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A DEVELOPMENTAL PERSPECTIVE ON CONFLICTS IN SOUTH-EASTERN EUROPE

Valentin Cojanu*
Alina Irina Popescu

Abstract** : *Most economists still thought in the 1980s that development could be accurately depicted in the variants of GDP indicators. Then, the United Nations Development Programme's broader perspective on development enriched the analytical process with an approach based on human capabilities and social context that are needed for a decent standard of living. The world-wide states of conflict in the contemporary international economy, including the post-communist evolutions in the Balkans have made clear that the realm of human development goes further. The analysis evolves against the background of economic, social and political evolutions in the former communist countries of South East Europe. The research expands the core concept of "weak states" to understand the transformations of national economies and to suggest policy actions for a prosperous area of development in the Balkans.*

Key words: *Development; security; South East Europe; post-communist evolution*

Introduction

For most part of its intellectual history, the concept of "development" had an exclusive economic content given by discussions about indicators that measure variations in GDP (gross domestic product) or variants of that notion. The fact that "mesmerized by the rise and fall of national incomes (as measured by GDP), we tend to equate human welfare with material wealth" (UNDP 2006: p. 263) has become widely controversial at least since 1990 when the United Nations Development Programme (UNDP) began devising alternative measures for a better understanding of well-being. This effort is principally grounded on Amartya Sen's insight that "development

can be seen as a process of expanding the real freedoms that people enjoy" (quoted in UNDP 2006: p. 263). Accordingly, UNDP publishes a human development index (HDI) that provides a composite measure of development which includes aspects of education, health, and material prosperity. Parallel initiatives have considerably enlarged the perspective from which development is assessed. A good discussion thereof provides Gadrey (2004) who enlists several noteworthy researches such as those on the Index of Social Health, the Index of Economic Well-Being, and the Genuine Progress Indicator. All these initiatives converge to pinpoint one major finding: some countries rank far below their income rank in terms of overall development, while

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others invert this relationship, and so support the criticism against the limits of GDP measurements.

The exclusive emphasis on the *economic content* of development has had a collateral effect in concealing the interdependence between development and the incidence of conflict evolutions, whether of social, political or military nature. More precisely, it is the direction of causality, i.e. whether conflict reduces economic well-being or economic well-being reduces conflict, which has received undeservedly scant attention. Kant (1795) left an indelible imprint in favour of the latter with his remark that the manifestations of international disputes "can be long delayed by the stimulus to trade." Since then, famous politicians (e.g. Richard Cobden, Cordell Hull, Robert Schumann, Jean Monnet) and economists (e.g. Vilfredo Pareto) reiterated that credo (Schiff and Winters 1997), although in a more simplified version of the helpful impact of regional economic integration in reducing security tensions between neighbouring countries. It is widely accepted that stability offers countries a greater capacity to cooperate and be preoccupied by the economic prosperity of their citizens. Cooperation stimulates economic prosperity and decreases the chances of conflict.

Obviously, it has been taken for granted that the absence of conflicts is conducive to development too, and for good reason. No progress can be imagined under circumstances of hardship. However, the goal of this paper is to renew the interest in this matter and to bring arguments to justify greater research efforts in that direction.

The case of the post-communist European evolutions, and particularly those in South East Europe (SEE), provides rich sources of evidence to make this case

compelling. The 2006 HDI hierarchy ranks the SEE countries either as "high human development" (Slovenia, Croatia, Bulgaria, Romania, Bosnia and Herzegovina) or "medium human development" (Macedonia) territories even if, as this paper shows, they constitute object of study for applying such disparaging analytical concepts as "weak states" or "defective democracies." The paper explains why the contemporary transformation of the security environment calls for a more explicit, ever broadened, analytical account of the security dimension of development.

The remainder of the report is divided in three parts. The first part describes the major turns in explaining the concept of "development". The second part extends the case of the impact of security on development for SEE countries. Particular attention is given to the characteristics of "weak states" and the way they affect the progress in policy and institutional reforms undertaken by those economies. The third part concludes and discusses possible extensions of these analytical issues for the research agenda on development.

The evolving nature of the concept of "development"

Nowadays, it is widely acknowledged that the definition of "development", which signifies progress in human well-being, is only to an insufficiently extent equated with economic growth measured by indicators of absolute or relative income. Indeed, a certain income level is one important threshold to achieve such progress, but not the only one, for two main reasons: first, because the average income fails to capture its distribution across households or individuals and second, there are many other important aspects of human

well-being, such as people's health, education or their security that may be inadequately represented by accounting instruments like the GDP measure, for good or bad.

In order to provide a comprehensive view on development, since 1990, the United Nations Development Programme (UNDP) has published a series of Human Development Reports (HDR) that estimate a simple composite index, the human development index (HDI), as a measure of human development along three dimensions: living a long and healthy life (measured by life expectancy); being educated (measured by adult literacy and enrolment at the primary, secondary and tertiary level); and having a decent standard of living (measured by purchasing power parity, PPP, income). In this representation, human development is a process of enlarging people's choices by expanding human capabilities and functioning. If these basic capabilities are not achieved, many choices are simply not available and many opportunities remain inaccessible.

The HDI has served well for over a decade the need to have an improved measure of development, because unlike the GNP, it includes some qualitative aspects that reflect better the real purpose of development. However, the mixed post-communist evolutions in SEE which combined democratic reforms with warfare atrocities made the same UNDP (1999) soon recognize that the concept of human development is much broader than the HDI. By consequence, it developed the concept of "human security" to encompass not just the achievement of minimal levels of material needs, but also the absence of severe threats to them of an economic or political kind: job security, income security, health security, environmental security,

security from crime, all emerging concerns of security all over the world.

The definition has been expanded by the Commission on Human Security (CHS): "Human security in its broadest sense embraces far more than the absence of violent conflict. It encompasses human rights, good governance, access to education and health care, and ensuring that each individual has opportunities and choices to fulfil his or her own potential... Freedom from want, freedom from fear and the freedom of the future generations to inherit a healthy natural environment these are the interrelated building blocks of human and therefore national security. (CHS 2003)

The achievement of the *development objective* defined as the enlargement of human choices is adversely affected by such *individual / community insecurity* because it cuts life short and thwarts the use of human potential. Narayan-Parker and Raj (2000) argue that if one takes a more utilitarian approach to the definition of development that it furthers human happiness insecurity has severe adverse affects. In consultations with poor people, the *need for security* comes up as one of their foremost priorities, even in peaceful societies. Thus, *individual and community security are an important dimension of development*. Their absence even if progress is being made on all other aspects of development seriously detracts from development achievements.

Beside the changes in the concept of "development", the matter is further compounded by the evolution of "security" as a concept, gaining a multidimensional shape. If during the Cold War the concept of security had only a military-political component, today it has gained new dimensions: social, environmental,

educational and economic. These are reunited under the non-military aspects of security and comprise everything from macroeconomic stability to environmental health. Developed and less developed countries alike have been in recent years more vulnerable to perceptions of heightened insecurity as a result of the rise of complex forms of serious crime. The Council of Europe (2005) describes a contemporary society considerably different from its past manifestation following a dramatic shift from traditional security risks (e.g. terrorist attacks, organised crime, drug trafficking, inter-ethnic conflict) to new threats and risks such as international mafia groups, international terrorism, human trafficking, transnational crime, infringement of basic human rights. Each of these aspects is emphasizing different facets of security's influence on development. The challenge is to integrate these influences into a coherent analytical framework which should deliver better results about the level of development at a certain moment in time. A list of three sorts of research bottlenecks is illustrative about the difficult task ahead.

One difficulty is the result of insufficient data collection, in comparable terms, about the multifarious developmental dimension of security. It suffices to compare the above list of security threats with the current treatment in such authoritative texts as the HDR. Current estimates (UNDP 2006) include data from surveys which mostly were conducted beginning with 1992 and refer to limited though valuable sets of information including refugees, armaments, and victims of crime (property crime, robbery, sexual assault, assault, and corruption). Even if other analyses do consider the aspect of "security" when discuss the issue of development such as the Index of Social Health (see Gaudrey 2004)

or the Bertelsmann Transformation Index (BTI) (Berlesmann Stiftung 2005) they prove unable to control for that variable for much of their findings.

A second impediment arises from insufficient efforts to discern among the relevant dimensions. Most dedicated analyses Bank of America World Information Services; Business Environment Risk Intelligence (BERI) S.A.; Control Risks Information Services (CRIS); Economist Intelligence Unit (EIU); Euromoney; Institutional Investor; Standard and Poor's Rating Group; Political Risk Services: International Country Risk Guide (ICRG); Moody's Investor Services usually do not go beyond the subject of assessing political or "geopolitical" risks in an international context, whereby the associated risk is understood as the risk of loss from economic activity in a given country caused by changes in a country's political structure or policies, such as tax laws, tariffs, expropriation of assets, or restriction in repatriation of profits.

The economic factor has become to be considered of primary importance also by the military alliances and the international organizations. For example, NATO, mainly a military alliance, regards economy as a very important factor when discussing accession with its partner countries. Another aspect refers to the effects of economic sanctions on development and security. These have been used with a very high frequency from 1990 onwards and although they are accompanied by the perception that they are punitive they rarely attain their true purpose. However they do represent an important aspect of economic security and their effects could be seen on SEE region. For instance, the economic sanctions imposed on Belgrade following the Serbian aggression in

Kosovo have blocked major commercial routes and have brought tremendous losses to the neighbouring countries. More so the Serbian people have been placed under huge restrictions while Slobodan Milosevici, the one initially targeted by the embargo, remained in power in defiance of international community, running for office and contesting the democratic election results in the fall of 2000. Another example of the destructive nature of the economic sanctions on development is the one imposed on Macedonia by Greece in 1994 that brought the country on the verge of economic collapse. Economic sanctions have created great internal problems in the states they have been oriented towards, often degrading the human rights situation even more and affecting the most disadvantaged categories, women, children and those dependent on the safety-net provided by the humanitarian agencies.

A third challenge is provided by the ever variable linkages between the triad security-stability-economy in the case of military dimension. The political organization of a country is fundamentally a quest for its security and development. A state can cover the costs of military expenditures when its economy is strong and healthy. Moreover, it is easier to spend money on military purposes in the light of a more or less realistic threat from outside. Decisions to spend money on defence are taken easily when there is pressure among states to do so. Financial sources can be used to cover the costs of weapons imported from abroad (Knorr 1956).

The military dimension of security is thus far from having disappeared, although the role of this factor is changing. It is very clear that the new stage of international relations diminishes the role of the hard dimension of security (military) and replaces

it by a soft dimension. This is linked not only with changes to the new security system, but also with changes to the nature of threats, which are now located more often within the national borders of the state, rather than being external threats from elsewhere. In this respect, the SEE context provides an illustrative case study.

The concept of "Weak states": an application to SEE

One practical result of those theoretical controversies consists in the emergence of the paired concepts of "weak states" and "human security". According to a special report (Krastev 1999) commissioned by the UNDP concerning the issue of human security in South-East Europe, human insecurity in the region is best explained and confronted in terms of the 'weak state'. Similar findings (e.g. Popa) state clearly that SEE is a region characterized by a high level of human insecurity as a result of long-term processes of failed modernization under communism and poor post-communism recovery. This literature offers *three major arguments* in favour of a security-based approach to development in SEE:

1. Insecurity characterises transition. The process of transition in former-communist countries in the past decade can be seen as essentially a human security issue a dramatic trade-off between the basic social security provided by the old regimes and the political freedom and new social and economic opportunities provided by the new regimes. It is the rise of insecurity that characterises the transition in the eyes of the ordinary citizens of SEE.

2. Promoting human security is the best way to prevent future conflicts. Some people react to insecurity with passivity, others with aggression, and some with both.

Previous strategies that focused exclusively on growth and neglected human security notably failed to prevent further violence. The reconstruction of SEE should therefore be viewed not just as a post-conflict activity but also as a strategy for conflict prevention.

3. *Weak states offer little human security.* In the case of Kosovo, Bosnia and Herzegovina and Albania, the major security provider is not the national state but the international community. In these circumstances, the human security approach becomes a promising framework for reconstruction policies.

The new approach retains the ambiguity about the circular causation as it offers no explanation whether weak states find themselves exposed to an imbalance between threats and capacities because they have few of the latter, or because a prolonged and debilitating imbalance between threats and capacities weakens a state. Does weakness yield insecurity, or vice versa? This time however, the issue of causality loses much of its analytical relevance because the concept of "weak states" in itself represents an end-product, a qualitative interpretation of the level of development.

A *weak state* is defined not merely as one with inefficient institutions but one that is unable or unwilling to enforce rules or to implement consistent policies. Weak states may also experience, though not necessarily in that sequence, low levels of tax collection, may be unable to deliver public goods and services, or may suffer from a proliferation of paramilitary groups and have high levels of crime and corruption.

The insecurity of the region has a multidimensional social perception (UNDP 1997): *Physical insecurity the threat of war:* the region's states currently enjoy greater security than their citizens; *Political*

insecurity internal threats: social evolutions in the region will probably depend less on external threats than on internal political conditions; *Social and economic insecurity:* many people face very severe decline in income and in their quality of life, as their economies become less competitive and their governments cut expenditure on health and education; *Overall insecurity weak states and illiberal democracies:* weak states are the major causes of current insecurity and will also be major obstacles to the success of the Stability Pact. The neo-liberal orthodoxy of state withdrawal is mostly blamed for the transformation of the communist welfare state into the post-communist 'farewell state'.

The introduction of the new analytical instrument is about to change the standard perspective on the mutual influence between democracy and market economy which underpins most of the studies in the field (e.g. Bertelsmann Stiftung). As it is acknowledged by Krastev et al. (1999), "the countries of SEE may have adopted the formal principles and institutions of democracy but they have achieved democracies not of citizens but merely of voters." Their economies have key areas of instability that make them vulnerable to shocks, threatening human insecurity, and which may obscure apparent oases of continued progress. Table 1 offers a view of the human security situation in these countries, based on assessments by contributors from each country.

The economic and social post-communist evolutions undermined the SEE countries' efforts to escape the "weak" qualification and made them undergo significant setbacks.

From the development stage perspective the region is divided into smaller sub-areas, like the Western and the

Table 1 Human security in South-East Europe after the Kosovo war

Country	Political Security	Economic Security	Overall Human Security
Albania	1 ↑	1 ↑	1 ↑
Bosnia & Herzegovina	1 ↑	1	1
Bulgaria	2 ↑	2	2
Croatia	2	2	2
FYROM	2 ↓	2 ↓	2 ↓
Montenegro	1	2 ↓	2 ↓
Romania	2	2 ↓	2
Serbia	1 ↓	1 ↓	1 ↓

1 = low level; 2 = middle level; 3 = high level;

↑ improving trend; ↓ deteriorating trend;

Source: Krastev (1999)

Eastern Balkans. The first sub-area comprises the countries of former Yugoslavia, countries torn either by war or severe ethnic tension and which need emergency assistance. In the Former Republic of Yugoslavia even before the Kosovo conflict, living standards had been hit by falling output and the disintegration of markets in the former socialist system. Several years of sanctions and other circumstances aggravated by ethnic tensions had further undermined security. As a result, many people became refugees and lost their homes, their jobs, and their sense of belonging. There are now huge numbers of refugees scattered over all the former Yugoslav republics and represent one of the most vulnerable groups. The second sub-area refers to Romania and Bulgaria, countries that have stayed out of armed or violent conflict but have suffered a great deal of collateral damage and need a different kind of assistance.

Since national governments within SEE have different definitions of *poverty* and use different poverty lines, it is not possible to compare poverty levels between one country and another. However, the poor in the SEE region do share common features which starkly contrast with the standard representation: many of them are well-educated, relatively highly skilled,

knowledgeable, and sometimes employed. This makes poverty in the SEE region quite distinctive, and particularly appropriate for a policy approach based on human security.

In addition to income poverty, the SEE region suffers from 'human poverty'. *Malnutrition* is one direct measure of the intensity of human poverty. This has been aggravated by declining real incomes which have forced people to consume cheaper and less nutritious food. *Educational attainment* has also been eroded by economic and social setbacks. Education systems are declining in quality and offering a curriculum often irrelevant to present-day needs. As a result, people have lower standards of education and fewer opportunities for employment. Large reductions in real public expenditures in many SEE countries are affecting the ability of schools to retain both students and teachers. Many kindergartens have also closed. In addition, the conflicts in Bosnia and Herzegovina and Kosovo have severely disrupted the education of thousands of children in many countries.

The region is still in transition and the states are undergoing radical transformation encompassing all its aspects, political, military, economic, human, social, environmental, and informational. The perspective from the security aspects of

development cannot but enhance the quality of policy recommendations for an accelerated recovery.

Concluding notes and research agenda

This paper puts forward a two-pronged conclusion. Firstly, recent conceptual developments and empirical evidence underscore the increasing importance of security aspects for understanding development in contemporary societies. The particular case of the former communist countries from SEE is suggestive to extend the discussion on the synthetic concept of "weak states" which is conceived to reflect the combined influences of security threats on development. Given the existing shortcomings in providing a comprehensive account of a country's well-being, this paper attempts to provide an improved understanding of the SEE context. Secondly, the arguments therein presented emphasize that a better management of security issues at national level, often in non-lethal manifestations, is a key ingredient in

defining a country's development status nowadays. A case in point is that the apparent favourable of SEE countries along the HDI ranking, on a par with developed Western European countries for example, is highly contrasted by the innumerable security shocks they had and still have to face on the way to a market, democratic economy. It is similarly suggestive that their very post-communist evolutions emboldened analysts to think of the security aspects of development.

The need to integrate those investigative problems What should the analytical measurement of a "weak state" consist in? What weights should the different components of overall security be given in different developmental contexts? What is the renewed role of state in the light of the proposed approach? into any future research agenda on development has so become compelling. Interdisciplinary approach of disciplines like economics, political science, sociology, military, or security intelligence should be promoted and new indicators of political management should be devised.

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ORIGIN, DEVELOPMENT AND PERSPECTIVES FOR THE *HUMAN SECURITY* CONCEPT IN THE EUROPEAN UNION

Karina Paulina Marczuk¹

Abstract. *The wide economic support and an attempt to guarantee safety, which the European governments are trying to provide for their citizens, are reasons why the European Union explores new directions of conducting common policies for which the most important is the human being and his needs. The European security policy and the new concept of human security could be one example of the EU's new behavior. Taking into consideration the previous attempts at developing security theories in Europe and other countries, it is possible to state that the modern human security doctrine in the EU could be followed by creating a special kind of European corps which would be a new tool for ensuring security where it would be necessary to provide it European Gendarmerie Forces (known as EGF or EUROGENDFOR). The aim of this article is to show the impact of the evolution of the modern security theories for creating a human security doctrine in the framework of the European Union. Moreover, genesis and activity of the EGF are presented and the author is trying to answer the question: could the EGF be a tool of human security in the EU?. Finally, a couple of proposals for the future development of the European security policy are mentioned.*

Key words: *European Union, human security, European security, European Gendarmerie Forces*

Introduction

It is a common belief that governments of the European Union (EU) member countries develop more social and humanistic policy towards their nations than the states in other parts of the world, such as United States, Japan, etc². The wide economic support and an attempt to guarantee safety, which the European governments are trying to provide for their citizens, are reasons why the European

Union explores new directions of conducting common policies for which the most important is the human being and his needs. The European security policy and the new concept of human security within it could be one example of the EU's new behavior. Taking into consideration the previous attempts at developing security theories in Europe and other countries, it is possible to state that the modern human security doctrine in the EU could be followed by creating a special kind of

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² See further: D. Milczarek, *Pozycja i rola Unii Europejskiej w stosunkach międzynarodowych. Wybrane aspekty teoretyczne*, Warszawa 2003, p. 153-168.

European corps which would be a new tool for ensuring security where it would be necessary to provide it European Gendarmerie Forces (as known as EGF or EUROGENDFOR). The aim of this article is to show the impact of the evolution of the modern security theories for creating a *human security* doctrine in the framework of the EU. Moreover, genesis and activity of the EGF are presented and the attempt to analyze if the EGF could be a tool of human security in the EU. Finally, a couple of proposals for the future development of the European security policy are mentioned in order to encourage readers to reflect on it.

1. Origin and evolution of the security thinking in Europe: from the Copenhagen School to the human security theory

Firstly, when the concept of *human security* is discussed it is necessary to remember previous attempts, from the Cold War era, to change the security concept. Peter J. Katzenstein, an American security scientist, briefly noticed that: "The end of the Cold War has put new national security issues beside the long-standing fear of a nuclear war between the two superpowers and their preparations for large-scale conventional wars: ethnic conflicts leading to civil wars that expose civilian populations to large-scale state violence; an increasing relevance of economic competitiveness and, relatedly, of the «spin-on» of civilian high technology for possible military use; increasing numbers of migrants and

refugees testing the political capacities of states; threats of environmental degradation affecting national well-being; and perceived increases in the relevance of issues of cultural identity in international politics, including human rights and religion"³. Moreover, the Cold War restricted significantly the development of the security branch of science and in that period the authors mainly focused on the arms race between the two most important opponents United States and the Soviet Union. Just a few of them were courageous enough to explore new approaches to security studies soft security studies, which were popular mainly in Europe.

The first sign of change in the thinking about security was a remarkable article published in the early 80s by Richard Ullman, entitled *Redefining Security*, in which the author "(...) made a general case for broadening the concept of security"⁴. Moreover, it was stated that threats to security were increasing, particularly non-military threats. These threats, argued Ullman, threaten the political freedom of governments and any single man, and could make him poorer as well⁵. Despite the fact that it was a very interesting idea, it seems that the time was too early for this kind of thesis and so Ullman`s article wasn't treated seriously by American and Russian scientists.

The next step towards a vital breakthrough in thinking about security was a publication by Jessica Matthews in a prestigious American magazine *Foreign Affairs*⁶. The author "(...) highlighted the need for states to give proper concern to the

³ P. J. Katzenstein, *Introduction: Alternative Perspectives on National Security* [in:] P. J. Katzenstein (ed.), *The Culture of National Security*, <http://www.arts.cornell.edu/tmp.php/publications/culture%20national%20security.doc>, (23.11.2006).

