduction of the

[30] Marsh, David, Co-Chairman of Official Monetary and Financial Institutions Forum, http:/www.omfif.org/OMFIF news/commentary.
[31] Schroeder, Gerhard, *op. cit.*
[32] Rattner, Steven, *op. cit.*
[33] *Ibid.*

euro, when the cost of French labour force was below Germany's, and France had a current account surplus. Today, shows *The Economist*, French labour force costs are far higher than Germany's, and the current account deficit is growing. Another field is the size of public expenditure. 15 years before, the public expenditure ratio in the GDP was similar in the two countries and higher than in Sweden. Nowadays, French public expenditure is 57% of GDP, 10% more than in the case of Germany. France has 90 clerks to 1000 people, while Germany has 50[34].

One final thing. Gerhard Schroeder pointed that: "The lesson learnt back then was that structural reforms can only make an impact if at the same time one stimulates growth. We must now give this opportunity to our European partner". The lesson learnt is that such structural reforms must be accompanied by economic growth for the population to share and not reject them later on.

8. Germany's European exam

The future validates answers that predict it, that come half-way, that decipher it earlier. Each country has a development strategy. Each country wants to develop and join the top powers. The countries that succeed are those that see further and are still prudent about fashions. From this perspective, Germany and China had surprisingly similar policies.

Germany is now at a crossroads: it could stay a European power or go on to become a global one. And such crossroads carry supplementary risks. In terms of certain economic indicators (export volume and competitiveness, for instance), Germany could claim to be a global power. At the moment, Germany is in a privileged position: it has no debts and its choices have been validated by history. In reality, Germany is at the forefront of European powers because these powers are in difficulty. The contrast is starker because of European powers' weakness, rather than Germany's power and performance.

One way of measuring Germany's real power today would be a comparison with its position at the end of the 19th century. The Germany of 2012 is decisively different from the Germany of 1880. Back then, Germany had the strongest universities and companies in the world, and a growing population. Now, Germany has some of the strongest companies in the world but is far from having the best universities and its population is decreasing.

Germany is the EU's main beneficiary. With the most competitive economy on the continent, Germany benefits most from the EU. Martin Feldstein was right to show that Germany's trade surplus with the EU, 200 billion euro (a significant figure), means trade deficit of the same size for the other countries[35]. Therefore, Germany does not support the Union from philanthropy, but from realistic policy reasons. Europe is Germany's main market. With Europe backing it up, Germany will grow stronger. On its own, Germany will be middling.

In our opinion, Germany will work for the Union's economic consolidation. This is the significance of Chancellor Merkel's consent for the European Central Bank to

[34] The Time-Bomb at the Heart of Europe, Why France Could Become the Biggest Danger to Europe's Single Currency, *The Economist*, November 17th 2012.
[35] Feldstein, Martin, The Failure of the Euro, *Foreign Affairs,* January/February, 2012.

buy shares from governments in difficulty. The decision was all the more difficult because in the last years Germany prioritised currency internal stability, in agreement with Bundesbank. This time, its commitments to the EU were prevalent, despite Bundesbank's opposition[36]. This shows the German government's considerable effort to adapt to circumstances, to change its position so as to identify joint solutions against the crisis.

The constraints before Germany must be taken into account as well, for at least two reasons. Germany's repositioning towards Europe must be gradual, so as not to contradict internal public opinion believing that the country credits and supports other people's "excessive consumption" and "waste". Political and electoral arguments weigh considerably in such decisions. For instance, Jean-Claude Junker, the president of Eurogroup, said: *We all know what to do, but we just don't know how to get reelected after we have done it"*[37]. Especially in the case of Germany, taking strategic decisions a year before elections is a difficult choice, since public opinion is increasingly reticent about Germany's expenses on countries in difficulty.

ECB will surely have to resort to printing money, which means the implicit increase in inflation, which word sends shivers down Berlin's spine. This is a price Germany assumes after several years of inflexibility. Sebastian Mallaby underlines that ECB printed money whose value equals Greece's GDP for eight years[38]. This intervention at the beginning of the crisis would have cost significantly less. In any case, Germany is now right in asking countries in difficulty to make efforts to get out of crisis, by improving the way they administer public finances, by drastically diminishing fiscal evasion, by decreasing public expenditure and tackling those factors that diminish overall competitiveness. This austerity process will bear the German print, but the vision of austerity itself will have to become flexible. Over the past year, the eurozone has indeed cut deficits sharply but the debt - to - GDP ratio has worsened. Programs are neither politically sustainable nor economically wise"[39].

Germany has forged a strategy for itself, but not for Europe. Now, it is wished that Europe "embarked upon" a road that supposes efforts and cuts in consumption. Yet Europe is hit by successive waves of crisis. Most countries in Europe have not taken Germany's option and consequently do not have Germans' means to face efforts. This is a lesson that each must learn. Germany did not seek to extend its option either, nor did the other countries decipher or study Germany's lesson.

It is Europe's exam that Germany will have to sit. It will reveal what Germany really wants. Germany will become a leader if it builds a model that will be accepted at European level and will promote Europe. Germany will continue to be a leader in the old Germany-led paradigm, but in this case it will only be Europe's most powerful state, and not its leader. This is the exam Germany will have to sit.

