# Romanian Journal of European Affairs

Vol. 16, No. 1, March 2016

European Institute of Romania

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*Romanian Journal of European Affairs* is published by the European Institute of Romania
7-9, Regina Elisabeta Blvd., Bucharest, Code 030016, Romania
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E-mail: rjea@ier.ro, Web: http://rjea.ier.ro

DTP and cover design: Monica Dumitrescu

Print: Alpha Media Print, http://www.amprint.ro/

ISSN print: 1582-8271
ISSN online: 1841-4273

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# Internal Security Cooperation under Functional Expectations: Initial Law Enforcement *Europeanization* - Case of Finland and Estonia

**Ramon Loik, Erkki Hämäläinen, Viljar Veebel** [1]

***Abstract***: *Law enforcement cooperation as a central part of the EU internal security policy to combat cross-border organised crime and terrorism needs to be more effective by adopting specific provisions and tools. This paper argues that functional expectations require removal of barriers and construction of a common security area, but sometimes better cooperation in practice does not fit, as Europeanization of law enforcement still lacks understanding of objectives, values and principles for improving international trust, consensus, sincere cooperation and effective national coordination. The level of Europeanization of law enforcement could be evaluated as based on the level of implementation of the EU provisions on police cooperation related to practical enforcement, factors promoting or hindering law enforcement and changes in discursive practices due to EU provisions and professional socialisation processes. Some aspects of observed inertia characterizes the slow process of transition or tendencies for absorption in which resilience meets the necessary degree of flexibility allowing for some mutual learning and cooperation, but the result is expectedly a form of accommodation of needful policy requirements in the lack of substantial change perspective.*

***Keywords***: *Law enforcement, EU Justice and Home Affairs (JHA), Area of Freedom, Security and Justice (AFSJ), Europeanization.*

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**Introduction**

The European Union (EU) has been in a permanent transition and probably never more than during the first turbulent decade of the 21st century with its challenging enlargements, deepening of the monetary and economic integration, the widening of the Schengen area and struggling with new immigration flows. Currently, the EU is facing the greatest contemporary migration crisis that will likely change the internal security system of the Union. The problem of illegal immigration, including that of cross-border organized human trafficking, is far from being new to the EU, but the increasingly forming pressure is becoming a source of more opinionated positions and thereby nurturing potential radicalism.

Effective management of transition requires both a high degree of cooperation based on mutual trust to shape collective action at the EU level, based on appropriate resources, including common value resources, political will and institutional capabilities. Contemporary security challenges are mostly cross-border and cross-sectorial. Thus, the future of the Union's internal security domain is mainly a matter of effective cooperation in preventing and fighting serious organised crime, terrorism and cybercrime, strengthening the integrated management of the external border and protection of critical infrastructure.[2] The ongoing crisis has highlighted the need for more active cooperation of the EU internal security and law enforcement bodies and competent national authorities to prevent, detect and stop transnational illegal networks. Operational cooperation should also be targeted even more towards the external dimension, in order to break the networks of cross-border smuggling. Increasing security challenges give some extra functional pressures to national governments for more effective transnational and supranational cooperation. The EU's efforts on matters of internal security have recently been focused more on operationalizing the existing instruments and intensifying the use of cooperation tools. The main innovation since the start of the ambitious Stockholm Program (2010) is the EU policy cycle on serious and organised crime, developed through the Standing Committee on Operational Cooperation on Internal Security (COSI). At the same time, some critical debates on state sovereignty and EU internal security integration have also been raised (see Bigo, 2008a, 2008b; Burgess, 2009) since policing and law enforcement have been carefully guarded features of traditional sovereignty. So, the constructivist approach to re-define the common security space needs to be re-vitalized to meet the functional expectations and find some further appropriate governance tools.

The adoption of the Lisbon Treaty (TFEU) opened a challenging chapter for the promotion of more supranational actions in EU law enforcement cooperation. The policy context of so-called *Lisbonization* highlights the call for the *European model* for Justice and Home Affairs (JHA) and Area of Freedom, Security and Justice (AFSJ) with appropriate operationalization of cooperation tools. Thus, the Stockholm Programme (2010) turns

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[2] Studies of transnational law enforcement cooperation and *Europeanization* have started to collect some interrelated academic research traditions during the past decade (see, among others, Anderson, *et. al.*, 1995; King and Ray, 2000; Sheptycki, 2000; Börzel and Risse, 2003; Mitsilegas, *et. al.*, 2003; Deflem, 2004; Walker, 2004; Marenin, 2005; Savage, 2007; Bigo, 2008a; 2008b; Burgess, 2009; Mabee, 2009; Kaunert, 2010; Merlingen, 2012; Kaunert and Léonard, 2013; Bergström and Cornell, 2014; Loik and Smith, 2015).

a lot of attention to the development of trust and common culture, stating that mutual trust is essential to make some 'real progress' in the EU, JHA/AFSJ, that also requires the establishment of minimum standards and understanding of the different judicial traditions and methods of the EU Member States (also *MS*).[3] Thus, the governments' activities should be examined from the point of view of national implementation of the EU cooperation principles and law as aspects of *Europeanization*.

There are some important aspects in characterizing to what extent law enforcement has been transformed in line with EU legislation and principles when analysed to the deepened understanding of whether the respective discursive practices under transitional adaptation pressure have become more *European*. From that position the study addresses the following questions: (i) how the implementation of the EU provisions on police cooperation manifests into guidance within respective authorities, and (ii) how the implementation of the EU provisions on internal security reflects on the operational level.[4] The hypotheses propose that the main direction of Europeanization has been *top-down* more than expected in case of Finland. Estonia as former soviet country in transition has been treated even in a more conditional way, since it was obliged to implement all the JHA/AFSJ provisions of the Amsterdam Treaty already prior to the EU accession on the 1 May 2004 (see also Veebel and Loik, 2012). The study refers to general understanding on how Finnish and Estonian law enforcement in combating organised crime has been challenged to transform in initial respect, and what measures should be taken under more close attention to promote further implementation of EU police cooperation instruments in Schengen area.

The paper discusses particularly the main shifts of competencies in EU internal security domain as policy context, the European Police Office (Europol) and the related exchange of information, liaison officers system and use of Analysis Work Files (AWF). Regarding the Schengen Convention, the mutual assistance and information exchange under the Convention and the use of the Schengen Information System (SIS) are additionally examined (see also Jaani-Vihalem and Loik, 2013). The Convention on Mutual Assistance in Criminal Matters between the MS (MLA Convention) is mainly examined in terms of the Joint Investigation Teams (JIT), and exchange of police information. The voluntary disclosure of information to other EU Member States is also discussed (see Hämäläinen, 2009). The implementation of the Europol (Serious) Organised Crime Threat Assessment (S)OCTA, as well as some related EU Council priorities are given as an example of translating policy goals into operational cooperation.

[3] The adoption of legislative action programmes creates some new and amends the existing secondary regulation deriving from the Treaties and initiates the efforts to improve police and judicial cooperation in a more specific manner. This paper aims to examine how the actors in the field of criminal justice applying the legal instruments, e.g., pre-trial investigation authorities and other relevant national bodies closely associated with the implementation are pressured to follow the EU provisions in combating organised crime.

[4] The questions are mainly approached from the practical perspective. The implementation of the EU instruments takes more time, as well as it takes a while before there is such information available to enable appropriate evaluation of whether the implementation has been influential. Hence, this paper covers the implementation of the main EU instruments started in or after 1999 but not later than 2004.

## 1. Aspects of EU Competency Shifts in Common Internal Security Area

### 1.1. Development of legal bases

Internal security and law enforcement issues in the EU achieved a prominent place after acceptance of the Stockholm Program for the period 2010–2014, the EU Internal Security Strategy (ISS) from 2010, and adoption of the Lisbon Treaty (TFEU)[5] with its principal reforms on the EU JHA/AFSJ.[6] Before the TFEU came into force on the 1 December 2009, the EU's legislative powers over the 3rd Pillar (TEU, Articles 29–45 previously) were quite limited and intergovernmental competences dominated in police and judicial cooperation in criminal matters.[7]

The legal basis for the JHA/AFSJ integration is mainly provided by Title V of the TFEU (formerly as article 61 of the Treaty establishing the EC and Article 29 of the TEU) providing that an AFSJ shall be constituted in the EU with respect for fundamental rights, the different legal systems and traditions of the Member States, ensure the absence of the internal border controls and shall frame a common policy on asylum, immigration and external border control, based on solidarity, which should be fair towards third-country nationals. The high level of security through measures to prevent and combat crime, to avoid racism and xenophobia and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws with the transparent public access to justice shall be facilitated through the *principle of mutual recognition*.

### 1.2. Mutual recognition and deepening harmonisation

Article 83(1) of the TFEU states that the European Parliament and the Council may establish minimum rules regarding the definition of criminal offences and sanctions in the areas of serious crime with a 'cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis'. Article 83 also lists such areas of crime as terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime. It is also important to note that on the basis of developments in crime, the Council may unanimously adopt a decision identifying also some other areas of crime

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[5] Treaty on the Functioning of the European Union (TFEU). Official Journal of the European Union, No. C 115/47.

[6] The EU Justice and Home Affairs (JHA) was the intergovernmental *Third Pillar* of the EU before the adoption of the Lisbon Treaty and covered police cooperation with judicial matters. At the Amsterdam Treaty, the pillar was renamed Police and Judicial Cooperation in Criminal Matters (PJCCM) after Schengen Agreement features were transferred to the *First Pillar* (Community law). According to the consolidated version of the TFEU, the JHA domain is integrated into Title V, *Area of Freedom, Security and Justice* (AFSJ): Chapter 4 – Judicial cooperation in criminal matters; Chapter 5 – Police cooperation.

[7] The AFSJ contains a large number of EU policies and instruments established to ensure (internal) security, rights and free movement within the EU. After internal borders removal with Schengen developments, cross-border judicial and police cooperation had to increase to counter cross-border crime with some common minimum judicial standards.

that meet the Article 83 criteria, after obtaining the consent of the European Parliament.[8] Effectiveness of implementation of these instruments is a priority to the EU and new areas should be also examined where necessary, including Euro counterfeiting, money laundering and drugs trafficking as the main areas for further construction of common internal security space within the advanced harmonization of criminal law and sanctions.

The judicial cooperation in criminal matters is based on the principle of mutual recognition of judgments and judicial decisions and will include the approximation of the laws and regulations of the EU Member States (incl. Article 70, TFEU). In criminal matters the European Parliament and the Council of the EU are able to adopt measures to lay down the rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions, prevent and settle conflicts of jurisdictions between the MS, as well as to support the training and common learning of the judiciary and law enforcement staff, as well as facilitate cooperation between internal security or equivalent competent authorities.

### 1.3. Major institutional developments

As further important cooperation steps, a standing committee (COSI)[9] is set up within the Council of the EU in order to ensure that operational cooperation on internal security and law enforcement that contributes to the coordination between the MS is promoted and strengthened within the EU. Also, it will be open to the EU MS to organise enhanced cooperation between themselves under their departments of their administrations responsible for safeguarding national security (see Article 73, TFEU). The Lisbon Treaty also establishes that as for preventing and combating terrorism and related activities, the European Parliament and the Council will define to the MS a framework for direct effective administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or some non-State entities (see Article 75, TFEU).

Revisions enforced by the Lisbon Treaty also strengthen the competence and positions of Eurojust agency (see Article 86, TFEU) that, namely in order to combat serious crimes against financial interests of the EU, may be developed into European Public Prosecutor's Office by the Council , in order to exercise the functions of prosecutor in the competent courts of the Member States. Furthermore, the Council may adopt unanimously, after obtaining the consent of the European Parliament and after consulting the European Commission, a decision in order to extend the powers of the Public Prosecutor's Office to

[8] Here the European Parliament and the Council have worked closely in recent years with a view to strengthen, especially the fight against trafficking of human beings, sexual exploitation of children, cyber criminality and protection of women and victims of other crime.

[9] COSI (In French: *Comité permanent de sécurité intérieure*) – Standing Committee on Internal Security, established by Article 71 of TFEU. The COSI is composed of members of the competent ministries, assisted by the permanent representatives of the EU MS and by the Secretariat of the Council. The objective of the COSI is to promote and strengthen the coordination of operational actions of the MS in the field of internal security (see OJ L52) The COSI, as well as the Political and Security Committee (PSC) must also assist the Council with regard to the *solidarity clause* – Article 222, TFEU. The COSI is successor to the Article 36 Committee.

include serious crime having a cross-border dimension and accomplices in serious crimes affecting more than one EU Member State.

## 2. Conceptualization of Law Enforcement *Europeanization*

### 2.1. Organizing approach from constructivist perspective

Presumably one of the most influential definitions of *Europeanization* is proposed by Claudio M. Radaelli (2003, p. 30), formulating that 'Europeanization refers to: Processes of (a) construction, (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, *ways of doing things*, shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies'. Hence, the concept of Europeanization could be defined as a theoretical approach of describing change or transition in terms of a dynamic and reciprocal process, which captures circular and nonlinear, multilevel interaction between the EU and its Member States, and understood as continual counteraction with on-going processes of negotiations, evaluations, learning and persuasion between multiple actors with their preferences and interests involved and changed.

According to Johan P. Olsen's well-referenced understanding (2002) *Europeanization* needs, as a first step, to separate the different phenomena referred to by the term, what is changing. He distinguishes between five possible uses of this sense: (i) Changes in external boundaries;[10] (ii) Developing institutions at the European level;[11] (iii) Central penetration of national systems of governance;[12] (iv) Exporting forms of political organization;[13] (v) and a political unification project[14] (Olsen 2002, p. 923–924). He claims that the developing institutions at the European level 'signify centre-building with a collective action capacity, providing some degree of co-ordination and coherence. Formal-legal institutions of governance and a normative order based on overarching constitutive principles, structures and practices both facilitate and constrain the ability to make and

[10] Olsen (2002, p. 923) explains in a more specific way that 'this involves the territorial reach of a system of governance and the degree to which Europe as a continent becomes a single political space. /…/ Europeanization is taking place as the European Union expands through enlargement'.

[11] This means 'centre-building with a collective action capacity, providing some degree of co-ordination and coherence. Formal-legal institutions of governance and a normative order based on overarching constitutive principles, structures and practices both facilitate and constrain the ability to make and enforce binding decisions and to sanction non-compliance'. (*Op.Cit.*)

[12] Olsen (2002, p. 923–924) explains that 'Europeanization here involves the division of responsibilities and powers between different levels of governance. /…/ Europeanization, then, implies adapting national and sub-national systems of governance to a European political centre and European-wide norms'.

[13] This means the 'Europeanization as exporting forms of political organization and governance that are typical and distinct for Europe beyond the European territory /…/ Europeanization signifies a more positive export/import balance as non-European countries import more from Europe than *vice versa* and European solutions exert more influence in international flora' (Olsen 2002, p. 924).

[14] Olsen (*Op. Cit.*) states 'the degree to which Europe is becoming a more unified and a stronger political entity is related both to territorial space, centre-building, domestic adaptation and how European developments impact and are impacted by systems of governance and events outside the European continent'.

enforce binding decisions and to sanction non-compliance'. (*Op. Cit.*) It also means that the institutions can take more roles in the functioning of the EU with supranational powers and thus advance the integration.

A *political unification project* by Olsen (2002, p. 924) describes the process to which EU is becoming a more integrated and unified political entity, related both to territorial space, centre-building, domestic adaptation, as well as how the European developments impact and are impacted by the events and systems of governance. Sharing the competencies show that if the MS are ready to delegate some of their powers up to the EU's level then they follow a political unification project, as well as strengthening the EU institutions. The TFEU initiates some new bases, which can be seen as important steps for deeper political integration and further unification in the EU internal security domain, and also as strengthening the powers of the EU JHA agencies. One of the indicators about deeper integration in the TFEU is the *mutual defence clause* (Article 222), which extends the EU's competencies, potential and powers in the fight against terrorism and conflict prevention missions.[15]

Asking about how to reflect Europeanization and the layout of its dynamics, the degree and logic of *adaptation pressure* for change also needs to be specified. Radaelli (2003, p. 37) distinguishes four different aspects of such adaptation pressures:

*(i)* *Retrenchment* in which domestic actors oppose reforms and thus national policies become somewhat less in line with European templates. In other words, national policies can transform in response to the EU level (a) towards more harmonization and convergence or (b) towards increased divergence;

*(ii)* *Inertia* characterizes a lack of change, where national and EU policies are too dissimilar or if there appears an overlarge misfit. Inertia is expectedly followed by (a) an implementation delay, (b) increasing resistance to change or (c) conservation of *status quo*;

*(iii)* *Absorption* is understood as change through adaptation in which resilience meets a necessary degree of flexibility which allows for some learning. Thus the result is expectedly a non-fundamental change in which a 'core' of national policies or traditions remains. The absorption is hence a form of accommodation of 'needful' policy requirements without substantial change of structural logic;

*(iv)* *Complete transformation* is labelled on paradigmatic change in which some new opportunity structures are also created in terms of a deeper and systematic change. Transformation thus means change of substantial logics of processes and behaviour as a result of adaptation pressures towards Europeanization.

[15] In the context of the EU JHA the first part that probably has the most significance, given that the EU Member States are compelled to bring domestic arrangements into line with specific EU conditions and criteria set at the European level of convergence, is the part of *Acquis Communautaire* – the Copenhagen Criteria for EU candidate countries. This form of adaptation pressure is potentially the most influential and is closely associated with the 'coercion' or conditionality. This influence also creates an important link between the *bottom-up* and *top-down* conceptualizations as MS may be able to 'condition' adaptation pressures from the EU level at the policy development stage in order to absorb its impacts.

Consequently, the adaptation of the Europeanization pressures reflects variations of domestic responses with different motivations, as well as abilities, to adapt the aspects of change and these are not universal or constant. To generalize, the level of Europeanization advancement of law enforcement can be perceived on the bases of the following criteria: (i) the level of implementation of the EU provisions on cooperation related to practical law enforcement; (ii) factors promoting or hindering the Europeanization of law enforcement, and (iii) changes in law enforcement discursive practices due to the EU provisions or the constructive socialisation process.

### 2.2. Levels and sources of law enforcement performance analyses

The main characteristics of the EU internal security domain during the recent years have been developments towards deeper harmonisation of criminal justice aspects for a more coherent fight against organised crime (Loik and Smith 2015, p. 105). Hence, the establishment of minimum rules at the EU level regarding necessary elements of a criminal offence and punishments for some serious organized cross-border crimes according to the TFEU (Article 83)[16] has become the central issue of concern. Recent EU proposals for directives on trafficking in human beings, sexual exploitation of children and cybercrime represent some further steps towards deepening harmonisation. Examinations of law enforcement and police cooperation from a larger perspective, where the interrelated levels for performance analyses can be distinguished (see Hebenton 1995, p. 39) are as follows:

(i) *macro* level – constitutional and international legal agreements, harmonisation of national laws and regulations;

(ii) *meso* level – operational structures, practices, procedures, technology, etc.;

(iii) *micro* level – the prevention and detection of specific offences and organized crime problems.

Macro-level implementation should be examined by analysing strategic- and international documents compiled by the government and ministries, as well as the corresponding steering of law enforcement performance. Meso-level implementation results come by evaluating mechanisms for international and transnational cooperation with exchange of information between the key law enforcement agencies combating organised- and the most serious crimes.[17] To assess micro-level implementation, the focus on the experiences of individual actors in the application of the EU instruments and the improvement of cooperation with other MS should be evaluated. The referenced levels of analyses should be reflected by the corresponding strategic documents and administrative implementation plans.

[16] Article 83(1); see also ex-Article 31 of the TEU.

[17] In case of Finland, namely the National Bureau of Investigation (in Finnish: *Keskusrikospoliisi*), Helsinki Police Department (*Helsingin poliisilaitos*) and National Board of Customs (*Tullihallitus*).

The Ministry of the Interior prepares annually both a strategic and financial plans for four or five years, including a detailed performance plan for the following year both in Finland and in Estonia.[18] There are discussions in progress in the Estonian Ministry of the Interior if it's more useful to develop and implement a ten-year strategic planning circle as the Ministry of Defence already does. In addition to the administrative plans drawn up by the Ministry, the *Police Department* in Finland and merged *Police and Border Guard Board* in Estonia prepares annual long-term operating and financial plans for policing, as well as correspondent annual performance plans.[19] These documents form the basis for annual performance plans between the Police Department and the police units under the Ministry, such as the National Bureau of Investigation, Helsinki Police Department and Provincial Police Commands in Finland[20] and for such law enforcement bodies as Police Districts (Prefectures), and specialized units as Central Criminal Police in Estonia are the main sources of analyses.

### 2.3. Mutual EU evaluation mechanism

The Council of the EU has made efforts to improve the national implementation of some key EU instruments in the field of JHA, particularly those adopted for combating serious cross-border organised crime. The mutual evaluation system is an organised mechanism for peer-evaluation of the procedures followed in each MS to implement the commonly agreed provisions. The mutual evaluation mechanism enables Member States to evaluate on a basis of equality and mutual confidence the implementation by each MS of the cooperation instruments laid down to combat international organised crime. The aim is to evaluate the implementation and application at national level of the legal acts and instruments of the EU and other international acts and instruments in criminal matters. The specific subject of each evaluation is defined by MS at the Council, on a proposal from the EU Presidency.

[18] The operating and financial plans studied for this paper cover the period 2004–2012. Such administrative plans are usually published at the end of the previous year or at the beginning of the first year of the planning period. The documents are mainly examined from the perspective of policing. Other strategic documents examined include – The vision, strategy and critical success factors of the police (2002); International cooperation strategy of the police (2004); Vision, strategy and critical success factors of the police (2004–2014); Drugs strategy of the police (2003–2006); Government resolution on the Internal Security Programme (2004) and Government resolutions on reducing financial crime and the *shadow economy* (2002–2005 and 2006–2009). Some working group reports of a strategy-like nature are also examined, concerning Legislation on combating financial crime (2004); Situations in the fight against financial crime (2004); Combating vehicle crime (2005); strengthening the fight against drug-related and organised crime (2007) and the Community policing strategy (2007). In addition, the long-term operating and financial plans for 2005–2008, 2007–2011, 2008–2011 and 2009–2012 of the Customs Administration and the annual performance plans between the Ministry of Finance and Customs (2003–2007), also Reports (2010, 2011 and 2012) on the implementation of the *Main Guidelines of Estonia's Security Policy Until 2015* by the Estonian Ministry of the Interior (2010, 2011, 2012) were examined as samples.

[19] The performance plans incorporate each unit's priorities and goals for policing, set in the administrative plans. The performance targets are then allocated inside the units, which takes place through performance plans between the management and the different performance units, e.g., supervision and criminal investigation units, as well as through staff development issues. The similar system of performance guidance both in Finland and Estonia is a major tool for turning the strategic goals of the entire police service into measures to be taken at the various units.

[20] The latter negotiate performance plans with the local police, except for the Helsinki Police Department, which comes directly under the Ministry of the Interior in Finland.

An evaluation team, set up separately and consisting of experts from the EU Member States and the General Secretariat of the Council, visits the MS being evaluated and prepares a report on the evaluation about mutual legal assistance, law enforcement and its role in fighting drug trafficking, implementation of a European Arrest Warrant (EAW),[21] exchange of information and intelligence with Europol and the other MS respectively, etc. Schengen capability evaluations under the Schengen Convention are also periodically carried out within the Member States. The country-specific reports are confidential until adoption, thus, the cooperation and mutual evaluation is based on mutual trust, confidentiality and loyalty as principle.

The evaluation reports are discussed by the relevant Council working group – earlier by the Multidisciplinary Group on Organised Crime (MDG) and from 2010 by the Working Party on General Matters including Evaluation (GENVAL). The working group adopts its conclusions on the reports by consensus. The Presidency then informs the Council annually about the evaluation results and the European Parliament about the implementation of the evaluation mechanism. The Commission then submits an annual report to the Council and the Parliament on the evaluation of the implementation of respective EU AFSJ/JHA programs. Hence, the development and implementation of law enforcement cooperation priorities' is observable by both the evaluation mechanism on EU level and policy reflections within national regulations.

## 3. Implementation of EU Policy to Fight Organised Crime

### 3.1. Law enforcement steering system

The research interviews were conducted with the aim of gathering more detailed information on the implementation of the EU instruments from the actors on the ground.[22] The main finding pertains to the *de facto* implementation of the EU legal instruments in law enforcement activities. The insufficient implementation of the instruments during the observed period also means failing to fully achieve the goals for police cooperation stated by EU legislation and the objectives of the joint actions between the EU MS. Current challenges to guarantee the functioning of Schengen free movement area is partly reflection of problems to fully implement the EU level law enforcement cooperation mechanisms.