⁴ P. J. Katzenstein, *Introduction...*, *op. cit.*

⁵ See: R. Ullman, *Redefining Security*, "International Security", vol. 8, no. 1, Summer 1983, p. 133.

⁶ Further see: J. Mathews, *Redefining Security*, „Foreign Affairs“, vol. 68, no. 2, 1989, p.162-177.

newly apparent threats posed by environmental problems such as ozone depletion and global warming⁷.

In this moment, it is necessary to emphasize that the way of understanding security concept had changed definitely in the consequence of the collapse of the Cold War bipolar system. Traditional, narrow, concentrated only on military aspects, security definitions were followed by modern, broad approaches, proposed by famous theorists in International Relations such as Barry Buzan, Stephen Walt, Edward Kolodziej and others⁸. The previous, narrow security concept tended to focus only on military capabilities and the use and control of force by states⁹. The new approach to security treated it broadly, including such aspects as political, social, environmental, cultural, information, but also military factors. The most famous promoter of this attitude was an English theorist of International Relations, above-mentioned Barry Buzan, the founder of the so-called *Copenhagen School* of security.

"Barry Buzan trail-blazed this approach in the early 1990s, but it fully crystalised later in the decade, when he teamed up with Ole Waever and Jaap de

Wilde in producing the groundbreaking work *Security: A New Framework for Analysis*¹⁰. This new direction was called for the first time as the *Copenhagen School* of security in 1994 by Bill McSweeney, one of the scientists who together with Buzan participated in *Security Research Group* in Copenhagen, Denmark. Thus, this complex security theory includes all works of the researchers who had joined the mentioned Group, which published very well-known books that are today fundamental for broad security studies¹¹. The most important lesson learned by the Group was that nowadays the targets of threats are both traditional, nation-states and others participants of International Relations. Secondly, the modern threats to security are both external and internal. These statements were proved by *Copenhagen School* researchers through the analysis of the conflicts in former Yugoslavia in 90s¹². Moreover, broad security conception is followed by the modern *human security* theory which is a consequence of Barry Buzan`s approach to the security matters.

The term *human security* became popular after being used in the *United Nations Development Program* (UNDP)

⁷ P. Hough, *Who's Securing Whom? The Need for International Relations to Embrace Human Security*, "Stair 1", no. 2, 2005, p. 73.

⁸ Further see: S. M. Walt, *The Renaissance of Security Studies*, "International Studies Quarterly", vol. 35, no. 2, June 1991, p. 211-239; E. A. Kolodziej, *Renaissance in Security Studies? Caveat Lector!*, "International Studies Quarterly", vol. 36, no. 4, December 1992, p. 421-438; E. A. Kolodziej, *What Is Security and Security Studies? Lessons from the Cold War*, "Arms Control", vol. 13, no. 1, April 1992, p. 1-31; B. Buzan, *People, States, and Fear: The National Security Problem in International Relations*, London 1983; O. Waever et al., *Identity, Migration, and the New Security Agenda in Europe*, New York 1993; M. T. Klare, D. C. Thomas (ed.), *World Security: Challenges for a New Century*, New York 1994, and others.

⁹ See: S. Walt, *The Renaissance of Security Studies...*, op. cit., p. 212.

¹⁰ P. Hough, *Who's Securing Whom?...*, op. cit., p. 74; for Barry Buzan work further see: B. Buzan, O. Waever, J. de Wilde, *Security. A New Framework for Analysis*, Boulder 1998.

¹¹ See: O. Wćver, P. Lemaitre, E. Tromer (ed.), *European Polyphony: Perspectives beyond East West Confrontation*, London 1989; B. Buzan, M. Kelstrup, P. Lemaitre, E. Tomer, O. Wćver, *The European Security Order Recast: Scenarios for the Post-Cold War Era*, London New York 1990; B. Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, Boulder 1991; O. Wćver, B. Buzan, M. Kelstrup, P. Lemaitre et al., *Identity, Migration and the New Security Agenda in Europe*, London 1993. About history of the Copenhagen School see: W. Kostecki, *Europe after the Cold War. The security complex theory*, Warsaw 1996, p. 15-21.

¹² About Yugoslavian conflicts see further: M. Waldenberg, *Rozbicie Jugosławii. Jugosławiańskie lustro międzynarodowej polityki*, Warszawa 2005; W. Konarski, A. Koseski, *Balkany. Etnokulturowe podłoże konfliktów*, Pułtusk 2006.

Report in 1994¹³, however it is believed that the idea for this sort of security appeared previously. Sabina Alkire noticed the fact that “as far back as June 1945, the U.S. Secretary of State reported this to his government on the results of the San Francisco Conference: «The battle of peace has to be fought on two fronts. The first is the security front where victory spells *freedom from fear*. The second is the economic and social front where victory means *freedom from want*. Only victory on both fronts can assure the world of an enduring peace. (...) No Provisions that can be written into the Charter will enable the Security Council to make the world secure from war if men and women have no security in their homes and their jobs»”¹⁴. Overall, the above-mentioned UNDP Report had only developed the idea from 1945.

The authors of the Report highlighted the fact that “the concept of security has for too long been interpreted narrowly: as security of territory from external aggression, or as protection of national interests in foreign policy or as a global security from the threat of a nuclear holocaust. It has been related more to nation-states than to people. (...) Forgotten were the legitimate concerns of ordinary people who sought security in their daily lives. For many of them, security symbolized protection from the threat of disease, hunger, unemployment, crime, social conflict, political repression and environmental hazards”¹⁵. Consequently, it

was distinguished in two trends within the modern approach to security in the Report: “(...) First, safety from such chronic threats as hunger, disease, repression [it means *freedom from want*]. And second, it means protection from sudden and hurtful disruptions in the patterns in daily life (...) [*freedom from fear*]”¹⁶. Bearing in mind these two aspects of human security, economic, food, health, environmental, personal, community and political dimensions of security were highlighted¹⁷. Furthermore, four essential characteristics for human security were noted: *universalism* of that conception, the components of it are interdependent, it is easier to ensure it through *early prevention* and the human security concept is *human-centred*¹⁸. The last value, human-centred aspect, gave a reason why some of the scientists used to call human security theory *human-centric security*¹⁹.

As far as *human security* is concerned, the theory was developed in further documents by the United Nations Development Program. For instance, the 1999 UNDP *Human Development Report* affected mainly globalization, but also human security by “giving it [means United Nations System] greater coherence to respond to broader needs of human security”²⁰. Consequently, in 2000 former United Nations Organization (UN) Secretary General Kofi Annan in his *Millenium Report* stated that humankind should be the most important point of

¹³ United Nations Development Program, *Human Development Report 1994*, New York 1994.

¹⁴ S. Alkire, *A Conceptual Framework for Human Security*, „CRISE Working Paper”, no. 2, 2003, s. 13.

¹⁵ United Nations Development Program, *Human Development Report 1994...*, op. cit., p. 22.

¹⁶ *Ibidem*, p. 23.

¹⁷ See: *ibidem*, p. 24 25.

¹⁸ See: *ibidem*, p. 22 23.

¹⁹ See further: P. Kerr, *The evolving dialectic between state-centric and human-centric security*, “Australian National University Department of International Relations Working Paper”, no. 2, Canberra 2003.

²⁰ United Nations Development Program, *Human Development Report 1999. Globalization with a Human Face*, <http://hdr.undp.org/reports/global/1999/en/>, p. 111, (15.11.2006).

interests for all the countries and international organizations, particularly for the UN, which would have to guarantee security for every man²¹. In addition, the UN emphasized the fact that human security could not be equated with *human development*. "Human development is a broader concept defined (...) as a process of widening the range of people's choices. Human security means that people can exercise these choices safely and freely (...)"²².

One of the first who proposed the idea of extended security study, including human security concept, was Professor Emma Rothschild from Harvard University, US. In her precious article from 1995 entitled *What is Security?*, Rothschild explores the origin of the human security idea as the process of widening *national security* conception. "The ubiquitous idea, in the new principles of the 1990s, is of security in an «extended» sense. The extension takes four main forms. In the first, the concept of security is extended from the security of nations to the security of groups and individuals: it is extended downwards from nations to individuals. In the second, it is extended from the security of nations to the security of the international system, or of a supranational physical environment: it is extended upwards, from the nation to the biosphere. The extension, in both cases, is in the sorts of entities whose security is to be ensured. In the third operation, the concept of security is extended horizontally, or to the sorts of security that are in question. Different entities (such as individuals, nations, and «systems») cannot be expected to be secure or insecure in the same way; the

concept of security is extended, therefore, from military to political, economic, social, environmental, or «human» security. In a fourth operation, the political responsibility for ensuring security (or for invigilating all these «concepts of security») is itself extended: it is diffused in all directions from national states, including upwards to international institutions, downwards to regional or local government, and sideways to nongovernmental organizations, to public opinion and the press, and to the abstract forces of nature or of the market"²³. To sum up, the human security concept being a consequence of the development and evolution of the Barry Buzan approach was proved by Rothschild. According to her, human security is a very important part of the national security as well. Moreover, bearing in mind all above-mentioned theories, it is possible to conclude that post-Cold War conception of security was called broad, wide, complex or extended, but the main idea was always the same after the collapse of the bipolar system, security should be understood as covering all the aspects of our daily life. Thus, the human security theory could emerge and became popular in the 90s, particularly in Western European countries (EU), Canada, Japan and the Third-World.

2. Towards the *human security doctrine of the European Union*

Professor Michael T. Klare, a famous American scientist, at the beginning of the 90s predicted that in the next couple of years the international security environment will be dominated by interstate conflicts.

²¹ K. A. Annan, "We the People". *The Role of United Nations in the 21st Century. Millenium Report of the Secretary General of the United Nations, United Nations 2000*, <http://www.un.org/millennium/sg/report/index.html>, (12.01.2007).

²² United Nations Development Program, *Human Development Report 1994...*, op. cit., p. 23. For further studies on human development see: "Man & Development", *Center for Research in Rural and Industrial Development, Chandigarh India*, vol. 26, no. 2, June 2004.

“Preventing, controlling, and resolving these conflicts, and impeding the spread of advanced weaponry will, therefore, constitute the principal world security tasks of the 1990s and beyond”²⁴ warned Klare. European Union had to face these new challenges by participating actively in many peacekeeping operations abroad (mainly in former Yugoslavia) or distributing humanitarian aid (activity of Humanitarian Aid Department of the European Commission ECHO). Through this practice, human security concept could become a point of interest for the EU. Moreover, through all mentioned efforts the European Union was able to create successfully its new foreign policy (the EU`s *soft power* policy)²⁵.

For the last few years the human security concept has changed rapidly. Firstly, the physical safety of the person was focused on, after that all military and non-military threats for the nations and for the individual were affected. Moreover, the states which had developed human security in their foreign policy divided in two parts consequently. The first one entails with *freedom from fear* (supported mainly by Canada and Norway) and the second one with *freedom from want* approach (Japan and the Third World). “Japan (...) stresses the importance of development issues and «human dignity» and has been critical of Canada's approach to human security,

which it sees as associated with humanitarian intervention”²⁶.

Academics from different countries have done research on that conception, being in favor of the Canadian (so-called narrow approach) or Japanese (broad approach) school of human security. Gary King and Christopher Murray develop the Japanese *freedom from want* point of view: “We define an individual's human security as his or her expectation of years of life without experiencing the state of generalized poverty. Population human security is then an aggregation of individual's human security”²⁷. However, Caroline Thomas writes that *freedom from want* entails not only basic material needs, but also human dignity and democracy²⁸, these are the values which are supported by European Union. For Canadian researcher Fen Olser Hampson “the concept of «security» can be defined as the absence of threat to core human values, including the most basic human value, the physical safety of the individual”²⁹. Thus, protection of the vital values such as the personal safety of the individual human is treated by Canadian professor of political sciences Robert Bedeski as primarily, a narrow definition of human security³⁰.

On the other hand, recently some academics called for a return to a comprehensive security concept, which includes such important questions as “(...)

²⁴ M. T. Klare, *The new challenges to global security*, “Current History”, vol. 573, no. 92, April 1993, p. 155.

²⁵ About *soft power* conception see further: J. S. Nye, Jr., *Soft Power: the means to success in world politics*, New York 2004; L. Chouliaraki (ed.), *The soft power of war*, Philadelphia 2007.

²⁶ A. Mack, *The Concept of Human Security* [in:] M. Brzoska, P. J. Croll, *Promoting Security: But How and For Whom?* Contributions to BICC`s Ten-years Anniversary Conference, Bonn International Center for Conversion, 10.2004, p. 47.

²⁷ G. King, Ch. J. L. Murray, *Rethinking Human Security*, “Political Sciences Quarterly”, vol. 116, no. 4, 2001/2002, p. 592.

²⁸ See: C. Thomas, *Global governance, development and human security the challenge of poverty and inequality*, London 2000, p. XI.

²⁹ F. O. Hampson, J. Daudelin, J. B. Hay, T. Martin, H. Reid, *Madness in the Multitude: Human Security and World Disorder*, Ottawa 2002, p. 4.

³⁰ See: R. Bedeski, *Preface to a Theory of Human Security*, <http://web.uvic.ca/polisci/bedeski/humansecurity.pdf>, (12.11.2006), p. 3.

economy, ecology, demography, communication and the development of civilization and technology³¹. Moreover, "(...) both the Commission on Global Governance and UNDP (...) have called for a broadening of the traditional concentration on state security to embrace the dimensions of human security and the security of the planet"³².

To conclude, it is the human who is affected by all the above-mentioned theories as the object of the modern security concern. Barry Buzan called this process *macro-securitisation*: „By macro-securitisation I mean a securitisation aimed at, and up to a point succeeding, in framing security issues, agendas and relationships

on a system-wide basis. Macro-securitisations are based on universalist constructions of threats and/or referent objects"³³. Moreover, wide research on human security provoked security experts to generate a new branch in security studies study on human security³⁴. Table 1. provides a brief comparison of mentioned approaches to security study, including traditional, military thinking security, the *Copenhagen school* by Barry Buzan and the most modern one human security. Finally, taking into consideration all the above-mentioned ideas, it was the European Union which had to seek its way among these both, Japanese and Canadian, attitudes of modern understanding human security.

**Table 1. A Matrix of Security Studies by Roland Paris.
What is the Source of the Security Threat?**

	Military	Military, Non-military or Both
States	National security (conventional realist approach to security studies)	Redefined security (f.ex. environmental and economic [cooperative or comprehensive] security)
Security for Whom? Societies, groups and individuals	Intrastate security (f.ex., civil war, ethnic Conflict and democide)	<i>Human security</i> (f.ex., environmental and economic threats to the survival of societies, groups and individuals)

Source: R. Paris, *Human Security...*, op. cit., p. 98.

³¹ A. D. Rotfeld, *Introducion. The International System in Transition*, "SIPRI Yearbook", Oxford 1995, p. 1 - 10.

³² T. Debiel, *The Need for an Integrated Security Concept* [in:] M. Brzoska, P. J. Croll, *Promoting Security...*, op. cit., p. 52.

³³ B. Buzan, *The „War on Terrorism“ as the new „macro-securitisation“?*, *Conference International Relations Theory, Unipolarity and September 11th: Five Years On*, Norwegian Institute of International Affairs (NUPI), Oslo 3 4.02.2006, p. 1.

³⁴ See further: K. Bajpai, *Human Security: Concept and Measurement*, „Kroc Institute Occasional Paper“, vol. 19, no. 1, 08.2000, p. 2; R. Paris, *Human Security. Paradigm Shift or Hot Air?*, „International Security“, vol. 26, no. 2, Fall 2001, p. 88.

As far as human security in the European Union is concerned, it is believed that a wide variety of European *soft power* factors, such as democracy, promotion of the human rights and cultural, social, economic values, etc.³⁵ were reasons why the EU started to be interested in human security in both, Canadian and Japanese, approaches. Dan Henk, in the papers of prestigious American military magazine *Parameters* notices the fact that through being interested in human security “the Europeans are looking at the world and their role in it in a significantly new way”³⁶. Furthermore, escalation of the intra and interstate conflicts, especially in the Balkans, and the need for development of its foreign and security policy finally encouraged the EU to be engaged in international peacekeeping operations. Previously, this European activity was restricted only to participation in international civilian police missions, but since 2004 the EU possesses European Gendarmerie Forces, a new tool to provide order and security in the post-conflict environment. However, P. H. Liotta and Taylor Owen highlighted the fact that the European Union had tried to implement some elements of human security earlier. “Collectively, documents and policies regarding the development of a European Common Foreign and Security Policy (CFSP) emphasize the necessity for Europe to have the ability for independent action. Especially with the 2001 «Helsinki Declaration» and the call for a 60,000-member European Rapid Reaction Force, Europe has recognized a need for independence from powerful allies (such as the United States) and from powerful

alliances (such as NATO). Moreover, the evolution of the European defense «responsibility» has focused on the so-called Petersberg tasks, which concentrate on humanitarian and crisis response capabilities that nonetheless fall short of a fullscale intervention force with the ability to sustain combat over prolonged time. As drawn from Article 17.2 of the Treaty of the European Union, and originally stated in the (now defunct) Western European Union Petersberg Declaration of June 1992, these responsibilities entail «humanitarian and rescue tasks, peacekeeping tasks, and tasks of combat forces in crisis management, including peacemaking»³⁷. Despite this fact, only afterwards European Security Strategy in 2003 and *A Human Security Doctrine for Europe: The Barcelona Report of the Study Group on Europe's Security Capabilities* in 2004 finally proved that the EU “(...) has declared inherent security values in both promoting the rights of nation-states and in protecting the rights of individual citizens”³⁸.

On the other hand, some isolated European countries, being members of the European Union, were previously interested in the human security idea. Therefore, Austria, Greece, Ireland, the Netherlands, Norway and, after accession to the EU, also Slovenia decided to join the Canadian initiative from 90s - *The Human Security Network*. “The Human Security Network (HSN) is a group of like-minded countries from all regions of the world that, at the level of Foreign Ministers, maintains dialogue on questions pertaining to human security. (...) The Network has a unique inter-regional and multiple agenda perspective with strong links to civil society and academia. The

³⁵ See: J. S. Nye, Jr., *Soft Power. Jak osiągnąć sukces w polityce światowej*, Warszawa 2007, p. 112-117.

³⁶ D. Henk, *Human Security: Relevance and Implications*, “Parameters”, Summer 2005, p. 96.

³⁷ P. H. Liotta and Taylor Owen, *Sense and Symbolism: Europe Takes On Human Security*, “Parameters”, Autumn 2006, p. 86-87.

³⁸ *Ibidem*, p. 87.

Network emerged from the landmines campaign and was formally launched at a Ministerial meeting in Norway in 1999 (...)”³⁹. The development of the human security idea in above-mentioned countries led the European Community to take an official stance and prepare official documents concerning human security.

In the first document, „*A Secure Europe in a Better World. European Security Strategy*”, the term *human security* has not appeared yet. Here there are mentioned wider human security necessities, concentrated on human needs. “In contrast to the massive visible threat in the Cold War, none of the new threats is purely military, nor can any be tackled by purely military means. Each requires a mixture of instruments. (...) Regional conflicts need political solutions, but military assets and effective policing may be needed in the post conflict phase. Economic instruments serve reconstruction, and civilian crisis management helps restore civil government. The European Union is particularly well equipped to respond to such multi-faceted situations”⁴⁰. The clear guideline to implementation of human security to EU *acquis communautaire* is given by the latter document, *A Human Security Doctrine for Europe*.

The mentioned record was written by the *Study Group on Europe's Security Capabilities* and presented to the European Union High Representative for Common Foreign and Security Policy Javier Solana on 15th September 2004⁴¹. “The report labels

the mounting conflicts in various parts of the world as a source of new threats to the security of EU citizens”⁴². The aim of the report is to establish a *human security doctrine* for European Union. For that reason, the concept of human security is understood by the EU as “(...) freedom for individuals from basic insecurities caused by gross human rights violations”⁴³. Furthermore, the EU human security doctrine should include three core elements: a set of seven rules for participating in operations abroad; establishing European Human Security Response Forces (HSRF); the new legal framework for human security activity of EU.

As far as the first element is concerned, there are seven principles for peace intervention: “(...) the primacy of human rights, clear political authority, multilateralism, a bottom-up approach, regional focus, the use of legal instruments, and the appropriate use of force. The report puts particular emphasis on the bottom-up approach: on communication, consultation, dialogue and partnership with the local population in order to improve early warning, intelligence gathering, mobilisation of local support, implementation and sustainability”⁴⁴. It is necessary to note that these rules relate to rules adopted earlier by other international organizations, such as the United Nations or the North Atlantic Treaty Organization (NATO). Table 2. presents a very interesting set, based on principles of

³⁹ *The Human Security Network (HSN)*, <http://www.humansecuritynetwork.org/network-e.php>, (20.05.2007).

⁴⁰ „*A Secure Europe in a Better World*”. *European Security Strategy*, 12.12.2003, p. 5 12.

⁴¹ See: *Europe needs a human security doctrine - and a new civil military force*, *The London School of Economics and Political Sciences*, http://www.lse.ac.uk/collections/pressAndInformationOffice/newsAndEvents/archives/2004/Europe_needs_HumanSecurity_Doctrine.htm, (12.05.2007).

⁴² S. Ogata, *Human Security: Theory and Practice*, “*Stair 1*”, no. 2, 2005, p. 16.

⁴³ *A Human Security Doctrine for Europe: The Barcelona Report of the Study Group on Europe's Security Capabilities*, 15.09.2004, Barcelona, p. 5.

⁴⁴ *Ibidem*.

all above-mentioned institutions, which was drawn up by the Centre for Strategic Studies at Victoria University of Wellington, New Zealand and concerns criteria for humanitarian intervention.

policymakers in Western Europe⁴⁵.

The second point of the human security doctrine for the EU Human Security Response Forces, according to the Barcelona Group should consist of "(...)

Table 2 Criteria for Humanitarian Intervention.