[36] Stephens, Philip, Merkel Has Decided to Pay Up for the Euro, *Financial Times*. Friday November 16, 2012.
[37] Bordignon, Massimo, Buettner, Thiess and Friedrick van der Ploeg. Europe at a Crossroad. In Buettner, Thiess, and Wolfgang Ochel, *The continuing evolution of Europe,* MIT Press (MA), 2011, p.128.
[38] Mallaby, Sebastian, Europe's Optional Catastrophe, The Fate of the Monetary Union Lies in Germany's Hands, *Foreign Affairs,* July/August 2012.
[39] *Ibid.*

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La définition progressive d'une politique européenne de sécurité

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Abstract: *This article looks upon the evolution of the idea of a European security policy, in a historical approach, based on the major challenges, statistics on defence, and some recent developments in the matter of defence budgets, but also at the European Union international identity as civilian power, normative power, or soft power.*

Keywords: *European Union, security, European Security and Defence Policy*

Introduction

La réflexion sur l'Europe politique a eu, depuis l'origine, un prolongement en matière de sécurité et de défense. *Selon ses partisans*, l'Europe puissance ne peut pas être en effet un véritable acteur international qu'à la condition de disposer d'une capacité autonome de défense. *D'autres* estiment au contraire que l'existence d'une sécurité européenne assurée par l'Alliance atlantique rend inutile la définition d'une politique européenne de défense commune. Ces approches antagonistes ont conduit, dans l'immédiat après-guerre, de nombreuses initiatives à d'autant d'échecs successifs, en s'éloignant ainsi durablement de la perspective d'une défense proprement européenne[1].

Le contexte de la Guerre Froide a fini par conférer à l'OTAN un rôle pratiquement exclusif dans la sécurité européenne. Au vue des échecs passés et de la primauté acquise progressivement par l'Alliance atlantique, les dispositions du Traité de Maastricht (art. J4) constituent une innovation majeure et un pas significatif vers la définition d'une identité européenne de sécurité et de défense.

Tout au long des différentes étapes de la construction européenne, les concepts d'union politique, de politique étrangère commune ou encore de défense commune ont régulièrement été mis à l'ordre du jour suite à la présentation de différents projets politiques.

La situation de la défense en Europe après la Guerre Froide

Immédiatement après la fin de la Seconde Guerre Mondiale, les Alliés se voient divisés par des idéologies, des pratiques et des régimes différents. Commence une autre guerre - sans les bruits des canons ou des champs de bataille, mais qui a comme

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[1] Voir *La Politique Etrangère et de Sécurité Commune*, Réflexe Europe, Paris, 1999, p.12.

aire de déroulement tout le globe et où l'Europe était l'enjeu principal : la Guerre Froide. Cela fait que la défense de l'Europe devienne un fait d'importance vitale pour les compétiteurs.

Les parties belligérantes ne sont en effet que deux superpuissances – l'Union des Républiques Soviétiques Socialistes, d'une part, et les États-Unis d'Amérique, de l'autre, chacune avec ses alliés de moindre taille – l'Est de l'Europe entre sous l'emprise de l'Union Soviétique, pendant que l'Ouest de l'Europe entre sous la protection des États-Unis. La grande économie américaine va faire affluer en Europe, dans l'idée de contrecarrer la marée du communisme, des énormes quantités d'aides matérielles et économiques (le plan Marshall), poussant les Européens vers une organisation à même d'assurer le bien-être de l'Europe Occidentale, à partir des valeurs du libre marché – les Communautés Européennes – et avec des certes aptitudes pour l'engagement politique des membres.

L'UEO

Les deux côtés opposés vont créer des organisations de sécurité collective. D'abord, ce sont les Européens qui s'organisent dans une entité de défense commune : *le premier traité de défense collective* après la Seconde Guerre Mondiale n'a pas pu toutefois jouer son rôle - très rigoureux dans ses prévisions, le *Traité de Bruxelles* (signé le 17 mars 1948) n'a pas réussi à créer l'espace de défense commune de l'Europe de l'Ouest. Le manque d'un désir ferme des États ouest-européens d'unifier leurs politiques de défense et de sécurité font que le traité conçu par les États-Unis sur le même système de sécurité collective le remplace, ensemble avec l'organisation portant le même nom – l'Organisation du Traité de l'Atlantique Nord ou l'OTAN[2]. En réponse à cette organisation, les soviétiques imposent à leurs pays-satellites le Traité de Varsovie avec le même fondement – la sécurité collective.

Le Traité de Bruxelles a été le premier essai de mettre en place les idéaux du mouvement européen d'après-guerre, mettant à côté deux nouvelles idées – sécurité collective et intégration, des idées continuées par les deux très importantes organisations qui seront *l'OTAN* (à partir de 1949) – la sécurité collective transatlantique – et *la Communauté Européenne du Charbon et de l'Acier* ou *la CECA* (à partir de 1951) – l'intégration.