[21] The European Arrest Warrant (EAW) is set up to address the issues of *dual criminality* for a list of categories of specified serious crimes, overcoming the obstacles of different criminal codes in the MS. The grounds for refusal are strictly limited by the correspondent framework decision and related regulations.

[22] The interviewees were mainly selected among representatives of law enforcement authorities whose rank in the organisation was that of a head of investigation or contact persons who had cooperated with law enforcement authorities with other EU MS in practice. The selection procedure was started with heads of investigation who were generally known to have investigated sophisticated international criminal cases. The interviewees comprised 24 experienced heads of investigation in total, representing the National Bureau of Investigation, Helsinki Police Department, Espoo District Police and the Southern and Western customs districts of the Customs Administration. Two of them had worked as police liaison officers seconded to Tallinn (Estonia) and Interpol.

The implementation of EU legislation at the macro-level demonstrates that political decision-makers have relatively clearly expressed willingness to improve and further deepen the internal security cooperation and strengthen the Schengen area both in Finland and Estonia (see also Security Policy 2010, 2011 and 2012). In this respect, the political and strategic level leaders seem to have adopted a policy that is in line with EU goals. Political will can be assumed to be reflected most directly by government officials responsible for preparing EU instruments of cooperation at the national level. The number of such officials were, however, too limited for deeper implementation both in Finland and Estonia up to the observed period.[23]

The administrative law enforcement steering system, which was mainly based on the operating and financial plans, performance plans and the performance guidance of offices and agencies on the bases of these plans, did not seem to contribute to transferring the goals of the governmental EU policy into the administrative sectors under the respective Ministries. Due to the steering system, law enforcement authorities only got a faint and diffuse message as to the EU's law enforcement objectives in the case of Finland. (Hämäläinen, 2009) In the case of Estonia, the academic community is quite poorly involved into the EU policy's evaluation process as potential valuable expertise providers. The steering system contributes poorly especially to the implementation of EU instruments, which call for more active measures by the administrations. Since the provision of information on the EU objectives through the steering system has been insufficient, it hence manifests lack of knowledge about EU-level obligations, well-coordinated implementation and complete evaluation.

### 3.2. Implementation of mutual assistance principle

The formal transposition of EU legislation, such as to enforce the national provisions implementing a certain convention or a framework decision, has been carried out within the given deadline when it comes to the instruments examined, i.e., the MLA Convention, Europol Convention, Schengen Convention and the framework decisions on JIT-s and the EAW. The respective administrative authorities, i.e., prosecutors and law enforcement agencies, have been provided with some training and instructions on the application of each instrument. Nevertheless, heads of investigation needs further detailed training in the instruments, as well as an update on the content. The findings of the study demonstrated that law enforcement authorities had not been provided with sufficient guidelines on processing information gathered during criminal intelligence and investigation processes, which could be useful for either Europol or law enforcement authorities of another MS (see Hämäläinen, 2009). The responsibility for taking action rested mainly with some individual law enforcement authorities.

[23] In fact, the National Audit Office in Finland considers that it was even too limited and that the responsibility for representing rested too much with individual officials. As a result, the national preparation of the EU instruments was narrow; the remainder of the administration was not being able to take an active and creative part in the preparation or the formulation of the national positions. This lack of involvement also meant lack of the opportunity to make full use of the existing expertise and reinforce the larger-scale administrative commitment to implement the EU instruments both in Finland and in Estonia during the observed period.

The 'non specialized' authorities seemed to have relatively lack of knowledge about the obligations related to sharing information under the Europol Convention to promote law enforcement cooperation in accordance with trust and loyalty.[24] In some cases, the national implementation of the EU instruments has resulted in changes in the exercise of powers between the authorities. The transfer of competence for the EAW from police to mainly prosecutors, for example, to send the arrest warrant to the requested MS. This transfer of competencies seems to have taken place relatively smoothly in general.

In Finland, as well as in Estonia, the system of processing international requests for mutual assistance was centralised *via* corresponding contact points (or contact *units*). It has not been modified in spite of the trend in EU legislation, which would have given grounds for opportunities to further amend the procedure. Recent developments in EU law towards direct contacts between law enforcement authorities of the MS, the need for more person-to-person contacts for effective law enforcement activities, especially between the neighbouring countries, require further revising the national and regional cooperation provisions in this respect.

### *3.3. De facto implementation*

To assess the *de facto* impact of the implementation of EU instruments, the effects on the operational micro-level needed to be examined. The heads of investigation selected as the interviewees were those who had the most experience in international cooperation, both within the police and customs. Therefore, the conclusions cannot be directly generalised to average senior investigators in the case of Finland.[25] It can be concluded that operational levels in both countries tend to approach the EU legislation from a task-oriented (narrow functional) perspective, focusing their interest directly on the task at hand. The need for the exchange of information, acquisition of evidence or operational cooperation at international level with another MS arises mainly from their own specific duties. Their cooperation at an international level could thus be mainly characterised as *need-oriented approach*.

There is also a finding that heads of investigations seemed to have minor knowledge about the Council priorities based on the (S)OCTA which do not influence with their concrete professional tasks. The situation can be explained by some defects in the administrative guidance on EU legislation and related supporting measures. However, the impact of the implementation of EU legislation manifests itself in gathering information for, or investigating individual criminal cases. Since the instrument applied is selected according to the needs of the case under investigation, the readiness to apply the different instruments is bound up with the experiences of each particular professional.

[24] Finnish legislation, for example, did not clearly provide for an obligation to record information in the information systems or to communicate it further to central authorities. This would require making further relevant amendments to the existing legislation and improvements to the existing guidelines for law enforcement authorities, as well as ensuring sufficient training to enable the authorities to meet the obligations and challenges in practice.

[25] If such interviews were conducted with investigators leading the investigation of serious crime cases in general, the findings would likely be equally different as they would probably indicate even a lower level of awareness and application of the EU instruments, with perhaps the SIS as an exception, which is also implemented on the operational street-level by the e-Police information system in Estonia.

The application of the SIS seems to have integrated into law enforcement authorities' daily routines by the technical integration of the system as part of the information systems of the Finnish and Estonian police and border guard. As a result, the alerts on persons, property, etc., recorded in the system are checked as part of the daily use of police e-information systems. The entries for Schengen alerts are checked centrally by the SIRENE Bureaus. Ensuring the EU law enforcement authorities' access to large-scale information systems, including VIS (Visa Information System), EURODAC (European *Dactyloscopie* – the fingerprint database for the Dublin Regulation to examine asylum applications), CIS (Customs Information System), FIDE (Customs File Identification Database), and other data exchanges, as well as the data protection activities is one of the central features of successful cross-border cooperation.[26] Heads of investigation had few experiences in the application of the framework decision on JIT and the national implementing act. Indeed, they were aware that the instrument exists, and its application tends to be considered in cases where cooperation in pre-trial investigations with another MS might be useful.[27]

### 3.4. Information exchange as an indicator of trust

The important finding of the study concerning international exchange of information is that exchange of information on crime or offences with Europol or another MS is needed for further improvement. In this particular context, information refers to knowledge gathered during the criminal intelligence or investigation processes which could be useful for Europol or the law enforcement authorities from another EU MS in the performance of their duties. Communicating information on the MS own initiative can be considered to significantly promote the joint action to combat organised crime referred by the Europol Convention.

Significant exchange of information with another MS or Europol means compliance with the principle of *sincere* cooperation. This can be considered binding under the Europol Convention. The Naples II Convention also includes a similar binding provision. Furthermore, the framework decision on simplifying the exchange of information and intelligence between law enforcement authorities clearly provides for an obligation to exchange information. Under the other EU instruments deriving from the Treaties, such as the MLA and Schengen Conventions and others, the exchange of information has

[26] Data protection and security of ICT networks, also essential for a well-functioning information society, recently recognized by the *Digital Agenda for Europe* by DG INFSO (Information Society) addressing issues related to cybercrime, cyber security, safer internet and privacy. The High Tech Crime Centre at Europol already plays quite an important coordinating role. There are also the European Network and Information Security Agency (ENISA), European Information Sharing and Alert System (EISAS) and interface with a network of national/governmental Computer Emergency Response Teams (CERT-s) as the focal points of the EU fight against cybercrime in place. (see also EU Internal Security…, 2010)

[27] The most common EU agency for Finnish and Estonian law enforcement authorities is Europol; especially the liaison officers system is used. Since the police and border guard services are merged in Estonia, the Police and Border Guard Board is also responsible of the operational cooperation with European Agency for the Management of Operational Cooperation at the External Borders (Frontex).

been voluntary on the Member States.[28] The practice of direct contacts creates a tension, especially when it comes to the administrative guidance on the current practices of the EU police cooperation.

Apart from cooperation with the Nordic countries, the national legislation provides that international cooperation takes place through the central authorities. This means at the very least opening the contact with the law enforcement authorities of the other MS. Opinions on centralised or decentralised cooperation vary between the EU Member States. Recent trends in EU legislation and operational steps have been taken towards direct and expeditious exchange of information, as well as more direct cooperation between relevant judicial authorities (see also Kaunert and Léonard, 2013; Bergström and Cornell, 2014). This trend is also reflected by past amendments to the Europol Convention, implementing the principle of availability concerning the exchange of information between law enforcement authorities, the Prym Treaty and the framework decisions on simplifying the exchange of information between the JIT-s. Functional expectations for advanced EU security require further barriers removal and construction of a common safety area both legally and socially, based on understanding of the objectives, values and principles for improving international trust and transnational cooperation within the European internal security and law enforcement community.

## Conclusions

The increase of various complex forms of cross-border organised crime is influenced by the trends of deepening globalisation and interdependence with regard to increasing functional pressures for the EU's internal security and regional stability. Complex and interconnected systems allow contemporary threats to emerge and escalate in quite unpredictable ways and national securities are closely framed by an international security turbulences. An appropriate and effective management of fast transitions and transformation processes requires a high degree of transnational cooperation skills and creative leadership with political will, sufficient normative resources, as well as institutional abilities to shape collective action.

The compatibility of the EU policy to fight against transnational organised crime and related legal instruments with national provisions and structures indicates the pressure for further Europeanization, especially after the TFEU came into force on 1 December 2009. Due to abandonment of former *Pillars*, the legal framework of the EU JHA/AFSJ has been transformed and forms of the cooperation have been further developed towards a supranational shift of competences. The EU legal instruments create framework and opportunities for the exchange of information, cooperation and joint operational actions between law enforcement authorities of the MS, however, the formal implementation of the instruments are not sufficient so far and national institutions are needed to act

[28] The correspondent framework decision on simplifying the exchange of information and intelligence between the law enforcement authorities of the Member States of the EU notes that the competent law enforcement authority is obliged, subject to certain conditions, to communicate information and intelligence on a criminal investigation or intelligence operation to its counterpart in another EU MS.

as mediators, as well as context providers to ensure appropriate normative framework, effective implementation and evaluation.

Some aspects of law enforcement Europeanization have successfully taken place in Finland and Estonia, sharing the Schengen transit-corridor along the EU North–East external border, mainly in a practical level of cooperation, especially in use of the SIS, well-developed bilateral exchange of information and person-to-person contacts. The implementation of the EU instruments is important insofar as it gives more effective legal bases and technical tools for enhanced practical cooperation. The law enforcement authorities' direct contacts with their counterparts in other EU Member States have been increased due to either a criminal case under investigation or a mission, meeting or training abroad and this has diffused ideas, experiences and information between the judicial authorities. Anyway, the fragmentation and multiple speeds of transformations were also observed.

The example of successful implementation is the exchange of information under the Schengen Convention through the SIS, applicable throughout the EU. This demonstrates how the national needs could be similar to those at European level and how it makes it possible to introduce adequate structural solutions as development of large-scale information systems. The awareness of the specific EU instruments transposed into national legislation has also been increased. On the other hand, administrative guidance on the operational application of many instruments was observed to be poor and implemented with inertia. In some respect, the implementation in Finland could have been more vigorous than has actually been the case in terms of pursuing the political goals of the EU during the observed period.

The law enforcement in Finland has been gradually Europeanized as the EU instruments are increasingly applied, as well as in Estonia. EU institutions and cooperation tools have increased cross-border cooperation between judicial authorities and personal interaction between criminal investigators. The main direction of Europeanization has been 'top-down' more than expected in Finland. Estonia, as a former soviet country in transition, has been treated in an even more conditional way, since it was obliged to implement all the AFSJ/JHA provisions of the Amsterdam Treaty before the EU accession by 1 May 2004 and onwards. On the other hand, the adaptation can also be explained by the deepening integration trend, based on increased functional pressures by the cross-border operational needs. Thus, practical implementation of the instruments in international police cooperation is primarily need-oriented and narrow-scoped.

The impact of implementation of the EU regulations which direct law enforcement cooperation in practice becomes mainly visible by the implementation of some specific instruments. National legislation on each particular instrument, e.g., a convention, framework decision, related guidelines and training measures are the main channels for transactions and impact. The sample of administrative plans examined demonstrate that the EU objectives for the JHA/AFSJ have been entered into the documents mainly for a strategic level without being very much transferred into the performance plans at the *meso*-level. Hence, it can be concluded that information on the principles of the implementation of EU legislation has not reached significantly to the operational actors

on the ground during the observed period. Insufficient administrative guidance also undermines measures supporting implementation, as providing training and issuing guidelines for the implementing authorities.

Taking into account that the effective implementation of EU legislation needs to combine both 'top-down' and 'bottom-up' approaches, as well as the horizontal dimension, measures need to be taken to promote the implementation of the EU instruments, including the improvement of the administrative steering system. Increasing the awareness and ensuring the implementation of EU law requires that obligations arising from the EU legislation and national goals of integration were incorporated into the administrative steering system with appropriate administrative guidance and resources, involving balance between both the EU-acceptance and national preferences. The conclusion is supported by the aspects of *inertia* observed during the study that characterizes a slow process of transition or tendencies of *absorption* in which resilience meets a necessary degree of flexibility allowing for some learning and change, but the result is expectedly a form of accommodation of 'needful' policy requirements in lack of substantial transformations of structural logic during the observed period. For confirmation some further empirical research efforts would be needed.

The coordination of the objectives of the ministries and the administrative guidance of the authorities in their respective sectors would require that the government's EU objectives and development policies in police and judicial cooperation were precise. The effective implementation of the EU legislation also requires that the key elements of the EU policy to fight organised crime are communicated and the responsibility for their implementation allocated to the competent law enforcement authorities in annual performance agreements or in a discrete steering document. To allocate the responsibility for the implementation of the horizontal instruments, such as the (S)OCTA and related Council conclusions, steering and coordination mechanisms involving more than one authority need to be applied, as joint implementing actions and the division of labour could be agreed on in the framework of the decision-making and steering systems shared between the police, customs and border guard authorities.

Since the operational level tends to approach the EU measures from a very task-oriented perspective focusing on national law enforcement interests, the approach to further (re-)define the EU common security space needs to be re-vitalized to meet the new functional expectations and find some further appropriate tools for the EU internal security cooperation. As a general proposal, the interdisciplinary preparation and development of EU legislation at the national level is needed. An interdisciplinary formulation of national positions in connection with drafting the EU provisions would ensure that national views, values and the objectives of law enforcement cooperation are taken into account. Furthermore, it contributes to providing the bodies who will apply the provisions with more information on the preparation and content of the common instruments. The achievement of these goals could be also enhanced by introducing a drafting mechanism, which would enable integrating the key experiences of experts on practical law enforcement cooperation into the preparation of EU instruments in more diffused and integrative manner.

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# EU's Humanitarian and Civil Protection Aid. Italy's Eccentric and ECHO-consistent Policy

**Fulvio Attinà**[1]

***Abstract:*** *This paper analyses the coherence of the aid to countries in need of humanitarian and civil protection assistance given separately by ECHO and the EU Member States, with an emphasis on Italy that appears as an eccentric case. Section one is about the humanitarian aid burden of the EU and the major European donor countries in the years 1999-2012. The analysis draws attention to the existing coherence at the world level and also to the difference existing in the aid to the countries of the Middle East and North Africa region. Section two analyses and shows the consistency of Italy's aid with the ECHO's. In the Conclusions, the coherence of the EU's and states' aid and the consistency of Italy's aid are shortly discussed in view of the existing shared powers in the humanitarian and civil protection policy area.*

***Keywords:*** *disasters, emergencies, civil protection, European Union, humanitarian aid, ECHO, cooperation policy, Middle East and North Africa (MENA), Mediterranean politics*

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Humanitarian and civil protection aid is given by national governments and international organisations to countries in need of funds to save lives, alleviate suffering during and after human-made and natural disasters, and to prevent and temper the impact of such events by promoting preparedness programmes and mechanisms. These goals are met by funding actions like the provision of food, water and sanitation, shelter, health services and other items of assistance to help the affected people and facilitate the return to normal life conditions.

Humanitarian and civil protection actions and programmes are of great concern to the European Union and the object of a policy area which is shared with the Member States (MSs). This study draws the attention of concerned students and practitioners to the existence of highly similar approaches towards this policy area and to some implications of it. In the present paper, the EU's and MSs' official aid is the amount of Euros spent by ECHO and the governments of the EU countries to fund actions and programmes in

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The present analysis has been funded by the Italian Ministry of Education University and Research, Grant no. E61J12000200001, and by the European Commission's Lifelong Learning Programme, Grant no. 2012-2839.

response to humanitarian emergencies caused by natural disasters and human-triggered tragedies in foreign countries. Such official aid is given to foreign state governments, international organizations, private companies and non-governmental organizations to implement, in the aid-receiving countries, one or more of the following responses (a) humanitarian actions and assistance, (b) disaster rescue operations and post-disaster reconstruction programmes, and (c) programmes for natural disaster prevention and for post-conflict peace building and state reconstruction.

The administration officers of the aid recipient country and other implementing actors like international and non-governmental organisations' officers and appointees carry out the humanitarian and protection actions. Though implementing the actions is in the hands of others, it is in the responsibility and concern of the donor country to finance actions in agreement with the shared humanitarian principles. Aid must be given firstly to the most in need, weak and vulnerable human beings (proportionality), by refraining from discriminating any group of people (impartiality), and by supporting any side in a conflict and dispute (neutrality), and leaving out any political, economic, military or other intent (independence).

In the first part of the present paper, the yearly expenditure of ECHO and the EU major donor countries is analysed to test whether they share the same or near the same aid allocation approach. In view of the eccentric position of Italy's aid policy that turns up in the first part of this study, in the second part the analysis of the correspondence of the Italian funds to the ECHO's need assessment measurement, the GVCA and FCA indexes, demonstrates Italy's good compliance to the proportionality principle of humanitarian action and also the good consistency with the EU's policy towards humanitarian and civil protection aid. In the conclusions, the reasons for keeping the humanitarian aid as shared powers area of the EU and the Member States are briefly remarked upon, and the meaning of Italy's eccentric aid is discussed.

## Do EU and the MSs share the same approach towards countries in need?

Numerous studies exist about the question of what is the primary reason in determining the international aid of rich and technologically advanced states like the European ones (see, for instance, Holden, 2009; Kevlihan, DeRouen and Biglaiser, 2014; Kono and Montinola, 2012; McKinley and Little, 1979; Merket, 2013; Reynaert, 2011; Rudloff, Scott and Blew, 2013; Schneider and Tobin, 2013). In this chapter, the issue about the determinants of humanitarian and civil protection aid is analysed by responding to two questions. First, *Do the EU Member States share the same approach towards humanitarian needs and civil protection aid?* Second, *Do the Member States' aid matches the need-goal criteria of the ECHO's aid policy?* The meaning of the first question is easy to recognise. Thanks to the integration process, the European states are expected to become similar to one another, and share values and interests. In the integration process, political decisions and institutional mechanisms produce single policies and are expected to also cause the convergence of the policies the member countries prefer to keep as shared competence policies. The foreign aid policy, including the humanitarian and disaster one, is a shared

policy of the European Union system. In the areas of cooperation and humanitarian aid, the EU has power to implement common actions and policies, but this does not prevent the MSs to exercise their own powers in the same policy area. Therefore, the analysis of the MSs' aid policies has to prove the existence of convergence and the nearing of these policies to one another and to the EU's, namely the ECHO's, aid policy. The meaning of the second question, instead, refers to the policy principles and mechanisms the European Commission employs to run, through ECHO, the EU competence in the humanitarian, and today also civil protection, aid policy. On such a ground, the distance of the MSs allocation from, or closeness to, the EU's aid allocation to third countries is a reasonable test of whether the MSs' aid funds are need-oriented as much as the EU funds are.

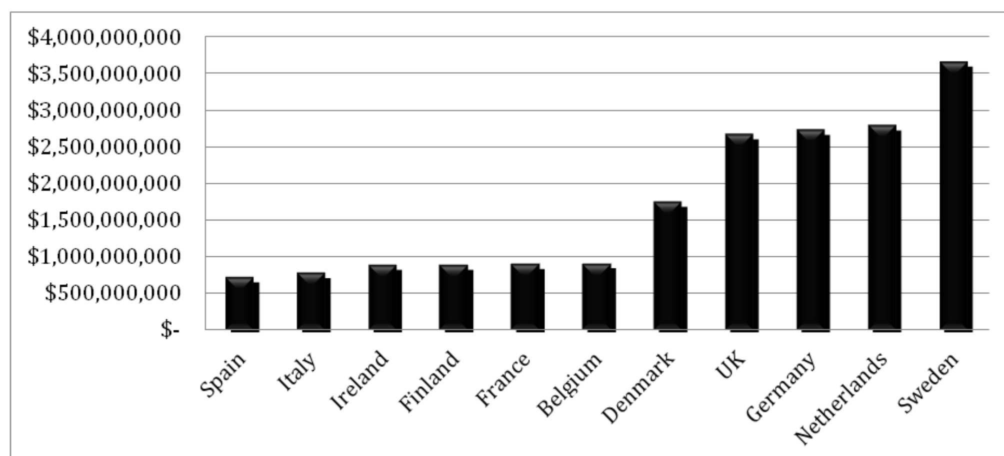
In the present study, the first question has been explored by analysing the data of the EU's and MSs' aid allocation to six regions of the world (see also Attinà, 2014) and to the countries of the MENA region (see also Attinà, 2015). In the second part of this paper, the analysis of the allocation of Italy's aid to individual recipient countries aims to answer to the second question. The analysis employs the data of EDRIS, the European Disaster Response Information System operated by ECHO, the European Commission's Directorate-General of Humanitarian Assistance and Civil Protection. EDRIS contains real-time information on the humanitarian aid ECHO and the EU MSs give to all low-income states, as defined by the World Bank. All information entered in EDRIS is transmitted electronically to FTS, the Financial Tracking System managed by United Nations OCHA (Office for Coordination of Humanitarian Aid) Geneva. FTS contains information reported also by non-EU Members States and the recipients of humanitarian funding[2].

In the time period of concern to the present study, 1999-2012, the whole humanitarian and civil protection aid of ECHO and the MSs to countries in all the world regions amounted to around € 33 billion. ECHO's aid amounted to 41.5 % of the total while the MSs' aid amounted to 58.5 % of the total, but 11 MSs donated almost 97 % of this portion. The donation of the twelfth country, Luxembourg, was much lower than the donation size of the eleventh large donor country. On such premise, the present analysis is made on the *Top Eleven Direct Donor* EU countries, from here on TEDD countries.

The size of the aid given by each of the eleven states to all low-income states in the 14 years under observation generates a dichotomy within the TEDD group separating the lower-donors, which are Spain, Italy, Ireland, Finland, France, and Belgium, from the upper-donors, namely Denmark, the United Kingdom, Germany, the Netherlands, and Sweden (Figure 1). Though the economy of the TEDD countries was not stable in the 14-years, all of them had, and continue to have, large economic resources, and to belong to the class of the most prosperous countries in the world. Large economic resources enable a country to act as a large donor, but economic power is not the only root of foreign aid. Accordingly, the TEDD countries' rank order in total aid does not match the rank order of any country wealth index like the Gross Domestic Product per capita index. Sweden and the Netherlands, for example, are higher on the aid scale than on the GDP per capita scale. Denmark and Ireland are examples of the reverse case.

[2] See EDRIS website European Disaster Response Information System and FTS website Financial Tracking Service.