1. The threat or occurrence of grave and large -scale violations of human rights.
2. Clear and objective evidence of such a threat or occurrence.
3. The government of the state is unwilling or unable to take remedial action.
4. There is clear urgency.
5. The use of force should be the last resort.
6. The purpose is clearly explained to publics and the international community.
7. The purpose is limited to stopping the human rights abuses.
8. The action is supported by those for whom it is intended.
9. There is support of regional states.
10. There should be a high probability of success.
11. There should be a mapped -out transition to post-conflict peace building.
12. The use of force should be proportionate to achieving the se goals.
13. International law on the conduct of war should be followed during the action.

Source: G. Wilson-Roberts (ed.), *Human intervention: definitions and criteria*, „CSS Strategic Briefing Papers”, vol. 3, no. 1, 06.2000, p. 2.

To conclude, the lesson learned is that the humanitarian intervention could be used only in the case of severely abused people, but force may be used as a last resort. Consequently, the criteria meets only the formations which do not use or minimally use force, such as the European Gendarmerie Force, which will be discussed later. Therefore, it seems important that the HSRF "(...) would have a heavy civilian specialist component skilled in conflict prevention and social reconstruction. Even its standing military component would be heavily imbued with a human security ethic. While it still is too early to anticipate the appearance of such a European force, the idea itself resonates powerfully among intellectuals and

15,000 men and women, of whom at least one third would be civilian (police, human rights monitors, development and humanitarian specialists, administrators, etc.). The Force would be drawn from dedicated troops and civilian capabilities already made available by member states as well as a proposed «Human Security Volunteer Service»⁴⁶.

The last, but not least element of the doctrine should be established by the EU in order "(...) to govern both the decision to intervene and operations on the ground. This would build on the domestic law of host states, the domestic law of sending states, international criminal law, international human rights law and international humanitarian law"⁴⁷.

⁴⁵ D. Henk, *Human Security...*, op. cit., p. 95.

⁴⁶ A *Human Security Doctrine for Europe...*, op. cit., p. 5.

⁴⁷ *Ibidem*.

3. Is the European Gendarmerie Force a *human security* tool of European Union?

As far as the EU's *Human Security Doctrine* is concerned, it is possible to state that the European Union is seriously taking into consideration the creation of a special corps devoted to ensure basic *human security*. Previously the EU participated in international civilian police operations abroad and some of its member countries participated in *Association of the European and Mediterranean Police Forces and Gendarmeries with Military Status FIEP*⁴⁸. Finally, the European Union decided to establish the European Gendarmerie Force (EGF/EUROGENDFOR). What is more, because of the EGF tasks and responsibilities it is possible to state that this force would be used as a tool to provide human security.

Primarily, the European Union participated in civil crisis management response operations and distributed humanitarian aid which encouraged that organization to find its place in the international security environment⁴⁹. The military peacekeeping activities of countries

such as United States or organizations such as the North Atlantic Treaty Organization or the Organization for Security and Co-operation in Europe (OSCE) provoked the EU to develop its capabilities in civil aspects of crisis management operations by providing humanitarian aid, training local police forces and supporting democratic election. For these reasons, the organization needed to develop corps which would be able to deal with these tasks. The previous successful activities of the Mediterranean constabulary forces (so-called *gendarmerie-type forces or carabinieri/gendarmerie like forces*), which means police forces, but with military status, such as the *French Gendarmerie Nationale*, the Italian *Arma dei Carabinieri*, the Spanish *Guardia Civil*, the Portuguese *Guarda Nacional Republicana* and the Romanian *Jandarmerie* led the European Union to the conclusion that the organization could face the above-mentioned challenges by establishing these kinds of forces. Table 3. presents a set of modern Mediterranean constabulary forces which exist in EU countries, supported by some numerical data.

Table 3. Comparison of the number of soldiers in traditional armies and gendarmes in the selected European countries between 1980 and 2000.

Country	Armed Forces (AF)/ Constabulary forces	1980	1990	2000
Austria ⁵⁰	AF/	50 300	42 500	35 500
	Gendarmerie	11 000	11 794	15 751
France	AF/	494 730	461 250	294 430
	Gendarmerie Nationale	78 000	91 800	94 950

⁴⁸ About FIEP see further: F. Dien, *Vers une Europe des gendarmeries: la FIE*, „Défense Nationale”, no. 5, 1996; K. P. Marczuk, *Mediterranean constabulary forces: theory, practice, solution?*, „Romanian Military Thinking”, 1/2007; K. P. Marczuk, *Position of Gendarmeries in Internal Security Systems: The Mediterranean Countries and EU. Paper for World International Studies Conference, Bilgi University, Istanbul, Turkey 23 - 25.08.2005*, <http://www.bbn.gov.pl/index.php?lin=5&last=167&idtext=357>, (29.05.2007).

⁴⁹ See: P. Cornish, G. Edwards, *Beyond the EU/NATO dichotomy: the beginnings of a European strategic culture*, „International Affairs”, vol. 77, no. 3, 2001, p. 587-603.

⁵⁰ In Austria gendarmerie had existed till 2005, when it was united with civilian police.

Spain	AF/ Guardia Civil	342 000 64 000	274 500 63 000	166 050 75 000
Holland	AF/ Royal Dutch Guard	114 980 3 900	102 600 4 700	51 940 5 200
Portugal	AF/ Guarda Nacional Republicana	59 540 13 000	68 000 19 000	44 650 25 300
Italy	AF/ Arma dei Carabinieri	366 000 84 000	389 600 111 400	250 600 110 000

Source: D. Lutterbeck, *Blurring the Dividing Line: The Convergence of Internal and External Security in Western Europe*, "European Security", vol. 14, no. 2, 06.2005, p. 246.

Previously, some EU member countries tried to co-operate in this field in the framework of the FIEP. Then, FIEP was used as a basement of the soon-to-be established EGF. Moreover, the contingents of the new European corps were planned to be sent to the areas of conflict. Stabilization of the post-conflict environment by common European gendarmerie contingents was perceived by the EU as a chance to be more valuable to the US which are undeniably leaders in peacekeeping⁵¹.

The first step in establishing the future European Gendarmerie Force was to found the *European Rapid Operation Forces* EUROFOR (15th of May 1995), which consisted of gendarmeries from France, Spain, Holland and Portugal. Later, the summit of the Council of the EU in Nice in 2000 and the meeting of the ministers of defense from France, Spain, Italy, Portugal⁵² and Holland 17th of September 2004 in Noordwijk (Holland) led to signing a common *Declaration of Intent* and, consequently, establishing the European Gendarmerie Force⁵³.

Furthermore, the use of the EGF units during operations out of the EU is highlighted in the 2004 *Declaration of Intent*. The scope of EUROGENDFOR is explained as follows: "In order to contribute to the development of the European Security and Defence Policy and the creation of an area of freedom, security and justice, France, Italy, the Netherlands, Portugal and Spain, all of whom possess police forces with a military status capable of carrying out, in accordance with the Nice European Council conclusions, police missions through substitution and/or strengthening of local police, propose the following: to provide Europe with a full capability in order to conduct all police missions in crisis management operations within the framework of the Petersberg Declaration, with particular regard to substitution missions; to offer a multinational operational structure to those States which intend to join EU operations; to participate in initiatives of international organizations in the area of crisis management. To that end, the above-mentioned countries have

⁵¹ See: D. T. Armitage Jr., A. M. Moisan, *Constabulary Forces and Postconflict Transition: The Euro-Atlantic Dimension*, „Strategic Forum”, nr 218, 11.2005, p. 1 2; D. Armitage, *The European Gendarmerie Forces: An American Perspective*, „Eurofuture”, Summer 2005.

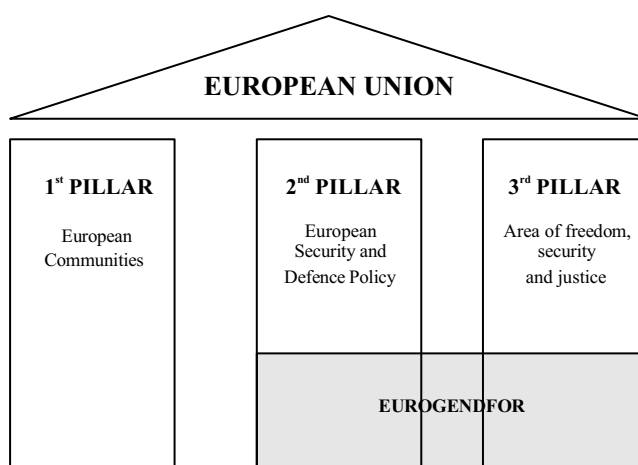
⁵² A. Paris, *La Gendarmerie Europea*, „RID”, no. 4, 2005, p. 60.

⁵³ See: *Gendarmes de la paz*, „Revista Española de Defensa”, nr 10, 2004; *EGF Declaration of Intent*, Noordwijk 17.09.2004, <http://www.eurogendfor.org/DECLARATION%20OF%20INTENT.htm>, (15.01.2007).

decided to create a gendarmerie force, called EUROGENDFOR (EGF) which will be operational, pre-organized, robust and rapidly deployable, in order to perform all police tasks⁵⁴. Picture 1. presents the place of the EGF in the law system of the EU, according to the *Declaration of Intent*. The most important conclusion is that the EGF is not only a military formation (is not subordinated only to 2nd pillar), but also fulfills civilian police tasks (from 3rd pillar).

co-operation with local or international police units), the military disengagement phase (the EGF supports civilian authorities)⁵⁵. All these tasks are linked with co-operation with and for civilians and involve no use of force. What is more, the European Gendarmerie has a capability to send to the place of conflict 800 gendarmes in 30 days. Furthermore, the Western European Union (WEU) is strongly interested in activity of the

Picture 1. The place of the EGF in the law system of the EU.



Source: 1. Scope. *EGF Declaration of Intent...*, op. cit.

The *Declaration* noticed the fact that the EGF could cover all phases of operations abroad as well. Thus, it entails three phases: the initial phase (units of the EGF perform the police tasks), the transitional phase (the EGF is able to facilitate co-ordination and

EUROGENDFOR. In 2006 the institution decided that EGF should give a report to the Assembly of WEU about its activity every year⁵⁶. Moreover, in the WEU document no. A/1928. *The role of the European Gendarmerie Force* it is stated that: "Among

⁵⁴ S1. Scope. *EGF Declaration of Intent...*, op. Cit.

⁵⁵ See: 2. Missions. *EGF Declaration of Intent...*, op. cit.

⁵⁶ Assembly of Western European Union, Document A/1928. *The role of the European Gendarmerie Force. Report submitted on behalf of the Defence Committee by Baroness Taylor of Bolton, Rapporteur (United Kingdom, Socialist Group) and Ignacio Cosidó Gutiérrez, co-Rapporteur (Spain, Federated Group)*, 21.06.2006, http://www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2006/1928.php?PHPSESSID=f3137d60...#P218_34390, (15.10.2006).

the capabilities required for substitution assignments are, *inter alia*: protection of people and property and riot control: the risk of situations getting out of control with a resulting need for supporting military forces must be taken on board; public surveillance, the capacity to enter and understand the territory, the gathering of information; expertise in the area of crime-fighting and criminal investigation, particularly with a view to combating terrorism and organized crime and dealing with war crimes. This capability covers the detection of offences, the tracing of offenders and their transfer to the appropriate judicial authorities. In this context, strong synergy needs to be developed between the actions undertaken to support the rule of law and those taken by the police mission, in order to avoid a legal vacuum⁵⁷.

Having a wide spectrum of capabilities, the EGF can realize elements of human security policy of the EU. Moreover, it is necessary to mark the fact that during the process of creating the EGF the *European Security Strategy* was being prepared (2003) as well. What is more, in the mentioned document the authors said that security is the first condition to development the one which is linked directly with human security aims⁵⁸. Therefore, according to the *Strategy*, the EUROGENDFOR is the EU's tool to provide order and security during peacekeeping operations.

4. Conclusion

After the collapse of the Cold War system the security researchers started to define security widely, including its non-military aspects (*Copenhagen school*). Extending the security concept led to

establishing the theory of human security and its two dimensions: Canadian (*freedom from fear*) and Japanese (*freedom from want*).

The first one, the Canadian approach, is connected with the forces such as police forces with military status gendarmeries, because they use little or no force (especially during peacekeeping operations). Therefore, the constabulary forces could become a tool for providing human security, like the European Gendarmerie, because the European Union is trying to reinforce its soft power policy through developing human security doctrine. Moreover, the unique capabilities of the Mediterranean constabulary and, consequently, the EGF could be very attractive partner for the US army which conduct a policy of foreign interventions and are still seeking a solution to this dilemma: how to stabilize effectively a post-conflict environment?... Perhaps it will be the EGF, as a practice tool, and the human security theory, as a theoretical support, which would allow the US to deal successfully with foreign campaigns. What is interesting, Americans highlighted the historical background: "the eschatological advantage is that Europeans conceive the fight between good and evil in the world, as well as their political «mission» and approach to it, in ways that substantially diverge from those of the United States. Due to its own more recent and brutal history, the Old World has drawn its lessons. Thus, Europe is beyond automatic reliance on brute force; it shies away from direct confrontation in favor the collegial; it seeks the mantle of legitimacy conferred by multilateral versus bilateral solutions; it hands out generous amounts of united

⁵⁷ §.66, *ibidem*.

⁵⁸ See: „A Secure Europe in a Better World”. *European Security Strategy...*, *op. cit.*, p. 13.

foreign aid; and it is *always* careful to stress the need for sustainable growth and a fair division of wealth among nations as the keys to international stability and respect for human rights⁵⁹.

Moreover, the future of EUROGENDFOR is difficult to predict. Will this initiative develop swiftly? What countries will join it? At the moment, Romanian, Polish and Turkish gendarmeries are applying for membership in the organization, but it is obvious that neither Poland nor Turkey will be accepted, as Poland does not possess a constabulary (Polish Military Police is applying) and Turkey is not a member of the EU. In the case of Romania it is possible to say that *Jandarmerie* could soon become a member of the EGF - the country is a EU member and its formation is a police force with military status. What is more, the Romanian gendarmerie for the last few years has

prepared itself to accession by participating in twinning projects held by the Spanish *Guardia Civil* and the French *Gendarmerie Nationale*.

Last, but not least, the human security doctrine perception by the new EU member countries would affect an EU policy. "So the Union, still carrying its historical baggage, had to find a role in an international system whose character was as yet unknown"⁶⁰. Romanian author Viorica Zorița Pop conducted a profound study on the former communist countries and the impact of human security for them⁶¹. According to her, new member countries, which in past were communist, today are familiar with human security and support this idea. The best example could be Slovenia, who actually is a member of the *Human Security Network*. The future will show whether other EU countries will join this initiative.

⁵⁹ B. Tigner, *The Fruit of EU Homeland Security: Military Policy* [in:] J. L. Clarke (ed.), *Armies in Homeland Security. American and European Perspectives*, Washington D.C 2006, p. 232.

⁶⁰ A. Deighton, *Foreign Policy and the European Union's Security Strategy* [in:] A. Deighton, V. Mauer (ed.), *Securing Europe? Implementing the European Security Strategy*, Zürich 2006, p. 26.

⁶¹ See further: V. Z. Pop, *Human Security in transition societies*, București 2003.

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THE REGIONAL COOPERATION IN THE ENLARGED EUROPEAN UNION - TOWARDS A UNITED AND MORE COMPETITIVE EUROPE

Malgorzata Dziembala*

Abstract.** *The enlarged European Union encompasses regions characterized by a diversified level of socio-economic development and innovation. The Community cohesion policy contributes to a harmonious and balanced development of the European territory, and the assistance in support of cross-border cooperation, as well as transnational and interregional cooperation is offered through the Community Initiative INTERREG III. The article presents the innovation potential of the border regions of the Western and Southern Poland. It is not sufficient in the light of the presented indicators, and it is necessary to take up measures aiming at its development. The Polish accession to the EU has brought along new possibilities in terms of supporting cross-border cooperation, as well as transnational and interregional one, in the years 2004-2006. Also, in the new programming period for the years 2007-2013, emphasis has been given to the need for promoting this direction of activity, while pointing at the same time to the importance of innovation, since innovation constitutes a key factor of economic growth and of enhancing competitiveness of European regions.*

Key words: *Cohesion policy, INTERREG Initiative, European Territorial Cooperation, region, innovation*

INTRODUCTION

The process of European integration incorporating an ever growing number of states requires taking up of coordinated measures with a view of reducing the existing barriers and developing a cohesive EU territory. On the 1st of January, 2007, new member states have been welcomed, namely: Romania and Bulgaria. Moreover, there are other countries that also apply for membership. The Community takes action with a view of supporting cooperation between regions belonging to various

countries. This cooperation is particularly essential due to the benefits that are reaped from its fulfillment, including those that are felt by border regions of the new EU member states which aim at stimulating the regions' socio - economic development, inter alia, by assisting in the construction of modern and innovative economic structures. This direction of activity development has been reflected in the implementation of a set of instruments pertaining to the Community's cohesion policy.

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The aim of the article is to present, on the basis of selected indicators, the diversification in terms of innovation potential between the border areas of the Western and Southern Poland and the regions of neighbouring countries. In this context, attention has been drawn to the implementation in Poland of the Initiative INTERREG III, as it was done in the years 2004-2006, as well as to the main experiences that have been gained as a result of such implementation.

Moreover, the new objective of the European cohesion policy has been discussed, i.e. the European Territorial Cooperation, which is to take effect in the years 2007-2013. The programmes activated as part of this objective shall also support activities directed at the development of innovation and at bringing about the economy of knowledge.

The innovation potential of the border regions of Poland, Germany, the Czech Republic, and Slovakia

Europe is formed by a mosaic of regions, characterized by diversified levels of socio-economic development, and as it is, by different growth dynamic. Several of these regions are struggling with problems ensuing from their distinct location with respect to the central regions i.e. these regions, where the greatest development potential (also in the sphere of innovation) is concentrated. By analogy, the border regions of the Western and Southern Poland¹, as well as the neighbouring regions of Germany, the Czech Republic, and Slovakia, all of them, encounter their own distinct problems. However, the greatest cross-border divergence in the sphere of innovation is encountered on the Polish-German border (see Table 1).

¹ The regions that qualify for receiving assistance from the EU funds as part of the cross-border cooperation programmes are, by and large, the NUTS 3 level regions. However, due to the lack of statistical data as regards innovation that may be relevant for this level of territorial units, the analysis has been conducted with respect to the border regions classified as the NUTS 2 units. In the case of Poland, the analysis relates to the regions classified as voivodeships.

Table 1 Selected indicators describing the potential in the scope of research & development and innovation of the Polish-German, Polish-Czech, and Polish-Slovak borderlands

Country/ NUTS 2 level region	Total intramural expenditure on R&D in 2003, expressed in Euros (million)	Total intramural expenditure on R&D as a % of GDP in 2003	Personnel in the research and development sector as a % of active population in 2003	Personnel in the research and development sector as a % of total employment in 2003	Human resources in science and technology as a % of labour force in 2005	Number of patent applications submitted to EPO in 2002 ²
<i>EU-25</i>	188681,31	1,9	1,36	1,5	:	:
<i>Poland</i>	1036,07	0,5	0,7	0,9	32,	179,3515
Polish Western border						
Zachodniopomorskie	13,11	0,1	0,4	0,6	32,	2,7504
Lubuskie	7,4	0,1	0,2	0,3	27,	3,641
Dolnoslaskie	58,68	0,3	0,7	1,0	32,	16,5876
<i>Germany</i>	54538,5	2,5	1,6	1,8	48,	24513,826
Mecklenburg-Vorpommern	392,77	1,2	0,8	1,1	45,	65,589
Brandenburg- Nordost	117,63	0,5	:	:	:	74,8688
Brandenburg- Südwest	430,66	1,	:	:	:	155,6018
Berlin	3096,14	3,9	2,3	2,8	62,	690,924
Dresden	1045,0	3,	1,9	2,	53,	308,7047
Polish Southern border						
Dolnoslaskie	58,68	0,3	0,7	1,0	32,	16,5876
Opolskie	6,43	0,1	0,3	0,4	27,	2,9338
Slaskie	85,21	0,3	0,6	0,8	31,	13,9354
Malopolskie	118,28	0,8	1,1	1,	30,	18,1315
Podkarpackie	26,2	0,3	0,3	0,4	29,	4,4007
<i>Czech Republic</i>	1012,57	1,2	1,0	1,1	37,	122,4312
Severovýchod	89,98	0,8	0,7	0,	33,	19,8446
Strední Morava	56,98	0,7	0,6	0,	33,	11,404
Moravskoslezsko	75,86	0,9	0,	0,	32,	7,0279
<i>Slovakia</i>	169,10	0,5	0,	0,9	32,	41,3357
Stredné Slovensko	20,02	0,3	0,4	0,6	32,	5,6364
Východné Slovensko	17,7	0,2	0,4	0,6	26,	4,7824

Explanations: Eurostat estimates

The study also involves the Berlin region, despite the fact that it is not a border region in itself.

Source: own study based on data of: Eurosta data base, European Commission

(http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,45323734&_dad=portal&_schema=PORTAL

&screen=welcomeref&open=/&product=EU_MASTER_regions&depth=2, 15.01.2007).

² The regional distribution of patent applications to the EPO is based on the inventor's place of residents. If one application has more than one inventor, the application is divided equally among all of them and subsequently among their regions. Quotation after: Regions: statistical yearbook 2006. Data 2000-2004, Office for Official Publications of the European Communities, Luxembourg 2006, p. 98.

By considering the magnitude of expenditure on research and development (R&D) in relation to GDP in the individual countries covered by the 2003 study³, it should be pointed out, that the lowest result has been observed in Poland - 0,54% of GDP; for Slovakia it was 0,58%, for the Czech Republic - 1,25% of GDP, whereas for Germany - 2,52% of GDP⁴. However, when considering this expenditure in absolute terms, then, it can be seen that Germany came first, and then, in the second place - Poland.