L'Union de l'Europe Occidentale est issue en 1954 de ce "traité de collaboration en matières économique, sociale et culturelle et de légitime défense collective" entre la France, le Royaume Uni et les pays du Benelux. L'Allemagne et l'Italie y adhèrent en 1955 à la suite des accords de Paris. Le traité créait une alliance défensive entre des États souverains : son article V prévoit notamment qu' *"au cas où l'une des Hautes Parties Contractantes serait l'objet d'une agression armée en Europe, les autres lui porteront, conformément aux dispositions de l'article 51 de le Charte des Nations Unies, aide et assistance par tous les moyens en leur pouvoir, militaires et autres"*.

[2] *"Une alliance politique et militaire avec le but d'assurer la défense commune contre toute forme d'agression et de maintenir une atmosphère de sécurité pour le développement des démocraties et la croissance économique", NATO in the 21st Century*, NATO Office of Information and Press, 2004, p.4.

L'UEO demeure cependant une organisation de concertation essentiellement politique. Elle ne dispose pas en effet de structure opérationnelle depuis qu'en 1950 il a été convenu de s'en remettre *"aux autorités militaires appropriés de l'OTAN pour toute information et tout avis sur les questions militaires"*. C'est-à-dire qu'après l'apparition de l'OTAN, les membres du traité de Bruxelles (la Grande Bretagne, la France et les 3 pays du Benelux) ont décidé d'inclure l'organisation dans l'OTAN, qui était déjà l'élément central de du système de sécurité ouest-européen et nord-atlantique.

L'OSCE

Une autre organisation fondée sur le principe de sécurité collective apparaît suite à la Conférence de Helsinki de 1975. Dans ce cas on discute plutôt d'un "gentleman's agreement[3]" car il n'y a pas de traité fondateur. Après Helsinki apparaît cette institution de médiation dénommée *La Conférence pour la Sécurité et la Coopération en Europe*. Transformée de *Conférence* en *Organisation,* elle n'a pas bénéficié d'une structure complète, n'ayant pas les moyens pour l'action, mais qui réussit à travers des méthodes de persuasion et la bienveillance des parties. De nos jours, elle est devenue un instrument pour la prévention des conflits, le gestion des crises et la résolution post-conflit des situations[4].

L'OTAN

A remarquer que, après tout, ce n'est que l'OTAN qui aura en soin la défense proprement dite de l'Europe Occidentale, où on inclue aussi la Communauté Européenne. Même si les débats en Europe sont très vifs sur la nécessité d'une force parallèle à celle de l'OTAN. Ses tâches seront énoncées de façon très simple par Lord Ismay, le premier Secrétaire Général de l'Alliance, comme : "*To keep the Russians out, the Americans in, and the Germans down*[5]", des tâches desquelles il s'est bien acquitté. Après la fin de la Guerre Froide, pourtant, il est venu le temps pour une nouvelle définition de son but, prévue et synthétisée par Manfred Wörner[6]. Mais elle a apporté avec soi aussi l'intensification de la discussion en Europe sur la nécessité d'européanisation de l'Alliance et même de constitution d'une propre force armée unique.

[3] Phillippe Moreau Defarges, *Les institutions européennes*, Ed. Armand Collin, Paris, 1993

[4] *The OSCE Handbook*, OSCE, Vienna, 2000.

[5] "*Garder les Russes dehors, les Américains dedans et les Allemands en bas*" - Lord Ismay, le premier Secrétaire Général de l'Alliance, dans *NATO review*, le numéro jubiliaire, Bruxelles, avril 1999.

[6] "[...]*The development of a European security and defence identity will indeed lead to a consolidation of the European pillar within the Alliance and represent a major contribution to the basic transformation of NATO.*" *in* Dr. Willem Van Eekelen, "WEU's Post-Maastricht Agenda", NATO Review, No. 2 - Apr. 1992, Vol. 40, p. 13-17.

Les démarches communautaires

En 1950, le plan Pleven[7] visait la création d'une armée européenne intégrée sous un commandement commun. Ce plan fit l'objet de négociations entre les États membres de la Communauté européenne du charbon et de l'acier de 1950 à 1952 et aboutit à la signature du traité instituant la Communauté européenne de la Défense (CED). Le corollaire de la CED était un projet politique, visant à créer une structure fédérale ou confédérale, qui fut présenté en 1953. La «Communauté politique européenne» prévoyait la création d'une Assemblée parlementaire bicamérale, un Conseil exécutif européen, un Conseil des ministres et une Cour de justice. Les compétences de la Communauté politique étaient très larges et devaient, à terme, absorber la CECA et la CED. Toutefois, ce projet ne vit jamais le jour suite à son rejet par l'Assemblée nationale française le 30 août 1954. [8]

Au début des années soixante, des négociations difficiles furent menées sur base des deux plans Fouchet, successivement présentés par la France, qui prévoyait une coopération politique plus étroite, une Union d'États et des politiques étrangère et de défense commune. Un comité, chargé d'établir des propositions concrètes, parvint à des compromis difficiles mais néanmoins ambitieux tels que l'établissement d'un secrétariat indépendant ou la perspective future du vote à la majorité qualifiée dans certains domaines. Malheureusement, faute d'accord sur les propositions du comité Fouchet, les négociations entre les États membres échouèrent en 1962.