**Figure 1 – EU Top Eleven Direct Donor MSs' total aid, 1999-2012**

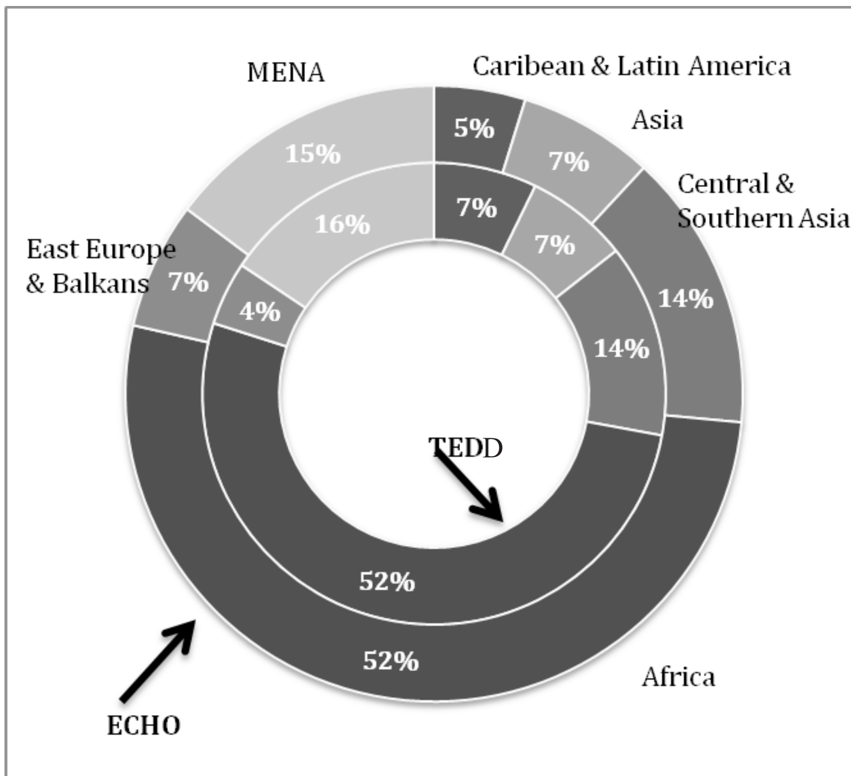



Data source: EDRIS

The direct aid of Sweden, Germany, Belgium and Finland has been growing progressively during the 14-years but the direct aid of the other TEDD States goes up and down from a year to the next. This may be explained by the view of humanitarian and disaster aid as response to events occurring irregularly. But in our times, disaster and emergency events are hardly unexpected and random occurrences as they are tied to structural conditions like the environment degradation that is practically uncontrolled in the Global South, the poverty conditions of large masses of people that are entrenched in the world economic system, and the diffusion of violence that affects many weak states. Consequently, assistance and aid to states in disaster-prone areas and in emergency-state conditions is relentlessly needed and can be provided only by the wealthy states that have advanced capabilities of disaster and crisis management and by international organizations that have appropriate resources and know-how to employ in this area of problems.

In this analysis, the funds given to countries in need are aggregated into region data. The regions are Africa, Asia, Caribbean & Latin America, Central & Southern Asia, Eastern Europe & Balkans, and MENA (Middle East and North Africa). The list of the countries of each region is the EDRIS list (See Appendix). All the TEDD countries and the ECHO allocate similar quotas of aid to the six regions (Figure 2). Hence, the aid distribution preferences of the EU states are close to one another and to the ECHO's aid distribution as well. Only the ECHO's Eastern Europe & Balkans region quota is different from, and significantly larger than, the TEDD's quota. This is easily understood considering the Union's enlargement and neighbourhood policies. On the contrary, the ECHO's Caribbean & Latin America region quota is smaller than the TEDD's quota. This indicates that the EU does not consider those countries of importance to the common interest and that some countries like Italy and Spain prioritize this region's emergency and humanitarian needs.

**Figure 2 – Distribution of the TEDD and ECHO aid to six regions (percent quotas), 1999-2012**




Data source: EDRIS

In general, the countries that are members of the total-aid upper-donor group (Denmark, United Kingdom, Germany, Netherlands, and Sweden), and the countries of the lower-donor group (Spain, Italy, Ireland, Finland, France, and Belgium) are also in the upper and lower echelons of the aggregate aid scale of each region. But there are exceptions to this. Denmark and the Netherlands, two members of the total-aid upper-donor group, are lower donors to the Caribbean & Latin America and the Asia region. Sweden, the total-aid highest donor, is a lower donor to the Eastern Europe & Balkans region. On the opposite, Italy and Spain, two members of the total-aid lower-donor group, are in the upper-donor group of the Caribbean & Latin America and Asia regions; Italy also in the Eastern Europe & Balkans region; Spain also in the MENA region.

As the sum of the aid to the first and second recipient region is used as indicator of the individual country's aid concentration, Italy shows up as the country with the lowest aid concentration and the fairest allocation to regions (Table 1). Italy amasses

aid funds on the first two regions much less than the other countries do. The aid ratio to MENA, the second region in the row, is also a remarkable feature of Italy's policy. This supports the declarations of attention to this region frequently released to the public by the Italian policy-makers. France, a reputed great power of the Mediterranean area and a regular player of the Middle East politics, allocates to the MENA countries a quota of humanitarian aid smaller than the Italian one. Spain, however, is the country prioritizing MENA in the distribution of state aid for humanitarian and civil protection needs.

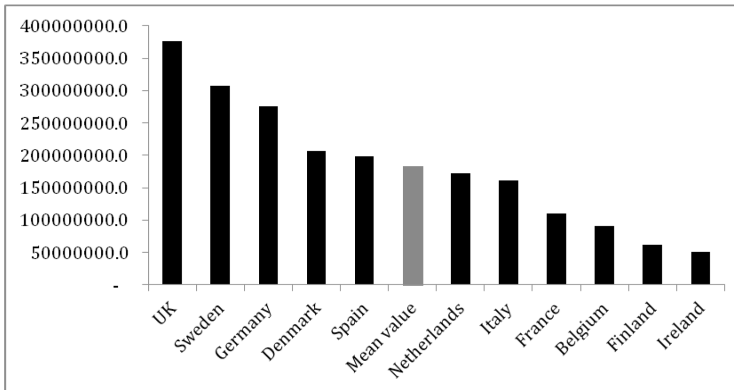
**Table 1 – TEDD countries' aid concentration**

| | Aid to the 1st region (%) | Aid to the 2nd region (%) | Aid to the 1st and 2nd regions (%) |
|---|---|---|---|
| Italy | 31 (Africa) | 24 (MENA) | 55 |
| Germany | 44 (Africa) | 19 (Cen- & South. Asia) | 63 |
| France | 47 (Africa) | 18 (MENA) | 65 |
| Denmark | 49 (Africa) | 18 (MENA) | 67 |
| Finland | 53 (Africa) | 16 (Cen- & South. Asia) | 69 |
| Spain | 53 (MENA) | 17 (Caribbean & Latin America | 70 |
| Sweden | 55 (Africa) | 15 (MENA) | 70 |
| UK | 59 (Africa) | 14 (MENA, Cen- & South. Asia) | 73 |
| Netherlands | 60 (Africa) | 13 (Cen- & South. Asia) | 73 |
| Belgium | 61 (Africa) | 14 (MENA) | 75 |
| Ireland | 70 (Africa) | 11 (Cen- & South. Asia) | 81 |

Data source: EDRIS

In the following, it is tested how much near to, or distant from one another are the humanitarian and civil protection funds allocated by ECHO and the TEDDs to individual countries of the MENA region, which is of great interest to all the European states in these years. In this case, differently from the rank order of the total aid (see Figure 1 above), the TEDD countries set in straight decreasing order (Figure no.3).

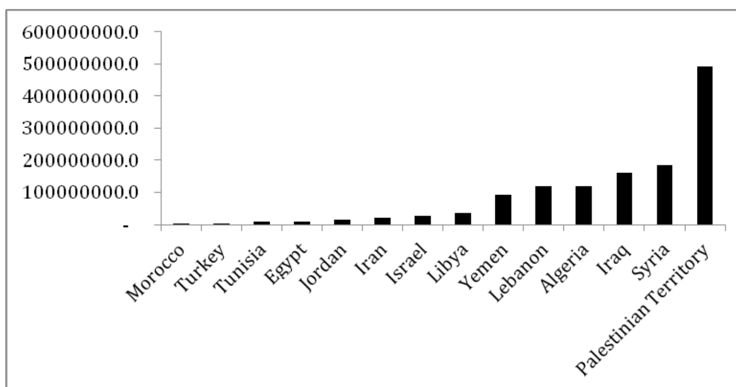
**Figure no.3 – TEDD countries' aid to the MENA region, 1999-2012**




Data source: EDRIS

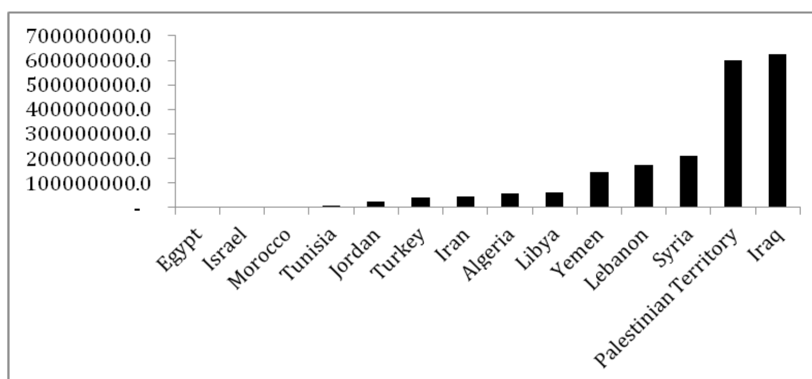
But the important feature of this set of aid funds concerns the aid-receiving countries. Three groups are distinguished on the base of the size of the donation allocated by the TEDD countries and ECHO. Eight out of the 14 MENA states have been small receivers, namely Israel, Jordan, Turkey, Iran, and Libya, and very small receivers, namely Morocco, Egypt, and Tunisia. Four of them are mid-level receivers, i.e. Algeria, Yemen, Lebanon, and Syria. The great receivers of the whole European aid are Iraq and the Palestine Territories. Separating ECHO's from TEDDs' aid, another important feature is worth noting. The Palestine Territories are the only great receiver of the ECHO's aid while Yemen, Lebanon, Algeria, Iraq and Syria are mid-level receivers and the remaining eight MENA countries are small and very small receivers of ECHO's aid (Figure no. 4). In the series of the aid given by the 11 major European donor countries, instead, Iraq jumps to the top position, a bit ahead of the Palestinian Territories, while Algeria falls back to the small-recipient group (Figure no. 5).

**Figure no. 4: ECHO's aid to individual MENA countries, 1999-2012**




Data source: EDRIS

**Figure no. 5: TEDD countries' aid to individual MENA countries, 1999-2012**




Data source: EDRIS

In conclusion, the EDRIS data make apparent few but important differences in the country allocation priorities the Commission attaches to the ECHO aid approach and the TEDD countries' policy-makers attach to their own humanitarian aid approach. In particular, Algeria is seen as an important target by ECHO rather than by the TEDDs. On the opposite, aid to Iraq gets the highest score from the TEDDs but not from all of them. Knowledge about the different position of the EU countries towards the 2003 American-led invasion of Iraq helps us recognize that the TEDD countries divided themselves into two aid-donor groups to that country as they did in responding to the war on Saddam Hussein declared by the American ally. In such a perspective, it has been remarked that there are different types of aid allocation to MENA countries and a four-type sorting of the major European countries' approach to emergency aid allocation to MENA countries has been presented (see Attinà, 2015). 'Type One' countries prioritize Iraq and the Palestine Territories as large recipients. This is the biggest group including four North European countries, Denmark, Ireland, the Netherlands, and Sweden. The "Type Two" group comprises Germany, Finland, and Spain. They give large aid to the Palestine Territories and Iraq and also significant funds to other countries like Syria and Yemen. "Type Three" countries are Belgium and France. They give about half the total aid to one country, the Palestine Territories. Lastly, Italy and the UK are the "Type Four", residual group allocating aid in a disparate way. The United Kingdom concentrates aid on Iraq and to a lower extent to Syria and Yemen. Italy is the only country concentrating aid on Lebanon, where Italy contributed significantly to the UNIFIL peace operations up to 2008, and in a lower amount to the Palestinians and Iraq.

**Italy's approach**

The policy-makers of contemporary Italy have always pledged strong commitment to humanitarian values as guiding principles of the country's foreign policy, and to humanitarian assistance as an undertaking ever missing from Italy's international

responsibilities. The Ministry of Foreign Affairs, MOFA, is in charge of Italy's humanitarian policy. In the MOFA, humanitarian affairs are assigned to the Directorate-General for Development Cooperation (Italian acronym, DGCS), and are the care of the Office VI, known as the Office of humanitarian and emergency intervention.

In the period of time taken into account, Italy's humanitarian aid has been ruled as required by Law no. 49, titled *New provisions governing Italian cooperation with developing countries*, which was approved by the Italian Parliament in February 1987. The competence of the MOFA and its DGCS to manage Italy's humanitarian and emergency affairs in foreign relations is stated soon in the Law no. 49 as Art. 1.4 recalls the management of 'special initiatives' as a MOFA competence. Such initiatives are humanitarian and civil protection actions as Art. 11.1 specifies[3]. Official documents of interest to the analyst are also (a) the Annual Report to the Parliament on the *Implementation of the development cooperation*; (b) the Annual Forecast and Programme Report on the *Development cooperation activities,* both prepared by the DGCS; (c) the two documents titled *Guidelines and strategic programme of Italy's development cooperation* that have been published in 2012 and 2014 to state the priorities and lines of action of the next three years on the legacy of the past experience; and (d) the paper prepared by the Workgroup DGCS-ONG, titled *Guidelines for Humanitarian Aid. Good Humanitarian Donorship Initiative. Principles and Good Practice of Humanitarian Donorship (2012-2015).* The *Annual report on the Italian contribution to the activities of banks and development funds in the multilateral sector*, prepared by the Italian Ministry of Economy and Finance, is also of interest to the study of the Italian involvement in the multilateral aid programs and actions[4].

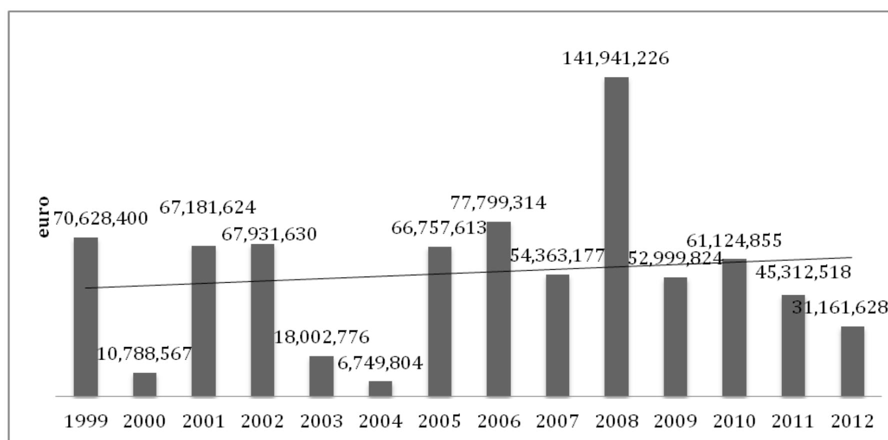
It is worth noting that the Guidelines 2012 document, on page 20, asserts the convenience of containing the number of Italy's aid recipient countries in order to get the strongest impact from the aid, and the Guidelines 2014 Document supports the impact goal in the recipient countries by arguing for conforming Italy's approach towards foreign aid to this practice as common practice of the EU countries. The document proposes to choose the countries worth receiving aid by employing seven *principal criteria* including poverty, serious humanitarian emergencies, closeness to Italy (geographical as well as defined on the basis of historical, economic and migration ties), ongoing conflict and/ or fragile democratization conditions, critical minority presence, and existing relations

[3] The extraordinary initiatives referred to in Article 1.4 shall consist of:
a) sending emergency assistance missions; transferring goods, equipment and food supplies purchased, preferably, in situ or in the region; granting funding at the bilateral level;
b) launching initiatives revolving primarily around health and installing basic infrastructure, especially in the agricultural and health and sanitation fields, which is vital to the immediate satisfaction of basic human needs in areas hit by disasters, hunger or famine and characterised by high mortality rates;
c) the creation, in situ, of systems to collect, store, transport and distribute goods, equipment and food supplies;
d) the use, in agreement with all the Ministries concerned and of local authorities and public bodies, of the resources and personnel required for the timely achievement of the objectives referred to at letters a), b) and c);
e) the use of non-governmental organisations recognised as eligible in accordance with this law, both directly and through by financing programmes drawn up by such organisations and agreed with the Directorate General for Development Cooperation.
[4] All these documents are available on the MOFA-DGCS website.

involving duties and attachments on Italy's side. Immediately after this, the Guidelines list the 24 priority countries for Italy's aid including Senegal, Sudan, South Sudan, Kenya, Somalia, Ethiopia, Mozambique, Niger, Burkina Faso, and Guinea in Sub-Saharan Africa; Egypt, Tunisia, Palestine, Lebanon and Iraq in the MENA; Albania in Eastern Europe/ Balkans; Bolivia, Ecuador, El Salvador, and Cuba in Caribbean and Latin America; Afghanistan and Pakistan in Central and Southern Asia; Myanmar and Vietnam in Asia. In agreement with the so-called exit strategy approved by the Ministry of Foreign Affairs, the Guidelines 2014 Document cut the number of the priority countries to 20 for the years 2014-2016. The countries deleted from the 2012 list are Ecuador, Guinea, Iraq, and Vietnam. The Guidelines 2014 Document also asserts that Italy's humanitarian actions will be consistent with, and complementary to, the strategy lines of the country's aid to development policy. Accordingly, the humanitarian aid will prioritize intervention in the Mediterranean, Sahel and Horn of Africa areas. Lastly, in agreement with the European Commission's policy, the DGCS Office VI will focus Italy's humanitarian actions on natural disaster risk reduction and on strengthening the resilience capability of the countries hurt by external shocks.

Italy's total aid, which is the second lowest of all the TEDDs' in the time period of concern here, has gone up and down but loosely growing in size from 1999 on (Figure no. 6). The goal of this last section is to check, with the data of the aid to individual countries, whether and, in the positive case, how much the somewhat peculiar aid of Italy adjusts to the need-oriented method of ECHO's aid allocation.

**Figure no. 6 - Italy's total aid, 1999-2012**




Data source: EDRIS

The European Commission ECHO Directorate-General identifies the people and countries receiving the EU humanitarian and civil protection funds by assessing the size and urgency of the needs. ECHO's assessment is the workout of a series of tools including the evaluation made by field's experts and desks, the country's score in the WFP's (World Food Programme) food insecurity needs assessment, and two instruments of need assessment and measurement that have been produced by the European Commission

Joint Research Centre scientists, namely the Global Vulnerability and Crisis Assessment (GVCA) and the Forgotten Crisis Assessment (FCA). GVCA exploits the grades of two multifactorial indexes, the *vulnerability* and the *crisis index,* to classify all the low-income countries on a 12-score scale. The degree of *vulnerability* of the country in the event of a disaster at a definite time (or year) is calculated from data about the socio-economic and health conditions of the population like under-5 children weight and mortality, inequality in income, and the number of internally displaced people. The existing *crisis* conditions are calculated from data about current and recent violent conflicts and natural disasters, and the presence of a large number of refugees. The higher the country's score, the more the country is in need of humanitarian assistance. The FCA index, instead, is an instrument to recognize severe protracted humanitarian crisis situations, namely those where there is no political commitment by domestic and external actors to solve the crisis, and the affected populations receive no or insufficient international aid. Such forgotten crises may concern minorities and specific groups of people within a country, which is not necessarily itself considered as being in crisis. Also FCA classifies countries on a 12-score scale.

In the remaining part of this paper, the consistency of Italy's humanitarian aid to the ECHO's Global Needs and Forgotten Crisis assessment is used to assess the need-orientation of the allocation of Italy's aid. Consistency is inferred from the analysis of the data about the recipient countries and how much money they get from Italy and from ECHO.

In 1999-2012, Italy funded humanitarian actions and civil protection programmes worth € 775 and half million in 108 low-income states. 10 % of the amount was given to international organisations like the World Health Organisation, the World Food Program, and the United Nations Office for Coordination of Humanitarian Affairs (OCHA), and to Italian ministries like the Health Ministry and MOFA, for actions and programs to implement, in most of the cases, in more than one country. In EDRIS, these organisations are labelled as Implementing Agency. The country of implementation of such actions and programmes is labelled as Country Not Specified.

The total aid to a recipient country varies from € 100 million to Afghanistan down to € 22 thousand to Costa Rica. The 108 Italian-aid-recipient countries are grouped into 5 Log-10 classes. From the highest to the lowest, the classes gather the countries that received funds over € 100 million (class 5), € 10 million to € 100 million (class 4), € 1 million to € 10 million (class 3), € 100 thousand to € 1 million (class 2), and up to € 100 thousand (class 1). Italy supplies different lumps of aid to a large number of countries (Table no. 2.) but allocates the largest portion of the aid, namely 60 % of the total, to 15 % of the countries, i.e. the 16 countries of the classes 4 and 5. Briefly, the policy-makers and officers of Italy's humanitarian assistance take care of a large number of countries in humanitarian need conditions but concentrate large donations on a small quota of countries in need.

**Table 2 – Log-10 Classes of Italy's aid recipient countries, 1999-2012**

| Classes | Class aid size | Total aid amount of the class € | Recipient countries: number | Recipient countries: examples |
|---|---|---|---|---|
| 5 | > € 100 million | 100.306.781 | 1 | Afghanistan (alone) |
| 4 | € 10 million to € 100 million | 362.449.941 | 15 | Lebanon, Albania, Palestine T., Somalia, Sudan, Pakistan, Iraq, Angola, Uganda, Ethiopia, |
| 3 | € 1 million to € 10 million | 223.925.444 | 52 | Iran, Nigeria, Thailand, Armenia, Vietnam, Nicaragua, Colombia, India, Honduras, Libya, Sri Lanka, Sierra Leone |
| 2 | € 100 thousand to € 1 million | 12.355.783 | 34 | Madagascar, Tonga, Chile, Tajikistan, Morocco, East Timor, Congo, Namibia, Cuba, Nepal, Senegal, Ecuador, Djibouti |
| 1 | < € 100 thousand | 222.821 | 6 | Malawi, Uruguay, Cambodia |
| *IGOs, NGOs, Italian Ministries* | | *76.323.387* | *Countries not specified* | |
| *Total aid* | | *775.654.157* | | |

Data source: EDRIS

The last question of the present analysis is *Do the policy-makers and officers of Italy's humanitarian assistance programmes apportion aid chiefly to countries in severe need conditions?* To answer this question, the strategy of this analysis is to check whether the Italian allocation policy fits to the global needs assessment that ECHO employs to implement the EU's policy, i.e. to the GVCA and FCA indexes.

The first test of the Italy and ECHO need assessment agreement consists in checking whether the countries high on the GVCA Index scale are also in Italy's highest aid class. The analysis gives back a broadly positive result as all but 4 of the 15 ECHO 12-score countries receive high donation funds from Italy. Afghanistan is the largest recipient of Italy's aid, followed by 10 countries receiving a class-4 money amount. Liberia, Pakistan, and Russian Federation-Chechnya, in class-3, are the 'out-layer' of Italy's high aid classes along with Congo, in class-2. They get from Italy less than they are entitled to get in agreement with the ECHO GVCA Index.

**Table 3 – Countries with the highest score on the GCVA Index scale (2012) and their position in Italy's aid class (aggregate data 1999-2012)**

| **Country** | **GNA Final Index** (a) | **Italy's aid class** (b) |
|---|---|---|
| Afghanistan | 12 | 5 |
| Central African Republic | 12 | 4 |
| Chad | 12 | 4 |
| Congo DR | 12 | 4 |
| Congo | 12 | 2 |
| Haiti | 12 | 4 |
| Liberia | 12 | 3 |
| Mali | 12 | 4 |
| Myanmar | 12 | 4 |
| Pakistan | 12 | 3 |
| Russian Fed.-Chechnya | 12 | 3 |
| Somalia | 12 | 4 |
| South Sudan | 12 | 4 |
| Sudan | 12 | 4 |
| Yemen | 12 | 4 |

Source: (a) *2012 - v.1 (June) - Global Vulnerability and Crisis Assessment*, http://echo-global-vulnerability-and-crisis.jrc.ec.europa.eu/PublicVisualization.aspx (accessed on 01.11.2014). (b) Author's elaboration of EDRIS data.