Among the analyzed border regions of Poland, it was the Southern borderland that benefited from the greatest R&D outlays: namely, the Małopolskie voivodeship, whereas the least was gained by the Opolskie voivodeship (2003 figures). On the Western borderland of Poland, the lowest outlays were observed in the Lubuskie voivodeship. When considering the indicator: number of personnel in the research and development sector as a percentage of active population, it should be pointed out that in Poland this indicator was at its lowest (from among the countries under scrutiny). In 2003, 0,75% of active population was employed in this sector; this indicator was similarly low for Slovakia (0,8%), whereas for the EU it equaled 1,36%. Among the Polish border regions, such low percentage of employed in this sector has been observed in the voivodeships: Lubuskie, Opolskie, Podkarpackie, where it failed to exceed the mark of 0,4% of active population (2003 figures). On the other

hand, for the border regions of the remaining countries covered by the analysis, the indicator was substantially higher. Similarly, the indicator relating to the share of R&D personnel in the total of persons employed, points to a low standing of the Polish borderland voivodeships in this respect, with the exception of the Dolnoslaskie and Małopolskie voivodeships, for which this factor was observed to be the highest from amongst all the border regions of Poland, Czech Republic, and Slovakia.

In a similar vein, another factor, namely: the number of science and technology personnel as a percentage of the labour force indicates that Poland, by virtue of the results it has obtained does is not far out from Slovakia and its regions. On the Polish Western border, in the border regions, the share of scientific and technical personnel fluctuated between 32,4% and 27,7% of the labour force, reaching its peak in the Zachodniopomorskie voivodeship. Also, on the Southern border of Poland, a similar differential was observed, with the highest share of scientific staff recorded in the Dolnoslaskie voivodeship constituting some 32,4% of employees. On the other hand, in case of the German border regions, this factor was significantly more favourable.

Poland's standing is no more favourable in comparison with the other countries under scrutiny when examined in the light of another innovation-related factor, i.e. the number of submitted patent applications to the EPO (European Patent

³The cited statistical data is derived from the Eurostat data base of the EU Commission: http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,45323734&_dad=portal&_schema=PORTAL&screen=welcomeref&open=/&product=EU_MASTER_regions&depth=2, as at January 2007.

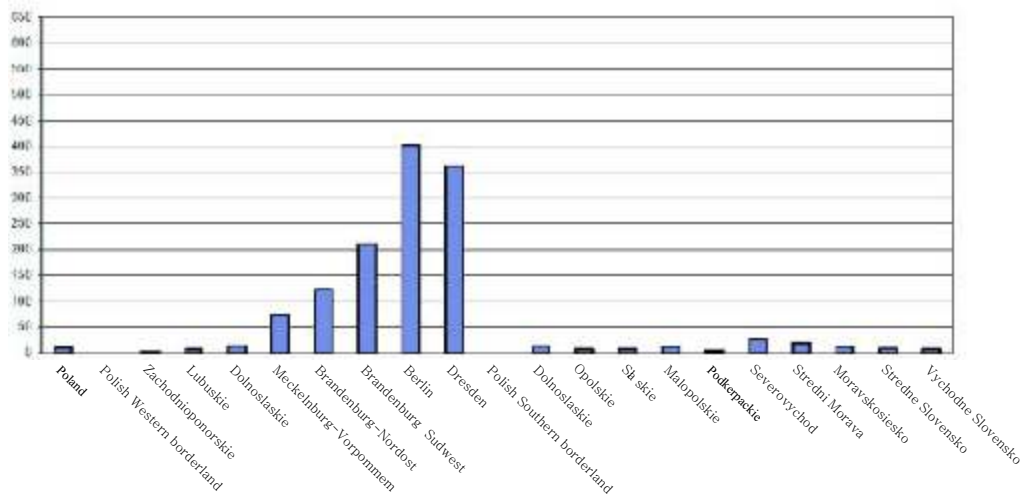
⁴ However, it can be observed that despite very low expenditure on R&D (with respect to GDP) in Poland, in the following years, this share tends to increase somewhat: in 2004 it already constituted 0,56%, and in 2005 0,57% of GDP. In Slovakia, this factor deteriorates, since in 2004 and in 2005, outlays on R&D constituted just 0,51% of this country's GDP. On the other hand, in the Czech Republic, there is increased expenditure on R&D in 2004: 1,26% of GDP, and in 2005 as much as 1,42% of GDP.

Office) per million of the labour force. The highest score was observed for Germany: 618 patent applications per million of the labour force, next being the Czech Republic (24), Slovakia (16), and only then, Poland (10) 2002 year figures. Similarly, when examining this indicator in the regional aspect, it should be emphasized that the border regions of Poland in comparison with both, German, and Czech regions, failed to achieve good results in this respect in the year 2002 (figure 1).

border regions. As regards Poland's border regions, the marked leaders are two voivodeships: Dolnoslaskie and Małopolskie.

As the conducted analysis shows, from amongst the Polish border regions, the Dolnoslaskie voivodeship stood out, both, in terms of the number of staff employed in the research and development sector (as a percentage of active population), and the number of science and technology personnel as a percentage of the total labour

Figure 1 Number of submitted patent applications to the EPO per million of labour force in the border regions of Poland in 2002



Source: own study based on data of: Eurostat data base, European Commission (http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,45323734&_dad=portal&_schema=PORTAL&Screen=welcomeref&open=/&product=EU_MASTER_regions&depth=2, 15.01.2007).

The „leading” regions (from among those under scrutiny) in the aspect of innovation potential are the German regions situated on the Polish-German borderland, this being both, in terms of the number of the submitted patent applications, as well as their magnitude per million of the labour force. The greatest number of the submitted patent applications per million of the labour force came from Germany and the German

force. The unquestioned leader is also the Małopolskie voivodeship, which results from this region hosting research centres and significant university education centres. Moreover, both of these voivodeships stand out in terms of the number of submitted patent applications.

In the light of the selected innovation indicators, Polish border regions do not score too high, this is also a by-product of

low results being achieved by Poland, nationwide.

When analyzing the regions on either side of border, it should be emphasized, that they concern partners with diversified level of development, inclusive of the innovation-specific one. This is clearly portrayed on the Polish Western borderland, as there is observed significant asymmetry in disfavour of the Polish border regions. In this context, the case of supporting innovation should become an integral target for measures being taken in the border regions, along with other endeavours aiming at supporting the socio-economic development of these areas. This should be reflected in the devised strategies for development of these regions. Without any doubt, this poses some difficulty, since in the border regions; it is mainly the infrastructural investment projects that are in the prime.

The supporting of innovation is promoted by the EU as part of the Lisbon strategy, in particular, through the development of network connections. This is also a result of a change of approach to the question of innovation, since a region also constitutes environment, in which innovation absorption and diffusion take place.

The implementation of the Initiative INTERREG III in Poland

The programmes in the regions and cofinanced from the EU funds are directed at the implementation of many

priority tasks in the new EU member states. As early on as shortly after two years of Polish membership in the EU and of availing of this aid, the effects of running the Community Initiative INTERREG III programmes aiming at the promotion of harmonious and balanced Community development can be seen. The Initiative INTERREG III as supported by the funds from the European Regional Development Fund (ERDF) was being effectively implemented also in Poland in the years 2004-2006⁵.

The „A” component of this Initiative⁶ is directed at promoting development of cross-border cooperation, and it promotes, most of all, the cooperation of self-government bodies (public authorities) and of the local communities inhabiting the border regions. The land on either side of border differs in social and cultural aspect, and through cross-border cooperation programmes and through the common projects being run as part of these programmes, there exists a possibility for initiating a lasting cooperation, and as it goes, the breaking down of the existing barriers (in a number of ways) that are marked out by the political frontier. As part of the INTERREG IIIA, there has been conducted cross-border cooperation on all Polish frontiers. In Poland, there are being realized 7 INTERREG III A programmes, inclusive of 3 programmes conducted on the Western border of Poland, and 2 on the Southern border. As per end of October 2006 figures, the number of projects being approved for running amounted to 756, which means that the volume of

⁵ This paragraph of text relating to the Initiative INTERREG III and its execution has been written on the basis of the publication: *„Inicjatywa Wspólnotowa INTERREG III. Polskie doświadczenia w latach 2004-2006. Ministerstwo Rozwoju Regionalnego, Warszawa 2006”*. There has been also made use of the presentations and information available on the site of the Ministry of Regional Development: <http://www.funduszeStrukturalne.gov.pl/Wiadomosci/Interreg+III/konferencja+od+interreg+do+ewt.htm> .

The above constitute information and speeches given during the international conference: *„Od Inicjatywy Wspólnotowej INTERREG do Europejskiej Współpracy Terytorialnej”*, which has taken place on the 9th of November, 2006, in Warsaw.

⁶ These are both, bilateral, as well as three-party programmes.

funding that was assigned to them constituted some 93% of the total allocation for the Polish party, i.e. the overall volume of funding out of the ERDF for these projects constituted over EUROS 164,30 million. It must be observed that these amounts concern projects that involved Poland. The effected projects relate, predominantly, to the development of road infrastructure, they are directed at promoting entrepreneurship; there are also undertakings being implemented in relation to the protection of the natural environment. Also assistance is being offered out of the Small Projects Fund, having been established for the so-called people-to-people projects.

As part of the Initiative INTERREG III, there is also supported transnational cooperation, this being interlinked with the other programme component, i.e. INTERREG III "B". As part of this component, Poland is involved in 2 programmes: Baltic Sea Region programme (BSR), and Central Adriatic Danubian South-Eastern European Space (CADSES) programme. As part of the BSR, the following states cooperate together: Poland, Sweden, Estonia, Denmark, Finland, Latvia, Lithuania, Germany, Russia, Belarus, and Norway. On the other hand, the CADSES programme involves a network of 18 states. What's more, the latter brings together not only the EU-27 member states, but also Albania, Bosnia-Herzegovina, Croatia, Serbia and Montenegro, the former Yugoslav Republic of Macedonia, Moldova, and Ukraine.

The projects involve strategies, planistic studies, development of TransEuropean infrastructure, the promotion of spatial development strategy, development of cooperation network, etc. If

the volume of funds awarded out of the ERDF for the running of tasks being part of the B component was to be examined, then, the figure for the Polish side would be EUROS 18,25 million, and the number of Polish beneficiaries would be counted 97 (CADSES), and 253 (BSR).

On the other hand, a separate component constitutes the interregional cooperation programme, the so-called "C" component, which is divided into four programme zones, Northern, Southern, Western, and Eastern⁷. Poland belongs to two programme zones: the Eastern one and the Northern one. As regards this component, there are 126 beneficiaries on the Polish side running the approved projects, and the volume of the assigned ERDF funds equals EUROS 13 million. As part of the conducted interregional cooperation, there are projects being supported relating to cooperation and the sharing of experience, also in the sphere of regional policy and the promotion of good practice.

The implementation of undertakings of various nature being cofinanced as part of the Initiative INTERREG III had a positive effect on initiating contacts with partners from other countries' regions, since the effected cooperation entailed the involvement of at least two partners coming from different countries, which were to come together for the purpose of preparing operational programme, and also on several occasions, were to cooperate at the stage of running of the project itself.

Cross-border cooperation programmes should be paid special attention. As part of the effected cross-border cooperation, the implementation of the Small Projects Fund has made possible

⁷ As part of the „C” component, there are also featured: ESPON European Spatial Planning Observation Network, and INTERACT - programme relating to technical assistance.

the implementation of projects of “people-to-people” type, i.e. Small projects.

The development of cross-border cooperation has resulted in a common strategy for the development of border area having been prepared. This was incorporated in the operational programme (the programme being a strategic document with regards to the availing of the EU funds) along with the priorities setting the path and the areas in need of assistance. Thus, the document also constitutes a common strategy aiming at developing the cross-border cooperation. Moreover, it has become essential to pay attention to the cross-border effect of the implemented projects. As part of the effected cross-border operational programme, it has also become necessary to develop common structures for the purpose of managing this programme, and to develop applicable mechanisms⁸. This is also an essential aspect of the implemented undertakings, as they made it possible to recognize the needs of entities on the other side of the border. The concept of the leading partner also is to be paid attention to, i.e. the subject that coordinates the projects and that is also responsible for the implementation, management, and coordination of the implemented tasks.

The endeavours being undertaken facilitate in initiating and in the developing contacts, which also favours the breaking

down of barriers. A continued realization of plans in the new period of programming of the cohesion policy should facilitate in their consolidation and in the formation of network of cooperating together entities. Also, the endeavours that are realized in the regions also in the border regions should be directed at assisting innovation development. Nowadays, the necessity for incorporating this path into the European programmes, which shall be implemented as part of the new objective - European Territorial Cooperation (ETC), is highly promoted in the new period of cohesion policy execution.

European Territorial Cooperation programmes for the years 2007-2013

Besides such objectives as: convergence, regional competitiveness and employment, a new objective shall be set: European Territorial Cooperation, thus addressing the positive experiences from the implementation of the Initiative INTERREG III, and following on the paths being traced out by the tasks that have been supported up until now. For the programmes having been activated as part of that objective, there has been assigned 2,52% of the total EU funds allocation for the years 2007-2013, i.e. EUROS 7 750 million⁹ (in the 2004 prices).

⁸ For more information on the Initiative INTERREG see: *Communication from the Commission to the Member States of 2 September 2004 laying down guidelines for a Community initiative concerning trans-European cooperation intended to encourage harmonious and balanced development of the European territory (2004/C 226/02)*. Brodecki Z. (ed.) (2005), *Regiony, LexisNexis, Warszawa, pp. 163-169, ISBN 83-7334 422-5*, Batchler J, Taylor S. *Współpraca międzyregionalna w Unii Europejskiej: pozytywki z przeszłości i perspektywy na przyszłość*. In: G. Gorzelak, J. Bachtler, M. Kasprzyk (ed.) (2004), *Współpraca transgraniczna Unii Europejskiej. Doświadczenia polsko-niemieckie*. Wydawnictwo Naukowe „Scholar”, Warszawa, pp. 344-365, ISBN: 83-7383-121-5.

⁹ This amount assigned for ETC is reduced by EUROS 200 million (it is a sum assigned for Northern Ireland for the PEACE programme which shall be implemented as cross-border cooperation programme), and then, the funds are shared out between the individual programmes. See the Enclosure II, sect. 22, to the Council Regulation (EC) no. 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social fund and the Cohesion Fund and repealing Regulation (EC) no 1260/1999.

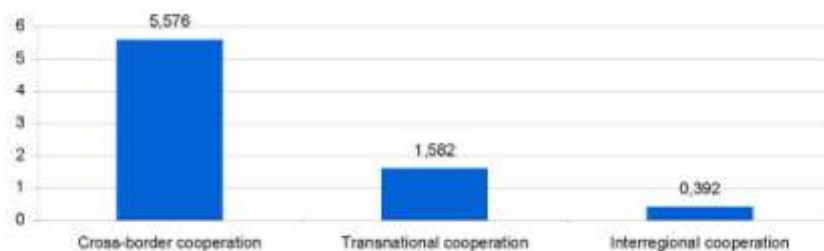
The supporting of cooperation between the European regions belonging to different countries has become an integral element of the new cohesion policy that shall take effect in the years 2007-2013 (incorporated into the policy mainstream).

ERDF funds shall support various cooperation programmes: cross-border cooperation programmes, transnational cooperation programmes, as well as those, which concern interregional cooperation.

The supporting of cross-border cooperation obtained the highest allocation of funds out of the ETC (fig. 2).

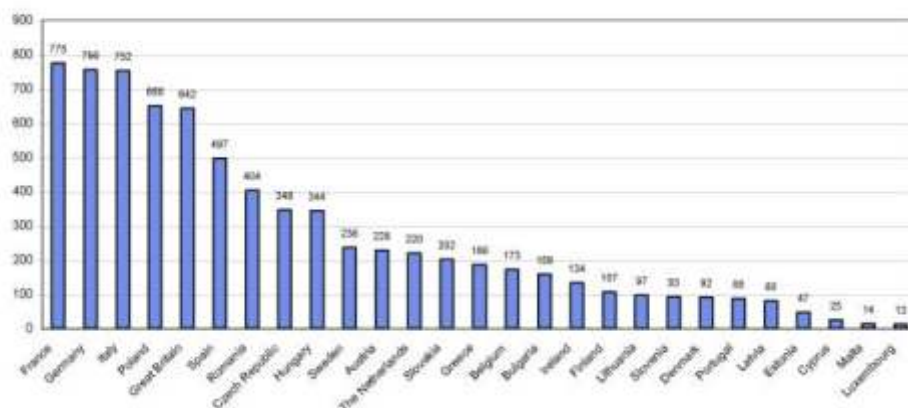
The majority of resources shall be assigned for cross-border cooperation programmes, constituting 73,86% of the total allocation for this objective, and then, 20,95% of allocation shall be assigned for transnational cooperation programmes. The main beneficiaries are: France, Germany, Italy, and then, Poland (fig. 3).

Figure 2 The allocation of funds for the individual components implemented as part of the ETC, in the years 2007-2013 (2004 prices, in EUROS billion)



Source: Council Regulation (EC) no. 1083/2006, art. 21.

Figure 3 The volume of ERDF allocation for the individual states of the EU-27 as part of the objective: European Territorial Cooperation for the years 2007-2013 (in EUROS million, 2004 prices)



* the volume of funds that has not been allocated amongst the countries equals EUROS 392 million, in the 2004 prices.

Source: *Regions and cities for growth and jobs: an overview of Regulations 2007-2013 on Cohesion and Regional Policy*. Inforegio, factsheet, European Union, 2006.

http://ec.europa.eu/regional_policy/sources/docoffic/official/regulation/pdf/2007/publications/memo_pl.pdf.

In the new programming period, certain modifications have been introduced as regards the preparation and implementation of programmes. It should be emphasized that the cross-border nature of the effected tasks is to be maintained, namely: completing of at least 2 out of 4 formulated cooperation criteria. This holds, in particular, for the cross-border programmes and for those in the sphere of transnational cooperation. The above boils down to the cooperation of at least two partners in at least two ways: joint development, joint implementation, joint staffing and joint financing¹⁰.

The programme brings together at least two states, and the country that hosts managing authorities is liable for its execution. The Managing Authority assumes the responsibility for the programme management and implementation. In the structure of programme implementation, attention should be paid to the common technical secretariat¹¹.

It is also necessary to consider in the programmes the leading partner as coordinator of the realized operations¹².

The overall volume of Community funds assigned to Poland for the new period of the cohesion policy 2007-2013 amounted to EUROS 67,3 billion (in the current prices). The volume of funds that shall be assigned for implementing programmes within the ETC is EUROS 557,8 million (in the current prices). As part of this amount, the Community funds shall be

distributed for cross-border cooperation (EUROS 374,44 million), EUROS 43,05 million shall constitute funds marked out in Annex II of the Council Regulation no. 1083/2006, whereas EUROS 140,27 million shall be assigned for transnational cooperation. Moreover, in addition to this, EUROS 173,3 million shall be granted from the European Neighbourhood and Partnership Instrument for cross-border cooperation programmes. Henceforth, the overall volume of funds from the ERDF as part of the operational programmes of the European Territorial Cooperation for the years 2007-2013 for Poland shall sum up at EUROS 731,1 million^{13,14}.

In the light of the held discussions on the role of the regions in implementing the decisions of the Lisbon Strategy it must be said that the Strategy implementation is to come into effect through the ETC programmes. This is also rooted in the priority areas that benefit from the assistance granted as part of the ETC. In relation to the programmes concerning cross-border cooperation, the granted assistance shall be directed, among others, at promoting entrepreneurship, cooperation, common usage of infrastructure (inter alia educational infrastructure), as well as the needs of research and technological development. The transnational cooperation programmes should also take into account the innovation-specific priority, as assistance is directed at supporting the development and formation of scientific and technology networks, and it

¹⁰ Regulation (EC) no. 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999, art. 19, sect. 1.

¹¹ National Strategic Reference Framework in support of economic growth and employment. Ministry of Regional Development, Warsaw, November 2006, pp. 99-101, where has also been shown the system of execution for the objective European Territorial Cooperation in Poland.

¹² Regulation (EC) no. 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999, art. 20.

¹³ Inicjatywa Wspólnotowa INTERREG III. Polskie doświadczenia w latach 2004-2006..., op.cit., p. 20.

¹⁴ National Strategic Reference Framework .., op.cit., pp. 103-104, p. 108, where the allocation of funds for Poland as part of the ETC has been presented.

shall also concern the improvement of innovation-related capacity in the regions, supporting the formation of networks between individual units of third level education, as well as research centres, SMEs, i.e. networks with the access to scientific knowledge, also in the sphere of technological transfer (concerning the transfer between BRT centres and international centres for best practice, covering twinning cooperation of these institutions being involved in the transfer of technology)¹⁵. Thus, as it can be concluded from the presented area of support, the promotion of innovation in the regions comes through the promotion of network connections and through the formation of cooperation networks.

The development of connections and contacts between regions and cities is promoted. A newly introduced initiative of the European Commission, Regions for Economic Change¹⁶ is to serve this purpose, this being part of the ETC, availing of the solutions of interregional cooperation and of the URBACT programme. For the purpose of implementation of this initiative, there have been assigned the ERDF funds in the sum of EUROS 375 million (for the years 2007-2013). This amount has been assigned

in support of the development of innovative ideas. There shall be developed cooperation networks involving regions and urban areas, where participation shall be voluntary. This initiative brings together the programmes of interregional cooperation and the programme concerning the development of urban network. The developed networks are to cover cities and regions, as well as the member states¹⁷, and are to support certain issues, while observing the Lisbon agenda. They are directed at promoting economic modernization and competitiveness. The worked out innovation-specific solutions (ideas), through the use of regional and urban networks, are to be incorporated into the programmes being executed as part of the mainstream of the cohesion policy.

However, it should be observed that the Commission has indicated the issues, which shall become focal points for these topical networks, presenting some 30 topics¹⁸. There has been also suggested the so-called "quick path". There shall be identified a group of 10-20 regions forming a network around a given topic (a priority issue). The Commission shall formulate such network, acting as its driving force, later on, it shall support the development of a given idea, coordinate it (providing additional

¹⁵ D. Hübner, *The importance of the territorial cooperation of regions for achieving the Lisbon Strategy objectives*. Speech given by prof. Danuta Hubner, the commissioner for regional policy during the conference „Od Inicjatywy Wspólnotowej INTEREG do Europejskiej Współpracy Terytorialnej”, Warszawa, 9th of November, 2006.;

(<http://www.mrr.gov.pl/Aktualnosci/konferencja+od+interreg+do+ewt.htm>); Regulation (EC) no. 1080/2006, art. 6. There are plans to activate 81 programmes as part of the ETC. See: D. Hübner, *The importance of the territorial cooperation of regions...*, op.cit.