Suite à une demande des chefs d'État et de gouvernement relative aux possibilités de progresser sur le plan politique, un rapport connu sous le nom de «Rapport Davignon» fut présenté en 1970 lors du Sommet de Luxembourg. Ce rapport fut à l'origine de la coopération politique européenne (CPE), lancée de façon informelle en 1970 avant d'être institutionnalisée par l'Acte Unique Européen (AUE) en 1987. La CPE impliquait principalement la consultation entre les États membres sur les questions de politique étrangère.

Trois ans plus tard, le Sommet de Copenhague présenta un rapport sur le fonctionnement de la CPE. Suite à celui-ci, le rythme des réunions des ministres des Affaires étrangères et du comité politique (composées des directeurs nationaux des affaires politiques) s'intensifie. Parallèlement, un «groupe de correspondants européens», responsables du suivi de la CPE dans chaque État membre fut créé. Celui-ci allait aussi bénéficier de l'accès à un nouveau réseau télex, reliant les États membres, le COREU.

L'institution du Conseil européen en 1974 a contribué à une meilleure coordination de la CPE grâce au rôle joué par les chefs d'État et de gouvernement dans la définition de l'orientation politique générale donnée à la construction communautaire. Dès lors, le rôle de la présidence ainsi que la publicité donnée aux travaux de la CPE se renforcèrent mutuellement par le biais de prises de position officielles de la Communauté.

Suite à l'invasion de l'Afghanistan par l'Union Soviétique et la révolution islamique en Iran, les États membres prirent conscience de l'impuissance grandissante de la Communauté européenne sur la scène internationale. Aussi, déterminés à renforcer

[7] Du nom du président du Conseil de la République française, René Pleven.
[8] Voir Charles Zorgbibe, *Construcţia europeană – trecut, prezent, viitor*, Ed. Trei, Bucureşti, 1998, p.42.

la CPE, ils adoptent en 1981 le rapport de Londres qui imposa aux États membres une obligation générale de se consulter préalablement et d'impliquer la Commission européenne sur toute question de politique étrangère concernant l'ensemble des États membres[9].

En 1982, le même souci d'affirmer la position de la Communauté au niveau mondial fut à l'origine de l'Initiative Genscher – Colombo d'*Acte Européen* qui mène, en 1983, à la déclaration solennelle de Stuttgart sur l'Union Européenne, ou un nouveau pas est franchi : la sécurité revient à la Coopération Politique Européenne (1970-1993), sous ses aspects politiques et économiques (et non militaires). De 1970 à 1986, l'harmonisation des diplomaties ouest-européennes aura fonctionné en marge des Communautés européennes, sur la base d'accords informels, sans structures permanentes.

En 1985, le rapport du Comité Dooge, préalable au lancement de la Conférence intergouvernementale qui aboutit à l'Acte Unique Européen, contenait une série de propositions relatives à la politique étrangère, notamment les idées de concertation renforcée, au niveau des questions touchant à la sécurité, et de coopération dans le secteur de l'armement. Par ailleurs, il préconisait la création d'un secrétariat permanent. Finalement, les dispositions introduites dans le traité par l'Acte unique n'allèrent pas aussi loin que les propositions du Comité Dooge, mais elles permirent tout de même d'institutionnaliser la CPE, le groupe des correspondants européens ainsi qu'un secrétariat placé directement sous l'autorité de la présidence.

Quant aux objectifs de la CPE, ils furent étendus à toutes les questions de politique étrangère ayant un intérêt général. L'Acte Unique Européen en 1986 va faire entrer la coopération européenne en matière de politique étrangère en son sein. Un secrétariat "CPE" est créé. Mais l'Acte Unique Européen ne parle pas d'une "politique étrangère *commune*". Il évoque la coordination des positions sur les *"aspects politiques et économiques de la sécurité"* : la dimension de défense et, par la suite, militaire reste encore expressément exclue.

Du côté militaire[10], les pays membres de l'UEO avaient décidé, en 1984, de réactiver leur organisation. La Déclaration de Rome du 27 octobre précise ainsi les objectifs politiques que les pays membres entendent assigner à l'UEO : promotion de l'unité et encouragement à l'intégration progressive de l'Europe, développement d'une coopération plus étroite entre les États membres et avec d'autres organisations européennes. De même prévoit-elle une réforme institutionnelle de l'organisation (réunion régulière deux fois par an des ministres des Affaires étrangères et des ministres de la défense). Trois ans plus tard, les inquiétudes que suscite en Europe l'accord américano-soviétique sur l'interdiction des armes à portée intermédiaire conduisent à l'adoption, le 26 octobre 1987, de la *"plateforme de La Haye sur les intérêts européens en matière de sécurité"*. Cette initiative, d'origine française, vise à relancer l'organisation. La plateforme définit notamment les conditions et les critères de la sécurité européenne ainsi que les obligations qui en résultent pour les partenaires de l'UEO en ce qui concerne la défense occidentale, le contrôle des armements et le désarmement, le dialogue Est/Ouest. Elle trace également le programme de l'UEO :

[9] Voir Charles Zorgbibe, *Construcţia europeană – trecut, prezent, viitor*, Ed. Trei, Bucureşti, 1998, p.43.
[10] *La Politique Etrangère et de Sécurité Commune*, Réflexe Europe, 1999, p.19.

donner une dimension de sécurité à l'intégration européenne, réaffirmer et renforcer la solidarité de l'Alliance. Les États membres de l'UEO affirment enfin la conviction que *"la construction d'une Europe intégrée restera incomplète tant que cette construction ne s'étendra pas à la sécurité et la défense"*.