The mismatch of the countries low in the ECHO's need assessment and the countries low in Italy's aid classes is also small, and gives back a positive signal about the correspondence of the Italian need assessment to the ECHO's (Table 4). There are three out-layers here, Albania, Argentina, and Brazil. They received aid in a small number of years. In 1999, Albania received a donation amounting to around ▯ 57 million for the Kosovo crisis. This country also received large donations from Italy in the preceding years. The socio-economic and political problems in this Italy-neighbour country were good reasons for such a large humanitarian donation, which has been stopped later on with the exception of a small aid in 2010. The severe economic conditions of Argentina explain the 2002 large donation of around € 5 million for the country's humanitarian crisis that has been implemented mainly by means of programmes run by the World Health Organisation. Also the large aid to Brazil in 2005 and 2006 was given for programmes against the deterioration of the socio-economic conditions and were implemented by the Italian Foreign Affairs Ministry.

**Table 4 – Countries with the lowest score on the GVCA Index scale (2012) and their position in Italy's aid class (aggregate data 1999-2012)**

| **Country** | **GNA Final Index** (a) | **Italy's aid class** (b) |
|---|---|---|
| Albania | 1 | 4 |
| Argentina | 1 | 3 |
| Brazil | 1 | 3 |
| Cuba | 1 | 2 |
| Kazakhstan | 1 | 2 |
| Korea DPR | 1 | 3 |
| Mongolia | 1 | 2 |
| Samoa | 1 | 2 |
| Tonga | 1 | 2 |
| Turkmenistan | 1 | 1 |
| Uruguay | 1 | 1 |
| Uzbekistan | 1 | 2 |

Source: (a) *2012 - v.1 (June) - Global Vulnerability and Crisis Assessment*, http://echo-global-vulnerability-and-crisis.jrc.ec.europa.eu/PublicVisualization.aspx (accessed on 01.11.2014). (b) Author's elaboration of EDRIS data.

Notable cases of missing agreement between the remaining classes of Italy's aid and the ECHO's need assessment scale exist to a limited extent. Many African states like Angola, Eritrea, Mozambique, and Sierra Leone are on the excess-side aid, i.e. Italy assigns to these countries funds larger than to other countries that have the same score in the GNA index. Out of Africa, this is the case of Armenia and Democratic People's Republic of Korea. On the shortage-side aid, i.e. the countries receiving from Italy less than it is expected in consistency with the ECHO need assessment, states outside of Africa are, instead, more numerous than those of the rest of the world like Cambodia, Ecuador, Kyrgyzstan, and Paraguay.

Such disagreement of the ECHO's global need assessment and Italy's funding of the humanitarian and disaster policy, however, does not upset the existing large correspondence between the two that has been highlighted by the fairly good fit at the top and bottom of the two scales. Statistically, the agreement between the GVCA Index and the Italian aid class index is confirmed by a fairly strong coefficient of positive correlation, r = 0,501. In other words, the higher the GVCA Index of a country is, the higher the Italian aid to the country is, and the reverse too.

The positive relation existing between Italy's aid and the vulnerability of people and countries to disaster events disappears concerning the people and countries suffering from protracted violent conflicts as measured by the ECHO's Forgotten Crisis Assessment

Index. The FCA index is intended to measure the severity of protracted violent conflicts that are hidden to the world public and neglected by the international diplomacy. The index is built like a risk analysis instrument. It employs four indicators, namely the vulnerability index, media coverage, public aid per capita, and the qualitative assessment of DG ECHO geographical units and experts. As such, it is a tool apposite to spotlight the areas of the world where humanitarian crises, as defined by the four indicators, are in place. It is less of use for rank ordering all the low-income countries, as the conditions for prolonged, unknown and neglected crises are not a feature of all the countries. In fact, the correlation coefficient of the GVCA and FCA indexes is very low, r = 0,153, and that of Italy's aid size and FCA index is nearly missing, r = 0,025. However, looking only at the countries with the FCA Index highest scores, it is notable that Italy's aid to the 10 countries which are high in the FCA Index is not small and never below the class-3 level (Table no.5) but we can't say whether it is employed to help the people of the forgotten crisis or to fund other programmes in the recipient country.

**Table 5 – Countries with the highest FCA Index (2012) and their position on the GNA Index scale (2012) and Italy's aid class list (aggregate data 1999-2012)**

| **Country** | **FCA Index** (a) | **GNA Final Index** (b) | **Italy's aid class** (c) |
|---|---|---|---|
| Central African Republic | 11 | 12 | 3 |
| Myanmar | 11 | 12 | 3 |
| Algeria | 10 | 8 | 3 |
| Bangladesh | 9 | 8 | 3 |
| Colombia | 9 | 11 | 3 |
| India | 9 | 11 | 3 |
| Pakistan | 9 | 12 | 4 |
| Sri Lanka | 9 | 8 | 3 |
| Yemen | 9 | 12 | 3 |
| Angola | 8 | 6 | 4 |
| Mozambique | 8 | 5 | 4 |

Source: (a) *Forgotten Crisis Assessment 2012*, http://echo-global-vulnerability-and-crisis.jrc.ec.europa.eu/PublicVisualization.aspx?system=FCA (accessed on 01.11.2014). (b) *2012 - v.1 (June) - Global Vulnerability and Crisis Assessment*, http://echo-global-vulnerability-and-crisis.jrc.ec.europa.eu/PublicVisualization.aspx (accessed on 01.11.2014). (c) Author's elaboration of EDRIS data.

The concentration of aid in few countries is plain also at the regional level with two exceptions, Asia and the Caribbean and Latin America regions (Table no. 6). In Asia, DPR of Korea, not an important GCVA country, received around the 30 % of the total aid to the region. Another 30 % was given to six countries with rather high GVCA scores but Indonesia. The remaining 30 % was divided among six countries low in GVCA scores but Cambodia. In the Caribbean and Latin America, a small sum of money has been distributed among a large number of countries but a group of six, namely Bolivia, Brazil, El Salvador, Guatemala, Haiti, and Peru, received the largest quota even though only Bolivia and Haiti are high in the GVCA index. In Sub-Saharan Africa, instead, the concentration of aid to high GVCA countries is high but there are also important disagreements between high GVCA-score countries like Chad, Congo, Guinea-Bissau, Liberia, Madagascar, and the Central African Republic, and the level of Italy's aid. Central and Southern Asia is the region with the highest concentration of aid to a few countries, namely Afghanistan and Pakistan, and a fair agreement of GVCA scores and Italy's aid levels, with the only exception of Kyrgyzstan, a highly vulnerable country that received a small aid from Italy. Lastly, the aid of Italy to the countries of Eastern Europe and the Balkans and the MENA regions is highly concentrated in the Balkan states, regarding Europe, and three Middle East countries, namely Lebanon, Iraq and Palestine.

**Table 6 – Italy's aid by region, 1999-2012**

| | Africa | | Asia | | Caribbean & Latin America | | Central & Southern Asia | | Eastern Europe & Balkans | | MENA | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Class | Recipient countries: No. | Total amount | Recipient countries: No. | Class total amount | Recipient countries: No. | Class total amount | Recipient countries: No. | Class total amount | Recipient countries: No. | Class total amount | Recipient countries: No. | Class total amount |
| 5 | 0 | - | 0 | - | 0 | - | 1 | 100.306.781 | 0 | - | 0 | - |
| 4 | 8 | 139.427.858 | 0 | - | 0 | - | 1 | 20.850.769 | 3 | 80.309.076 | 3 | 121.862.238 |
| 3 | 20 | 72.005.273 | 7 | 22.402.879 | 10 | 65.603.339 | 5 | 18.682.077 | 3 | 8.560.020 | 8 | 36.671.857 |
| 2 | 13 | 6.355.521 | 5 | 1.794.995 | 7 | 1.685.403 | 5 | 1.415.508 | 2 | 730.352 | 1 | 410.304 |
| 1 | 1 | 70.000 | 1 | 36.300 | 3 | 136.521 | 1 | 50.000 | 0 | - | 0 | - |
| Total | 42 | 217.858.652 | 13 | 24.234,174 | 20 | 67.425.263 | 12 | 141.305.827 | 8 | 89.599.448 | 12 | 158.944.399 |

Data source: EDRIS

**Conclusions**

The present analysis sheds light on important aspects of the humanitarian and civil protection aid policy of the EU and the major aid-donor MSs. In particular, the analysis wants to enlarge existing knowledge about how close to one another are the MSs' and European Commission's choices of aid allocation to different areas and countries in need, and also how consistent with the ECHO's need assessment criteria is the aid of a member country like Italy. Such questions are of importance since the Commission united in a single Directorate-General the humanitarian and civil protection policy areas that were separate areas of the EU administration in the past. Such an institutional change may have impact on the Member States even though the two areas continue to be shared competence areas in the European Union system.

Regarding the EU's and MSs' aid policy, this analysis demonstrates that the EU and the MSs share the same aid allocation approach at the world level, i.e. towards six international regions. Such finding suggests the convergence effect of the integration process on the values and interests that drive the humanitarian and civil protection policy of the MSs. But the research reveals also that the EU countries dispense funds to direct humanitarian assistance and civil protection aid to a size larger than the EU's fund size. This condition is not typical of the humanitarian and civil protection aid policy but common to other external policies of common power in the EU system. As foreign aid is an important instrument of the external action of the contemporary states, the EU governments are careful not to pass such an instrument entirely to the power of the EU policy-makers. Foreign aid, including the humanitarian one, is an instrument to play for gaining political influence on the domestic and foreign affairs of the recipient countries. Direct foreign aid is also an instrument for giving to the donor's domestic groups access to the market of foreign countries. This is obtained by financing the national companies investing abroad and also the non-governmental organizations acting in the recipient countries. Lastly, giving aid has symbolic return as the country earns the reputation of being a good fellow. Such a reputation is larger when the aid is given directly to foreign countries rather than through a common office like the ECHO. On such premises, this study invites to further research about these and other possible reasons, and to assess how much such different interests impinge on the efficacy of European aid in humanitarian and civil protection matters.

The second part of this analysis focused on the aid policy of an individual country, Italy, to stress the existing difference among the MSs as this country appears as eccentric in important respects. In particular, Italy's aid has been the least region-concentrated policy of all the TEDD countries' policies, and did not look like the other TEDD countries' aid in the MENA region. The present analysis demonstrates also that Italy's aid policy shows up as consistent with the ECHO's need assessment criteria that have been devised to abide by humanitarian action principles. However, this is a provisional finding as the ECHO-consistency of the aid policy of the other EU countries is not known and remains to be analysed by research experts.

There are other topics of interest to research on in this field of study. One of these is the magnitude of the humanitarian and civil protection aid to Africa. All the TEDD

countries give the most to Africa but Spain. Apparently, this is no surprise when one considers the large number of states and the severe and numerous emergency problems of the African continent. But the analysis of Italy's aid consistency with the ECHO's GVCA index, demonstrates that Italy's aid to African countries is 'in excess' of the GVCA index score of those countries, in other terms countries in other regions are more in need than the African ones. On such knowledge, one has to investigate about the reasons for such European preference, or bias, towards delivering aid to an African country rather than to a country in more severe conditions of need in another part of the world. Whether such excess aid (relative to GVCA) is wanted by some or all the actors of the national humanitarian and disaster aid policy circle, and whether it is a matter of culture (European feelings towards Africans are deep and strong), communication (the media attention to Africa is higher, and consequently has amplifying impact on the policy-making), technical (Europe's resources and capabilities fit better to the African needs) or political (the national interest is best served supporting political cooperation and economic ventures in Africa), are conditions to investigate in order to better know the causes of such a deviant preference.

Deepening knowledge in the recently united area of humanitarian assistance and civil protection cooperation is of great concern today. Existing knowledge about humanitarian action is wide and good but the present condition of the world has broadened the problems and issues at stake and fused the study of humanitarian action with the study of natural and human-made disasters and emergencies. Accordingly, the responsibility of the EU scientist community has to meet with such a new condition.

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**Appendix**

**Regions and member states**

AFRICA – 39 member states: Angola, Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Congo Dr, Cote D'Ivoire, Djibouti, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Malawi, Madagascar, Mali, Mauritania, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, South Africa, South Sudan Republic, Sudan, Tanzania, Togo, Uganda, Zambia, Zimbabwe.

ASIA – 19 member states: Cambodia, China, East Timor, Fiji, Indonesia, DPR of Korea, Laos, Malaysia, Marshall Islands, Myanmar, Papua New Guinea, Philippines, Samoa, Solomon Islands, Taiwan, Thailand, Tonga, Vanuatu, Viet Nam.

CARIBEAN & LATIN AMERICA – 18 member states: Belize, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru.

CENTRAL & SOUTHERN ASIA – 16 member states: Afghanistan, Armenia, Azerbaijan, Bangladesh, Comoros, India, Kazakhstan, Kyrgyzstan, Maldives, Mongolia, Pakistan, Seychelles, Tajikistan, Turkmenistan, Uzbekistan.

EASTERN EUROPE & BALKANS – 19 member states: Albania, Bosnia-Herzegovina, Croatia, FYROM Macedonia, Serbia, Belarus, Georgia, Moldova, Russia, Ukraine.

MENA (Middle East and North Africa) – 14 member states: Algeria, Egypt, Iran, Iraq, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Terr., Syria, Tunisia, Turkey, Yemen.

# Competition within EU Public Procurement Regulation and Practice: When EU Competition Law Remains Silent, EU Competition Policy Speaks

**Noemí Angulo Garzaro**[1]

***Abstract:*** *The economic importance of public procurement within the EU is undeniable, given its pre-eminent role in the overall economic performance of the Union. Its regulation is thus conceived as a priority. Further, the creation of an EU-wide level playing field for economic operators is submitted as indispensable to combat Member States' preferential treatment towards their domestic firms. In this scenario, the achievement of a Single Public Procurement Market, working under conditions of vigorous competition, is menaced by the immunity from competition constraints of some public behaviours. In this research we are going to analyse the different public activities that may distort the competitive dynamics of the market. First we are going to evaluate the adequacy of not submitting certain public activities to the EU Competition law. Then, some clarifications will be made and the material scope of the EU Competition law will be expanded as to cover public non-regulatory economic activities. Finally, with regard to public regulatory activities and public non-regulatory non-economic activities, it will be argued, with a view of achieving the Single Public Procurement Market, the imperative necessity of observing competition constraints and, consequently, of submitting such activities to EU Competition policy considerations.*

***Keywords:*** *Single Public Procurement Market, Public Procurement, EU Law, EU Competition Law, EU Competition Policy*

***JEL:*** *K12, K21, K33*

## I. Introduction

Public procurement within the European Union (hereinafter, EU) represents an annual expenditure of around 14% of GDP on the purchase of services, works and supplies by over 250.000 public authorities[2].

In this scenario, the regulation of public procurement is conceived as a priority within the EU, because, given its economic importance, it plays a pre-eminent role in the overall

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[2] European Commission. *Growth – Internal Market, Industry, Entrepreneurship and SMEs*, European Commission website, http://ec.europa.eu/growth/single-market/public-procurement/index_en.htm, last accessed: 15.01.2016.

economic performance of the Union[3]. EU Public Procurement law aims at creating a level playing field for all firms, setting, through Directives that are transposed into national legislation, minimum harmonized public procurement rules, thanks to which suppliers and service providers are not excluded from the market of public purchases in other Member States[4]. Moreover, EU Public Procurement rules aim at preventing practices that may partition the EU market, such as Member States' preferential treatment in favour of operators from their own country[5].

The ultimate goal is thus the attainment of a Single Public Procurement Market that, working under conditions of vigorous competition, enables the creation of a legal environment that guarantees the access of all European firms to public contracts and an efficient spend of public funds[6]. All in all, an EU-wide procurement market and the most efficient use of public funds may only be preserved insofar as Member States fully harmonize their regulations and provide undertakings with the right environment to ensure equal opportunities, while avoiding being captured by national tendencies towards protectionism[7].

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[3] European Commission. *Green Paper on the modernisation of EU public procurement policy - Towards a more efficient European Procurement Market - Synthesis of replies*. Brussels, 2011, p. 2. On the economic importance of the regulation of public procurement, as a direct consequence of its identification as a significant non-tariff barrier, *vide* BOVIS, C.H. *EU Public Procurement Law*. Cheltenham, Edward Elgar Publishing, 2012, 2nd edition, pp. 1 and 5; UNCTAD. *Non-tariff measures to trade: economic and policy issues for developing countries*. Geneva, 2013, pp 1-2 and 106.

[4] Nowadays, Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, *Official Journal of the European Union*, L 94/1, 28 March 2014 (collectively, *Concessions Directive*); Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, *Official Journal of the European Union*, L 94/65, 28 March 2014 (collectively, *Public procurement Directive*); Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, *Official Journal of the European Union,* L 94/243, 28 March 2014 (collectively, *Special sectors Directive*). Their transposition period expires the 18 April 2016, but for some articles, related to electronic means of communication, whose transposition period is either until 18 October 2018 or 18 April 2018.

[5] Monti, M. *A new strategy for the Single Market - at the service of Europe's economy and society*. Report to the President of the European Commission, 9 May 2010, p. 76.

[6] In this line, public procurement and competition laws are considered instrumental to the achievement and maintenance of the Internal Market. *Vide*, European Commission. "The Single Market Act", in *Growth - Internal Market, Industry, Entrepreneurship and SMEs*, available at http://ec.europa.eu/growth/single-market/smact/index_en.htm (last consulted: 15.01.2016), p. 3.

[7] European Commission. *Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions - Towards a Single Market Act: For a highly competitive social market economy - 50 proposals for improving our work, business and exchanges with one another*, COM(2010) 208 final/2, Brussels, 11 November 2010, p. 15; European Commission. *Communication from the Commission - Europe 2020: A strategy for smart, sustainable and inclusive growth*, COM(2010) 2020, Brussels, 3 March 2010, pp. 19 and 24.

In any case, whereas EU public procurement rules are deemed essential for the achievement and maintenance of the Internal Market, the design of healthy public procurement processes that allow the EU to continue growing at the pace it has been doing lately require the observance of the free competition principle, enshrined in the Treaties[8]. Furthermore, not only public tenders, but also the EU public procurement rules themselves need to be designed (and, if not directly applicable, transposed) in a way that is compliant with the requirements of a system operating under undistorted competition, in order to guarantee a competitively functioning Internal Market. This is so because Member States and the EU are required, pursuant to Articles 3(3) TEU, 3(1)(b) TFEU and Protocol 27, to refrain from any measure that could jeopardize the attainment of EU goals and, more specifically, they are obliged to conduct their activities in accordance with the principle of an open market economy with free competition, with the objective of building up a system ensuring that competition in the market is not distorted[9]. Otherwise, not only the achievement of a Single Public Procurement Market and an efficient expenditure of public funds could be endangered, but also the maintenance of the Internal Market might be risked, since, as expressed by the EU judicature, competition rules are fundamental provisions essential for the accomplishment of the tasks entrusted to the Union and, in particular, for the functioning of the Internal Market[10].

Notwithstanding, as we will analyse in the following sections, the submission to Competition law of any State measure to assess whether it restricts competition has not always been straightforward (Part II) and, still today, it is submitted that, in the realm of EU public procurement, as a result of the pre-emptive character of the competition concerns, the State Action Doctrine needs to be subject of a further redefinition (Part III).

## II. The State Action Doctrine in the realm of public procurement, as developed by the EU judicature

Whether all actions performed by a public entity may fall under a competition scrutiny is debatable. Competition rules are intended to assess the performance of undertakings –be they public or private– in the market and, although it may seem paradoxical, they aim at promoting free competition through the control and interference with the freedom of

[8] Article 3(3) of the Treaty on the European Union (hereinafter, TEU); Article 119 of the Treaty on the Functioning of the European Union (hereinafter, TFEU) sets out the principle of an open market economy with free competition.

[9] Judgment of the Court of 13 February 1969, case 14/68, *Walt Wilhelm and others v Bundeskartellamt* [ECLI:EU:C:1969:4], § 4; Judgment of the Court of 10 January 1985, case 229/83, *Association des Centres distributeurs Édouard Leclerc and others v SARL "Au blé vert" and others* [ECLI:EU:C:1985:1], § 14.

[10] Judgment of the Court of 7 February 1985, case 240/83, *Procureur de la République v Association de défense des brûleurs d'huiles usagées (ADBHU)* [ECLI:EU:C:1985:59], § 9; Judgment of the Court of 1 June 1999, case C-126/97, *Eco Swiss China Time Ltd v Benetton International NV* [ECLI:EU:C:1999:269], § 36.

conduct of undertakings[11]. Therefore, the lack of a clear cut response in the legal texts as to what extent an undertaking can be held liable for a conduct that has been promoted by a public authority or as to what extent a public authority itself can be blamed for foreclosing a market, has led to the necessity of interpreting those existing legal texts to adapt them to reality.

From a comparative perspective, several jurisdictions have resorted to the development of a jurisprudential answer in relation with the submission to Competition law of the actions carried out by the State[12]. The State Action Doctrine, originated in the US, leads to exempt from US antitrust rules, on one side, of some State measures, provided that the State engaged in *bona fide* exercise of its sovereign regulatory powers, and, on the other side, of some practices by private entities, adopted in furtherance of an State measure, as long as the measure is clearly articulated and affirmatively expressed as State policy and is actively supervised by the State itself[13]. Accordingly, the EU Courts have also been questioned about the submission to antitrust liability of practices that, even carried out by private undertakings, have been encouraged or forced by national laws[14]. This resort to a juridical answer is due to the absence of a specific set of rules with regard to competitive

[11] Jones, A. and Sufrin, B. *EU Competition Law: text, cases and materials*. London, Oxford, 2014, 5th edition, p. 3. On the equal application of competition rules to private and public undertakings that carry on activities of an industrial or commercial nature, Judgment of the Court of 20 March 1985, case 41/83, *Italian Republic v Commission of the European Communities* [ECLI:EU:C:1985:120], §§ 16 to 20; Judgment of the Court (Sixth Chamber) of 23 April 1991, case C-41/90, *Klaus Höfner and Fritz Elser v Macrotron GmbH* [ECLI:EU:C:1991:161], §§ 21, 23 and 24; Judgment of the Court of 17 February 1993, joined cases C-159/91 and C-160/91, *Christian Poucet v Assurances Générales de France and Caisse Mutuelle Régionale du Languedoc-Roussillon* [ECLI:EU:C:1993:63], §§ 17-19; Judgment of the Court of 16 March 2004, joined cases C-264/01, C-306/01, C-354/01 and C-355/01, AOK Bundesverband, Bundesverband der Betriebskrankenkassen (BKK), Bundesverband der Innungskrankenkassen, Bundesverband der landwirtschaftlichen Krankenkassen, Verband der Angestelltenkrankenkassen eV, Verband der Arbeiter-Ersatzkassen, Bundesknappschaft and See-Krankenkasse v Ichthyol-Gesellschaft Cordes, Hermani & Co. (C-264/01), Mundipharma GmbH (C-306/01), Gödecke GmbH (C-354/01) and Intersan, Institut für pharmazeutische und klinische Forschung GmbH (C-355/01) [ECLI:EU:C:2004:150], § 46; Judgment of the Court (Grand Chamber) of 11 July 2006, case C-205/03 P, *Federación Española de Empresas de Tecnología Sanitaria (FENIN) v Commission of the European Communities* [ECLI:EU:C:2006:453], §§ 25-27; Judgment of the Court (Second Chamber) of 26 March 2009, case C-113/07 P, *SELEX Sistemi Integrati SpA v Commission of the European Communities and Organisation européenne pour la sécurité de la navigation aérienne (Eurocontrol)* [ECLI:EU:C:2009:191], §§ 82 and 85; Judgment of the Court (Third Chamber) of 12 July 2012, case C-138/11, *Compass-Datenbank GmbH v Republik Österreich* [ECLI:EU:C:2012:449], §§ 34-40.

[12] For a broader analysis, *vide* Van de Gronden, J. "Emerging Principles of International Competition Law: Do Public Services Matter?", in Krajewski, M. (Ed.) *Services of General Interest Beyond the Single Market. External and International Law Dimensions*, Erlangen, Springer, 2015, [pp. 161-188] pp. 169-175.