¹⁶ further information with respect to the new initiative on the basis of: D.Hübner, *The importance of the territorial cooperation of regions...*, op.cit. p. 4., also: Commission from the Commission: *Regions for Economic Change, Commission of the European Communities*, Brussels, dated 8.11.2006, COM (2006) 675 final; *Regions for Economic Change European Commission strengthens exchange of best practices in innovation among European regions*. IP/06/1526, Brussels, the 8th of November, 2006; *Information note on regions for economic change* (January 2007)

http://ec.europa.eu/regional_policy/cooperation/interregional/ecochange/doc/infoimplementation01.pdf

¹⁷ The main driving force behind such network formation is either region or city.

¹⁸ The topics have been indicated in the document: Commission Staff Working Document accompanying the Communication from the Commission: *Regions for Economic Change, Commission of the European Communities*, Brussels, 8.11.2006, SEC(2006) 1432.

support in the sphere of specialist knowledge and administration), and then, the Commission shall take action with a view of including it into the mainstream, i.e. into the basic programmes. Also, as part of this new initiative, there shall be promoted the concept of the so-called: two-way bridge the solution that is to link the networks with the programmes being run as part of the main objectives. Within its scope, there shall be provided a possibility for a "bridge" solution the concepts (good practice) as worked out by the regions are to be evaluated as part of the initiative in the light of their execution as part of the mainstream programmes. In a similar vein, the entities (states, cities, regions) are to demonstrate that the conducted works are in connection with the mainstream programmes. There shall be also improvements in the sphere of communication¹⁹.

It is this very cooperation between the European regions that may constitute a significant step forward, both in the direction of promoting the own identity and culture of the territories involved, as well as in the direction of developing new forms of cooperation. It is worth stressing that through these programmes experience exchange shall take place, just as well as the economic growth in specific areas.

CONCLUSION

The conducted cooperation, also encompassing cross-border cooperation is currently gaining momentum. The experience gained in the course of implementing the Initiative INTERREG III may be of help in making effective

use of the European funds assigned for developing community cooperation and for developing network connections favouring the transfer of knowledge. It should be pointed out that the experience gained by Poland at the time of implementation of the Initiative INTERREG III may be transferred out and availed of, in various ways, by the new member states, or else, by these countries that apply for EU membership. This concerns, in particular, the building of strategies of regional development as part of the cross-border cooperation programmes, which should reflect the development priorities, while at the same time, mark out the main line of support out of the EU funding. In the face of scarcity of European funds, it is important to formulate priorities and present projects that take into account the needs and the possibilities of regional development and that bring in into the Community some added value. There may be also of some help, the experience gained from planning of actions and undertakings, and from the implementation of programmes (execution of projects).

It should not be forgotten that conducting such cooperation is hindered by the existence in various countries of different institutional and administration structures, as well as legal and administrative disparities, which bring about certain problems in managing the programmes²⁰.

The new programmes of territorial cooperation that are prepared by Poland for the years 2007-2013 and the ensuing undertakings should reflect the mainstream of the major policies as indicated at the European level. The programmes should plan their actions so as to follow the objectives of the Lisbon Strategy.

¹⁹ Moreover, with a view of promoting good practice in the regions, as a complement to this initiative, there shall be organized annual conferences. There shall be also prizes awarded for the best ideas.

²⁰ The third report on economic and social cohesion, p. 156 and p. 158. The European Commission 2004 (http://ec.europa.eu/regional_policy/sources/docoffic/official/reports/cohesion3/cohesion3_pl.htm).

SOME NORMATIVE AND INSTITUTIONAL DEVELOPMENTS IN THE FIELD OF COMMON AGRICULTURAL POLICY AND THEIR CONSEQUENCES ON THE PROTECTION OF THE EUROPEAN CITIZENS' INTERESTS

Gabriela Alexandra Oanță¹

Abstract. *This paper intends to briefly comment on some changes in the field of Common Agricultural Policy, especially regarding the safety of agricultural products and foodstuff. Within the framework of the CAP the food safety has managed to progressively constitute its third pillar, currently boasting an outstanding place in the attainment of its objectives. CAP has been progressing in its mechanisms and legal instruments towards a more relevant integration of the concerns relative to the consumer's health protection and to the food safety in the objectives to be reached.*

Key words: *Common Agricultural Policy, food safety, protection, agriculture*

Introduction

The Common Agricultural Policy (CAP) is, by excellence, an integrative policy of the European Union (EU). It has been one of the major areas of the European integration project for years, always representing a great concern for the EU.

This policy presents, without a doubt, a great importance for the average citizens. It is estimated that each family living in the EU dedicates, on the average, 20% of its disposable income to the purchase of food and drinks. On the other hand, the Union is, on a worldwide scale, the main importer of food and the second exporter. Agriculture in the EU represents approximately 3% of its Gross Domestic Product (GDP). In addition, the CAP continues to play a very important social factor. For example, before May 1, 2004, when the fifth EU enlargement took place, 4 to 5% of its active population was

developing its activity in this field. In recent years, this percentage has been enlarged considerably since a large part of the active population of some of the countries which recently joined the EU, like Poland and Romania for instance, is involved in agriculture.

Through this paper, we propose to briefly comment on the changes that have arisen in the CAP, especially from the early nineties, when it adopted a third pillar in regards to the security of agricultural products and foodstuffs, considering it as one of the best means to protect the interests of food safety of the European citizen (1); emphasize the intents of "modernization" of this Community Policy, carried out in the framework of the European Convention (2); finally, to get closer to the elements that, to our understanding, are the most significant regarding the attainment of the protection objective of the interests of European citizens in this field, such as the quality of

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the agricultural products and foodstuffs, and the matter of the controls carried out by the Member States in order to ensure that it complies with the requirements of quality of these products (3).

1. Food Safety the third pillar of the Common Agricultural Policy

If we start with the basic objectives of the CAP, provided for in the EC Treaty, as it is to increase the agricultural productivity through the promotion of the technical progress, the rational development of the agricultural production and the optimum employment of production factors, in order to guarantee a fair standard of living to the agricultural population, to stabilize the markets, to guarantee the security of the provisions and to ensure reasonable stock prices to the consumer, the first thing to point out is that at the beginning of the European construction, the Community legislator had not considered necessary to make any reference to the characteristics which the agricultural products should comply with from the perspective of the food safety². On the other hand, the EC Treaty does not define the CAP. It only provides its field of application³ and its objectives⁴. Neither the Treaty establishing a Constitution for Europe introduced any changes in that regard⁵.

In this context, the legal judgements of the Court of Justice of the European Communities (CJEC), that tried to cover somehow the existing legal void relative to

the requirements that agricultural products should meet in order to assure the Community consumer's health, were more significant. Thus, this Court considered that the objectives of the CAP, mainly in the framework of the Common Organization Markets, would not be able to be reached unless they considered the demands of general interest, for instance, the consumers' protection or the health and life of people or animals. These are all requirements that the EU Institutions should respect when practising their competences⁶, in spite of the extensive faculty of appreciation that the Council has in order to obtain the different objectives enumerated in the art. 33 EC⁷.

Regarding all this and starting from the basic and commonly admitted idea that as long as these "primary" objectives were being achieved, the consumer's demands about agricultural matters also increased. We must admit that, at this stage, the perception that the consumer has of the CAP has experienced a significant change. It is enough to mention that the results of a recent special survey carried out on these matters point out the consumer's conviction that the essential function of this Policy is, above all, to guarantee healthy food products. On the other hand, it is noticed that matters such as the respect for the environment, the safety and quality of food products, the animals' welfare, etc., have achieved a special meaning. It is to say that the Community consumer's concerns have changed regarding agricultural products and

² The main objectives of the CAP provided by the Community legislator are collected in art. 33.1 EC.

³ Art. 32.1 EC: "The common market shall extend to agriculture and trade in agricultural products. 'Agricultural products' means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products".

⁴ Art. 33 EC.

⁵ Treaty establishing a Constitution for Europe, OJ C 310, 16.12.2004, p. 1-474.

⁶ Vid.: Judgement of the Court, of 23 February 1988, United Kingdom/Council, 131/86, Rec. 1988, p. 905, para. 17; judgement of the Court, of 23 February 1988, United Kingdom/Council, 68/86, Rec. 1988, p. 855, para. 12. Vid. also: judgement of the Court, of 15 September 1994, KYDEP/Council and Commission, C-146/91, Rec. 1994, p. I-4199, para. 61.

⁷ Judgement of the Court, of 15 September 1982, Kind/CEE, 106/81, Rec. 1982, p. 2885. Vid. also KYDEP/Council and Commission, cit.

foodstuffs. For instance, it has been confirmed that 52% of consumers are willing to pay more for better quality products.⁸ This survey helps to understand why food safety has achieved an increasingly more noticeable position in the EU framework, particularly along the last decades.

One of the most significant reasons that led to reach this new situation was the contagious illnesses of animal origin, like “mad cow” disease, the hoof and mouth disease, the H5N1 avian influenza, etc., which have been highly affecting the domestic market, particularly since the nineties. All these began to cause an unprecedented general anxiety regarding food safety in the EU. In fact, the capability of the existing Community legislation on the matter to truly achieve the objective of a high level of protection regarding the public health and the European consumers has never been so closely scrutinized before.

This situation was necessarily reflected in the activities developed in this field by the EU Institutions. In relation to this, the CAP is involved in a deep process of reform since 1992. Thus, we have to mention the prominent contribution of the Agenda 2000, which was adopted in the framework of the financial perspectives set up for the period 2000-2006.⁹ The results of a survey carried out in that period reflected that a great number of Europeans sought a change so the CAP could help the EU farmers. And they also wanted that this Policy guaranteed them healthy agricultural products. At the same time, they considered that the CAP priority should be to guarantee

the safety of the agricultural products and foodstuffs (90%), to promote the respect of the environment (88%) to help the farmers to adapt its production to the consumer's expectations (80%), etc.

It is from that moment when the quality of food products and the Food Safety adopted a new dimension, since they became a third pillar of the CAP, turning into one of the main objectives of this Policy. This was about a coordinated answer from the EU to the demands of the European population to access to a wider variety of food quality, safe for health and produced at reasonable prices by farmers with adequate guaranteed incomes. Likewise, it was acknowledged that it was not possible to have a communitarian market of agricultural products and foodstuffs without pay attention to food safety; the rural development came to be the second pillar of this Policy, along with the agriculture. Thus, even the European Commission pointed out that the instruments at the disposal of the CAP to favour the health and quality of the food, continued to be limited. On the other hand, all the responsible involved in these sectors agreed that further could be done by the CAP to reach all the new objectives fixed in the Agenda 2000 in this field¹⁰.

At the same time, the European Union began to lower the subsidies to the production in order to favour direct payments to farmers. This reform also contained some important elements of regulatory simplification in different sectors, and the adoptions of regulations were preferred as an alternative to the Directives. In fact, currently, there are some areas where

⁸ European Commission: “Special Eurobarometer: European Union citizens and agriculture from 1995 to 2003”, September 2004 (http://ec.europa.eu/agriculture/survey/2004/rep_en.pdf).

⁹ COM(97) 2000: Agenda 2000 - Vol. I: For a stronger and wider Union - Vol. II: The challenge of enlargement, Brussels, 15.07.1997, Bol. EU 7/8-1997.

¹⁰ COM(2002) 394 final: Communication from the Commission to the Council and the European Parliament - Mid-Term Review of the Common Agricultural Policy, Brussels, 10.07.2002. Vid. Also: European Commission: “Europe's Agenda 2000: Strengthening and widening the European Union”, Priority Publication Programme 1999, X/D/5.

the dispositions of a single framework regulation are applied instead of the numerous legal documents previously adopted.

Therefore, with regard to these concerns, the Community legislator adopted a legislative package on the reform of the CAP during the meeting of the Council of Agriculture and Fisheries (Luxembourg, June 11-26, 2003).¹¹ It was meant to transfer, since January 1, 2005, a significant part of the direct payments linked to the production to the regime of a unique payment for exploitation.

Without a doubt, we are dealing with a fundamental reform of the CAP that tries to totally change the way in which the EU supports its agricultural sector. This meeting of the ministers of the Member States responsible for Agriculture and Fisheries, constituted the real turning point that led the Council to adopt, on September 29, 2005, a series of regulations which took into consideration the food safety, the animals' health and welfare, and good agrarian and environmental conditions.¹² One of the most important changes provided by these normative acts was to provide for that in those cases that did not

comply with the basic requirements, the Member States had the obligation to withdraw, totally or partly, the direct aids, taking into consideration objective and proportional criteria following a progressive scale. However, this withdrawal does not prevent other sanctions from being imposed at any time or in the future, on the basis of other dispositions of the Community or national legislation.¹³

This is a scope that the Community legislator has been dealing with more thoroughly. For that reason, at the present time, the CAP boasts the widest normative of the whole EU. Thus, approximately 60% of the total volume of the secondary Community law has been legislated referring to the aspects of food safety as a third pillar of the CAP. Moreover, the CJEC is carrying out a wide judicial activity in this area. For instance, a third part of its judgements was dictated considering elements relative to this Policy.¹⁴

One of the most outstanding principles that were introduced in the Community scope by the consecutive reforms of the EC Treaty is the principle of integration of the different Community policies (such as: the Environment Policy¹⁵,

¹¹ COM(2003) 554 final: *Communication from the Commission to the Council and the European Parliament - Accomplishing a sustainable agricultural model for Europe through the reformed CAP - The tobacco, olive oil, cotton and sugar sectors*, Brussels, 23.09.2003.

¹² *It is about the further Regulations: Council Regulation (EC) n° 1782/2003, of 29 September 2003, establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) n° 2019/93, (EC) n° 1452/2001, (EC) n° 1453/2001, (EC) n° 1454/2001, (EC) n° 1868/94, (EC) n° 1251/1999, (EC) n° 1254/1999, (EC) n° 1673/2000, (EEC) n° 2358/71 and (EC) n° 2529/2001, OJ L 270, 21.10.2003, p. 1-69; Council Regulation (EC) n° 1783/2003, of 29 September 2003, amending Regulation (EC) n° 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF), OJ L 270, 21.10.2003, p. 70-77; Council Regulation (EC) n° 1784/2003, of 29 September 2003, on the common organisation of the market in cereals, OJ L 270, 21.10.2003, p. 78-95; Council Regulation (EC) n° 1785/2003, of 29 September 2003, on the common organisation of the market in rice, OJ L 270, 21.10.2003, p. 96-113; Council Regulation (EC) n° 1786/2003, of 29 September 2003, on the common organisation of the market in dried fodder, OJ L 270, 21.10.2003, p. 114-120; Council Regulation (EC) n° 1787/2003, of 29 September 2003, amending Regulation (EC) n° 1255/1999 on the common organisation of the market in milk and milk products, OJ L 270, 21.10.2003, p. 121-122; Council Regulation (EC) n° 1788/2003, of 29 September 2003, establishing a levy in the milk and milk products sector, OJ L 270, 21.10.2003, p. 123-136.*

¹³ Regulation (EC) n° 1782/2003, cit., para. 2.

¹⁴ Vid.: MASSOT MARTÍ, A.: "La Política Agrícola Común", en MORATA, F. (ed.): *Políticas públicas en la Unión Europea*, Ed. Ariel, Barcelona, 2000, p. 91.

¹⁵ Art. 174.2 EC: "Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community [...]".

the Public Health Policy¹⁶, the Consumer Protection Policy¹⁷, and the Policy of Economic and Social Cohesion¹⁸) in the other Community actions and policies. The CAP has been enriched with a series of contributions from other policies, as for instance, the policy dealing with the exigencies of food safety. These policies have been extending the traditional objectives of the CAP with no need to modify the EC Treaty. This has led to this policy being equipped with a third pillar dedicated to food protection.

2. The third pillar of the Common Agricultural Policy and the European Constitution

In recent years, several tasks have been developed in order to manage that the present dispositions of the EC Treaty were modified so the matters relative to food safety as the third pillar of the CAP could be introduced.

The working document "Contribution to a Preliminary Draft Constitution of the European Union", commonly known as "Penelope", was submitted to the European Convention on behalf of the European Commission on December 4, 2002¹⁹. The basic line of this document was to classify the EU policies in main policies and in

policies to take supporting and complementary actions. And, at the same time, it gave to the External Relations Policy an important role. In regards to the CAP, it is necessary to mention that this document made a distinction between the competences of the Community Institutions and the competences of the Member States. When establishing the objectives of this Policy pointed out that, along with the Fisheries Policy, the PAC was "designed to ensure the sustainable development and the competitiveness of production, to develop rural and coastal areas, to preserve natural resources, the countryside and species, to ensure a fair standard of living for the communities concerned, to supply consumers with healthy products of good quality at reasonable prices and to guarantee security of supplies".²⁰

The second significant contribution to be considered regarding the contents of the aforesaid document refers to the measures to be established by law, in order to achieve the indicated objectives, such as: "[...] g) the food safety, the quality and the promotion of products; h) the veterinary and phytosanitary scopes [...]".²¹

Later, the European Commission stated its opinion once again on the need that the content of the dispositions of the EC Treaty relative to Agriculture was reformed

¹⁶ Art. 152.1 EC: "A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities".

¹⁷ Art. 153.2. EC: "Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities".

¹⁸ Art. 159 EC: "[...] The formulation and implementation of the Community's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 158 and shall contribute to their achievement [...]".

¹⁹ This work was developed at the request of the President of the European Commission, Mr. Romano Prodi, and in agreement with Mr. Barnier and Mr. Vitorino, by a work team constituted under the responsibility of François Lamoureux and constituted by: Marie Lagarrigue, Paolo Stancanelli, Pieter Van Nuffel, Alain Van Solinge, with the technical assistance of Marguerite Gasse; text available on the web page: http://europa.eu.int/constitution/futurum/documents/offtext/const051202_en.pdf. On the doctrinal contributions on the same issue, vid.: TOGNON, G.: *La tela di Prodi: una Costituzione per un'Europa più democratica*, Baldini & Castoldi, Milano, 2003; BIANCHI, D.: "Une PAC <<dénaturée>>, <<délaissée>> et <<malmenée>>?", *Revue trimestrielle de droit européen*, vol. 40, n° 1, 2004, p. 80-86; LAMOUREUX, F.: "La Constitution <<Penelope>>: une refondation pour en finir avec les replâtrages", *Revue de droit de l'Union européenne*, n° 1, 2003, p. 13-37; MATTERA, A. (dir.): "Penelope": *Projet de Constitution de l'Union européenne*, Clément Juglar, Paris, 2003

²⁰ "Contribution to a Preliminary Draft Constitution of the European Union", cit., art. 15.

²¹ *Ibidem*, art. III-23.

in order to agree with the fundamental elements of the reform of the CAP, whose objective consists in fomenting the high quality of food production.²²

Unfortunately, these particular references to the food safety and the quality of food products were not included in the draft of the European Constitution. This decision led to a failed opportunity to regulate these questions in the EU, at the level of the original Law. However, we must agree that there are other scopes in which the European Constitution contributes with new features on the CAP²³ and, for that reason, are worthy of our attention. There are two main points.

Firstly, the European Constitution introduced some changes in the CAP in regards to competences. The fact that the Member States are granted a competence shared with the EU in such an important field as it is the agriculture, which has always been considered as a Policy with an exclusive competence in the Union, constituted, without a doubt, one of the most outstanding novelties which the European Constitution contributed to the material Community law.²⁴ In relation, article I-14 of the European Constitution regarding the scopes of shared competences, mentioned explicitly, all

those scopes that will be subject to this new distribution between the Member States and the Union. Thus, along with the questions referred to agriculture and fisheries, with the exception of the conservation of the marine biological resources, this article contained both scopes of shared competence already well-known after the reform carried out in Maastricht (consumers protection, environment, etc.) or policies with a mixed nature after the European Constitution (public health) and policies that would be exchanged as a result of this Constitutional Treaty (space of security, freedom and justice).

Secondly, the European Constitution provided a new procedure of adoption of decisions in the scope of the CAP, that is to say, the codecision. Thus, art. III-231.2 stipulates: *“European laws or framework laws shall establish the common organisation of the market [...] and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy. They shall be adopted after consultation of the Economic and Social Committee”*.²⁵ Nowadays, art. 37.2 EC stipulates that the normative acts in the field of this Policy are adopted by qualified majority in the Council, after a proposal of the Commission

²² COM(2003) 548 final: *Communication from the Commission - A Constitution for the Union - Opinion of the Commission, pursuant to Article 48 of the Treaty on European Union, on the Conference of representatives of the Member States' governments convened to revise the Treaties, Brussels, 17.09.2003, p. 13-14.*

²³ Art. III-227 of the European Constitution.

²⁴ Art. I-14 of the European Constitution stipulates: *“1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-13 and I-17.*

2. Shared competence between the Union and the Member States applies in the following principal areas:

- (a) internal market;*
- (b) social policy, for the aspects defined in Part III;*
- (c) economic, social and territorial cohesion;*
- (d) agriculture and fisheries, excluding the conservation of marine biological resources;*
- (e) environment;*
- (f) consumer protection;*
- (g) transport;*
- (h) trans-European networks;*
- (i) energy;*
- (j) area of freedom, security and justice;*
- (k) common safety concerns in public health matters, for the aspects defined in Part III”.*

²⁵ *Vid. also art. I-34 of the European Constitution.*

and before consulting the European Parliament. The plan to introduce the procedure of *codecision* within the framework of the CAP had been tried in some occasions before the draft of the European Constitution. Thus, its adoption was unsuccessfully tried within the framework of the 1996 Intergovernmental Conference and during the European Council in Nice (December 9-11, 2001).²⁶ This would mean, without a doubt, a transcendental change of this Policy, since, for the first time, the European Parliament would act as a joint legislator in this matter. It was meant to offer the Parliament the role of a true joint legislator in the whole of the policies of the EU and, at the same time, to get to set a single procedure of adoption of Community rules.