Suite à la Conférence intergouvernementale sur l'Union politique et l'entrée en vigueur, en 1993, du traité sur l'Union européenne, un titre spécifique concernant une politique étrangère et de sécurité commune (PESC) a été introduit. Ainsi, la PESC a remplacé la CPE et un pilier intergouvernemental distinct a été créé dans l'édifice communautaire. Il exprime la volonté de l'Union d'affirmer son identité sur la scène internationale.

Après la Guerre Froide ...

Le système international au début des années '90 était incertain, dès qu'après une quarantaine d'années de confrontation entre deux blocs un d'eux disparaît dans un délai de temps très court. Si on compare la situation à un match de boxe on ne reproduit pas du tout la situation. Car la puissance "restant debout" – c'est-à-dire les États-Unis – ne sort pas *ipso facto* vainqueur. Elle ne pouvait pas élargir son hégémonie sur le reste du monde "couvert" par le communisme d'un jour à l'autre ! En effet, la puissance américaine exprimée en influence par km^2 se voit presque ... divisée par deux.

Par la suite, il y a dans cette période un état d'incertitude, même si les voix qui annoncent la suprématie de la démocratie[11] ensemble avec une Amérique victorieuse ne sont pas du tout peu nombreuses[12]! En réalité les voix qui se demandent sur le succès de cette "victoire" ne se font pas trop entendues[13]. A partir du milieu des années '90, le système se dirige vers une multipolarité fondée sur le principe de l'équilibre des pouvoirs.

Dans ce contexte international l'expression d'une dimension européenne de sécurité apparaît plus favorable. Le pacte de Varsovie est officiellement dissous le premier juillet 1991. Les évolutions à l'Est conduisent l'Alliance atlantique à envisager une réforme de ses missions et de son fonctionnement. Les États-Unis, traditionnellement hostiles à toute prétention européenne de nature à porter atteinte à leur "leadership" stratégique, semblent moins réticents. C'est dans ce cadre que la Conférence intergouvernementale de 1990-1991 examine l'insertion possible des questions de sécurité/défense dans le champ de l'action extérieure commune.

L'amorce d'une politique de sécurité commune dans le Traité de Maastricht constitue une innovation majeure. Il n'en s'agit pas moins d'un compromis difficile entre des positions qui demeurent divergentes. Dans les années 1990-1991 on peut voir apparaître *deux approches différentes*[14]. La négociation de la position commune sur la défense européenne est orientée sur la relation entre une politique de sécurité commune et les engagements souscrits dans le cadre de l'OTAN et tributaire des débats

[11] Voir Francis Fukuyama, *La Fin de l'Histoire et le dernier Homme*, Ed. Flammarion, Paris, 1992.
[12] Par exemple Zbigniew Brzezinski dans son livre *Marea tablă de şah. Supremaţia americană şi imperati-vele sale strategice*, Ed. Univers Enciclopedic, Bucarest, 2000.
[13] Vojtech Mastny, "Did NATO win the Cold War?", *Foreign Affairs*, 05/1999.
[14] *La Politique Etrangère et de Sécurité Commune*, Réflexe Europe, 1999, p.21.

engagés parallèlement au sein de l'Alliance.

a. Le Royaume-Uni, les Pays-Bas, le Portugal et, pour des raisons différentes, l'Irlande et le Danemark militent pour une politique commune de défense qui renvoie à une concertation de nature politique sur certaines questions de sécurité au sens large: CSCE, maîtrise des armements, non-prolifération... Cette acception tend à maintenir l'Alliance atlantique comme le cadre naturel de la sécurité européenne : elle préserve les compétences exclusives de l'Alliance et ne saurait concurrencer les tâches militaires de l'OTAN.

b. Pour leur part, la France et l'Allemagne (le *"non-papier"* Dumas / Genscher et l'initiative commune Mitterrand / Kohl du 14 octobre 1991) militent pour une défense commune. Dans ce cadre, il s'agit d'abord de faire de l'Union Européenne le forum de discussion sur les questions de défense, en vue d'aboutir à l'élaboration d'une véritable politique européenne de défense commune (PEDC), impliquant par exemple le rapprochement des concepts de défense, la mise en commun des forces armées ou des convergences accrues dans le domaine des armements.

Il s'agit parallèlement de faire de l'UEO "la composante de défense de l'UE", en subordonnant clairement l'UEO à l'UE – chose qui s'est déjà passée en 2000. Il s'agit également à cette fin de renforcer le caractère opérationnel de l'UEO, en créant des forces européennes capables d'agir, à la demande de l'Union, sous un commandement intégré européen. *Le compromis* sera difficile, mais toutefois réalisé au prix de formulations alambiquées[15].

Conformément à l'article J.4.1 *"la politique étrangère et de sécurité commune inclut l'ensemble des questions relatives à la sécurité de l'Union Européenne, y compris la définition à terme d'une politique de défense commune, qui pourrait conduire, le moment venu, à une défense commune"*. L'article J.4.2 précise que *"l'Union demande à l'Union de l'Europe Occidentale (UEO), qui fait partie intégrante du développement de l'Union Européenne, d'élaborer et de mettre en œuvre les décisions et les actions de l'Union qui ont des implications dans le domaine de la défense"*.