[13] Gerard, D. "EU Competition Policy after Lisbon: time for a review of the "State Action Doctrine?", in *SSRN*, http://dx.doi.org/10.2139/ssrn.1533842 (last consulted: 17.01.2016), 2010, pp. 3-4; Van de Gronden, J. "Emerging Principles of International Competition Law... *op. cit..,* pp. 169-170. On the exemption from EU competition rules of activities that fall within the exercise of public powers, since they are not of an economic nature, Judgment of the Court of 11 July 1985, case C-107/84, *Commission of the European Communities v Federal Republic of Germany* [ECLI:EU:C:1985:332], §§ 14 and 15; Judgment of the Court of 19 January 1994, case C-364/92, *SAT Fluggesellschaft mbH v Eurocontrol* [ECLI:EU:C:1994:7], § 30; Judgment of the Court (Grand Chamber) of 1 July 2008, case C-49/07, *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio* [ECLI:EU:C:2008:376], § 24; Judgment of the Court of 12 July 2012, case C-138/11, *Compass-Datenbank*, *cit.,* § 36 and 51.dand, consequently, ve theion Laent Market; Public Procurement; EU Law; EU Competition law; EU Competition Policythe materaial e

[14] Temple Lang, J. "European Community Competition Law and Member State Action", in *Northwestern Journal of International Law and Business*, Vol. 10, Issue 1, Spring 1989, [pp. 114-132], p. 114.

distortions generated by public actors – but for those on State aid and exclusive or special rights (articles 106 to 109 of the TFEU), which have proven largely inadequate to assess the conduct of the public buyer in the sphere of public procurement[15].

In relation to public procurement, as it will be dealt with in the following sections, two types of public interventions must be differentiated: when the public actor drafts and passes a public procurement legislation or a regulation of general application (section 1); and when the public actor applies the procurement rules and conducts a tender process to purchase goods, works or services (section 2). Public actors may generate competitive distortions in both, but the differences in straightforwardness and incontestability when assessing whether they raise competitive concerns result in the need to conduct a separate analysis. Nonetheless, it may be anticipated that, from a Competition policy standpoint, the liability of a non-compliant or competition distorting public entity should be submitted to a competition scrutiny and, furthermore, should not be shielded behind an unpierced veil of sovereignty.

### 1. Public procurement regulation: Member States' regulatory measures that may impact the public procurement process

Legislation and the regulation of general application come as indispensable to the harmonized achievement of the objectives of the EU; however, any regulatory measure might amount to a restraint of competition[16]. Regulators, when exercising their public powers to pass rules, are, on one hand, vested with a high degree of sovereignty and, on the other hand, they are required to balance public interests with other social interests that

[15] Van de Gronden, J. "Emerging Principles of International Competition Law… *op. cit.*, p. 169. With regard to provisions on State aid (articles 107 to 109 of the TFEU), one must be aware of the fact that in many cases the procurement process does not imply that the contractor has obtained an undue economic advantage and, in the absence of an undue economic advantage, the award is not to be regarded as a State aid incompatible with the Internal Market. In relation to the granting of a special or exclusive right, the award of a public contract will be considered as such only under very specific circumstances: either when the award of the public contract constitutes the only option for companies active in the sector of reference to remain in business (article 106(1) of the TFEU); or when the object of the award is a Service of General Economic Interest (article 106(2) of the TFEU). Also, *vide* Sanchez Graells, A. *Public Procurement and the EU competition rules*. Portland, Hart Publishing, 2015, pp. 129-133.

[16] Kohl, M. "Constitutional limits to anticompetitive regulation: the principle of proportionality", in Amato, G. and Laudati, L.L. (Eds.) *The Anticompetitive Impact of Regulation*, Cheltenham, Edward Elgar, 2011, [pp. 419-441] pp. 419 and 425. In this section we will refer to 'regulation' with the meaning of legislation and regulation of general application – that is, rules pass by the legislative power or rules that, being passed by the executive power, are applicable *erga omnes*. Likewise, by 'regulator' we will refer to the authority empowered to adopt the piece of legislation or regulation – i.e., the Parliament or the Administration. By 'Administration' we refer to its organic meaning: « *L'Administration,* au sens organique*, ne désigne donc que l'ensemble des institutions qui composent le pouvoir exécutif en y associant, par extension, les collectivités locales. Ainsi conçu, le terme vise toutefois chacune de ces institutions, quelle que soit son activité. S'il est également indifférent que les services composant ces institutions soient dotés de la personnalité morale, il convient de souligner que le sens organique, ici présenté, implique que les institutions en cause soient elles-mêmes des personnes publiques (État, collectivités locales et établissements publics rattachés à eux)* ». *Vide*, SEILLER, B. «Acte administratif (I-Identification)», in *Répertoire des contentieux administratif*, Dalloz, January 2010 [last update: October 2014], §§ 15-17.

may be deemed worth to be pursued[17]. Courts are reluctant to scrutinize regulation due to the wide discretionary powers in the hands of the regulator when adopting economic regulation[18]. That explains why, as a general rule, regulatory measures adopted by the State are exempted from competition scrutiny – the State Action Doctrine –[19].

However, provided that the distortive activity of the regulator results in an anticompetitive practice concluded by an undertaking, the EU Courts have recognized certain liability on the side of the State. The Court of Justice of the EU (hereinafter, CJEU), based on article 4(3) of the TEU – the principle of sincere cooperation – and the Treaty provisions on competition – 'core' competition provisions are contained in articles 101 and 102 of the TFEU –, has derived the 'Useful Effect Doctrine', according to which EU Member States – i.e., national regulators – must refrain from (1) requiring or encouraging the adoption of restrictive agreements, decisions or concerted practices or from reinforcing their effects, and (2) delegating their powers to intervene on the market to private economic operators[20]. Otherwise, national rules may frustrate the useful effect of the EU competition rules applicable to undertakings, which take preference over state regulation by virtue of the principle of supremacy of EU law[21]. In conclusion, undertakings that, lacking any room for manoeuvre, act in accordance with relevant national legislation cannot be held competitively liable for their actions[22].

[17] Regulators are particularly sensitive to the promotion of various goals with a view of attaining the public interest – i.e., innovation, environmental protection or employment, among others. *Vide*, Anderson, R.D. and Kovacic, W.E. "Competition Policy and International Trade Liberalisation: Essential Complements to Ensure Good Performance in Public Procurement Markets", in *Public Procurement Law Review*, vol. 18, 2009, pp. 67-101.

[18] In any case, as Prof. Kohl accurately recalls, the principle of the Rule of Law constitutes a limitation to the arbitrary use of public power. *Vide* Kohl, M. "Constitutional limits to anticompetitive regulation... *op. cit.*, p. 434. However, whereas the recourse to arbitrariness is specifically forbidden, regulators are provided with discretionary powers when passing rules and they are thus obliged to balance the different public interests at stake in order to make a decision among all the equally available options.

[19] Judgment of the Court (Second Chamber) of 17 October 1995, joined cases C-140/94, C-141/94 and C-142/94, *DIP SpA v Comune di Bassano del Grappa, LIDL Italia Srl v Comune di Chioggia and Lingral Srl v Comune di Chiogga* [ECLI:EU:C:1995:330], § 14. Also, *vide* Sanchez Graells, A. *Public Procurement and the EU competition rules, op. cit.*, p. 150.

[20] Judgment of the Court of 16 November 1977, case 13/77, *SA G.B.-INNO-B.M. v Association des détaillants en tabac (ATAB)* [ECLI:EU:C:1977:185], §§ 31-33; Judgment of the Court of 21 September 1988, case C-267/86, *Pascal Van Eycke v ASPA NV* [ECLI:EU:C:1988:427], § 16; Judgment of the Court of 17 November 1993, case C-185/91, *Bundesanstalt für den Güterfernverkehr v Gebrüder Reiff GmbH & Co. KG* [ECLI:EU:C:1993:886], § 14; Judgment of the Court (Sixth Chamber) of 9 June 1994, case C-153/93, *Bundesrepublik Deutschland v Delta Schiffahrts – und Speditionsgesellschaft mbH* [ECLI:EU:C:1994:240], § 14. Article 4(3) of the TEU states the following: «Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties». Also, *vide* Van de Gronden, J. "Emerging Principles of International Competition Law... *op. cit.*, pp. 170-171. On the reference to articles 101 and 102 of the TFEU as 'core' competition rules, *vide* Sanchez Graells, A. *Public Procurement and the EU competition rules, op. cit.*, p. 135.

[21] Judgment of the Court of 13 February 1969, case 14/68, *Walt Wilhelm, cit.*, § 5;

[22] Judgment of the Court of 16 December 1975, joined cases 40/73 to 48/73, 50/73, 54/73 to 56/73, 111/73, 113/73 and 114/73, *Coöperatieve Vereniging "Suiker Unie" UA and others v Commission of the European Communities* [ECLI:EU:C:1975:174], §§ 65, 66, 71 and 72; Judgment of the Court of 11 November 1997, joined cases C-359/95 and C-379/95, *Commission of the European Communities and French Republic v Landbroke Racing Ltd.* [ECLI:EU:C:1997:531], § 33; Judgment of the Court of 9 September 2003, case C-198/01, *Consorzio Industrie Fiammiferi (CIF) v Autoritá Garante della Concorrenza e del Mercato* [ECLI:EU:C:2003:430], §§ 51-53.

This approach exposes a shortcoming that brings about some implications. If we analyse communitarian case-law we may conclude that it is required that the competitively distortive regulatory act results in or strengthens the effects of an anticompetitive practice by an undertaking; therefore, unilateral competition-distorting behaviour by national regulators is not captured[23]. It is undeniable that regulatory acts that lack sufficient material legitimacy do fall under the scope of competition law[24]. But, as far as unilateral competition-distortive regulatory measures are concerned, they fall outside the scrutiny of Competition law. In the absence of a legislative change, case law does not support a direct submission of state regulatory measures to EU Competition law. However, EU Competition policy does have a say.

From a Competition policy perspective, competition authorities are entitled to assess whether regulators have balanced the intended benefits and policy goals of their regulations with the anticompetitive effects that the concrete piece of regulation may bring along; in doing so, they establish a relationship between the means and ends of the regulatory measures by reference to external values and, by concluding such a structured assessment, they narrow regulators' discretion, while increasing transparency of the decision making[25].

### 2. Public procurement practice: Member States' non-regulatory measures within the public procurement process

EU antitrust rules are addressed to 'undertakings', a concept which is dependent on the prerequisite of performing an 'economic activity'. An economic activity, in its turn, involves the participation of an undertaking – any entity engaged in an economic activity – in the

[23] Prof. Sanchez Graells refers to it as 'derivative' state liability. *Vide* Sanchez Graells, A. *Public Procurement and the EU competition rules, op. cit.*, pp. 149-151. Judgment of the Court (Fifth Chamber) of 29 January 1985, case 231/83, *Henri Cullet and Chambre syndicale des réparateurs automobiles et détaillants de produits pétroliers v Centre Leclerc à Toulouse and Centre Leclerc à Saint-Orens-de-Gameville* [ECLI:EU:C:1985:29], §§ 17-18; Judgment of the Court of 28 February 1991, case C-332/89, *Criminal proceedings against André Marchandise, Jean-Marie Chapuis and SA Trafitex* [ECLI:EU:C:1991:94], § 23; Judgment of the Court of 17 November 1993, case C-245/91, *Criminal proceedings against Ohra Schadeverzekeringen NV* [ECLI:EU:C:1993:887], § 15; Judgment of the Court of 17 October 1995, joined cases C-140/94, C-141/94 and C-142/94, *DIP, cit.*, § 16; Judgment of the Court (Fifth Chamber) of 18 June 1998, case C-266/96, *Corsica Ferries France SA v Gruppo Antichi Ormeggiatori del porto di Genova Coop. arl, Gruppo Ormeggiatori del Golfo di La Spezia Coop. arl and Ministero dei Trasporti e della Navigazione* [ECLI:EU:C:1998:306], §§ 50 and 53.

[24] Regulations adopted by a public authority lower than the one that must have adopted them will be fully submitted to competition law since lower-than-ought levels of government are not entitled to develop (quasi) legislative or nearly regulatory functions. The approval of legislation or regulations of general application is in hands of the governments of the States, since those are imbued with a significant degree of legitimacy and are subject to an intense political review; on the contrary, decisions by lower instances –civil servants, government employees– show a different (lower) degree of legitimacy and are further isolated from public oversight. *Vide* Sanchez Graells, A. *Public Procurement and the EU competition rules, op. cit.*, pp. 180, 184 and 193.

[25] Competition policy is concerned with the formulation and enforcement of competition law and with competition advocacy, that is, the way in which public policies are shaped in order to reduce barriers to entry, facilitate deregulation, promote trade liberalisation and enhance competition, or, at least, ensure that competition will not be harmed by the government action. *Vide* Dabbah, M.M. *International and comparative competition law*. Cambridge, Cambridge University Press, 2010, pp. 12-13 and 60-62; Kohl, M. "Constitutional limits to anticompetitive regulation... *op. cit.*, p. 434.

market or the development of the activity in a market context[26]. Procurement activities, albeit being of clear commercial or economic nature, are not considered 'economic' activities in and by themselves; instead, the focus is placed on whether the subsequent use of the purchased object –good, work or service– amounts to an 'economic' activity[27]. Therefore, absent a downstream economic market – that is, if a contracting authority purchases a product to be used for the purposes of a non-economic activity, it is not acting as an 'undertaking' for the purposes of EU Competition law and, thus, 'core' EU competition rules are not applicable to scrutinise competition compliance[28].

It has been submitted that there is no justification for relieving all types of State actions within the realm of its procuring activities of all control; otherwise, it would imply an automatic extension of the consideration of an exercise of 'public powers' to every kind of public activity in relation to public procurement, even when the State is acting as a mere economic operator. Public powers are typically those of a public authority, those involving the exercise of sovereignty[29]. Further, the fact that private entities also develop a given activity is an indication that the activity does not imply the exercise of public powers[30]. In any case, the exercise of public powers does not imply an intervention in the market and, thus, impedes the consideration of the public entity as an 'undertaking', shielding it from competition scrutiny – i.e., the power of the State exercised in the political sphere is subject

[26] On the functional approach to the concept of 'undertaking', Judgment of the Court of 23 April 1991, case C-41/90, *Höfner, cit.,* § 21; Judgment of the Court (Fifth Chamber) of 22 January 2002, case C-218/00, *Cisal di Battistello Venanzio & C. Sas v Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro (INAIL)* [ECLI:EU:C:2002:36], § 22; Opinion of the AG Mazák delivered on 18 November 2008, in the case C-350/07, *Kattner Stahlbau GmbH v Maschinenbau- und Metall- Berufsgenossenschaft* [ECLI:EU:C:2008:631], § 39. Also, *vide* Sanchez Graells, A. *Public Procurement and the EU competition rules, op. cit.*, p. 138 and 170.

[27] Judgment of the Court of First Instance (First Chamber, extended composition) of 4 March 2003, case T-319/99, *Federación Nacional de Empresas de Instrumentación Científica, Médica, Técnica y Dental (FENIN) v Commission of the European Communities* [ECLI:EU:T:2003:50], § 36, confirmed by Judgment of the Court (Grand Chamber) of 11 July 2006, case C-205/03 P, *FENIN, cit.,* § 26; Judgment of the Court of First Instance (Second Chamber) of 12 December 2006, case T-155/04, *SELEX Sistemi Integrati SpA v Commission of the European Communities* [ECLI:EU:T:2006:387], § 65, confirmed by Judgment of the Court of 26 March 2009, case C-113/07 P, *SELEX, cit.,* § 102. Also, *vide* Sanchez Graells, A. *Public Procurement and the EU competition rules, op. cit.*, who concludes that «procurement that is ancillary to a non-economic activity does not by itself qualify as 'economic activity' for the purposes of articles 101 and 102 [...] In relation to public procurement activities [...], they constitute a particular instance where the case law has departed from the functional approach», p. 140.

[28] Judgment of the Court of First Instance of 12 December 2006, case T-155/04, *SELEX, cit.,* § 68. Also, Judgment of the Court of 26 March 2009, case C-113/07 P, *SELEX, cit.,* § 10; Judgment of the Court of 12 July 2012, case C-138/11, *Compass-Datenbank*, *cit.,* § 41; Judgment of the General Court (Fifth Chamber) of 16 July 2014, case T-309/12, *Zweckverband Tierkörperbeseitigung in Rheinland-Pfalz, im Saarland, im Rheingau-Taunus-Kreis und im Landkreis Limburg-Weilburg v European Commission* [ECLI:EU:T:2014:676], §§ 84-85.

[29] Judgment of the Court of 19 January 1994, case C-364/92, *SAT Fluggesellschaft/Eurocontrol, cit.,* § 30; Judgment of the Court of 18 March 1997, case C-343/95, *Diego Cali & Figli Srl v Servizi ecologici porto di Genova SpA (SEPG)* [ECLI:EU:C:1997:160], § 23.

[30] Judgment of the Court of 23 April 1991, case C-41/90, *Höfner, cit.,* § 22; Judgment of the Court (Fifth Chamber) of 25 October 2001, case C-475/99, *Firma Ambulanz Glöckner v Landkreis Südwestpfalz* [ECLI:EU:C:2001:577], § 20. Also, Judgment of the Court of First Instance (Third Chamber) of 12 December 2000, case T-128/98, *Aéroports de Paris v Commission of the European Communities* [ECLI:EU:T:2000:290], § 124.

to democratic control; whereas Competition law is aimed at controlling the behaviour of economic operators acting on a market[31].

Having said that, a distinction shall be made between (a) whenever the public entity carrying out the public procurement process – i.e., the contracting authority – resorts to the market due to a mere need of complying with its operational needs –buyer – or (b) whenever the contracting authority resorts to the market to accomplish the tasks in the public interest it has been vested with – offeror –[32]. When the intention of the State is concluding a procurement process in order to offer the service procured from the undertaking winning the process in the market –offeror–, the contracting authority pursues a public interest. In such a case, it is carrying out a (social or equivalent) non-economic activity, which may be considered an exercise of its public powers. EU Competition law is not applicable as the public entity is not performing an economic activity and, likewise, is not acting as an undertaking. Still, EU Competition policy does have a say. On the contrary, when the State purchases goods, works or services in order to cover its operational needs, there is no economic reason to restrain the submission of such activities to competition scrutiny to cases where the object of the procurement process is ultimately assigned to the subsequent development of an economic activity[33]. While some Advocates General have petitioned for a less formalistic approach, placing the focus on whether the activities carried out by the public entity in the course of its procuring processes may lead to competitive distortions in the market and must be, thus, condemned, EU Courts have maintained the exclusion from the EU Competition law scrutiny[34]. However, one must admit that 'core' procurement activities –when the State acts as a buyer– may not be camouflaged behind a veil of sovereignty, since they do not entail the exercise of any public power; instead, they merely consist of narrowing down the ample discretion set by public procurement rules in order to select the tenderer that may most effectively comply with the operational needs of

[31] Opinion of the AG Poiares Maduro delivered on 10 November 2005, case C-205/03 P, *Federación Española de Empresas de Tecnología (FENIN) v Commission of the European Communities* [ECLI:EU:C:2005:666], § 26.

[32] One may differentiate cases where a contracting authority is acting as an ultimate offeror from those where a public undertaking is acting as an offeror. The latter are subject to EU Competition law scrutiny, since, as underlined above, the private or public nature of the undertaking does not affect its submission to EU Competition law.

[33] Case law quoted in the footnote 26. A comparative analysis will conclude that the internal competition laws of several Member States (such UK, Germany, the Netherlands, France and Spain) already sanction conducts concluded by public entities when they act as buyers, making competition law in such jurisdictions fully applicable to public procurement activities and to all activities of the public authorities. *Vide*, Sanchez Graells, A. *Public Procurement and the EU competition rules, op. cit.*, pp. 141, 159-161.

[34] Opinion of the AG Jacobs delivered on 13 September 2001, case C-218/00, *Cisal di Battistello Venanzio & C. Sas v Istituto nazionale per l'assicurazione contro gli infortune sul lavoro (INAIL)* [ECLI:EU:C:2001:448], § 71. And case law quoted in the footnote 26. A comparative analysis will conclude that the internal competition laws of several Member States (such UK, Germany, the Netherlands, France and Spain) already sanction conducts concluded by public entities when they act as buyers, making competition law in such jurisdictions fully applicable to public procurement activities and to all activities of the public authorities. *Vide*, Sanchez Graells, A. *Public Procurement and the EU competition rules, op. cit.*, pp. 159-161.

the contracting authority, at the best value for money[35]. In conclusion, it is submitted that public entities, when they purchase goods, works or services to fulfil their operational needs, are carrying out economic activities that qualify them as undertakings for the purposes of directly applying EU Competition law provisions; consequently, decisions must be based on purely economic efficiency grounds, since the pursuance of other public interests must be necessarily attained through regulation[36].

## III. Towards the attainment of the Single Public Procurement Market: the imperative redefinition of the State Action Doctrine

The achievement and maintenance of the Single Public Procurement Market comes as indispensable to ensure an EU-wide public procurement market working under conditions of vigorous undistorted competition. However, as it has been put forward in the previous sections, EU Competition law provisions do not capture all the competitive restraints that may be caused by a public actor. Therefore, it is for the EU judicature to delineate, through its interpretation, the boundaries of the EU Competition law.

In doing so, the EU Courts have developed the State Action Doctrine, which, as a general rule, exempts State activity from competition scrutiny. Nevertheless, some specifications must be made regarding the State Action Doctrine and its development throughout the EU case law, in order to further redefine its contours.

Firstly, the State Action Doctrine turns out to be applicable when the State is acting in the exercise of its sovereign powers; therefore, purchasing activities of the State that do not qualify as an exercise of public power may be regarded as economic activities and, thus, directly subjected to the assessment of EU Competition law rules. Consequently, in the field of public procurement, only (a) the approval of legislation or regulations of general application and (b) procurement activities aimed at the direct provision of goods, works and services to comply with public interest tasks shield public entities' activities from EU Competition law scrutiny (*vide* Figure 1).

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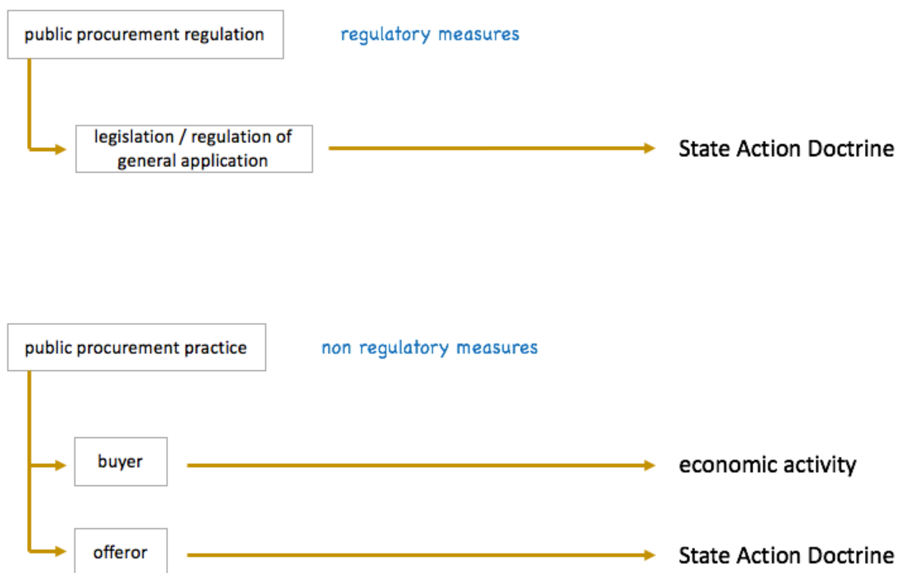
[35] Opinion of the AG Poiares Maduro, case C-205/03 P, *FENIN*, *cit.*, § 62 and 64: «[...] one of the criteria which is relevant for classifying an entity as an undertaking is its participation in the market. [...] Where public organisations carry out both economic activities, and activities of another kind, it is only demand which is linked to their economic activities which may fall within the scope of competition law. By contrast, purchases intended for non-economic activities are comparable to final demand by consumers and are not subject to competition law [...]».

[36] Gerard, D. "EU Competition Policy after Lisbon... *op. cit.*, p. 11. The balance of public interest grounds through regulation is desirable, as it provides with legal certainty – i.e., all entities will be treated equally. In contrast, the analysis conducted by a competition authority is applicable to the specific factual situation of a case – that is, the solution provided by a competition authority is based on a case-by-case assessment and it cannot be automatically applied to any other case; therefore, different solutions may be rendered in essentially identical cases.

**Figure 1** – The submission to the State Action Doctrine of regulatory and non-regulatory measures within the field of EU public procurement




Source: Elaborated by the author.

Secondly, from our standpoint, regulations that have been passed circumventing the legal procedures established or public procurement processes conducted for the direct provision of a public interest task by a contracting authority different from the public entity legally vested with the accomplishment of the task may not benefit from such immunity. All in all, the State Action Doctrine is grounded in the recognition of sovereign powers to specific instances of the State – regulatory powers to the highest sovereign entity, in the case of the approval of regulation; and non-regulatory powers to specific public entities, in the case of acting as an offeror–, which, in turn, are subject to political review.