In short, although the European Constitution did not specifically include the objective of food protection as an intrinsic element of the CAP, the truth is that at least it maintained intact the dispositions referred to the “body” of this Policy, as we have seen, and this objective already represents its third pillar. With regards to us, we agree with the opinion of some author²⁷ in the sense that the food dimension still continues to give the agriculture matter significance and a role which nobody wants to part with.

3. The analysis of the third pillar of the Common Agricultural Policy concerning the attainment of the objective of food protection in the European Union

After having seen how food safety has become the third important pillar of the CAP, in the following lines we will show the elements that form it. The EU Agricultural Policy has been equipped with four specific

subjects in the sector of agricultural products and foodstuffs: the durability, the quality of agricultural products and foodstuffs, the well-being of animals and food safety seen from the point of view of this Community Policy. We will not try to develop all these dispositions, since they would separate us from our objective; we will just study those aspects concerning the quality of agricultural products and foodstuffs (3.1.) and the controls carried out by the Member States considered as a guarantee of the performance of that requirement (3.2.). With regard to this, we must point out that we will consider all the products produced both in the Member States and in the third countries which are easily found in the European internal market.

3.1. The quality of the agricultural products and foodstuffs

We do believe that the subject of the quality of agricultural products and foodstuffs is closely related to the complex questions of the protection of the geographical spots, the guarantee of designation of origin of the products and the certifications of specific characteristics of food products.

The coordinated answer of the Community Institutions towards the promotion and protection of agricultural products and foodstuffs was the creation, in 1992, of the systems of the Protected Designation of Origin, the Protected Geographical Indication and the Traditional Speciality Guaranteed. So that, at the present time, more than 500 agricultural products and foodstuffs benefit from these systems.

²⁶ COM(2000) 34 final: *Adapting the Institutions to make a success of enlargement - Commission opinion in accordance with Article 48 of the Treaty on European Union on the calling of a Conference of Representatives of the Governments of the Member States to amend the Treaties, Brussels, 26.01.2000. Vid. also: BIANCHI, D.: cit., p. 87.*

²⁷ Vid. BERMEJO GARCÍA, R.: “La Política Agrícola Común” (<http://iustel.com>).

Both the Protected Designation of Origin (PDO) and the Protected Geographical Indication (PGI), meaning the “geographical designations”, meet their juridical base in the *Council Regulation (EEC) n° 2081/92*. This Regulation provides the norms related with the protection of designation of origin and the geographical indications of the agricultural products assigned to human food in the Annex I of the EC Treaty, and foodstuffs mentioned in Annex I and II of it.²⁸ These are “names used to designate food products that allude to their origin from a specific geographical area”.²⁹

One of the great contributions of the Council Regulation (EEC) n° 2081/92 to the subject we are dealing with is, on the one hand, the creation of a direct bond between the quality or the characteristics of the product for which the authorization is solicited, and, on the other, its specific geographical origin.³⁰ So that, the Community consumer will be able to make a better election since he has clear and concise data about the origin of the product. This reflects the constant concerns of the European citizen towards food quality. And this concern reaches an increasing demand for agricultural and food products from a specific geographical origin that the citizen considers to be healthy and of good quality. On the other hand, the norms that were adopted by the Community legislator

regarding the labelling, the packaging and the publicity of foodstuffs have a special meaning within this subject, too. It is looked for guarantying to the European consumers that the agricultural products and foodstuffs comply with specific qualities.³¹

As the CJEC has stated in its judgement *France/Commission*, the objective of the Council Regulation (EEC) n° 2081/92 is to define, exclusively, the conditions which are necessary to protect a denomination that sets a relation between food and agricultural products, and a specific geographical origin.³² The consequence is the disappearance of the national systems of special protection of the Member States from which a geographical denomination could benefit (PDO and PGI).

Before the Regulation (EEC) n° 2081/92 came into effect, it was taken into consideration the principle of territorialism where the denominations of origin were protected by national dispositions, which were applicable only in the territory of the Member State that had adopted them. All this had to be done as the CJEC provided, together with the International agreements that extended this protection to the territory of other Member States, commonly agreed by the parts of each concrete case.³³ Anyway, this principle of territorialism continues to be operative, but the protection of the geographical denominations refers now to the whole single internal market.³⁴

²⁸ Council Regulation (EEC) n° 2081/92, of 14 July 1992, on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, OJ L 208, 24.07.1992, p. 1-8.

²⁹ Vid. Advocate-General RUIZ-JARABO COLOMER in *Canadane Cheese Trading y Kouri*, C-317/95, Rec. 1997, p. I-4681, para. 35.

³⁰ Regulation (EEC) n° 2081/92, cit., art. 2. Vid.: judgement of the Court, of 7 May 1997, *Pistre and others*, -321/94 - C-324/94, Rec. 1997, p. I-2343, para. 35 and 36.

³¹ Directive 2000/13/EC of the European Parliament and of the Council, of 20 March 2000, on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, OJ L 109, 6.05.2000, p. 29-42.

³² Judgement of the Court, of 6 March 2003, *Commission/France*, C-6/02, Rec. 2003, p. I-2389, para. 13.

³³ Judgement of the Court, of 20 May 2003, *Consorzio del Prosciutto di Parma and Salumificio S. Rita*, C-108/01, Rec. 2003, p. I-5121, para. 98.

³⁴ Vid.: LÓPEZ ESCUDERO, M.: “Parmigiano, feta, epoisse y otros manjares en Luxemburgo. Las denominaciones geográficas ante el TJCE”, in COLNERIC, N.; EDWARD, D.; PUISSOCHET, J-P.; RUIZ-JARABO COLOMER, D. (coord.): *Une communauté de droit. Festschrift für Gil Carlos Rodríguez Iglesias*, Ed. Berliner Wissenschafts-Verlag, Berlin, 2003, p. 410-411.

On the other hand, as the CJEC has indicated, the Community system of protection provided in the Regulation does not oppose to the existence of a national regime on the matter, as long as this regime is similar to the one resulting from a bilateral agreement about the protection of a geographical indication or a qualified denomination of origin³⁵.

In our opinion, it would be useful to conceptually delimit the “denomination of origin” and the “geographical indication”. It is, without a doubt, a difficult task to carry out since their definitions are not pacific.³⁶ Thus, the Regulation (EEC) n° 2081/92, when considering the intensity of the bond between the characteristics of the product and geographical means of origin³⁷, provides that the “denomination of origin” represents “the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff: originating in that region, specific place or country, and the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area”³⁸; and “geographical indication” means “the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff: originating in that region, specific place or country, and which possesses a

specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area”³⁹.

For these reasons, the main difference between these two concepts refers to the requirements that will have to be met. Thus, in the case of the PDO, the requirements deal with the natural conditions of the place and the elaboration that make possible the creation of agricultural products and foodstuffs that can be obtained only in the aforesaid geographical area⁴⁰; while, as for the PGI, the acquisition of the reputation is, fundamentally, linked to the activity developed by the companies of the delimited area.

On the other hand, it is necessary to indicate that the PDO must not get confused with the indications of geographical origin. In relation, we must stand out the jurisprudential contribution of the CJEC. This Court has considered that the purpose of these indications is just to offer the data about the origin of a place, a region or a concrete country of a certain agricultural product and foodstuff.⁴¹ And that, therefore, there is no direct relation between a specific quality of the product and its specific geographical origin, as it is demanded, in accordance with art. 2.2.b) of the Regulation (EEC) n° 2081/92, in the case of the PDO.⁴² The PDO guarantee the geographical origin

³⁵ *Judgement of the Court, of 18 November 2003, Budějovický Budvar, C-216/01, Rec. 2003, p. I-13617, para. 57.*

³⁶ LÓPEZ ESCUDERO, M.: *cit.*, p. 415. *Vid. also: CORTÉS MARTÍN, J. M.: La Protección de las Indicaciones Geográficas en el comercio internacional e intracomunitario, Ministerio de Agricultura, Pesca y Alimentación, Secretaría General Técnica, Madrid, 2003, p. 349-369.*

³⁷ *All these are criteria used in CORTÉS MARTÍN, J. M.: cit.*, p. 347.

³⁸ *Regulation (EC) n° 2081/92, cit.*, art. 2.2.a).

³⁹ *Ibidem*, art. 2.2.b).

⁴⁰ *Vid.: judgement of the Court, of 20 February 1975, Comisión/Alemania (“Sekt”), 12/74, Rec. 1975, p. 181.*

⁴¹ *Judgement of the Court, of 10 November 1992, Exportur, C-3/91, Rec. 1992, p. I-5529, para. 11. Vid. also: Pistre and others, cit.*, para. 36.

⁴² *Warsteiner Brauerei, cit.*, para. 43 and 44; *Budějovický Budvar, cit.*, para. 54.

of the product and that this product complies with specific characteristics, too.⁴³

With regard to the scope of application of the Regulation (EEC) n° 2081/92, this depends, fundamentally, on the nature of the denomination or indication in question. Therefore, it will be limited to those designations corresponding to a product in relation to which there is a particular bond between its characteristics and their geographical origin.⁴⁴ It also depends to a certain extent, on the Community reach of the conferred protection.⁴⁵ On the other hand, it is considered that a denomination that has an utter general character and that extends national borders will not be subjected to dispositions of this normative act, since, in this case, this direct bond which is required (between the quality or the characteristics of the product and their specific geographical origin) would not exist, as we have previously pointed out.

In practice, it has been demonstrated that this protection of the denominations of origin and the geographical indications, that are so interesting from the point of view of the food safety, can, however, prevent the free movement of goods, as stated art. 28 EC.⁴⁶ In relation to it, it is necessary to mention that the CJEC has considered, firstly, that this article is against the application of a national norm that reserves

the use of a denomination only to products made in the national territory and elaborated with national raw materials.⁴⁷ And, secondly, that, in the present state of the Community law, the principle of free movement of goods is not opposed to the fact that a Member State takes all concerning measures to guarantee the protection of the registered denominations of origin in accordance with the dispositions of the base Regulation in the scope of the PDO and the PGI.⁴⁸ Nevertheless, this Court has considered that a Member State fails to fulfil an obligation concerning to itself, in accordance with the dispositions of the article, when prohibiting the low scale sale of certain products imported from other Member States, unless they are labelled with an indication of origin or are enclosed with one.⁴⁹

Another aspect that has special importance in relation to the scope of application of the Regulation (EEC) n° 2081/92 is the fact that neither wines (except for vinegars of wine and the spirits⁵⁰) nor industrial products are included. Although, in this last case, as it was stated in the doctrine, the own Regulation leaves the door open so that they can included in the future.⁵¹ The lack of inclusion concerning wines and spirits in the scope of application of this Regulation could be justified because is applicable a Community norm relative to

⁴³ *Judgement of the Court, of 9 June 1992, Delhaize, C-47/90, Rec. 1992, p. I-3669, para. 17 and 18; Exportur, cit., para. 11.*

⁴⁴ *Regulation (EC) n° 2081/92, cit., art. 2.*

⁴⁵ *Budějovický Budvar, cit., para. 76.*

⁴⁶ *Vid.: LÓPEZ ESCUDERO, M.: cit., p. 410, 414 y 420-422.*

⁴⁷ *Pistre and others, cit., para. 54.*

⁴⁸ *Judgement of the Court, of 4 March 1999, Consorzio per la tutela del Formaggio Gorgonzola y otros, C-87/97, Rec. 1999, p. I-1301. Vid. also: PARDO LEAL, M.: "El Tribunal de Justicia de las Comunidades Europeas anula la denominación de origen comunitaria queso feta", *Gaceta Jurídica de la UE y de la Competencia*, n° 202, 1999, p. 90-91.*

⁴⁹ *Judgement of the Court, of 25 April 1985, Comisión/Reino Unido, 207/83, Rec. 1985, p. 1201, para. 23.*

⁵⁰ *Art. 1.1 of the Regulation (EEC) n° 2081/92 stipulates: "[...] this Regulation shall not apply to wine products or to spirit drinks".*

⁵¹ *The para. 9 of the Regulation (EEC) n° 2081/92 says: "Whereas the scope of this Regulation is limited to certain agricultural products and foodstuffs for which a link between product or foodstuff characteristics and geographical origin exists; whereas, however, this scope could be enlarged to encompass other products or foodstuffs". Vid. also: CORTÉS MARTÍN, J.M.: op. cit., p. 338; BEIER, F. K.; KNAACK, R.: "The Protection of Direct and Indirect Geographical Indications of Source in Germany and the European Community", *International Review of Industrial Property and Copyright Law*, vol. 25, 1994, p. 35.*

these fields. Neither the indications of a geographical origin entered its scope of application either.

In relation to this, it is significant the case of the *generic denominations*. It is not necessary to register them. In accordance with the dispositions of the Regulation (EEC) n° 2091/92, the term “designation that has turned into generic” means “the name of an agricultural product or a foodstuff which, although it relates to the place or the region where this product or foodstuff was originally produced or marketed, has become the common name of an agricultural product or a foodstuff”.⁵² The CJEC has contributed to clarify the situations created by the generic designations. So, the Court considers that in the case of a combined designation, the protection of each element will only be possible as far as it does not refer to a generic word or a common word.⁵³

This Regulation intends to guarantee a uniform protection in the EU, both of the designations of origin and of the geographical indications. Considering these necessities, the Community legislator set the obligation for the Member States to have a *Community registry*. It means that as long as they are registered, those designations and/or indications will be protected in any Member State. Whereas the national protection, that a Member State grants to

geographical denominations that do not fulfil the registry requirements, according to the rule of this normative act, will be governed by the national law of that concrete country and will be limited to its territory.⁵⁴ On the other hand, it is compulsory, that whenever a country asks for the registry of a new designation, this designation is legally protected in its territory or in the territories of the Member States where there is not a protection system.⁵⁵ Thus, the CJEC originally considered that a special importance had to be paid to the existing situation in the original Member State⁵⁶, considering, subsequently, to minimize the meaning given to this designation in the rest of the Member States. So, all pertinence to its national legislations was denied⁵⁷.

We could wonder about the conditions to be fulfilled by agricultural products and foodstuffs in order to be awarded either a designation of origin or a geographical indication. The answer is given by art. 4.2 of the Regulation (EEC) n° 2081/92, that gather the list of the necessary conditions, but not thoroughly, as it was indicated in the CJEC judgement *France/Commission: the name and description of the agricultural products and foodstuffs, the definition of the geographical area, the elements that prove that the product is original of this geographical area,*

⁵² Regulation (EEC) n° 2081/92, cit., art. 3.1.

⁵³ Judgement of the Court, of 9 June 1998, *Chiciak y Fol*, C-129/97 y C-130/97, Rec. 1998, p. I-3315, para. 37; judgement of the Court, of 25 June 2002, *Dante Bigi*, C-66/00, Rec. 2002, p. I-5917, para. 17.

⁵⁴ Vid.: judgement of the Court, of 7 November 2000, *Warsteiner Brauerei*, C-312/98, Rec. 2000, p. I-9187, para. 50; *Budějovický Budvar*, cit., para. 74. Vid. also: Commission Regulation (EC) n° 2400/96, of 17 December 1996, on the entry of certain names in the 'Register of protected designation of origin and protected geographical indications' provided for in Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, OJ L 327, 18.12.1996, p. 11-12; European Commission Directorate-General for Agriculture: "Food Quality Policy in the European Union. Protection of Geographical Indications, Designations of Origin and Certificates of Specific Character for Agricultural Products and Foodstuffs. Guide to Community Regulations", Working Document of the Commission Services, 2nd Edition, August 2004, p. 27-42.

⁵⁵ *Dante Bigi*, cit., para. 28.

⁵⁶ *Exportur*, cit., para. 37.

⁵⁷ Judgement of the Court, of 16 March 1999, *Dinamarca, Alemania y Francia/Comisión ("Feta")*, C-289/96, C-293/96 and C-299/96, Rec. 1999, p. I-1541, para 68 and 87-90.

the description of the method to obtain the product, the factors that credit the bond with the geographical means or with the geographical origin, the references relative to the structures of control, the specific elements of labelling relative to the designation PDO or PGI or the equivalent national traditional mentions, and the possible requirements that must be fulfilled by virtue of the communitarian and/or national dispositions.⁵⁸

This Regulation also provides, in art. 11.4, the conditions in which this Community registry can be annulled. There are two situations: firstly, when the Member State that has submitted the request of original registry verifies that a request of cancellation, submitted by the group or by any affected juridical or natural person is justified, or prefers to send it to the Commission, and, secondly, for justified reasons in which the respect to the conditions of the specifications of an agricultural product or foodstuff that it is awarded the protection of a geographical origin would no longer be guaranteed.⁵⁹

Next, we will deal with the EC protection system in the case of Traditional Specialty Guaranteed (TSG). Its legal basis is set in the *Council Regulation (EEC) n° 2082/92*. It regulates the certification of the specific characteristics of agricultural products and foodstuffs.⁶⁰ It is necessary to mention, from the start, that this system, unlike the one stated in the *Council Regulation (EEC) n° 2081/92*, does not make

any reference to the origin of the agricultural products and foodstuffs, but it intends to stand out a traditional composition of the product or a way of traditional production.⁶¹ Thus, the use of geographical terms in a name for which registry has been requested, in accordance with art. 5. 4 of the Regulation (EEC) n° 2082/92, will be authorized, but as long as these terms are not subject to the Regulation (EEC) n° 2081/92. The scope of application of this normative act is made up both of the agricultural products that appear in the Annex I of Treaty EC, that as we have indicated previously, are aimed to human feeding, and of the food products that are enumerated in the Annex.

In accordance with article 2.1 of the Regulation (EEC) n° 2082/92, the concept “specific character” of agricultural products and foodstuffs means “*the feature or set of features which distinguishes an agricultural product or a foodstuff clearly from other similar products or foodstuffs belonging to the same category*”. Nevertheless, the presentation of an agricultural product or foodstuff will not be considered as an element, in the sense of this legal disposition. These specific characteristics of a particular agricultural product or foodstuff will not be limited just to the qualitative or quantitative composition or to a way of production defined by the Community or national norm, neither by norms provided for by organisms of normalization or voluntary norms. However, this disposition will not be applied when the national norm

⁵⁸ *Commission/France, C-6/02, cit., para. 44-45. In this occasion, the CJCE stated there were some essential conditions related to: the description of the agricultural product or foodstuff, the elements that prove that the product comes from this geographical area, the description of the method to obtain the product, the specific labelling elements linked to the mention to PDO or PGI or the equivalent national traditional mentions, and the possible requirements that must be met by virtue of the communitarian and/or national dispositions*

⁵⁹ *The procedure is established by art. 15 of the Regulation (EEC) n° 2081/92, cit.*

⁶⁰ *Council Regulation (EEC) n° 2082/92, of 14 July 1992, on certificates of specific character for agricultural products and foodstuffs, OJ L 208, 24.07.1992, p. 9-14.*

⁶¹ *Vid.: COM(99) 374 final: Report from the Commission to the Council under Article 21 of Regulation (EEC) No 2082/92 on certificates of specific character for agricultural products and foodstuffs on the implementation of the Regulation, Brussels, 19.07.1999, p. 10-12.*

or the specific norm has been provided to define the specific characteristics of a product.⁶²

For this, the Commission has created a new system in the European internal market. This system has a voluntary character. We believe that it can be a useful instrument to guarantee the food health of agricultural products and foodstuffs. It is about the *Register of certificates of specific character* that shows the names of the food products whose specific characteristics have been previously identified on a communitarian scale⁶³, on the one hand. And, once they comply with a list of conditions that will be verified in a very strict way in the phase of manufacture of the product (such as: the name written up in one or several languages, the description of the production method, the elements that allow to evaluate the traditional character, the description of the characteristics of the agricultural products and foodstuffs, indicating its main characteristics, the minimum requirements and the procedures of control of the specific characteristics), on the other hand.⁶⁴ It is also stated that the name will have either to be specific by itself or to express the specific characteristics of the agricultural products and foodstuffs. This is the case of the traditional names that are, at the same time, in accordance with the national dispositions and of the names given by the use. In this sense, the Regulation (EEC) n° 2082/92 provides that the name of a product that refers only to the exigencies of general character used for a set of

agricultural products and foodstuffs or to the exigencies provided for in a specific communitarian regulation could not be registered; or when that name is abusive, specially for making a reference to an evident characteristic of the product or because it does not comply with the list of conditions or with the expectations of the consumer, considering the characteristics of the product.⁶⁵

As far as the request of register of the specific characteristics of agricultural products and foodstuffs, only the groups have this possibility. This means, only those organizations who work with the same agricultural products and foodstuffs, independently of their legal form or its composition, of producers and/or transformers.⁶⁶ These groups will have to go to the competent authority of the Member State in which it is established. This authority will be responsible for forwarding this request to the European Commission, at the time it considers that the requirements indicated in arts. 4-6 of the Regulation (EEC) n° 2082/92 are being fulfilled.⁶⁷ The following step will correspond to the Commission, since it is the one that will transmit the request of register to the Member States. The request will be translated in the official languages of these states, in a term of six months, counted from the date of reception of the request. Immediately afterwards the Commission has to publish the main elements of the request in the Official Journal of the European Union, series C, mainly the name of the

⁶² Regulation (EEC) n° 2082/92, cit., art. 2.

⁶³ *Ibidem*, arts. 3-5. Thus, the agricultural products and foodstuffs to be included in this register, must be produced from traditional raw materials or present a traditional composition or a way of production and/or transformation that belongs to the type of production and/or traditional transformation. For instance, those products whose specific characteristics are not in their origin or geographical origin or which they are not just the result of the application of a technological innovation, will not be registered.

⁶⁴ *Ibidem*, art. 6.

⁶⁵ *Ibidem*, especially art. 5.

⁶⁶ *Ibidem*, art. 2.