Les tendances

Pour parler maintenant des tendances d'après la fin de la Guerre Froide il faut d'abord souligner le fait que la menace de la guerre est amoindrie de façon considérable. Par la suite, les organisations et les États ont dû réviser leurs conceptions de sécurité et de défense[16].

La première grande tendance qui se dégage dans l'ensemble des pays d'Europe occidentale après la fin de la Guerre Froide est **la réduction générale des crédits militaires**. La rigueur imposée par la nécessité de rétablir les grands équilibres budgétaires et de respecter les critères de Maastricht pour la réalisation de la monnaie unique a obligé les gouvernements à réaliser des économies substantielles qui se sont traduites par la baisse des budgets de la défense. Pourtant, après 1998, les dépenses

[15] L'article J.4 du Traité de Maastricht (TUE) réalise un compromis entre les deux approches.

[16] Buffotot, Patrice, coord., *La défense en Europe. Les adaptations de l'après Guerre Froide*, édition 1998, La Documentation Française.

militaires et de sécurité commencent à monter, pour arriver au début du XXIe siècle, quand la flambée de la menace terroriste a consolidé cette tendance[17].

La deuxième tendance est **la réorganisation des armées**, conséquence à la fois des réductions des crédits, mais aussi du changement géostratégique en Europe, résultat de la fin de la Guerre Froide. Cela fait que l'Union Européenne s'est munie (après de longs débats sur la nécessité, les coûts etc.) d'une Force rapide d'intervention, voir ensuite des Groupements de combat (Battle Groups).

La troisième tendance est **la volonté des Européens de constituer**, non sans certaines difficultés, **une Identité Européenne de Sécurité et de Défense (IESD)**, chose qui impliquait l'accord des États-Unis. En ce qui les concerne, une chose est sûre – ils n'ont rien à reprocher à l'effort des Européens de créer un système de défense à leur propre forces aussi longtemps que cela ne touche pas à la suprématie de l'OTAN – et implicitement américaine – en Europe de point de vue de la défense et aussi longtemps que les Européens participent de plus à l'effort financier, car la sécurité européenne est indivisible.

Enfin **le rôle de l'OTAN** dans le système de sécurité occidental et l'avenir des relations transatlantiques constituent une autre interrogation. La réduction des crédits militaires a été générale dans l'ensemble des pays de l'Union Européenne. L'absence de menaces militaires immédiates a servi de prétexte pour réaliser des économies sur les budgets militaires. Les baisses sont évidentes, se situant autour d'un pourcent et même plus dans certains pays[18]. Il est évident que, si cette tendance à la réduction de l'effort de défense se confirmait dans les années à venir, on pourrait assister à un véritable désarmement de l'UE, qui rendrait problématique une défense européenne digne de ce nom.

En outre, la réduction des budgets de la défense et la nouvelle situation géostratégique de l'Europe ont entraîné la définition de nouvelles missions et une réorganisation des armées dans un grand nombre d'États. On assiste*, d'une part*, à un changement du format des armées, qui se traduit par une réduction des effectifs et du nombre des unités (Allemagne, Espagne, France et Italie), voire par l'abandon du service militaire et par le passage à l'armée professionnelle (Belgique, Pays Bas et plus récemment France) et, *d'autre part*, à une réorganisation de la structure des forces.

On a ainsi pu constater, y compris chez des pays neutres, la mise en place de forces de réaction rapide capables de s'intégrer dans un dispositif multinational pour participer à des interventions extérieures dans le cadre de la prévention des conflits et du contrôle des crises.

Concernant *l'Identité Européenne de Sécurité et Défense*, si la France avait pensé

[17] Shah, *High Military Expenditures in Some Places*, November 9, 2006 – www.globalissues.org/geopolitics/armstrade/spending.asp.

[18] Pas mal de pays en Europe approchent aujourd'hui même 1% du PIB, y inclus la Roumanie. En dépit de ses engagement internationaux, notamment vers lÓTAN – 2,38% du PIB – en présent, le budget est moins de 1 %, comme le ministre Corneliu Dobriţoiu l'a admis en quelques occasions en 2012. Le regres est visible: 1999 - 2.7, 2000 - 2.5, 2001 - 2.4, 2002 - 2.3, 2003 - 2.1, 2004 – 2, 2005 – 2, 2006 - 1.8, 2007 - 1.5, 2008 -1.5, 2009 - 1.4, 2010 - 1.3 (The Stockholm International Peace Research Institute (SIPRI), *SIPRI Military Expenditure Database* - http://milexdata.sipri.org/result.php4 - 4 décembre 2012).

dans un premier temps de développer un pilier européen de défense autonome au sein de l'UEO, face aux réticences de nombreux pays européens refusant de dupliquer des moyens militaires au moment où l'on réduit les effectifs, elle s'est ralliée en décembre 1995 à l'idée d'inscrire ce pilier au sein de l'OTAN[19].