Finally, it follows that the referred political review includes the assessment of public restraints to the EU's Internal Market rules and, moreover, to general policies set by the TFEU. Among all, the respect to the principle of free competition, which aims at preserving a competitively functioning Internal Market, is to be thoroughly evaluated. Therefore, the EU Competition policy enters into play in order to assess whether a specific pure state action unduly restraints competition in the market. Competition authorities in charge of evaluating the potential restrictions of competition will examine the case in light of competition policy considerations, rather than applying Competition law provisions. They will raise no concerns, even if the public entity at stake takes into account interests other than pure economic efficiency, as long as the potential competitive restrictions amount to a justification and a proportionality test is come

through – that is, as long as the measure at stake is proportional to the objective pursued[37].

In conclusion, while the subjection of public bodies to competition constraints does not hinder the effective achievement of their redistributive objectives, it also comes as essential for the achievement of a competitively working Single Public Procurement Market[38]. However, in cases where the activity of the public entities is due to their exercise of public powers, such constraints are better tailored through its submission to EU Competition policy, which may be more adequately placed to balance public interests rather than just pure economic efficiency.

## IV. Conclusion

In the sphere of EU public procurement, the occurrence of antitrust practices may negatively impact the competitive dynamics of the procuring process. Anticompetitive behaviours become especially harmful when they are publicly generated, mainly because Competition law instruments have proven to be ill-positioned to assess the compliance with competition rules of publicly-originated distortions.

The design of EU-wide competitive compliant public procurement processes comes as indispensable for the maintenance of the Internal Market. Moreover, the attainment of a Single Public Procurement Market, where no scope is left for preferential treatment in favour of national companies, unfailingly requires an outmost care for the competitive conditions under which the procurement processes are conducted. As a consequence, concern should also be placed on the approval of legislation and regulations of general applicability that do not stimulate the foreclosure of the market in any form whatsoever. All in all, public authorities have the duty of pursuing the objectives of the EU, no matter their acts are due to their exercise of sovereignty or due to the need of servicing their operational needs.

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[37] *Ibid.*, p. 11. Also, *vide* Sanchez Graells, A. *Public Procurement and the EU competition rules, op. cit.*, pp. 189 and 190. The principle of proportionality, codified in the article 5(4) of the TEU and recognised as one of the general principles of EU Law by the EU Courts, entails an analysis of whether the measure was necessary and appropriate to achieve the objective. *Vide* Craig, P. and De Burca, G. *EU Law: Texts, Cases and Materials*, Oxford, Oxford University Press, 2011, 5th edition, pp. 168-169.
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# In Search of Emerging Polities: Thematic Agendas of Selected European Cross-Border Cooperation Structures

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***Abstract:*** *The objective of this paper*[2] *is to find several answers by investigating the extent to which the cross-border cooperation structures (CBCS) act as de facto emerging polities. The scope of research is limited to the layer of territorial cooperation, namely the policy space or more exactly the thematic agendas of a sample of selected CBCS: Council of the Baltic Sea States, Greater Region, and Nordic Council, Oresund Region (OR) and South Eastern European Region (SEER). We design a methodological approach based on a content analysis of public documents or papers specific to each area. For two of the selected regions – Baltic and Oresund – the results support the working hypothesis that a converging approach towards issues of common concern may be a condition for deeper regional integration and, more specifically, for the viability of emerging polities. This research, however, did not look farther than the policy space that is relevant for the territorial integration of markets, leaving aside the economic and the socio-cultural spaces, for which different conceptual frameworks and methodologies are needed.*

***Keywords****: European integration, territory, regional development, polity*

***JEL codes****: F15, R11, R58*

## 1. Introduction

The increase of cross-border cooperation (CBC) has become an established feature of the European economic space. From small to large-scale initiatives, CBC structures

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[2] **Acknowledgment**: An earlier version of the text was presented and published as a conference intervention, see Cojanu Valentin, Alexandru Gavriş, Raluca Popescu, "*Policy convergence in European emerging polities: a content analysis on selected cross-border cooperation structure*", EURINT Proceedings 2015, pp. 92-111. It has been substantially revised in response to criticisms and suggestions coming from colleagues who read the first draft.

encompass around 41% of the European Union's (EU) total inhabitants and 60% of its territory (Medeiros 2015) and benefit from most of the allocated funds for the European Territorial Cooperation objective, with ca. 6 billion Euros spent over 6,000 projects in the previous (2007-2013) programming period (Deffaa 2014). The overwhelming evidence (see also AEBR 2012, p. 1) lends itself to some obvious questions: How much will CBC change the impact of national economic policies? Will it strengthen or weaken the role of the nation-state? The pace of accomplishing the EU single market, will it accelerate as a result? It is the objective of this paper to arrive at several answers by investigating the extent to which the CBC participating countries or regions act as de facto emerging polities.

The origins of statehood may have been grounded in basic catalysts of sovereignty like language and ethnicity, but the rise of the modern nation-state, as Wallerstein's (2011) investigation shows, has been possible by distilling (read: defending, regulating, and politicizing) more sophisticated components of a society's socio-political fabric like citizenship, race, or class. If one is to search at present for emerging polities in territories that get rid of instead of erecting division marks poses similar challenges. For one thing, the sovereign region is a product ideally consisting of a perfect match between its functional (operational) and administrative (political) functions in the same geographical area (Edwards 2007, p. 4). For another, to assess the optimal nature of this working, one has to have an in-depth look at the conditions of its viability as a separate unit of analysis. The existing studies point to three distinct yet co-existing layers of integration forces.

First, a policy space revolves around converging themes of common concern. The political objective is hardly changeable with any newly forming polity – e.g. the welfare improvement of its people – only the means to achieve it get modelled around the new rationale of administrative organisation at territorial level. The focus on regional issues asserts precedence over the national-level for local decision-makers and communities (Cnossen, 2003; VanNijnatten and Boychuk 2004), and gradually reshape the meaning of the classical determinants of belonging, identity and citizenship (Nadalutti 2014).

Second, an economic space forms around a single market able to support competitive advance and bring prosperity to its constituents. The 'Go global' credo may continue to play an important role in business internationalization and in making most of the advantages of global competition; success stories – Switzerland, The Netherlands, Belgium, Finland, Ireland, Singapore to name just a few – serve as a permanent reminder about the vital role of external markets in fostering prosperity back home. However, from Linder (1961) to Porter (1990) to contemporary research on clusters and value chains, theorists have warned that all economic success stories are ultimately based on nurturing a competitive 'domestic' market where the economic actors learn how to differentiate themselves in the marketplace. Local conditions of competitiveness such as immobile factors (e.g. territorial capital, tacit knowledge), taxation or lock-in attributes of specialization belong to an economic space that does not necessarily resemble the geographical contour of national-states any longer.

Third, a socio-cultural space based on shared customs and histories, social values, and work habits will continue to be a powerful force in defining a community. Intra-regional

differences in what are now standard administrative units like federal or nation-states may not be a result of poorly designed macroeconomic policy but inadequate consideration of regional communalities. So, asynchronous business cycles within an economic space may reflect divergent economic and developmental needs that claim a better focus on understanding a community's priorities rather than targeting variables within the existing state boundaries.

Together, the political, economic, and socio-cultural constraints are helpful in delineating the geographical contour of an emerging polity large enough to address the aspirations of people identifying themselves with a community, and not so small as to stop taking advantage of the benefits of scale and controlling for negative externalities. There is a respectable scholarly tradition of rethinking economic spaces beyond the nation-state's geographical confines, at either sub- or supra-national level. Fictive polities have been imagined for long (Garreau 1981, Heineken 1992), but real ones have actually taken shape in time to resemble true jurisdictions. In formal arrangements, more or less binding, they have mushroomed and flag exotic names not only in the hinterland of older democracies, like Cascadia (Dupeyron 2008; CascadiaNow 2014) in North America or Upper Adriatic (Nadalutti 2014) in the EU core, but also all over the world (Chen, 2005).

From all possible samples of study, this paper looks at Cross-border cooperation structures (CBCS) as prime candidates to offer lessons on emerging polities. They feature fittingly rich institutional diversity as they:

- May or may not hold legal personality in representing the interests of the respective region and are founded to manage cooperation projects of the members of an EU cross-border region (AEBR, 2008);
- Have limited authority in relation to national states, according to the form of organization: association, charter, intergovernmental commission, European Grouping for Territorial Cooperation (EGTC), etc. (ESPON, 2010);
- Are very different in terms of size, autonomy, institutional level and specialization, involve a variety of public and private actors, and face the "challenge of being divided across two or more sovereign nations, with different governance systems and different strategies" (Anderson, 2012).

The scope of research is limited to the layer of territorial cooperation that comes first in our list of integration forces above, namely the policy space or more exactly the thematic agendas of the CBCS members. The paper continues with a section dedicated to the context in which, before acceding to full-fledged self-determination, there is a certain parallelism and coordination between the policies of the members with the role of supporting initiatives of cooperation in different domains. The networks and linkages that form within a territory can produce spill-overs and enhance economic competitiveness in varying degrees depending on the extent of overlap between the functional and administrative roles of the emerging polity. We design a methodological approach based on content analysis of public documents or papers specific to a selected sample of CBCS to test the working hypothesis that a converging approach towards issues of common concern may be a condition for deeper regional integration and more specifically for the

viability of the emerging polities. Conclusions point to some considerations on the effect of the emergence of new cross-border cooperation structures and the role of the nation-state when trans-boundary governance extends its prerogatives.

## 2. From nation-state to region to polity: theoretical background

*Region* and *regional policy* have secured a place in a nation-state's development strategy at least since the UK in the 1920s and the US in the 1930s pioneered public interventions to redress regional imbalances. The perspective on *regional* issues has changed considerably in the meantime. From experiences with large scale projects of market integration, as for example on the European and North-American continents, it has been observed (Brunet-Jailly 2012, Schoon 2013) that a circular process whereby economic integration reinforces institutional integration and vice-versa foments various scales of territorial integration in a way that the *region* plays an evolutionary role in the transition from nation-state towards a different form of polity.

While the demise of the nation-state is not in question (see O'Hearn and Wilson 2011, Adams et al. 2011), the emergence of new polities is announced by the changing functions of borders. Mainly due to the process of relentless removal of barriers to flows of goods and production factors, regions have become essentially a manifestation of functional cooperation within a territory (Ohmae 1996, Konrad 2006, Hirsch 2009) in need of a denomination of its own. Political will may not suffice or be relevant anymore for conducting economic policy; the concept of border brings up the terms of geographical and institutional proximity between territories treating regional communality as a political, economic, and cultural asset. A territory's common descriptor may be a centre of power (e.g. the nationalist movement in Catalunia, Spain), a salient feature of its people (e.g. religious devotion in the Bible Belt in the US), an extraordinary concentration of economic activity (Florida 2008: 41ff), or a common concern (e.g. environmental issues in Cascadia, a trans-boundary territory between the US and Canada). In full-fledged polities, we should expect that the 'common descriptor' increases its coverage in terms of all possible ranges of a community's interests – political, economic, and socio-cultural – and so ensuring a perfect overlap between the administrative and the functional. Our interest lies therefore in general in the *region* whose borders configure a space that dominantly attracts the attention of its inhabitants at the expense of outer centres of decisions. Even if that space may or may not eventually prefigure an emerging polity, it leaves no doubt about its generic location, within or across nation-states.

Discussions centred on regions at sub-national-level have been the staple of regional economics and policy. An illustrative case is the succession of the EU landmark decisions consolidating the economic role of regions from setting-up the European Regional Development Fund in 1975 to defining regions as national administrative units according to NUTS (*Nomenclature des Unités Territoriales à des fins Statistiques*) in 2003 and to the introduction of territorial cooperation as a programming objective in 2007.

The apparently flawless deployment of regional policy initiatives, sustained by an ever growing scholarship (see Boyce 2004), has been carried out in spite of the equivocal view

about the actual geographical contour, where *actual* stands for a perspective that takes into account not only the administrative, but also the functional of a region. Consider a typical definition (Eurostat 2009), where the region appears as "a tract of land with more or less definitely marked boundaries ... [whose] features may be particularly noticeable in one location, but are usually to be found to some degree over such a wide area that they cannot be used in themselves to mark off one region from another; in other words, the boundaries are 'fuzzy'." The implication is not evident in terms of financial allocation, because it targets clearly defined administrative units with the goal of attaining socio-economic indicators (e.g. occupational rates, education level, infrastructure investments etc.). However, narrowing the perspective on regions in purely administrative terms is simply ineffectual at operational level. What 'operational (functional)' ***is*** takes on different meanings depending on the policy objectives at stake; administrative units prove to be ineffectual in reaching an applicable competitiveness policy (Council on competitiveness 2010), in yielding relevant data on social capital (Gironda and Peterson 2014), or in accounting for borderless "epistemic communities" and generation of innovation (Pallagst 2011), all factors that are vital in the organisation of modern economies.

*A region* may also be placed in an indeterminate space beyond the nation-state. The classic debate has been framed in terms of the 'core-periphery' model of spatial organisation of growth centres and political influence (Paelinck and Polèse 1999). The poles are essentially defined by a function that indicates the degree to which the added-value is unevenly distributed along economic networks and cumulatively augmented in the direction of the core at the expense of the periphery, with the space in-between (the 'semi-periphery') enjoying partial prosperity at the risk of possible decline (Wallerstein 1974:355). The administrative role a region may play exists only in relation to ensuring governance within networks of arm's length transactions.

There is more to understanding a region than this realist yet simplified triadic representation though. Spatial connections evolve to the point of integrating cultural affinities, social values, or economic preferences. From small-scale integration of labour markets to large-scale economic and monetary unions, functional regions play different roles in defining an economic space, either independently from or in close connection with the nation-states they belong to. The institutional variability of territorial arrangements is virtually boundless.

Lianos and Gerard (2012) speak of a paradigm shift from the classical conceptualization of integration, with the corresponding emphasis on economic efficiency, to a 'holistic' perspective defined on the notion of institutional-based trust. In their view, the underlying premise rests on the "ontological requirement" of enabling a progressive state of integration between "competing rationalities" of different sub-systems interacting across national boundaries. Market behaviour and other issues generally related to the way people actually react to choices in the marketplace make adherence to the same values critical to achieve internal market reform rather than the other way round. The importance of trust-enhancing mechanisms is reflected, among other things, by the apparently intriguing discrepancy in the EU economy between the dominant role of the services sector – an activity deeply anchored in identity-loaded social choices – and the slow pace of reform

in harmonizing this particular market.

Between prevalently administrative territorial units and prevalently functional ones, there is, finally, an intermediate locus to possibly place a *region*, namely "contiguous sub-national units from two or more nation states" (Perkmann 2007), or what the EU practice has made known as *cross-border cooperation structures* (CBCS). The process of cross-border cooperation capitalizes on the advantages of both roles of a spatial unit of analysis, administrative and functional. The former is reflected in coordinated interventions of countries in regional policies' design and implementation, generally fulfilling the (contractual) need of an adequate territorial organization of authority (ESPON 2010); the latter resides in benefits that arise from cross-border externalities and spill-overs or linkages of all kind (economic, technological, social, cultural, environmental, etc.).

Analyses of determinants accounting for communality in CBCS (VanNijnatten and Boychuk 2004; Hlatky, 2012; Nadalatti 2014) emphasize convergence in major themes of common concern occurring among sub-national cross-border jurisdictions that is not as evident at national-level. However, trans-frontier areas include territories that are different. Geographic proximity may or may not lead to institutional proximity (cf. Talbot 2007, Silvers 2000, ESPON 2010) and further to transforming regional communality into a developmental asset. Table 1 summarizes the diversity of factors to account for when evaluating the potentiality of emerging polities.

**Table 1. Policy areas of territorial integration**

| Areas of cooperation | Policy dimensions | Policy areas |
|---|---|---|
| (1) Economy | Economy - Technology | Labour and legal issues<br>Economic and commercial agreements<br>Enterprise collaboration<br>Financial and fiscal issues |
| | | |
| (2) Society | Cultural - Social | Quality of life<br>Culture and heritage<br>Sports and health |
| | | |
| (3) Institutional | Accessibility | Transports and connectivity |
| | Environmental - Heritage | Sustainability and environment |
| | Institutional - Urban | Knowledge, research and innovation<br>Institutional arrangements<br>Strategic territorial development issues<br>Regional planning |

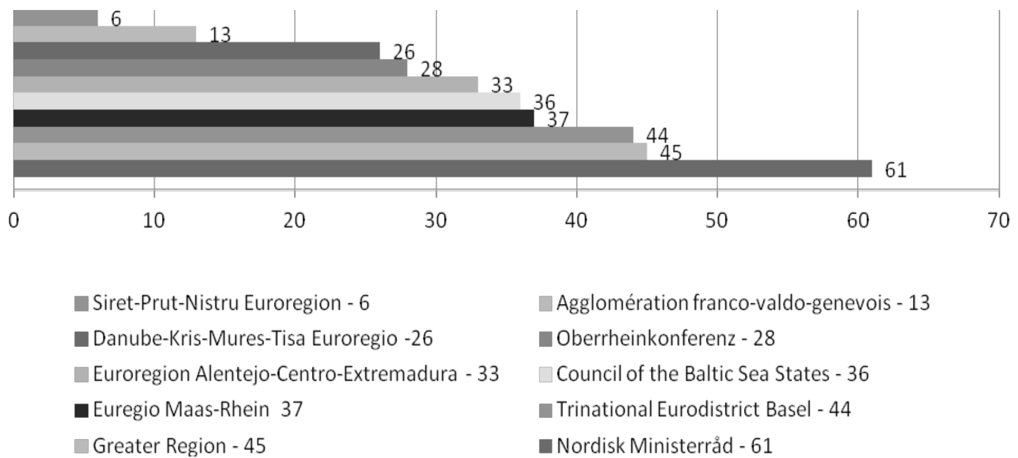
Source: Adapted from Medeiros (2015)

We follow this theoretical template to provide some (rough) estimates on the conditions of emerging polities in the case of a sample of CBCS' institutional cooperation frameworks.

**3. Methodological approach**

Our case study draws on previous results on institutional proximity for ten European cross-border cooperation structures[3]. We produced a qualitative assessment of each cooperation structure by assigning scores of institutional quality on two dimensions: breadth (the number of domains of cooperation) and depth (the level of integration on each thematic focus) of the level of integration (see Figure 1).

**Figure 1. Institutional strength of selected European CBCS**




Source: Cojanu and Robu (2014)

Explanatory note: The projects of each CBCS were evaluated at one, two or three stars according to their institutional strength. The figure captures the depth of cooperation in each thematic focus calculated as a sum of the number of stars assigned to each project.

The initial results point to different integration speeds across CBCS, from more to less advanced regional structures. In this paper, we have searched further for expressions of political consensus or conflict within policies, objectives, opinions, etc. that appear in documents issued in the form of policy or research publications for each CBCS for three

[3] The initial CBCS sample consisted of ten European regional groupings: Oberrheinkonferenz (Upper Rhine), Nordisk Ministerråd (The Nordic Council), Agglomération franco-valdo-genevois (Grand Geneva), Danube-Kris-Mures-Tisa Euroregio, Greater Region, Siret-Prut-Nistru Euroregion, Euregio Maas-Rhein, Council of the Baltic Sea States, Trinational Eurodistrict Basel, and Euroregion Alentejo-Centro-Extremadura (EUROACE).

areas of cooperation, i.e. economy, society, and institutional, along policy dimensions and areas as described in Table 1.

Recent advancement in the linguistic and computational models revealed solutions for analysing political discourses (Albaugh *et al.*, 20). Researchers involved in the field argue that the meaning of communication frames itself on words, among which complex relations exist. The text "is an integral part of its context and the formalization of contextual patterning of a given word or expression is assumed to be relevant to the identification of the meaning of that word or expression" (Tognini-Bonelli, 2001: 4). The analysis of words from various corpora of text showed clusters with different relations in which the meaning of the words depends on its neighbours. This hierarchic association of words and spatial proximity within a sentence or a paragraph determines semantic fields, seen as maps or graphical charts. The abstract representation of language is transferred into models that suggest patterns of co-occurrence, indicating the semantic clustering. Such patterns indicate potential themes representative for the field of inquired corpora. Among the solutions proposed to analyse texts and words, we opted for content analysis, given its potential to develop "systematic, objective, quantitative analysis of message characteristics" (Neuendorf 2002:1).

Before analysing the content of the texts, we had to collect relevant materials on cross-border cooperation. We opted to mine the web to extract the texts. More specifically, the official and related web-sites of CBCS were crawled to download all the text uploaded and considered to be thematic documents. Because not all of the CBCS sites contained enough documents, only three of the original sample regions remained for analysis: Council of the Baltic Sea States (CBSS), Greater Region (GR), and Nordic Council (NC), to which we added the Oresund Region (OR) and the South Eastern European Region (SEER). The grouping of text into categories according to the three directions of cooperation involved reading of the documents and consultation among the members of the team. After these steps, the relevant texts (Table 2) of each category underwent data preparation to uniform various expressions that might be considered individual words and to clean irrelevant information (like bibliography, web-links).

**Table 2. The number of CBCS documents used in the content analysis**

| CBCS | Economy | Society | Institutional |
|---|---|---|---|
| Baltic Sea Region | 25 | 62 | 19 |
| Greater Region | 13 | 7 | 4 |
| Nordic Region | 9 | 5 | 11 |
| Oresund Region | 16 | 5 | 22 |
| South Eastern Europe Region | 10 | 6 | 7 |

Analysing the patterns and reviewing the frequency of words are parts of the content analysis which we used to gain understanding over the proposed working hypothesis.

While the content analysis comprises many other steps, in this paper we focus on exploring the themes revealed by words co-occurrence from each of the corpora that may indicate models and strength of the three directions of cooperation. The rationale is that if words specific to the three areas of cooperation appear well structured, this indicates their respective directions and the importance of cooperation.

Data collection consisted in extracting meaningful information from respective documents to emphasize the scope of common themes and their level of convergence among CBCS members. Besides the visible links among CBCS, there is a large amount of hidden knowledge inside the documents which create, manage and shape the future of regional structures. In our research, we mined the texts to explore the content of documents on each selected region, on each area of cooperation and on the participating countries. The results were further explored inside a thematic mapping of clusters, which is analysed through content analysis. The structure of the networks emerged from selecting top 100 words and using random-walks option to represent the communities, option that allowed a better structuring of the clusters (Aggarwal 2011).

Furthermore, the corpora involved the separation based on countries inside a CBCS, which resulted into cross-tabulation analysis of the respective countries according to the initial structuring of the emerging themes (see Table 1). Consequently, the resulting corpora were coded and the codes were used to create a dictionary to find the possible existing relations among different levels of structuring inside the territorial space. To help the analysis, the KH Coder software (Higuchi 2014) was employed, which offers various tools for text mining and the possibility to expand the research by exporting the results into R software. While its use in regional studies was not so visible, some research exploited its capabilities to explore the characteristics of knowledge coordinators in regional revitalization (Chihara et al. 2011) and identification of barriers that may hinder the cross-border collaboration process (Nieda and Tanaka).

## 4. Findings and discussion

### 4.1 The wording of policy dimensions

Among the regions, frequency of words indicates the major elements among which the policy themes are structured. Elements of cooperation at regional level emerged from sorting the top 10 words of each region to see what the indicators for common elements are. The most frequent expressions that were found in all CBCS refer to official names of organizations, ‘region’, ‘projects’, ‘governance’, ‘policy’, ‘development’ and ‘cooperation’ showing preoccupation for a formalized relation of cross-border cooperation and for a careful planning of the objectives and their achievement (‘impact’, ‘planning’, ‘implementation’, ‘management’). The institutional level of actors involved in cooperation is also discussed in some CBCS using words like: ‘governance’, ‘local’, ‘transnational’, but it is less frequent a topic of discussion.

### 4.2 Co-occurrence analysis

The co-occurrence analysis reveals the main themes for each region and the possible relationships among them.

The Baltic Region economic clusters suggested the intensity of developing projects at different scales, involving the different structures (CBSS, HELCOM) specific for this organization. They focus on strengthening the cooperation by acting on the Baltic Sea as a complex system, fact suggested also by the institutional map. In the case of society and the institutional map, the issues are more specific (e.g. ecological structures, marine protection, social development, child security) and help increase the understanding of this initiative of cooperation.

In the Greater Region, the economic dimension is mostly connected to the cities theme on which cross-border cooperation is high. The regional perspective indicates that cooperation is related to research and industry partnership. These themes showed continuation within the institutional map, transportation distinguishing itself as the main theme. The same for the society map, where the two main clusters (culture and artists mobility) indicate additional themes of cooperation in the region.

The Nordic Region cooperation records a complex structure for all of its dimensions, being characterized by marine management, energy issues and unemployment for the economic dimension, infrastructure and organization issues for the institutional, while the social is focused on urban challenges, welfare, and social challenges.