⁶⁷ *Ibidem*, art. 7.

agricultural products and foodstuffs and the references of the applicant.⁶⁸

Therefore, this creates the possibility of an opposition law and, on the other hand, that the register is provided by the Commission through a regulation. However, the designations which are registered will not be reserved only to these groups, but they can be used by any producer that elaborates a product and that adjusts to the list of conditions provided for in art. 6. Thus, it is possible to register “generic” denominations for the agricultural products and foodstuffs.

In relation to it, we have to say that the Community legislator has provided two levels of protection that are at the disposal of the producer. Thus, in accordance with art. 13.1 of the Regulation (EEC) n° 2082/92, there is a *partial protection* of the name, and, by virtue of art. 13. 2 of this Regulation, the *absolute protection* of the name is also provided. But, this second possibility has never been used till now. It is also possible to add the protection given by the route of the *Community logo*, which would be published in colour and would be accompanied of an illustrated manual for its use.⁶⁹ Nevertheless, the registered designations, which are also characterized by its shortage of terms, have not been used yet.⁷⁰

3.2. The control conducted by the Member States as a guarantee of the fulfilment of the requirement of quality of agricultural products and foodstuffs

After having raised the subject of the regulation referred to the protection of

agricultural products and foodstuffs by means of a denomination of origin, a geographical indication or a traditional specialty, it seemed useful to indicate, in general lines, the control carried out by the Member States on the matter, as a guarantee of the fulfilment of the existing legal dispositions in this matter since it is an essential component of any food safety strategy.

We are talking about a complex coordinated program of control conducted in the field not only of the human consumption but also of animals, being a reflection of the new approaches followed by the EU referring to the fulfilment of the requirement of quality of agricultural products and foodstuffs and, therefore, of the own food safety. One is the well-known with the name of “Hazard analysis and control of critical points” (HACCP).

The control system fixed in the Regulation (EEC) n° 2081/92 is identical to the one provided for in the Regulation (EEC) n° 2082/92. The objective of this system is to guarantee that the agricultural products and foodstuffs that show a protected denomination or that have a certification of specific characteristics, can meet the requirements of the list of conditions. It is looked that these products respect the conformity control.⁷¹ In this sense, a structure of control will be created in each Member State to guarantee that the products that benefit from a PDO or a PGI or that have a certification of specific characteristics fulfil the requirements of the list of conditions, in accordance with the mentioned dispositions.

⁶⁸ *Ibidem*, art. 8. Vid. also: COM (99) 374 final: cit., p. 5-8.

⁶⁹ Commission Regulation (EC) n° 2515/94, of 9 September 1994, amending Regulation (EEC) n° 1848/93 laying down detailed rules for the application of Council Regulation (EEC) n° 2082/92 on certificates of specific character for agricultural products and foodstuffs, OJ L 275, 26.10.1994, p. 1-2.

⁷⁰ COM (99) 374 final: cit., p. 7.

⁷¹ Regulation (EEC) n° 2081/92, cit., para. 10.1; Regulation (EEC) n° 2082/92, cit., art. 14.1.

The control structure will comprise one or several designated control services and/or private organisms authorized to this purpose by the Member State; once these control services are provided, each Member State will send to the Commission the list of authorities and/or authorized organisms and their respective competences. Immediately afterwards the Commission will publish all this information in the Official Journal of the European Union. These services and/or control organisms will have to offer sufficient guarantees of objectivity and impartiality to the producers or transformers submitted to their control. For that reason, its organizational chart had to permanently have experts and the necessary means to carry out the controls of the agricultural products and foodstuffs that show either a protected denomination or a specific certification.⁷² As regards the costs caused by the controls carried out, they will be paid by the consumers, which, in practice, brought about a lot of criticism since the expenses were quite high, especially for medium and small producers.

Five years after the Regulation (EEC) n° 2082/92 came into effect, on the basis of the art. 21, the Commission submitted a report to the Council about the profits achieved in the field of the certification of the specific characteristics of agricultural products and foodstuffs. Thus, among other considerations, the assessment of the Commission was positive since it considered that the norms regarding the controls organized and conducted by the Member States adjusted to the conditions imposed by art. 14 and, on the other hand, it

recognized that complaints had not been submitted, which led to think that the controls had been made correctly, totally respecting the considerations of objectivity and impartiality.⁷³

Obviously, all these aspects are directly related to the questions of food safety that, so far, have been object of study on the part of the CJEC in few occasions. In our opinion, this situation is related, to a great extent, to the novel character of the application of the HACCP on an EU scale. Although, we think that the number of subjects raised to this Court about situations related to this system of control will increase soon.

Among the judicial uprising of the CJEC we could extract that this Court has considered which of the controls carried out outside the production region offer less guarantees of security for the quality and the authenticity of the product that the ones carried out in the production region, respecting, also, the procedure provided in the list of conditions.⁷⁴ This position could be understood from a double perspective: on the one hand, the controls conducted according to this last procedure have a meticulous and systematic character. For that reason, it is necessary that these operations of control are in the hand of professionals with a specialized knowledge of the characteristics of a specific food product. And, *on the other hand*, it is hardly imaginable that the representatives of the beneficiaries of the PDO can effectively establish such controls in the other Member States. The CJEC has also considered that the risk for the quality and the authenticity of the

⁷² There is also the possibility that the control is carried out by another organism that resorts to the designated authorized service. In this situation, this organism will have to present the same guarantees that the one that had the initial authorization to do it, although the responsibility of the conducted controls is not delegated in the new organism in charge to carry out the control at issue.

⁷³ COM (99) 374 final: cit., p. 21.

⁷⁴ Judgement of the Court, of 16 May 2000, Belgium/Spain, C-388/95, Rec. 2000, p. I-3123, punto 67; Consorzio del Prosciutto di Parma and Salumificio S. Rita, cit., para. 75.

product which is finally available to the consumption is higher when some operations of its production are carried out outside the production area rather than when they are made inside the area.⁷⁵

Conclusions

Throughout this paper, we have intended to draw the route of the objective of food protection within the framework of the CAP, all along the Treaty signed in Rome in 1957 to the present time. As we have pointed out, although the profit of a viable protection of the Community consumer has always been intimately related to the accomplishment of the internal market (within the framework of the free movement of goods), its later reception by other Policies of the Union has been, to our point of view, the logical evolution of the integration process that the EU has

experienced, mainly along the last two decades. It would be enough to mention that within the framework of the CAP the food safety has managed to progressively constitute its third pillar, currently boasting an outstanding place in the attainment of its objectives.

As we could see along this paper, the concept of food protection of the European citizen is considered in all the EU framework, not only in an isolated Community Policy, but it inspires different Community Policies, CAP being one of the most outstanding.

Of all that has been said, the CAP has been progressing in its mechanisms and legal instruments towards a more and more relevant integration of the concerns relative to the consumer's health protection and to the food safety in the objectives to be reached.

⁷⁵ *Belgium/Spain, cit., para. 74; Consorzio del Prosciutto di Parma and Salumificio S. Rita, cit., para. 76.*

HARMONIZED EUROPE OR EUROPEAN HARMONY?

Cosmin Marinescu*

Abstract: *Recent evolutions in Europe raise questions on the viability of the present economic and social model that defines the European construction project. In this paper, the author will try to explain the viability of institutional European model that sticks between free market mechanisms and protectionism. The main challenge for the EU is about the possibility to bring together the institutional convergence and the welfare for all Europeans. This is the result of the view, still dominant, of European politics elite, according to which institutional harmonization is the solution of a more dynamic and prosper Europe. But, economic realities convince us that, more and more, a harmonized, standardized Europe is not necessarily identical with a Europe of harmony and social cooperation. If „development through integration” seems to be harmonization through „institutional transplant”, how could then be the European model one sufficiently wide open to market, which creates the prosperity so long waited for by new member countries?*

Key words: *economic model, institutions, economic integration, competition*

Last year news presented great union demonstrations that almost paralyzed symbol towns of EU. Worried and astonished, we assisted to a terrifying show offered to the entire world. “Bolkenstein Directive”, against which there were hundreds of thousands of European people, seemed to become a horror movie title that threatened to dethrone social privileges of the welfare state. In France, politics proposed in order to liberalize the labor market turned Paris in a siege capital, through which unions almost colonized the state. This is the image of an unprecedented institutional crisis that characterizes the present social arrangements of EU. There is no doubt that we speak about an amazing state of affairs, contrary to “social cohesion and solidarity” challenges that begin and end almost all EU programmatic documents.

European integration is built on a system of common policies negotiated and

adopted by European governments. This integration process is not the result of the political constraints abolition; it does not mean perfect free market and competition mechanisms, despite all efforts towards these. We can speak about a political-bureaucratic option towards *what should be the economic and society European model*. And this political normative derived into an institutional arrangement exported, with the highest fidelity possible, to member countries and to those that applied for membership.

We are all aware of the confusion that the philosophy of EU political elite makes between “harmonization” and “harmony”. In fact, harmonization is another way of speaking about “unification”, meaning accepting a unique rule, in fact “standardization” that European institutional arrangement propose to almost all social life sectors.

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Harmonization architects seem to ignore what is the most important precondition for the economic prosperity, meaning diversity, competition between different institutional arrangements and, in globalization terms, even between different fiscal systems. Competition is the only one that can improve the situation, meaning reducing tax burdens and improving public services.

Within economic sectors, the same as in music, harmony does not derive from unanimity agreement, but from diversity agreement. This could be the future of fiscal Europe: European contributors capitalize the interjurisdictional differences, and those will facilitate tax competition. For the very moment, hundreds of young French go abroad trying to escape from the French tax system rapaciousness. Which could be the harmonization scope? To stop the free movement of production factors by constraining the other European countries to "harmonize" (it could be also read "increase") their tax system to rough requirements of welfare state.

Free Market vs. Protectionism

The entire EU institutional arrangement - with American pedigree at its origins - is fundamentally the result of the European political system. Despite many economic arguments being quoted in favour of European integration, the defining source of the European project is, par excellence, primary a political one. Initially, the energies of the European integration were animated by the necessity to build a (political) power to counterbalance the American "imperialism" and the unprecedented taking aim of East Asia. In time, the economic dimension gained (an) increasing importance.

But who are the creators of this political project and what were they aiming at? The founding fathers of the "United States of Europe", starting with Jean Monnet, were convinced that the "high" European authorities would have the capacity to plan the economic development overriding the economic principles of the market. We talk here about the model of an economy built via and surrounding the state policies and budgets?. As shown in *"Institutions and Prosperity. From Ethics to Efficiency"* (Marinescu, 2004), the allocation of public resources does not impede the exigencies of economic calculus and of markets, but rather political rationales. In fact, the political allocation of resources bears the stamp of any governmental budget. European budgets are built on an immense scheme of subsidies, aids, structural funds and financial external assistance. All this explains the redistribution of resources in the European space via governmental budgets, the European budget and the common policies.

The candidate countries, from the position of net-receivers, consider this a very positive process, at least at this stage. Since the Marshall Plan, it became clear that the dramatic expansion of „foreign aid“ programmes is the result of a political option and not necessary of an efficiency criterion. Hence, the impossibility to assess whether the politically „exported“ resources will serve a real economic need or will only contribute to feeding corruption and the “ossification” of the state elites. Billions of dollars external aids offered generously to the African countries by international financial institutions had a modest efficiency or proved to be painfully failure in reducing poverty (India, some countries from Latin America or Africa). Numerous studies have shown that external financial assistance

neither creates, nor is it correlated with the essential sources of prosperity. If liberty is the determining source of prosperity, one could notice that a reduction of economic freedom is often paradoxically - the result of foreign aid increasing¹. Setting external fund at the foundation of a country's economic success is a dismal illusion. This approach neglects the role of liberal policies (some of them even anti-European) in creating prosperity. Ireland is a very good illustration of the case when the reduction of public expenditure exceeded the inflow of European funds.

In its essence, the transition to market economy resides in the generalization of the private property as a fundamental institution and its logic corollaries: economic freedom, markets and economic calculus. For all former candidate countries, excepting probably Estonia, embracing the European model was the equivalent of reducing the degree of state intervention in the economy and accompanied by an expansion of the market mechanisms. From this point of view, for the governments of Central and East European countries, accession represented an external constraint favouring the completion of reforms towards the market. For example, the liberalization of external trade (the adoption of a common trade policy), reducing the barriers to foreign investment and the free movement, the competition policy in general which can clarify the national business environments and even the almost obsessively invoked safeguard of legal stability and certainty.

However, the very European model itself is insufficiently open to the market mechanism in order to rapidly induce in the candidate countries the long waited prosperity. Moreover, embracing this model

requires costs which are far from negligible and which can reflect in the slow down the economic performance. The so much wanted economic growth is the product of economic liberalization and market mechanisms. Prosperity is not a spontaneous result of gaining the EU membership, but of sound economic policies which stimulate capital accumulation, investment and entrepreneurship.

CEE economies are emerging economies for which economic progress and spread of prosperity via the market could be more important than the protection by the state of consumers' interests, job security or other aspects related to environmental protection. Moreover, it has been admitted that the implementation of European rules in labour, agriculture and environmental sectors is associated with huge costs, which would vitiate the potential for economic growth.

For instance, if the European environmental regulations were immediately applied, they would sentence the Romanian economy to stagnation, by the imposition of the required high standards and prohibitive costs. It is understandable why, at present, the most stringent standards and legislations regarding environmental issues are to be found in the developed countries: improving the environmental quality is the consequence and the reflection of an improvement in the standard of living. Empirical studies have shown that environmental standards tend to rise with the GDP/capita. This means that the European exigencies should give priority to the fast economic growth in the CEEC which should be followed, rather than preceded, by an improvement in the environmental

¹ See the works of Lal (2002), Bauer (1993), Johnson (2003), Bandow and Vasquez (2001).

standards. Besides, the possibilities of reforming the present approach (state ownership, high standards and huge governmental spending) through the systematic expansion of the private property in the environmental sector are an illusion.

Institutional Transplant of European Centralism

There are two ways in which the national governments could react to the generalization and the intensification of competition: giving up to the market forces or forming a cartel. The first means the consolidation of freedom and a greater prosperity, the second one erodes freedom, determines the preservation of the status quo and only redistributes wealth.

The first way reflects the generalization of the institutional competition, which represents the spontaneous adjustment of the national institutional arrangements with the aim of improving competitiveness and economic performance. In the context of globalization intensification of cross-border trade and the increased mobility of factors of production economic systems are prone to certain adjustments and even to institutional changes of high magnitude. Under the new circumstances, the institutional competition the competition between rules is the natural consequence of technological and organizational innovations. These have induced the increase in the mobility of goods and people at international level, the unprecedented development of communications through the reduction of transaction costs. Thus, the opportunities offered by the external market are greater and their fructification becomes more advantageous.

The European model of institutional building and political governance

corresponds to the second path. This derives from the European political elite belief that the politically and economically uniformed, harmonized United Europe will better resist the “disruptive” forces of globalization. In this view, the *acquis* would represent an instrument of harmonization through institutional transplant and the taking over the legislation *corpus (acquis communautaire)*.

The Brussels bureaucracy, also called Eurocracy, has developed specific forms of hierarchical coordination and administrative harmonization (read *standardization*) in almost every domain of public policy. The transposition of thousands of pages of European legislation means importing institutions, administrative structures, legal practices and economic policies. The *acquis* illustrates probably the best way the legislation can be turned into a governing (political) instrument, thus creating a radical discrepancy between Legislation (governing regulation) and Law (applying the rule of law through the distinction between good and evil). Moreover, the project of the European Constitution, the longest and most politicized constitution of all times - 270 pages and 70.000 words, in comparison with the only 17 pages and 4.500 words that the USA Constitution counts) is a clear example of European centralism at economic, institutional and political level.

With regard to the constitutional arrangements, one needs to mention that the most important difference between the American Constitution and the Constitutional project of the European Union resides in their view on “rights”. The „Bill of Rights” of the US Constitution consists in a list of individual rights against the state and its constraining powers, the „Charter of Fundamental Rights” of the

European project consists in a long list of rights to the state monopolized services, like the right to education and health, the right to security, social assistance, right to work etc. The US Constitution is largely build on the philosophy of “the right to ...” (ownership) because, lastly, the philosophy of the natural right of John Locke demonstrates the human rights cannot be conceived other than as ownership rights. In turn, the European constitutional project talks about “the right of...”, a concept that implies the very undermining of the true human rights, by the expansion of political power and the authority of the state over the life of the individual. By the sacrifice of these fundamental principles of law, the authors of the constitutional treaty project have overloaded the vessel of social rights with nothing else but privileges that dilute the concepts of contract and individual responsibility, favouring set up of a union like, collectivist regime.

The accession process, as it was conceived, was based on the creation and consolidation of an executive specialized branch at national level, which favours the executive component of government. This derives from the fact that the negotiating process and the adoption of European norms is, in reality, an administrative exercise which has the nature of consolidating even more the “statist model” in Europe through the perpetuation of the welfare (redistributive) state and the social market economy model - a model whose economic performances are more and more modest. The fact that the whole process of EU enlargement has developed in a purely elitist, technocratic way has eroded the public support and the trust in the integration process. This could explain why, in what regards the enlargement issue, the public opinion in many European countries

is less enthusiastic than in the Brussels officials' declarations.

From an economic perspective, it is not clear why EU should be a centralized institutional and political arrangement. The free market and competition are capable of boosting Europeans prosperity without necessarily regulating the size and shape of fruits and vegetables, as it happens with the European legislation. Almost all economic and social policies and subject to “harmonization” at a pan-European level while enlargement based on a strictly conditionality system becomes a powerful instrument of reducing diversity.

At fiscal level, harmonization could lead to the alignment of taxes “higher” at the level of most burdensome fiscal regimes. It is alarming that European officials tackle the competition issue only half the way: competition is good, but not between governments (at fiscal level). It seems ironic that many European officials have shown concerns for the fact that some countries use fiscal dumping as more and more business turn towards more friendly fiscal jurisdictions. Moreover, both at EU and OECD level, there are concrete proposals for fiscal harmonization in order to prevent the damages of fiscal competition! These measures are meant to prevent the national governments to resort to the fiscal competition “gun” as the main means of rending their business environment more appealing; this is similar with prohibiting the entrepreneurs to use all the tools and instruments they know for obtaining the best quality product in the least costly way. In that case, the constitutional rights of American and Swiss citizens to legislative proposals of fiscal reductions should be forbidden, since this would lead to the reduction of revenues from taxation to the German or the French government?! And, to

finally conclude on the issue of fiscal competition, we should quote Pascal Salin who said that prosperity needs not to abolish the “fiscal paradises”, but to abolish the „fiscal hell”...

Theoretically, *fiscal competition* is the natural consequence of the mobility of taxation base between the states. As a non-cooperative game between governments, the fiscal competition generates the incentive to reduce the fiscal pressure for the taxation bases with a higher mobility and the increase of the burden for the factor of production and activities less mobile. As globalization diminishes the possibilities for monopolies to resist in different markets, so it acts towards the limitation of the monopoly of governmental power. Consequently, governments that cannot resist fiscal competition could exhibit the tendency to operate at a higher level of constraint of the political monopoly, in a fiscal cartel very likely to be built at European level.

At present, the ample technological and institutional changes facilitate the international migration and the intensification of fiscal policy in the labour markets, a factor whose mobility has increased significantly: the high tech sector specific skills, artists, sportsmen, all place their activities taking into account the friendliest fiscal jurisdiction. For instance, the fiscal authority in France reports that each year, thousands of tax-payers leave the country for fiscal reasons; a large number of French entrepreneurs place their operations in UK; the strong relief of fiscal pressure in Ireland has reversed the traditional trend of migration.

At sector policy level, guided by its aim to “organize” (read make uniform) whole sectors of economic activity, the European Commission has adopted the

strategy of „common policies”, based on the proliferation of regulations, administrative controls and political subsidies. What are the results? The CAP - an expression of the view that private agriculture is impossible has deprived consumers, contributors and even farmers. Brussels' fixed prices did not prevent the rural exodus; they have put pressure on households' income, while the protectionist policy diminishes the benefits from agricultural cheaper imports. Moreover, as a result of accession, the farmers in the new Member States will have to reduce their output in conformity with the already negotiated and arbitrary established quotas together with the European decision making bodies, based on un-loyal competition grounds, despite the fact that old Member States export more to Easter Europe than they import. But how do the production quotas shake hands with the idea of a true, competitive internal market?

The Welfare State or the Redistribution that deprives

When the economic history of Europe from the last third of 20th century will be written, we will understand the whole series of battles that national governments have launched against the economic reality, with the mere illusion that victory can be granted by the embodiment of a simple majority. In this period, Europe was dominated by the institutional arrangement of the welfare state, whose practices were promising education, healthcare, security, prosperity, jobs, in a word happiness for everyone. For the achievement of this goal, national governments understood to increase governmental spending to over 50% of their GDP.

Beyond the increase in public spending, the welfare state machinery was

fortified by numerous protectionist laws, ranging from an extremely elaborated system of “working rights” to a huge administrative mechanism in the social insurance and social care. The almost full subordination of the economic to the political was justified, on a large scale, by two reasons. The first one, packaged in cheap electoral pills like „The man counts more than the market” or „In democracy, it is the votes that decide, not the dollars”, is based on the fallacy that man, on one side and dollars, on the other side, have conflicting interests. The second reason, one that amplified the invasion of economy by a multitude of “welfare” policies consists in the unhappy belief that the redistribution of income by the government through taxation and policies is an act of “social justice” and a moral duty.

The institutional arrangement initially named “welfare state” was later on recalled in numerous programmatic declarations of EU as the “European model”. This very skilful linguistic manoeuvre is meant to underline the clear antagonism of the „European model” in contrast with the „Anglo-Saxon” or, even further, with its political rival, the „American model”. In this sense, the supporters of the institutional construction of the EU try to accredit the idea that the performance of this „European model” will be the more obvious, the more the good Europeans will disagree with the cultural model of Anglo-Saxon origin.

Obviously, the claim that, at present, this „European model” would be representative for all Europeans is biased. Essentially, the nature of the „model” is French-German. Its essence is derived from the French socialism of military Gaullist

inspiration, from the German social-democracy and the doctrine of the unions². Thus, the European model gets attached, as it is the case for any „rational planned” society, to its own system of cultural values, meant to clearly illustrate the dislike of the Anglo Saxon civilization, still liberal, but more and more to a lesser extent.