L'intervention en ex-Yougoslavie est fortement liée à cette évolution car elle a mis en lumière l'incapacité de l'UE à régler seule la crise yougoslave malgré les efforts entrepris depuis 1991et la mise en place d'une force sur la bannière de l'ONU (30000 hommes de la FORPRONU). Néanmoins l'arrêt de cette guerre est avant tout le résultat de l'intervention des Américains et de l'OTAN et non des Européens.

L'absence de l'UE lors du règlement du conflit yougoslave et les limites de l'action européenne dans le règlement des différends internationaux, faute d'une politique commune et aussi de moyens militaires suffisants, illustrent l'incapacité des Européens à dépasser en matière de défense et politique étrangère leurs différents intérêts nationaux.

La Politique Etrangère et de Sécurité Commune (PESC)

La politique étrangère et de sécurité commune (PESC) a été établie par le Traité de Maastricht, entré en vigueur le 1 novembre 1993[20]. Les dispositions de la PESC ont été révisées par le traité d'Amsterdam, signé le 2 octobre 1997 et entré en vigueur le 1 mai 1999. La révision du traité devrait permettre d'améliorer l'efficacité et la visibilité de cette politique. La nomination d'un Haut Représentant pour la PESC, Javier Solana, lors du Conseil européen de Cologne en juin 1999, est une décision d'importance à cet égard.

Pendant près de quarante ans de construction européenne, l'expression même de "politique étrangère commune" est demeurée tabou. Si les États membres de la Communauté européenne s'efforçaient de se concerter sur les grands problèmes de politique internationale, acceptaient que leurs services diplomatiques nationaux se réunissent et dialoguent, jamais n'avaient-ils inscrit dans un traité l'objectif d'une "politique étrangère commune" qui soit celle de l'Union européenne. C'est chose faite à Maastricht. L'Union Européenne essaie de faire entendre sa voix sur la scène internationale, exprimer sa position sur des conflits armés, sur les droits de l'homme ou sur tout autre sujet[21].

Le Traité dote aussi l'Union d'une politique de sécurité commune qui inclut l'ensemble des questions relatives à sa sécurité, y compris la définition progressive d'une politique de défense commune. Cette politique de défense commune pourrait conduire à une défense commune si le Conseil européen en décidait ainsi et sous réserve d'une décision adoptée et ratifiée par les quinze États membres. La PESC n'affecte cependant pas le caractère spécifique de la politique de sécurité et de défense de certains États membres, de même qu'elle est compatible avec la politique menée dans le cadre du Traité de l'Atlantique Nord.

Le Traité sur l'Union Européenne établit plusieurs liens entre l'Union Européenne et

[19] *The NATO Handbook*, p.75.

[20] Les articles 11 à 28 du traité sur l'Union Européenne étaient spécifiquement consacrés à la PESC : le site de la Commission Européenne – http://europa.eu/index_fr.htm.

[21] *La Politique Etrangère et de Sécurité Commune* , Réflexe Europe, 1999.

l'Union de l'Europe Occidentale (UEO). Il prévoit notamment que l'Union a recours à l'UEO pour élaborer et mettre en œuvre des décisions et des actions de l'Union qui ont des implications dans le domaine de la défense. L'UEO pourrait en outre être intégrée à l'Union : cette intégration est soumise à une décision du Conseil européen et à une décision adoptée et ratifiée par les quinze États membres.

Les artisans du Traité d'Amsterdam ont réservé une place importante aux missions de Petersberg[22] (du nom du lieu où s'est tenu en juin 1992 le conseil ministériel de l'UEO qui les a définies). Il s'agit de missions humanitaires et d'évacuation, de missions de maintien de la paix et de missions de force de combat pour la gestion des crises, y compris les missions de rétablissement de la paix.

Le conflit au Kosovo a conduit le Conseil européen de Cologne à placer, comme c'est déjà le cas dans le traité, les missions de Petersberg au cœur du renforcement de la politique européenne commune de sécurité et de défense. Les quinze chefs d'État ou de gouvernement et le Président de la Commission européenne réunis les 3 et 4 juin 1999 ont en effet déclaré qu'à cette fin "l'Union doit disposer d'une capacité d'action autonome soutenue par des forces militaires crédibles, avoir les moyens de décider d'y recourir et être prête à le faire afin de réagir aux crises internationales, sans préjudice des actions entreprises par l'OTAN"[23].

Des travaux sont actuellement en cours au sein de l'Union Européenne pour assurer le contrôle politique et la direction stratégique des opérations de Petersberg conduites par l'Union Européenne, pour déterminer la mise en oeuvre des opérations avec ou sans recours aux moyens et capacités de l'OTAN et les modalités de participation aux opérations des membres de l'Union européenne, des membres européens de l'OTAN et des partenaires associés de l'UEO.

A-t-on besoin d'une politique étrangère et de sécurité commune ?