The Oresund Region analysis reveals strong relations with the development theme, especially spatial development through transportation and business. Other major concerns focus on energy and environment challenges.

The case of SEE region shows connecting words on partnership, cooperation, and development. In the institutional, one cluster dominates the map, the one of regional identity. The social dimension discloses the importance of cultural heritage.

### 4.3 Converging themes in emerging polities: a discussion

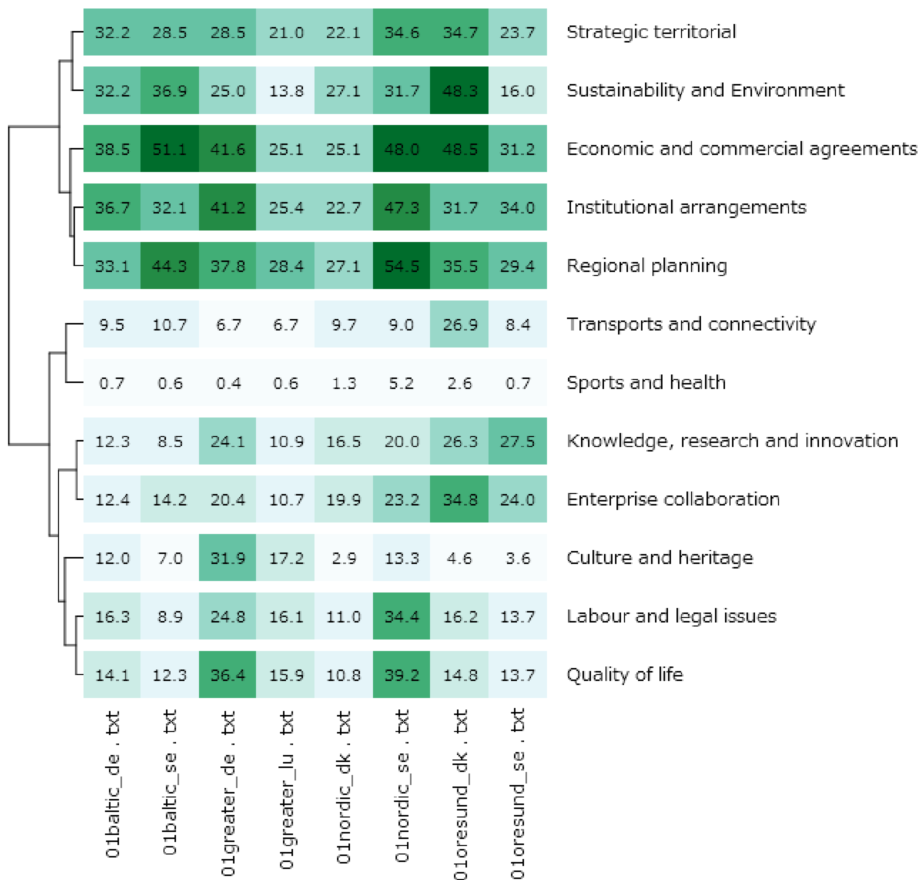
The results of cross-tabulation analysis (Figure 2) involved countries with a number of documents for which we set a cut-off point of at least three for at least one country and summing over 1,000 paragraphs per country in the final corpora of a region. On these criteria, the South Eastern European region, as well as several participating countries could not be included in the analysis.

The general map of converging themes shows a high level of similarities both between participating countries, and between sample regions. Several thematic directions attract most of the attention: strategic territorial development issues (STDI), sustainable and environment issues (SEI), economic and commercial agreements (ECA), institutional arrangements (IA), and regional planning (RP). The considerable degree of convergence around these themes may be explained by the need to control for externalities in situations that should be coordinated in the cross-border region. The classical subject matter of

economics – the management of limited natural resources – is visible in the cooperation framework, as these resources are found on a common territory, being equally important to social and economic problems (Degórski, 2008).

The results emerging from the words frequency and co-occurrence maps indicated a well framed image of each region with some persistent themes within each dimension. Across the five CBCSs belonging to our sample, policy cooperation themes are developed according to the specific problems of each region. Those regions (Baltic Region and Nordic Region), which have sea access cooperate for a clean environment, both coastal and maritime, and for the protection of maritime species, while SEER countries cooperates for clean mountains, biodiversity, and natural landscape conservation.

**Figure 2. Percentage of similar words in each thematic area at country level**




Source: Authors' calculations.

Among the common themes, strong similarity is noticed for Baltic countries (Germany, Sweden), where STDI and SEI and IA record close high values. Another pair of countries (Denmark and Sweden from Oresund Region) face the same situation, but with a much wider spread of themes incorporated. For these two regions, the results reappear at a smaller scale in the case of the remaining themes. In the case of Greater Region and Nordic Region the variability is higher for the aforementioned themes, significant differences of frequency being recorded.

## 5. Conclusions

In this paper, we collected policy documents to identify a common language as proxy for common descriptors that orient the cooperation activity of selected cross-border regions. The clusters of common words and expressions that we have found in research documents, opinions and CBCSs' goals and actions suggest that the cross-border coordination of policies may lead to the emergence of viable territorial units: polities that address the encompassing range of policy interests of a community - economic, social, and institutional. Dense occurrences of words which designate themes of cooperation showcase a high interest for themes that are strategic and general, but also for practical and specific ones, although to a lesser extent. They are part of large clusters of words with strong connections between them ensuring a relatively balanced overlap with the policy areas as generally identified in the literature.

The existence of common language throughout the three directions of cooperation shows that the selected regions are well integrated (possibly also the reason why we have found more official documents for these regions) and there is a good coordination between the policies inside that CBCS. It also suggests that social and institutional development is strongly connected to the economic dimension (although most of the common themes were identified between the society and institutional topics).

The paper started from the hypothesis that the viability of emerging territorial units depends on the way their members reach a converging approach towards issues of common concern. For two of the selected regions – Baltic and Oresund – the results show that this is the case; the evidence we have gathered indicates a convincing case towards the possibility of emerging polities. This research, however, did not look farther than the policy space that is relevant for territorial integration of markets, leaving aside the economic and the socio-cultural spaces, for which different conceptual frameworks and methodologies are needed. Even if it is thus premature to advance any definite conclusions on the possible rising of future (European) polities, this paper suggests the transition from nation-states is making certain progress.

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# Analysis of the Czech and Slovak Different Strategic Choices Towards the Eurozone

**Jiang Li**[1]

***Abstract:*** *Czechs and Slovaks lived in a common country from 1918 to 1992, and in May 2004 the Czech Republic and Slovakia joined the EU together; nevertheless, these two countries took different paths towards the Eurozone. On January 1, 2009 Slovakia became the 16th member state of the Eurozone, while the Czech Republic has not yet determined a specific timetable to enter the Eurozone. In this paper, our main objective is to answer the following questions: Why did the Czech Republic and Slovakia make different strategic choices on the issue of euro introduction? How could Slovakia, a country with unfavourable initial conditions of transformation, quickly achieve the full compliance of the Maastricht convergence criteria? How is Slovakia's experience in the Eurozone? Compared with the Czech Republic, which has not introduced the euro, is the Slovak economic situation better or not? Which economic consequences did the Eurozone debt crisis bring to Slovakia and how does it affect the decision of the other Central European countries, including the Czech Republic, about euro adoption?*

***Keywords:*** *Czech Republic, Slovakia, euro adoption, monetary policy, economic convergence*

***JEL Classification:*** *E52, E58, O23, O52.*

## 1. Introduction

On January 1, 2009 the Slovak Republic, a small country in Central Europe introduced the euro and officially became the 16th member state of the Eurozone. It was not only the first country from the former Warsaw Treaty Organization to join the Eurozone, but also the second country among the new EU member states after Slovenia. However, the Czech Republic, which had a long-term coexistence in a common country with Slovakia and even joined the EU together, in 2004, made a completely different strategic choice: indefinite postponement of euro adoption. Our paper is organized around the answers to the following six questions: Why did the Czech Republic and Slovakia make different strategic choices on the issue of joining the Eurozone? How could Slovakia, a country with unfavourable initial conditions of transformation, quickly achieve the full compliance of the Maastricht convergence criteria? How is Slovakia's experience in the Eurozone? Compared with the Czech Republic, which has not introduced the euro, is the Slovak economic situation better or not? Which economic consequences did the debt crisis of the Eurozone bring to Slovakia

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and how does it affect the decision of the other Central European countries, including the Czech Republic, about euro adoption?

The argumentation begins with an historical evidence of the two countries' economic development and international status before joining the European Union. It continues with the analysis of the determinants which led to Slovakia's Eurozone accession, while the Czech Republic postponed the entry into the Eurozone. Our paper goes on with the introduction of Slovakia's experience in the Eurozone and a comparison between the Slovak and Czech economic developments since 2009. Finally, we present the main conclusions and discuss the effect of the Eurozone debt crisis on the attitudes of the Central and Eastern European countries towards the euro adoption.

## 2. The economic development and international status of the Czech Republic and Slovakia before joining the European Union

Before the breakup of the Czech and Slovak Federal Republic, the Czechs and Slovaks had already begun the process of transition to a market economy and the "return to Europe". The separation of the two entities accelerated the pace of change. Nevertheless, "the Velvet Divorce" and the subsequent economic changes took place "in the shadow of the war in the former Yugoslavia and the crumbling of the Soviet Empire" and it "received comparatively little attention" among scholars (Hilde, 1999).

Economic transformation in the Slovak Republic was even more difficult and caused a greater impact on Slovak people's life, leading to widening economic disparities between the two neighbouring countries. The disintegration of the Czech and Slovak Federal Republic on December 31, 1992 interrupted the economic recovery which had begun in the second half of that year. While it adversely affected the economic development of both the Czech Republic and Slovakia, the dissolution of the federal republic brought greater negative consequences to the Slovak Republic (Švejnar, 1997).

After the dissolution of the federal republic, the Czech Republic and Slovakia embarked on different paths of economic transformation. The Czech Republic continued with the radical transformation strategy which had been adopted in the federal period, while the Slovak Republic was gradually deviated from the transition path of the federal republic, with a new way of privatization, and slowdown of the transition speed. In the early times following independence, due to more favourable initial conditions for transition, such as a relatively balanced domestic market, skilled and educated labour force, less debt, low inflation and adequate domestic savings, the economic situation was better in the Czech Republic, and its pace of integration into the European economy was faster than Slovakia's.

The Czech Republic needed only a few years to achieve macroeconomic stabilization, privatization of state-owned companies and price and trade liberalization. It was internationally considered as a successful transition model among the Central and Eastern European countries with sustained GDP growth, surplus public finances, expanded foreign exchange reserves, increasing investment, falling inflation and unemployment rates. However, starting from the second half of 1996, the Czech Republic began to show signs of economic slowdown. The main reason was the lack of appropriate institutionalization

and regulation, with a number of reforms being considered a mere formality, in addition to the lack of reforms in some areas. But its successful performance in the early period of transition, coupled with a sustained, stable political situation and close relations with the United States and Germany, led to success in terms of European integration. In 1995, the Czech Republic joined the Organization for Economic Cooperation and Development (OECD), being the first one among the Central and Eastern European countries to do so. In December 1997 it received the invitation to begin the accession negotiations with the EU.

After independence, Slovakia embarked on a unique way to establish a market economy. Privatization was mainly opened for interest groups that had close relations with the government. This non-transparent way of privatization not only made the country lose significant revenues, but also caused a corporate restructuring lag. Despite the fact that between 1994 and 1996 the economic growth rate in Slovakia was high, economic growth was built on the basis of government and household consumption surges, and not on the basis of system innovation and structural reforms. Soon macroeconomic imbalances appeared, such as: widened fiscal deficits, rising debt and current account deficit.

A turbulent domestic political arena, a too close relationship with Russia, and unresolved Hungarian minority status issues resulted in Slovakia's failure in terms of European integration, gradually being excluded from the trend of joining the EU and NATO.

In 1998 the Czech Republic and Slovakia were in economic trouble, leading, in both cases, to politically changed governments. In the Czech Republic, the economic recession shattered illusions about the success of radical reforms. The long-ruling centre-right government collapsed, and the Czech Social Democratic Party, emphasizing the social market economy and the welfare state, came to power. In contrast, in Slovakia a centre-right government that advocated deepening reforms replaced the previous one.

The new Czech government took the resumption of economic growth as the priority target, adopting a series of measures for economic revival. Because the government chose to use the expansion of public consumption to stimulate economy, in addition to the continuously increasing spending on social welfare, the Czech Republic saw an expansion of the government budget deficit. From 1998 to 2002, the pace of economic reforms in the Czech Republic was relatively slow. On one hand, after beginning accession negotiations with the EU in March 1998, the external pressure forcing the country to make fundamental changes weakened. On the other hand, a part can be explained in the context of the domestic political situation. The minority government, consisting of only the Czech Social Democratic Party, maintained the country's governance on the basis of mutual compromise with the largest opposition party, the Civic Democrats. Although the two political parties could agree on most economic policy priorities, they had different views on specific implementation of the reform programme. Therefore the reforms were delayed and long-standing structural problems were not resolved. After the 2002 parliamentary elections, strife within the ruling coalition was not a rare occurrence, and, as such, the government failed to properly formulate and implement the concept of economic and social reforms. The health care, pension and educational reforms still remained at the planning stage.

The Slovak government headed by Mikuláš Dzurinda not only strengthened the political democratization construction, but also made efforts to promote economic reforms, in order

to catch up with neighbouring countries in the process of "returning to Europe". Through unrelenting efforts, in December 1999 Slovakia received an invitation to start accession negotiations with the EU. Through austerity policies and structural reforms, the Dzurinda government successfully achieved macroeconomic stability. Low wages, corporate and financial sector restructuring, and the introduction of monetary policy measures to support trade enterprises in expanding exports prompted the Slovak economy to improve its competitiveness continuously. From 2002 to 2006, the second Dzurinda government continued to deepen reforms, so as to meet the Copenhagen criteria as soon as possible, and to be close to the Maastricht convergence criteria. With the improvement of the business and trade environment, and a stable inflow of foreign direct investment, the economic growth in Slovakia was faster than its Central European neighbours. On May 1, 2004 Slovakia, together with the Czech Republic, joined the European Union.

## 3. Why Slovakia entered the Eurozone while the Czech Republic remained outside?

While joining the EU is a milestone in the process of European integration of the Central and Eastern European countries, joining the European Economic and Monetary Union is a natural continuation of the integration process. Since the date of signing the Accession Treaty in 2003, the Czech Republic and Slovakia took on the obligation to introduce the euro. Although both countries pledged to enter the Eurozone as soon as possible, in order to fully integrate into western structures, there was a clear difference between their paths of preparing to join the Eurozone. In October 2003 the Czech Republic established a political goal to introduce the euro in 2009 or 2010, with repeated delays of the process of entering the Eurozone; up until the present moment, it has not identified a specific date to join the Eurozone.

Slovakia has not only determined the time of entering the Eurozone early, but also acceded to the Eurozone in accordance to the stated objectives. Indeed, the path of preparing to enter the Eurozone of each EU Member State is very specific, each being able to choose the timetable of euro adoption in accordance with their economic convergence conditions. However, the Czechs and Slovaks had long-term coexistence in a common country, with notable similarities in the economic and cultural aspects, and the Czechs had better initial transition conditions. In this case, why did the Slovaks introduce the euro and the Czechs did not? The reasons reside in the following three aspects.

### 3.1. The strength of the political will

Since the centre-right government came to power in the fall of 2006, the Czech leaders stressed that before considering entering the Eurozone they should implement the necessary economic reforms. In November 2007, Prime Minister Mirek Topolánek stated that, the Czech Republic should not hurry to join the European exchange rate mechanism before implementing the pension system and health care reforms, therefore a 2012 introduction of the euro was not realistic (EurActiv, 2007). Since the political will of entering the Eurozone was not strong, the economic and structural reforms which had to be carried out on the road leading to the Eurozone were delayed, and thus the Czech Republic could not meet

the Maastricht convergence criteria for a significant amount of time. This became the main reason for which the Czech political leaders emphasized that there was no hurry to enter the Eurozone.

Since the beginning of the global financial crisis and the Eurozone crisis, the Czech government leaders were more worried about the potential ways in which the introduction of the euro could damage national economy. In August 2011, Czech president Václav Klaus, who was famous for his critiques of the European integration process, claimed that the Czech Republic should follow the example of the United Kingdom, Denmark and Sweden, and begin to negotiate with the EU about a permanent exemption on the issues of introducing the euro (Klaus, 2011). In October 2011, Prime Minister Nečas stated on the occasion of the informal summit of Visegrad Group that the Czech Republic did not currently intend to determine a date to introduce the euro, for two main reasons: firstly, the Czech Republic still had not met the convergence criteria. Secondly, the Eurozone had been transformed from a monetary union to a “transfer and debt” alliance, consequently Czechs needed time to observe future trends in the Eurozone (Nečas, 2011).

Although Miloš Zeman, who became the Czech President in 2013, supported the introduction of the euro as soon as possible, and the Bohuslav Sobotka government, which took office in January 2014, declared in its policy statement that it will prepare the Czech Republic for entry into the Eurozone, due to the rather eurosceptic electorate of the ruling Czech Social Democratic Party, the high levels of anti-euro sentiment among the public in general and the Greek crisis, the government has agreed not to make a decision on starting the euro introduction process (i.e., participation in ERM II) before its term ends in 2018 (Kałan, Toporowski, 2015). In fact, the Czech Republic has currently met the Maastricht convergence criteria in aspects such as government debt to GDP, budget deficit to GDP, long-term interest rates, HICP inflation rate and exchange rate volatility, and it is only due to lack of sufficient political will it has not met the final criteria – participation in ERM II. While in the report submitted to the government, the Czech National Bank and the Ministry of Finance repeatedly stated that the Czech Republic has not yet been ready to introduce the euro, the governor of the Czech National Bank, Miroslav Singer pointed out that the Czech National Bank was only a professional adviser in financial respect, the issue whether to introduce the euro was to be decided by politicians, not by economists (Singer, 2015).

By contrast, Slovakia had a strong political will for entry into the Eurozone as soon as possible. Because of consideration of the following factors: the size of the country, the openness of the economy, the close economic ties with countries in the Eurozone, the country’s economic transition and convergence process, the Slovak government leaders believed that Eurozone membership would bring Slovakia more good than harm. They considered that the benefits of entry into the Eurozone were prevailing, such as lower transaction costs, reduced exchange rate uncertainty, the elimination of currency risk of a speculative attack, lowering interest rates, strengthening of economic activity, increased foreign direct investment, price stability, healthier public finances and easier access to cheap credit.

From 2002 to 2006 the ruling Dzurinda government made necessary reforms, and did not hesitate to join the European Exchange Rate Mechanism. The change of government

in 2006 did not interrupt or delay the process of entry into the Eurozone, with the new Slovak government continuing to make efforts to push Slovakia closer to the door of the Eurozone. Although the Fico government paid attention to social protection measures and social assistance issues, it made only some adjustments in the field of tax reform taken on by the Dzurinda government, and never changed its priority of urging Slovakia to join the Eurozone according to the schedule. Prime Minister Fico considered that the combination of a modern social state model and fulfilment of the convergence criteria was a devil's plan and that the convergence criteria were a trap (Gonda, 2007a). Even so, the Fico government continued almost all reforms taken by the Dzurinda government. Strong political will helped resolve difficulties and problems on the road leading to the Eurozone. From 2004 to 2007 the Slovak economy grew rapidly and even though it was very difficult for the inflation rate to be reduced to the required level, through effort Slovakia managed to accomplish its goals.

### 3.2. The similarities and differences of economic characteristics

The Czech and Slovak economies have similarities, mainly in the following four areas. Firstly, they are small and open economies. Secondly, foreign trade and foreign direct investments are important for economic development. The financial and manufacturing sectors are dominated by foreign investors, while export destinations are mainly countries in the Eurozone. Thirdly, industrial output accounts for a high proportion of GDP, more than 30%. Fourthly, from 2004 to 2008 there was a trend of rapid economic growth, increasing foreign trade and investment activity. There are also some differences between the two economies; for example, in the Czech Republic the unemployment rate is lower, GDP per capita is higher and diversification of commodity production is higher than in Slovakia. In addition, another difference consists of the strength and effectiveness of the monetary policy system and economic reforms. Economic differences led to differing levels of social urgency to introduce the euro in the Czech Republic and Slovakia.

#### 3.2.1. Monetary policy system

The Czech Republic implemented floating exchange rates, while the Slovak National Bank focused on the regulation of exchange rates. The Czech Republic achieved low inflation levels early on, while the process of decreasing inflation in Slovakia was longer and slower. Slovakia hoped that by entering the Eurozone it would improve the economic environment, so as to make borrowing costs decline and to promote investment and economic growth. However, this outcome is not attractive for the Czech Republic, because its long-term interest rates are well below those in the Eurozone, consequently the introduction of the euro will increase borrowing costs. Due to the relatively high current account deficit in Slovakia, it also hoped to guarantee monetary stability by joining the Eurozone. Already in possession of low inflation and interest rates, the Czechs have no illusions about the introduction of better monetary policy. Moreover, the Czechs do not want lose their exchange rate control mechanism in a situation where economic convergence is incomplete and synergy of the economic cycle is not so good (Vintrová, 2008).

### 3.2.2. The strength and effectiveness of economic reforms

Economic reforms can not only change the economic environment, but represent a step that must be taken before entry into the Eurozone. In terms of meeting the Maastricht convergence criteria, the fundamental problem for both the Czech Republic and Slovakia was public finance. In order to increase state budget revenues and to reduce budget expenditures, the Czech Republic and Slovakia carried out tax, health care and pension reforms etc., but the strength and effectiveness of these reforms were significantly different. In the same year of joining the EU, Slovakia carried out a tax reform. It abolished the gift, inheritance and real estate transfer taxes, simplified the income tax, implemented the single rate of VAT (19%) and adjusted the consumption tax. In the field of taxation, the Czech Republic did not carry out a fundamental reform, choosing to only partially change the tax system, therefore the situation of public finances was not significantly improved. In 2005 Slovakia carried out the pension system and health care reforms. Through the pension reform, part of the pension was paid by private funds, thus public expenditure was saved. The Czech Republic increased the retirement age and made a number of changes in the field of disabled pensions. In 2008 the Czech Republic carried out a health care reform, but in some regions reform was stopped, leading to medical expenses still being paid by the state rather than the patients. In contrast with Slovakia, the Czech Republic carried out reforms later, the duration was shorter, the intensity of reforms was lower, and there was less effectiveness in reducing the government budget deficit.

## 3.3. Euro adoption from the perspective of social needs

The issue of entry into the Eurozone, in addition to the political will of leaders and full compliance with the Maastricht convergence criteria also requires public support. In Slovakia, the euro was regarded as a tool to make the country's economy fully integrated into the EU's structure. In their eyes, entry into the Eurozone meant that Slovakia was further fixed in the developed economic structure. In the discussion on the issue of the introduction of the euro, the Slovak people were most concerned about how and when to meet the Maastricht convergence criteria, and rarely considered the negative impact of the introduction of the euro. The Maastricht convergence criteria even became an effective "whip" for the government to enforce budgetary discipline (Gonda, 2007b). According to the results of a survey conducted by pollster Focus in November 2008, about 60 percent of Slovak respondents had a positive attitude to the euro. In the process of "saying good-bye" to the Slovak Krone, the Slovaks did not show a significant "sentimental mood". For many Slovaks, the reputation of the euro was and remains more important than nostalgia for the Krone (Hospodářská Komora ČR, 2008).

The Slovak people actively supported joining the Eurozone as soon as possible and that was due to four factors. Firstly, after achieving independence in 1993, Slovaks committed to strengthening the international position and economic development of their nation in order to be on par with the developed Western countries. From 1994 to 1998, Slovakia gradually went into international isolation because of the authoritarian ruling style of the Mečiar government, and that negative experience subsequently made Slovaks all the more eager to integrate into the EU. It became one of the countries which most desired

to deepen cooperation with Western countries out of the states of Central and Eastern Europe. Secondly, the introduction of the Europe-wide used euro inspired Slovak national self-confidence. Joining the Eurozone earlier than neighbouring Central European countries made Slovaks very proud. Thirdly, historically the Slovaks were subject to Hungary, Nazi Germany and the Soviet Union, so national sovereignty does not affect Slovakia on the issue of entry into the Eurozone. Fourthly, the Slovak civil society was relatively weak, therefore non-governmental organizations were not able to promote and take part in necessary discussion on important civic issues such as entering the Eurozone. Therefore, Slovaks were insufficiently aware of the pros and cons of introducing the euro (Zachar, 2008).

By contrast, the Czech people did not share the Slovak enthusiasm for the introduction of the euro. Before the crisis in the Eurozone, they sustained the idea of introducing the euro after thorough preparations. The main reasons for which the Czechs did not hurry to the Eurozone also resided in four aspects. Firstly, the Czech nation is proud of its long history and splendid culture, so it is reluctant to give up even a measure of its national sovereignty. Secondly, the Czech civil society is more developed; there are many non-governmental organizations and independent organizations which actively participate in formulating national policy from different views and standpoints. Thirdly, Václav Klaus, Czech President from 2003 to 2013, who enjoyed a notable reputation in the domestic economic and political arenas, was a well-known eurosceptic. Fourthly, after the outbreak of the crisis in the Eurozone, economic uncertainty in the Eurozone increased, and the position of the euro weakened, which made the Czechs more hesitant to introduce the euro, fearing that the euro adoption would hurt the economy. At the beginning of the 2000s, more than half of the Czech population supported the euro adoption. Regrettably, the high public support was not properly used by the decision-makers. After 2005, the pros and cons regarding the introduction of the euro were almost equal. From 2010, the majority of the citizens were against the euro introduction. In May 2015, 24% of Czechs supported the euro adoption, with 69% of Czechs opposed to it. In the countries committed to introducing the euro, the Czech Republic has one of the most negative attitudes to the euro (Horáček, 2015).

## 4. The economic development of the Slovak Republic after the euro adoption, by comparison with the Czech Republic

Slovakia introduced the euro on 1 January 2009, at the beginning of the global financial crisis. At the end of 2009, the crisis in the Eurozone broke out. These two crises had a significant impact on Slovakia and the other Central European countries. The introduction of the euro made Slovakia lose its independent monetary policy and face more challenges from the perspectives of having more flexibility in the labour and product markets. While the other Central European countries could promote exports through the depreciation of their currencies, Slovak exporters could not benefit from a weaker currency. As Slovak products lost their competitive edge in price, exporters had to adjust by cutting production (mostly labour) costs and prices. As such, the Slovak economy declined sharply, and unemployment was rising faster than in other Central European countries. Since 2011, the currencies in the other Central European countries have appreciated towards the euro,

leading Slovakia to an accelerated growth in exports. It should be pointed out that as a member state of the Eurozone, Slovakia continues to bear a part of the cost of the Eurozone debt crisis: it participates in the financial aid programmes that currently provide assistance to Greece, Portugal, Ireland, Spain and Cyprus. Slovakia has taken part in almost all rescue programmes implemented in the Eurozone. Its total contribution exceeds €2.6 billion, or 3.6% of its GDP, and its total participation in the European Stability Mechanism accounts for 7.1% of its GDP (Kałan, Toporowski, 2015).

Slovakia has been in the Eurozone for seven years, compared to the Czech Republic which has postponed introduction of the euro; from this viewpoint it is important to answer the question: has the Slovak economic situation improved or worsened? We will address this issue in the following section.

### 4.1. Gross domestic product

In 2006 the Slovak National Bank stated in its analysis report that the contribution of the euro adoption on Slovak annual economic growth was about 0.7 percent, and long-term contribution rate would reach 7-20%. Obviously at that time the Slovak National Bank did not predict the global financial crisis would come.

The recession and recovery of the export-oriented Czech and Slovak economies are closely related to the demand of foreign markets, especially the demand of the larger EU market. Introduction of the euro in the period of economic crisis and the high exchange rate were unfavourable to Slovak exporters, as they could not obtain the support of national currency devaluation like the Czech exporters. Therefore, the degree of recession of the Slovak economy was larger than that of the Czech Republic in 2009. The reason for which the global financial crisis had a lesser impact on the Czech Republic's economy lies also in its relatively healthier financial system and better macroeconomic situation, with more balanced international payments, low inflation, higher economic growth, small proportion of foreign currency debt and lower household debt ratio etc. As the impact of the global financial crisis gradually subsided, the momentum of the economic recovery in Slovakia was stronger than that in the Czech Republic (**Table 1**).

**Table 1: Comparative Czech and Slovak real GDP growth rates during 2008-2014 (%)**

| Economy/year | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|---|---|
| Czech Republic | 2.7 | -4.8 | 2.3 | 2.0 | -0.9 | -0.5 | 2.0 |
| Slovakia | 5.4 | -5.3 | 4.8 | 2.7 | 1.6 | 1.4 | 2.4 |

Source: Eurostat (2015a).

Slovakia has not only maintained a positive growth trend from 2010 to the present, but according to the forecast report of the European Commission released in spring 2015, the economic growth rate of Slovakia will greatly exceed the EU average in 2015 and 2016 (European Commission, 2015, p. 154), and in 2016 the economic growth rate of Slovakia is

also expected to be the second best in the EU just after Luxembourg's and Ireland's and the same as Poland's. Under the influence of the Eurozone debt crisis and the stringent fiscal austerity measures taken by its government, from 2012 to 2013 the Czech economy fell by two percentage points, returning to the level it previously saw at the turn of 2009 and 2010. Before the end of 2013, as the economic situation of major trading partners improved, the new government took a series of measures to support economic growth, the National Bank executed a series of interventions in the foreign exchange market, strong growth gradually emerged in the automotive industry, therefore the Czech economy began to expand.

### 4.2. Foreign direct investment

Before joining the Eurozone, the Slovak National Bank pointed out that the euro adoption would have a positive impact on attracting foreign direct investment. There were two reasons: on one hand, transaction costs and exchange rate risks would be lower, on the other hand sovereign credit rating would be raised. In the context of the global financial crisis, foreign direct investment in both the Czech Republic and Slovakia declined in 2009. In 2010, due to the low level of foreign debt, and a better withstanding of the impact of the global financial crisis, the Czech Republic attracted foreign direct investment most successfully of the Central and Eastern European countries, accounting for 4% of GDP. By comparison, total foreign investment in Slovakia accounted only for 1% of GDP (TASR, 2011). In 2011, the total foreign investment in Slovakia was four times higher than in 2010. Andrea Gulová, the director of the section for direct foreign investment of the Slovak Investment and Trade Promotion Agency declared that, in addition to assets such as skilled workforce and the highest labour productivity of the Central and Eastern European countries, the introduction of the euro was an important reason for foreign investors to choose Slovakia (Rychtárik, 2012). Being affected by the Eurozone debt crisis, the Czech Republic attracted less foreign direct investment, which fell by 26% compared to 2010. In 2012, due to the foreign investors' expanded investment in Slovakia, in particular in the automotive industry, Slovakia managed to avoid a second wave of recession in the Eurozone. Introduction of the euro was one of the reasons why foreign car manufacturers decided to invest in Slovakia.

In spite of that, from 2009 to 2013, except 2011, the Czech Republic attracted much higher foreign investment per capita than Slovakia. In other words, introduction of the euro failed to help Slovakia surpass the Czech Republic in terms of attracting foreign investments.

### 4.3. The overall financial situation

In 2008, the Czech public debt-to-GDP ratio was 28.7%, and the Slovak public debt-to-GDP ratio was 28.2%, well below 60%, the reference value predetermined in the Maastricht convergence criteria. From 2009 to 2013, the Czech public debt-to-GDP ratio increased more than 10 percentage points, while the Slovak public debt-to-GDP expanded even more (19 percentage points) (**Table 2**). Nevertheless, these levels remain well below those recorded by the old member states (EU-15) and, besides, in 2014 the public debt-to-GDP ratio began decline in both countries.

**Table 2: Comparative Czech and Slovak public debt-to-GDP ratio during 2008-2014 (%)**

| Economy/year | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|---|---|
| Czech Republic | 28.7 | 34.1 | 38.2 | 39.9 | 44.6 | 45.0 | 42.6 |
| Slovakia | 28.2 | 36.0 | 40.9 | 43.4 | 52.1 | 54.6 | 53.6 |

Source: Eurostat (2015b).

According to Eurostat data, in 2008, the Czech Republic recorded a government budget deficit equal to 2.1% of GDP, while in the Slovak Republic the numbers went up to 2.4% of GDP; both of them were less than 3%, the reference value specified in the Maastricht convergence criteria. In 2009, the government budget deficit to GDP ratio in both countries increased dramatically, reaching 5.5% and 7.9%, respectively. Consequently, both governments adopted state budget austerity plans in order to reduce the government budget deficit. From 2010 to 2013, the government budget deficit to GDP ratio in both the Czech Republic and Slovakia sharply decreased, while in 2014 this indicator increased again, but only slightly (**Table 3**).

**Table 3: Comparative Czech and Slovak budget deficit to GDP ratio during 2008-2014 (% of GDP)**

| Economy/year | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|---|---|
| Czech Republic | 2.1 | 5.5 | 4.4 | 2.7 | 3.9 | 1.2 | 2.0 |
| Slovakia | 2.4 | 7.9 | 7.5 | 4.1 | 4.2 | 2.6 | 2.9 |

Source: Eurostat (2015b).

After the global financial crisis, the Czech Republic implemented a fiscal consolidation policy earlier and faster than Slovakia, so its public finance was improved more quickly and significantly, while at the same time, austerity policies, especially the earlier increased VAT hindered economic growth, resulted in the second economic recession after the Czech Republic's accession to the EU.

### 4.4. Inflation rate

Before entering the Eurozone, scholars in Slovakia and abroad worried that introduction of the euro would lead to the increase of inflation. In fact, with the exception of 2011-2012, Slovakia had no problems in this regard (**Table 4**). This situation was partly due to the weakening of the global economic activity and the consumer demand impact on the price development in Slovakia, partly explained by the government's appropriate measures to prevent the increase of inflation. The law on introduction of the euro expressly stipulated that any steep rise in price connecting with the transition to the new currency will be severely punished (Cvrček, 2010).

**Table 4: Comparative Czech and Slovak harmonised index of consumer prices (HICP) during 2009-2014 (%)**

| Economy/year | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|---|
| Czech Republic | 0.6 | 1.2 | 2.1 | 3.5 | 1.4 | 0.4 |
| Slovakia | 0.9 | 0.7 | 4.1 | 3.7 | 1.5 | -0.1 |

Source: Eurostat (2015c).

Between 2009 and 2010 the inflation in Slovakia was at a low level, owing mainly to weak domestic activity. Between 2011 and 2012 inflation sharply rose due to increases in indirect taxes and food prices, and higher oil prices respectively. In 2013 to 2014, the inflation rate declined because the domestic demand was weaker and food and fuel prices on global markets continued to be moderate. During 2009-2014 the evolution of the inflation rate in the Czech Republic was similar to that of Slovakia.

According to the Czech News Agency, from 2000 to 2014, the average inflation rate in the Czech Republic amounted to 2.2 percent, which in Slovakia amounted to 3.6 percent (ČTK, 2015). The evolution of the inflation rate in the Czech Republic and Slovakia was on the whole similar to that in the EU, but larger differences exist on the expenditures. Compared with the average level of the EU countries, the prices fell more in terms of clothing, footwear and home facilities in the Czech Republic and Slovakia, while expenses in housing, water, electricity and natural gas and other aspects significantly increased.

### 4.5. Unemployment rate

After joining the EU, with the expansion of the labour market and the enhancement of its flexibility, the Czech unemployment rate decreased obviously, from 8.3% in 2004 down to 4.4% in 2008. By contrast, high unemployment became a major issue for Slovakia, which was difficult to be resolved after it's independence in 1993, and only in 2008 the Slovak unemployment rate was reduced to below 10% (9.6%). After the global financial crisis, unemployment rose both in the Czech Republic and Slovakia. It should be mentioned that the unemployment rate in Slovakia is twice the level of that of the Czech Republic (**Table 5**). The euro adoption did not help Slovakia to reduce unemployment.

**Table 5: Comparative Czech and Slovak unemployment rate during 2009-2014 (percentage of the labour force)**

| Economy/year | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|---|
| Czech Republic | 6.7 | 7.3 | 6.7 | 7.0 | 7.0 | 6.1 |
| Slovakia | 12.1 | 14.5 | 13.7 | 14.0 | 14.2 | 13.2 |

Source: Eurostat (2015d).

According to figures released by the Czech Statistics Office in August 2014, the Czech Republic had the fourth lowest unemployment rate in the EU, after the Netherlands, Germany and Austria. In 2013 the Czech Republic had an average 7 percent unemployment rate, compared to the EU average of 11 percent (Lazarová, 2014). The unemployment rate in the Czech Republic decreased to 6.20 percent in June of 2015. The average unemployment rate in Slovakia, calculated by the Central Office of Labour, Social Affairs and Family amounted to 12.79 percent in 2014, down by 1.32 percentage points compared to 2013 (Minarechová, 2015). From 2009 to 2014 the average unemployment rate in Slovakia was always above the average unemployment rate of the EU and the Eurozone.

## 5. Conclusions

During the first years after independence, Slovakia lagged behind the Czech Republic in regard to political and economic changes and integration into the European economy. Later it was struggling to catch up with the Czech Republic. In 2004 they met in the Euro – Atlantic structures. When the two countries joined the EU, both of them were committed to introduce the euro as soon as possible in order to accelerate the European integration process, however their paths of preparing to join the Eurozone were different: Slovakia chose a smoother and shorter track, while the Czech Republic underwent a longer and more tortuous process.

Based on a strong political will, a wide range of social support and economic interests, Slovakia steadfastly struggled towards the political goal of entering the Eurozone as soon as possible. In order to achieve full compliance with the Maastricht convergence criteria, Slovakia implemented reforms in related fields very early, and achieved remarkable results. By contrast, with the government's replacement in 2006, Czech political elites gave up the strategic goals of joining the Eurozone in 2009-2010 and instead slowed down the pace of preparing to enter the Eurozone. In addition to the nominal convergence with the Eurozone, the Czech Republic placed more emphasis on real convergence. Czech leaders were worried about the perspective of introducing the common currency in the case of incomplete preparation, which would have been disadvantageous to domestic economy. Due to the lack of urgency in the implementation of the reforms, some of them were delayed or interrupted, and as such the desired results could not be achieved. With the arrival of the global financial crisis, the economic situation in the Czech Republic worsened and full compliance with the Maastricht convergence criteria became more difficult. The ensuing Eurozone debt crisis brought along a dramatic drop in the Czechs' confidence in the euro. It can be asserted that, in the process of preparing for the introduction of the euro, the Slovaks were definitely euro-optimists, while the Czechs became more and more eurosceptic.

After entering the Eurozone, the Slovak economy was deeply affected by the global financial crisis and the Eurozone debt crisis in different degrees, and the benefits of the euro adoption have not yet been fully displayed in seven years, which is why it is difficult to state whether introduction of the euro has improved Slovakia's economic status and improved its growth potential or not. However, by comparison to a series of macroeconomic indicators, we can still find that in terms of GDP growth Slovakia is better off than the Czech Republic. Although the Czech Republic could in times of global financial crises ease the short-term impact of weaker external demand by devaluating the national currency, from a long-term

perspective it is not conducive to improving the overall national competitiveness. From 2009 to 2014, labour productivity in Slovakia was improved significantly more than in the Czech Republic. According to Eurostat data, during 2009-2014, the Slovak GDP per capita increased from 11800 EUR to 13900 EUR, while the Czech GDP per capita grew only marginally, from 14100 EUR to 14700 EUR (Eurostat, 2015e). This indicates that the gap between the two countries has been continuously shrinking. In the field of attracting foreign direct investment, the two countries recorded different trends in different years. The overall financial results and employment situation are better in Czech Republic than in Slovakia. The evolutions of the inflation rate in the two countries are similar. In this context, we agree with the former governor of the Slovak National Bank, Mr. Šramko, who considers that the '*euro is not a panacea and the key of economic growth is to implement proper economic policies and continue to deepen reforms'*.

Although new EU member states are obliged to adopt the euro, besides the convergence criteria it is not specified when and under what conditions they should enter the Eurozone. Slovakia's experience in the Eurozone provides mixed feelings for other Central European countries and it can hardly help them make decisions about when to join the Eurozone. Since the beginning of the Eurozone debt crisis, the negative developments in the Eurozone caused Central European countries to adopt a more cautious and hesitant attitude to the euro. In view of the fact that some institutional changes have been taken to secure the future of the Eurozone, the economic situation in the Eurozone seems to be improving. Moreover, the Eurozone is still an attractive offer for Central European countries (Toporowski, 2015). Nevertheless, most of them, including the Czech Republic, will wait for a better time to adopt the euro, maybe after the shadow of the Eurozone crisis disappears.

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# *United by or Against Euroscepticism? An Assessment of Public Attitudes towards Europe in the Context of the Crisis*

Edited by Alina Bârgăoanu, Loredana Radu and Diego Varela.
Cambridge Scholars Publishing, Newcastle upon Tyne, UK, 2015,
ISBN (13): 978-1-4438-8090-9, 248 pp.

**Book Review** by **Anca Ulman**[1]

***Abstract***: *Published as a collection of academic articles under the coordination of PhDs Alina Bârgăoanu, Loredana Radu and Diego Varela, the volume "United by or Against Euroscepticism? An Assessment of Public Attitudes towards Europe in the Context of the Crisis" draws a comprehensive image of the public attitudes concerning the European Union, with an emphasis on what has been known as Euroscepticism. Doubled by different perspectives and supported by multiple sources, the phenomenon is coloured in balanced tones from an unbiased light. Euroscepticism and the broader context of the leadership crisis in the EU are permanently mirrored in this book as a connection between the two is sought. The argumentation can be followed logically and chronologically, as it gradually unveils EU public support from the union level to the national level and from the beginning of the crisis towards its expected end.*

***Keywords***: *EU, Euroscepticism, crisis, multifaceted perspective*

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### Text and context

The volume coordinators have proved long theoretical and practical involvement in the issues related to EU-scepticism, Euroscepticism and populist discourse in the EU that took the form of research, academic work, paperwork, conference participation and project management. *United By or Against Euroscepticism? An Assessment of Public Attitudes towards Europe in the Context of the Crisis*, is the result of collaborative work between the book coordinators and 17 co-authors with academic experience and research interests in different areas belonging to the social sciences field (Communication, Sociology, Public Affairs, Political Science, Philosophy, Media studies). It is the variety of points of view their specializations infer and their international background that support a round, complete view over the concepts.

The book was published in 2015, at a time when public attention was captured by multiple events with European resonance and when the media focus was on the word "crisis" and its derivatives. The economic difficulties imposed by the crisis of the early 2000s were merely

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the trigger for consequences coming with the speed of a waterfall and the steep incline was favoured, if not formed, by the poor stability of the European project. The "unity in diversity" slogan became obsolete as the reality was rather represented by disunity. The heterogeneous composition of the European Union was proving its weaknesses.

Formulated as a question, the title is relevant for the both sides of Euroscepticism, gathering the defenders as well as the opponents of the European project under the same analysis. The term "united" might seem strange or unfitted when the subject covers the growing feeling of discontent regarding the EU membership. In fact, what we believe its use implies is the common spirit laying behind all the European nations, the sense of similarity and belonging exceeding any formal association, the connected history. The explanation is probably stated by the authors themselves: "we are critical pro-Europeanists and we believe that criticizing the EU does not equal contesting the European project" (p. 11).

The introductory chapter of the book asks the question in the title: *United By or Against Euroscepticism?*. Although the rhetorical character of the question stays to the end of the chapter, the reader is empowered to give his/her own answer. Support-questions are formulated and answered in a manner that gradually reveals the most important aspects of Euroscepticism.

*"Why and how did this happen? (…) What has changed then in just seven years, since the beginning of the crisis? (…) What is the future of the EU? (…) Do Eurosceptics speak with one (European) voice?"* (pp. 2- 11)

Chronologically-oriented and logically-connected, they are responsible with setting the context for the phenomena described by the contributors. Moreover, answering these questions means adjusting the position of the three authors who, far from engaging into technical argumentation, plead the symbolic dimension of the EU.

**Contributions and contributors**

Before describing how the EU-related attitudes are approached throughout the chapters, it is important to get better acquainted with the co-authors and the book design.

Various contributions draw the lines of Euroscepticism and offer a multifaceted view on the events crossing it. Judged by content management, the book describes the larger image before focusing on the national or regional realities. From the North to the South or from the West to the East, Europe is portrayed in the colours of the Eurobarometers and seen through utilitarian lenses before the attention is captured by the local nuances. Time-wise, the content is characterized by a future-oriented perspective, seeking to anticipate trends and foresee changes generated by the multi-layered crisis. The concept of Euroscepticism benefits from a comprehensive analysis, from its roots in 1988 towards its massive use nowadays.

The list of contributors is defined by heterogeneity, a feature proportionally transmitted to the chapters of the book. With authors originating in or professionally assigned to Russia, Turkey, Romania, Ukraine, Slovenia, Poland, The Netherlands, Italy or Spain and proving expertise or interests in EU studies, media studies, political science, philosophy, communication studies or sociology, the book proves the intention of objectivity.

**The East, the West, the Rest**

The subject is formally structured into four sections coinciding with the previously described logic. *"Euroscepticism – cross-national perspectives"*, the first section of the book, considers the EU's actual situation from the inside, emanating from the national spheres and spreading throughout the union. What this chapter suggests is that EU legitimacy often becomes an economic matter:

*"With Europe fighting the echoes of the economic crisis, criticism towards Brussels is higher than ever. Many Europeans resent the EU for continued rounds of austerity measures and for its perceived lack of democratic legitimacy."* (p. 18)

Research demonstrated that even traditionally Euro-optimistic countries (the Mediterranean and the Eastern European countries) reversed their views when cuts in payments and rises in tax were in sight. On the other hand, a divide between creditor and debtor countries was recorded both in the public discourse at the national level and in the surveys addressed to the people, fuelling the opposition towards the EU and creating the premises for an Utilitarian type of Euroscepticism.

*"Western Europe: Growing Discontent and Placid Euroapathy"* gives the name of the next group of contributions. While the title concentrates the attention over a certain part of the EU, the articles evaluate the public attitudes toward the Union in an individual manner, considering each of the recorded societies in their own frame. The findings prove that Euroscepticism is not an absolute value with precise characteristics, but rather a concept prone to adaptation; although it might register similar levels of intensity in distinct countries, the causal system behind it can be fundamentally different. According to one of the contributors, the EU is perceived as a "foreign embassy" in the UK and, at the same time, as an "enlightened despot" in Spain. The reasons and the outcomes of this situation are subject to interpretation in the first article of the chapter. The Dutch have their own representations of the ruling Union:

*"If one wants to explain Euroscepticism in the Netherlands, it stands to reason that development of the present financial turmoil, labour tensions caused by ordinary workers' fear of losing their jobs to Eastern European immigrants, the overall rise of populism and, in that perspective, the falling participation in formal politics, and the expectation of diminishing welfare in the near future should be considered."* (p. 90)

The situation on the Eastern front works under a different set of rules. Although not isolated from the growing Euroscepticism, the people in this part of the continent (with an emphasis on Romanians, Slovenians, Turkish and Ukrainians) can still see and feel the benefits of EU membership. *"Eastern Europe: De-mystification of Europe"* gathers various sets of research directed towards sketching the reflection of the EU to the population.

The young generation in Romania is considered under the magnifying glass in an attempt to figure the future of the Union by taking into account the present image of the EU. Contrasting perspectives contribute to an accurate representation of the EU, while the young are portrayed according to the opinions they expressed during the interviews. In a similar manner, the Slovenian case is characterized by findings in the national surveys. From 2009 to 2012, Euroscepticism pulse rates are connected to EU identification, with perception of the EU and

European citizenship feeling as quantifiable measurements. When candidate countries are in sight, the visibility of EU-related events bears high importance to the integration mechanism. For Turkey and Ukraine, Euroscepticism has particular meanings to be understood in their own environment.

The final considerations are anticipatory and suit the logic of the book. As unexpected as it might seem, Euroscepticism has its own bright side and the theory behind this view proves it right. Far from suggesting the imminent collapse of the EU, the authors assigned to the chapter *"Euroscepticism and the Future of the European Union"* invite to awareness and deep knowledge of the concept. The separation between the ideologically and tactically-motivated Eurosceptic actions is not just one of the scholars' whims, but the imperative step in prevention.

**Conclusions**

Without having an exhaustive aim, *"United By or Against Euroscepticism? An Assessment of Public Attitudes towards Europe in the Context of the Crisis"* manages to formulate a complete analysis of the current reflection of the EU to its own citizens. Theoretical references and statistical data support the objectivity of the interpretations, which can easily be extended to further analyses. The personal background of the contributors explains their preference for a certain area of interest and it becomes visible in style, without interfering with the results. If comparison is allowed, this book bears resemblance to the EU configuration: it is the result of team work, but the actors express themselves according to their own identity.