Au moment où les États membres ont négocié le traité de Maastricht, de nombreux événements modifiaient le paysage européen. Le rideau de fer était tombé entre l'ouest et l'est de l'Europe. L'Allemagne se réunifiait. La Yougoslavie entrait dans la guerre. Au niveau international, la guerre du Golfe éclatait. C'est dans ces circonstances que les États s'interrogèrent sur les "raisons d'être" d'une politique étrangère et de sécurité commune. Les défis rencontrés à l'époque ne se sont pas démentis durant et après l'adoption du traité d'Amsterdam, au vu de l'instabilité régnant dans la région d'Europe du Sud-Est ou au Moyen-Orient. *Pourquoi a-t-on besoin d'une politique étrangère et de sécurité commune ?*[24]

Depuis les années 1950, les Communautés européennes ont développé des liens économiques forts entre leurs États membres et avec le reste du monde. Les progrès dans le domaine économique (création d'un grand marché sans frontière, monnaie unique, développement des relations commerciales avec de nombreuses régions du

[22] *La Politique Etrangère et de Sécurité Commune* , Réflexe Europe, 1999.
[23] *Rapport de la présidence sur le renforcement de la politique européenne commune en matière de sécurité et de défense*, Bulletin UE 6-2000, Annexes aux conclusions de la présidence (2/8).
[24] "*La politique étrangère et de sécurité commune de l'Union Européenne*" Bureau d'information de la Commission Européenne, Luxembourg, 1996.

monde) n'ont pas été suivis d'un rôle politique de même envergure.

La Communauté européenne et ses États membres fournissaient à la fin des années '90 plus de la moitié des fonds pour l'assistance internationale au développement, plus de 50% de l'aide humanitaire mondiale. Ils financent un tiers de l'aide mondiale au Moyen-Orient (50% pour les territoires palestiniens), près de 60% à la Russie et aux Républiques nées de l'ancienne Union soviétique, 40% de l'effort de reconstruction en Bosnie-Herzégovine. Cette aide considérable peut être complétée par un volet politique : contribution au maintien de la paix internationale, promotion de la coopération, de la démocratie et des droits de l'homme[25].

Les politiques étrangères des États membres n'ont pas disparu avec la création d'une PESC. La PESC n'a d'ailleurs pas vocation à les faire disparaître. Elle ne doit pas non plus faire obstacle aux systèmes de défense de chacun. Cependant les États membres peuvent s'entendre sur certaines questions internationales. Ils ont la possibilité d'ajuster leurs points de vue, de parler d'une seule voix dans les enceintes internationales lorsqu'ils le veulent. Ils ont la possibilité d'agir ensemble. Un ensemble régional qui en est capable acquiert un poids sur la scène internationale.

L'Union doit défendre les valeurs communes, ses intérêts fondamentaux, son indépendance et sa sécurité. Elle doit pouvoir faire face à des menaces multiples, comme le sont la prolifération des armes de destruction massive, les trafics d'armes, la contrebande de matériel nucléaire, le fondamentalisme ou l'extrémisme. L'émergence de conflits locaux, de guerres comme dans l'ancienne Yougoslavie, peuvent aussi déstabiliser les États voisins.

La politique étrangère et de sécurité commune est mise en oeuvre de manière intergouvernementale, étant donnée la sensibilité que représentent les questions touchant aux relations internationales. Le traité a donné un très grand poids aux États membres et aux instances de l'Union Européenne dans lesquelles ils participent directement. Les pouvoirs de la Commission européenne, du Parlement européen et de la Cour de Justice ont été limités pour cette même raison. De ce point de vue, la PESC se distingue très fortement de la mise en œuvre des politiques communautaires. En outre, la PESC ne connaît pas les instruments juridiques que sont les "directives" ou les "règlements" existant pour les politiques communautaires. Elle utilise des instruments spécifiques.

Conclusions

L'Union Européenne est certainement un symbole de la réconciliation, mais elle est plus que ceci... Elle a densifié ses relations avec le reste du monde, développé et institutionnalisé ses politiques externes, étendu ses ambitions internationales. L'UE est ainsi devenue un acteur international global ayant vocation à intervenir aussi bien dans le champ de la diplomatie internationale que dans celui de l'économie internationale[26].

Les scénarios d'évolution sont divers, toutefois il faut remarquer que nul ne risque

[25] *"Quelles sont les relations de l'Union Européenne avec le reste du monde?"* Office des publications officielles des Communautés Européennes, Luxembourg, deuxième édition 1998.

[26] Charlotte Bretherton; John Vogler; *The European Union as a Global Actor*, London, Routledge, 1999; Franck Petiteville, *La politique internationale de l'Union Européenne*, Presses Sciences Po, Paris, 2006, p.144.

à prédire un monde dont l'Europe serait significativement absente... [27] Cependant, les grandes questions restent toujours ouvertes, comme la relation entre l'Union Européenne et l'OTAN, ou que va se passer si, après tout, pas tout le monde ne sera impressionné avec les bonnes manières et les talents rhétoriques des Européens, sachant que le contenu, la projection de force est assez faible[28]. L'Europe a toujours besoin de son oncle Sam. La Lybie en 2011 n'en est qu'un très récent et inquiétant épisode ...

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[27] Voir Franck Petiteville, *La politique internationale de l'Union Européenne*, Presses Sciences Po, Paris, 2006, pp.193-231.

[28] Comme le suggère la théorie de l'Europe puissance normative. Voir aussi Cristian Iordan, *Defending Europe*, in *Per Concordiam,* http://www.marshallcenter.org/mcpublicweb/MCDocs/files/College/F_Publications/perConcordium/pcv3n2eng.pdf.

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Rien ne se crée sans les hommes. Rien ne dure sans les institutions.

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