The fundamental trait of the “European model”, taken over word by word from the arrangement of the „welfare state”, consists in the redistribution of welfare in the society. Nowadays, the political redistribution of property is considered, even amongst economists, a “natural” prerogative of the state. But the institutionalization of the redistributive practices of the *welfare state* produces, during time, as it has been proved, two types of consequences that inhibit economic prosperity (Marinescu, 2004):

a) *At economic level*, the incentives for work, initiative and entrepreneurial activity are negatively affected; a decrease in the rate of capital formation, the disincentive of the investments with depressive effects on the economic activity.

b) *At socio-cultural level*, changes occur in the social structure regarding the types of personality and character of humans. Social assistance is the one that creates a “mentality of assisted” and favours the collectivist and equalizing cultural values.

Beyond the precarious realism of the policies of the European welfare state, the main goal of the “model” consists in developing a vast scheme of social security, starting with the full monopoly of state in the education sector, goes further with the legal protection of labour places, the best paid

² *The European Union tradition is well known. The Americans had spoiled theirs by the capitalist „spirit” that animated the initial development of their economy. If socialism was aiming at collective state property on capital, the union-ship (as a doctrine and a tactic) had as a fundamental goal the abolition of the separation of workers from the means of production and consequently the annihilation of the entrepreneurial spirit (see Ludwig von Mises, 1966, chapter XXXIII).*

holidays, the lowest duration of labour-time that ever existed and ends up with the social insurances for the unemployed and the state pensions.

But which are the economic costs of this social „generosity“? First, we need to understand this public “generosity” is built on higher taxes that have always defined the welfare state institutional arrangement. The redistribution mechanisms and the burdensome taxation are the very sources of the economic problems that Europe faces at this moment. First, we talk about a very pale economic growth experienced by some of the *hard-core* members of the Union. Economic growth rates of 1-2% have become almost a rule, thus being official figures of the economic counter-performance in the EU. Happily, the economic growth deficit in the EU raises serious constraints for the European elite in continuing to rolling systematically the social (read “political”) leverages of “welfare”. Secondly, it is the serious frictions in the way of the realization of “social harmony” whose source resides, ultimately, in the administrative defection of the labour market mechanism. During the thirty years since the “social model” became a political must, unemployment exploded from an average of 4% to over 10% in France and to approx. 12% in Germany. And from the side-slip of the labour market (if we allow

ourselves to call it labour market) to the undermining of the fundamentals of civilizations, of “social cohesion” (a concept so dear to the planners of the EU) are only a few very small steps.

The morale is that social policies meant at ensuring social cohesion end up by off-setting economic growth and implicitly, the creation of jobs, which also explains the dramatic tensions in the labour market in countries like France and Germany. Moreover, the partisans of the “European social model” proved the misunderstanding of a simple economic logic when they claim that unemployment is high in Europe because the model is not “social” enough...or “European”, which holds the danger of giving birth to an even more stringent need of European “harmonization”. In reality, unemployment is the consequence of a labour market stiffened by its own over-regulations by the job protectionism. This is contrary even to the principle of “freedom of contracts” by a fiscal burden that ruins the incentives of entrepreneurship, hence the scarcity of the newly created jobs. In an economy dominated by the public sector, the thirty years time of economic socialist policies have spoiled the incentives of the entrepreneurship and turned the “working class” to an amorphous mass continuously nourished with preferential legislation.

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« CULTURE 2000 », MISE EN PLACE D'UNE POLITIQUE CULTURELLE

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Abstract. *Le programme « Culture 2000 », commençant à être appliqué à partir de l'année 2000 est le premier programme cadre dans le domaine culturel au niveau européen. Le saut qualitatif que ce programme cadre représente par rapport aux programmes précédents nous mène à analyser les avancées qu'il apporte, son rôle et sa place dans la politique culturelle de l'Union européenne ainsi que sa contribution à l'établissement d'une identité européenne. Ainsi, dans une première partie l'article traite du processus de la mise en place du programme « Culture 2000 », de ses portées et de ses objectifs pour se concentrer dans une deuxième partie sur le rôle que la dimension culturelle européenne peut jouer, à travers le programme cadre, dans la définition d'une identité européenne.*

Mots clé: *culture, politique culturelle, identité européenne*

Introduction

A l'aube du XXI^{ème} siècle, la culture est définitivement reconnue comme un élément clé dans la construction européenne. La nécessité d'asseoir une politique culturelle ébauchée au cours des années quatre-vingt-dix se fait ressentir et les acteurs communautaires aspirent alors à approfondir le processus entamé auparavant. Le premier programme cadre intitulé « Culture 2000 » est sans doute le fruit de cet approfondissement. Mais en quoi ce nouveau programme représente-t-il une avancée significative pour le volet culturel européen ? Révèle-t-il plus précisément le rôle et la place accordés à la culture dans la construction européenne ? Ces questions nous invitent ainsi à analyser la situation dans laquelle se trouve la dimension culturelle européenne dans l'esprit de « Culture 2000 », en abordant les fondements et les enjeux de ce programme avant de dégager le regard alors porté sur le domaine

culturel et de chercher à mieux délimiter l'espace qui lui est consacré dans la construction européenne.

1. Les origines du programme

Les changements, que connaît le volet culturel à partir de 1993, concrétisés par l'adoption des programmes Kaléidoscope, Ariane et Raphaël représentent une avancée importante de la dimension culturelle. Mais, malgré la cohérence que ces programmes apportent au volet culturel, les limites conceptuelles de l'action culturelle déterminent les acteurs communautaires à entamer l'élaboration d'un programme plus exhaustif.

Ainsi, le 22 septembre 1997, avant même l'adoption des décisions établissant les programmes Ariane et Raphaël, le Conseil adopte une décision concernant l'avenir de l'action culturelle dans laquelle il invite la Commission à « étudier les possibilités d'élaborer une approche

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directrice, globale et transparente pour l'action culturelle au sein de la Communauté¹. En soulignant le fait que «les programmes culturels actuels se termineront dans les prochaines années»², le Conseil démontre que les trois programmes sont avant tout conçus comme une phase transitoire dans le développement du volet culturel et comme une source expérimentale à partir de laquelle peuvent s'inspirer les acteurs communautaires pour répondre à sa demande. En effet, le Conseil demande à la Commission «de lui faire parvenir, pour le 1er mai 1998 au plus tard, des propositions concernant l'avenir de l'action culturelle en Europe, y compris, entre autres, l'établissement d'un instrument unique de programmation et de financement»³ et cela tout en se basant sur les précisions de l'article sur la culture du Traité sur l'Union européenne (TUE).

En vue de préparer la proposition établissant cet «instrument unique de programmation et de financement», la Commission organise, les 29 et 30 janvier 1998 à Bruxelles, le Forum culturel de l'Union européenne qui réunit des représentants du Parlement, des Etats membres, de la Commission, des pays de l'Espace Economique Européen (EEE) et des pays associés ainsi que de nombreuses organisations du monde culturel. Suite au processus de consultation entamé pendant la durée du Forum, sont arrêtées plusieurs conclusions :

« - un effort de concentration des actions, de recherche d'effets structurants et de

simplification administrative doit être réalisé dans la nouvelle génération de programme [...] ;

- une attention prioritaire doit être accordée à la création qui est la dimension essentielle de toute activité culturelle [...] ;

- la culture constitue un terrain privilégié pour le renforcement de la cohésion sociale [...] enfin la culture, l'échange et le dialogue culturels consolident le terrain de la paix qui est l'une des finalités premières de la construction européenne [...] ;

- chaque citoyen en Europe doit avoir le droit d'accéder à la culture et d'exprimer sa créativité »⁴.

Forte de ces différentes suggestions et de l'avis d'initiative du Comité des régions du 13 mars 1998, la Commission soumet, le 6 mai de cette même année, au Parlement, au Conseil et au Comité des régions la communication sur le premier programme-cadre de la Communauté Européenne en faveur de la culture. Elaborée sous la direction de Marcelino Oreja⁵, commissaire chargé de la culture entre 1995-1999, la communication propose la création d'un nouveau programme culturel communautaire pour la période 2000-2004⁶ (par la suite prolongé jusqu'en 2006). Ce dernier, fondé sur une vision globale et transparente succède, tout en les regroupant, aux programmes Kaléidoscope, Ariane et Raphaël et vise «la rationalisation et la mise en cohérence des actions communautaires en faveur de la coopération culturelle»⁷ ainsi que l'«intégration explicite de la culture dans les actes et

¹ JO n° C 305 du 7. 10. 1997, p. 1.

² Ibid.

³ Ibid.

⁴ COM(1998) 266 final, pp. 10-11.

⁵ Marcelino Oreja Aguirre, né en 1935 à Madrid, ministre des affaires étrangères d'Espagne de 1976 à 1980, secrétaire général du Conseil de l'Europe de 1984 à 1989, membre en 1994 de la Commission européenne responsable de l'énergie et de l'Agence d'approvisionnement de l'Euratom ainsi que de la politique des transports.

⁶ Le programme « Culture 2000 » est ultérieurement prolongé jusqu'à la fin 2006.

⁷ COM(1998) 266 final, p. 5.

politiques communautaires »⁸. En outre, la communication précise les objectifs généraux que l'action culturelle communautaire doit atteindre par la mise en place du nouveau programme :

«la valorisation de l'espace culturel commun aux Européens à travers la mise en évidence de leurs caractéristiques culturelles communes ; le respect et la promotion de la diversité culturelle ; la créativité comme source de développement durable au sein de l'espace culturel commun»⁹.

En vue de concrétiser ces objectifs, la Commission joint à la communication une proposition de décision du Conseil et du Parlement établissant le nouveau programme appelé « Culture 2000 ».

Au cours de la procédure de co-décision, la proposition de décision connaît plusieurs modifications suite aux amendements apportés par le Parlement et par le Conseil. Une proposition de décision modifiée est finalement adoptée dans le cadre du comité de conciliation réunit principalement pour régler la question du financement du programme. Le budget total de « Culture 2000 » étant prévu initialement pour un montant de 167 millions d'euros est amendé par le Parlement à deux reprises. Ce dernier demande ainsi dans un premier rapport rédigé par la députée européenne Nana Mouskouri en novembre 1998 puis dans un second rapport rédigé par le parlementaire Vasco Graça Moura¹⁰ en octobre 1999, une augmentation de l'enveloppe financière à 250 millions d'euros. Le dernier rapport est d'ailleurs très clair à cet égard considérant « qu'un

programme-cadre digne de ce nom ne saurait atteindre ses objectifs avec un budget plafonné à 167 millions d'euros»¹¹. Malgré les efforts du Parlement, le budget du programme est toutefois arrêté, lors du comité de conciliation, à 167 millions d'euros, ce qui représente tout de même une augmentation de 30% du budget de la culture par rapport à la période précédente. La décision finale établissant le programme « Culture 2000 » est alors arrêtée le 14 février 2000 suite à la signature par le Conseil et par le Parlement.

2. L'essence de « Culture 2000 »

Le contenu du programme « Culture 2000 » et ses différentes ambitions représentent une perspective d'approfondissement du volet culturel et sont particulièrement liés au contexte dans lequel il est élaboré.

En effet, la communication sur le premier programme-cadre en faveur de la culture, de 1998, qui vient apporter les premières précisions en ce qui concerne le fond du programme souligne l'importance du volet culturel dans la construction européenne et celle des réponses qu'il peut offrir aux grands défis du moment. L'établissement du programme « Culture 2000 » se réalise ainsi dans une période clé de la construction européenne marquée par la mise en place de l'Union économique et monétaire ainsi que par le début des « négociations en vue de l'élargissement qui ouvrent la voie à une Europe plus grande, à la dimension du continent, mais aussi plus

⁸ Ibid.

⁹ COM(1998) 266 final, p. 11.

¹⁰ Vasco Graça Moura, né en 1942 à Porto, écrivain, secrétaire d'Etat à la sécurité sociale et aux rapatriés en 1975, député européen entre 1999 et 2004, membre du Parti populaire européen et vice-président de la Commission de la culture, de la jeunesse, de l'éducation, des médias et des sports.

¹¹ Le Parlement européen, « Education, culture », m, octobre 1999, p. 35.

diverse»¹². Ce double mouvement d'approfondissement et d'élargissement constitue alors l'un des premiers facteurs qui amènent les acteurs communautaires à réaliser la nécessité de plus en plus pressante d'accorder un rôle plus important à la culture. Ensuite, la communication aborde la globalisation comme facteur « qui soulève des questions majeurs pour l'avenir de chaque culture »¹³ et auquel l'UE doit répondre en vue de « [préserv]er les identités et les droits culturels de chaque communauté »¹⁴ présente sur son territoire. Enfin, l'importance de la culture est mise en avant par d'autres facteurs tels que le souci de l'emploi ou encore celui de la cohésion sociale, car non seulement « les activités culturelles représentent un gisement d'emplois important qu'il convient de valoriser »¹⁵, mais elle jouent également « un rôle d'intégration et permettent aux personnes exclues [...] de retrouver des repères et une sociabilité »¹⁶. C'est d'ailleurs à partir de ces deux derniers constats que les auteurs de la décision finale établissant le programme « Culture 2000 » sont amenés à mettre en place un nouveau rapport de force entre la culture et l'économie et à conclure qu'« il est nécessaire d'établir un meilleur équilibre entre le volet économique et le volet culturel de la Communauté de façon à ce que ces volets puissent se compléter et se renforcer »¹⁷. En outre, un dernier élément contextuel vient s'ajouter comme un moyen dans la perspective du développement culturel. Il s'agit de la société de l'information qui « offre des opportunités considérables pour l'accès à la

connaissance mutuelle, le dialogue culturel, la circulation des idées... »¹⁸. Ainsi, ces facteurs contextuels non seulement mettent en avant l'importance de la culture au niveau européen mais amènent l'action culturelle communautaire à prendre en compte ces différents facteurs que ce soit aussi bien dans les objectifs qu'elle doit se donner que dans les moyens qu'elle peut mettre en place.

Toujours dans la communication de 1998, la Commission revient sur le problème de la définition du concept de culture analysé précédemment dans la communication de 1996, traitant de « la prise en compte des aspects culturels dans l'action de la Communauté Européenne ». Si dans cette dernière, la Commission constate sans apporter de solutions qu'en limitant l'action culturelle communautaire aux seuls domaines faisant l'objet des programmes Kaléidoscope, Ariane et Raphaël sont écartés des éléments culturels importants, dans la communication de 1998, la Commission y apporte une réponse. Ainsi, en réitérant l'idée que l'action culturelle antérieure est fondée sur une approche limitée de la culture, s'attachant uniquement à « la haute culture » (Beaux arts, musique, danse, théâtre, littérature), la Commission avance une nouvelle conception en affirmant que « la notion de culture s'étend aujourd'hui à la culture populaire, la culture industrielle de masse, la culture au quotidien »¹⁹. Elle explique d'ailleurs l'extension de la signification du concept de culture par le fait que « la culture n'est plus considérée comme une activité

¹² Marie-Thérèse Bitsch, *Histoire de la construction européenne*, Bruxelles, Ed. Complexe, 2000, p. 297.

¹³ COM(1998) 266 final, p. 3.

¹⁴ Ibid.

¹⁵ Ibid., p. 4.

¹⁶ Ibid.

¹⁷ JO n° L 063 du 10. 03. 2000, p. 1.

¹⁸ COM(1998) 266 final, p. 4.

¹⁹ Ibid., p. 3.

subsidaire mais comme une force motrice pour la société, un facteur de créativité, de vitalité, de dialogue et de cohésion »²⁰. Cette conception de la culture élargie se trouve ainsi à la base du programme « Culture 2000 » et invite à consacrer à ce dernier une portée et des enjeux particulièrement plus importants qu'aux programmes antérieurs.

Cette nouvelle conception de la culture ainsi que l'influence des facteurs contextuels déterminent ainsi l'apparition d'une vision culturelle communautaire plus étendue qui vise par la mise en place du premier programme-cadre pour la culture « la mise en valeur d'un espace culturel commun aux peuples de l'Europe »²¹. Cette idée d'espace culturel européen, dont l'existence est déjà constatée dans la quatrième communication sur la culture de 1992, devient désormais une idée centrale dans le programme « Culture 2000 » qui doit venir contribuer au renforcement de cet espace. En vue de réaliser cela « les nouveaux moyens d'action de la coopération culturelle sont conçus de façon à éviter toute dispersion sur des actions qui ne seraient pas en mesure d'atteindre un impact significatif »²². En outre, le nouveau programme vise principalement « à favoriser la coopération entre les créateurs, les acteurs culturels et les Institutions culturelles des Etats membres »²³ pour atteindre ses principaux objectifs.

3. Les objectifs du programme

Pour répondre à la nouvelle vision de la culture, le programme « Culture 2000 » est doté d'une série d'objectifs qui non

seulement regroupent les objectifs des programmes antérieurs mais englobent de nouveaux objectifs censés répondre aux nouveaux défis contemporains :

« - la promotion du dialogue culturel et la connaissance mutuelle de la culture et de l'histoire des peuples de l'Europe ;

- la promotion de la création, de la diffusion transnationale de la culture et de la mobilité des artistes, des créateurs [...] ainsi que de leurs œuvres [...];

- la mise en valeur de la diversité culturelle et le développement de nouvelles formes d'expression culturelle ;

- le partage et la mise en valeur [...] de l'héritage culturel commun d'importance européenne ;

- la diffusion du savoir-faire et la promotion des bonnes pratiques en ce qui concerne la conservation et la sauvegarde de cet héritage culturel ;

- la prise en compte du rôle de la culture dans le développement socio-économique ;

- la reconnaissance explicite de la culture en tant que facteur économique et facteur d'intégration sociale et de citoyenneté ;

- l'amélioration de l'accès et de la participation du plus grand nombre possible de citoyens de l'Union européenne à la culture »²⁴.

Les ambitions qui transparaissent à travers le grand champ d'actions que ces objectifs veulent couvrir répondent à la volonté des acteurs communautaires d'offrir à ce premier programme-cadre une vision culturelle globale de l'action communautaire.

Pour atteindre ces objectifs ambitieux, les acteurs communautaires envisagent la mise en place de plusieurs types d'actions et d'événements: des actions

²⁰ Ibid.

²¹ JO n° L 063 du 10. 03. 2000, p. 2.

²² COM(1998) 266 final, p. 12.

²³ Ibid.

²⁴ JO n° L 063 du 10. 03. 2000, pp. 2-3.

spécifiques, novatrices et/ou expérimentales, mais aussi des actions intégrées au sein d'accords de coopération culturelle, structurés et pluriannuels ainsi que des événements culturels spéciaux ayant une dimension européenne et/ou internationale. La nouveauté de ces actions et événements réside dans la possibilité de développer dans leur cadre deux sortes d'approches qui offrent une plus grande flexibilité aux projets proposés: une approche verticale, concernant un seul domaine culturel ou une approche horizontale, associant plusieurs domaines culturels.

En ce qui concerne tout d'abord, les actions spécifiques, novatrices et/ou expérimentales, «la Communauté soutient annuellement des événements et des projets réalisés en partenariat ou sous forme de réseaux»²⁵ réunissant des représentants d'au moins trois Etats participant au programme. En outre, par le soutien apporté aux divers projets, ce premier type d'actions est censé :

- «- faciliter l'accès à la culture [...] ;
- encourager l'émergence et l'épanouissement de nouvelles formes d'expression culturelle, à l'intérieur et à côté des domaines culturels traditionnels (tels que la musique, les arts du spectacle, les arts plastiques et visuels, la photographie, l'architecture, la littérature, le livre et la lecture, et le patrimoine culturel) ;
- soutenir des projets visant à améliorer l'accès aux livres et à la lecture ainsi qu'à former les professionnels travaillant dans ce domaine ;
- soutenir la création de produits multimédia [...] et rendre ainsi la création et le patrimoine artistiques européens plus visibles et plus accessibles à tous ;
- soutenir les initiatives, les échanges de vues et la coopération entre les acteurs

culturels et socioculturels qui travaillent dans le domaine de l'intégration sociale, notamment l'intégration des jeunes ; [...] »²⁶

En ce qui concerne les fonds prévus pour les projets soutenus par ce type d'actions ils s'élèvent à 45% du budget du programme, ce qui illustre l'importance et la priorité qui leurs sont accordées.

Ensuite, pour les actions intégrées au sein d'accords de coopération culturelle, structurés et pluriannuels, le programme « Culture 2000 » soutient des projets reliant des acteurs d'au moins cinq Etats membres et leurs réserve 35% de son budget. Ces actions ont comme objectif principal de soutenir «le rapprochement et le travail en commun en soutenant des réseaux culturels et, en particulier, des réseaux d'opérateurs, d'organismes culturels, d'institutions culturelles»²⁷. En outre, les actions transnationales peuvent concerner soit «un seul domaine culturel tel que la musique, les arts du spectacle, les arts plastiques et visuels, la littérature, le livre et la lecture, y compris la traduction, ainsi que le patrimoine culturel»²⁸, soit plusieurs domaines culturels à la fois, les actions devant alors s'appuyer dans ce cas sur l'utilisation des nouveaux médias. Ces différentes actions qu'elles soient verticales ou horizontales soutiennent des projets visant à organiser des expositions, des festivals, des séminaires et des congrès autour de thèmes d'importance européenne, ou à mettre en valeur des sites culturels, ou encore le multilinguisme ainsi que les valeurs culturelles communes.

Quant aux événements culturels spéciaux, ceux-ci « devraient avoir une résonance significative auprès des peuples de l'Europe et contribuer à une meilleure

²⁵ JO n° L 063 du 10. 03. 2000, p. 5.

²⁶ Ibid.

²⁷ JO n° L 063 du 10. 03. 2000, p. 5.

²⁸ Ibid.

prise de conscience de l'appartenance à une même communauté, ainsi qu'à la sensibilisation à la diversité culturelle des Etats membres, et au dialogue interculturel [...]»²⁹. Il s'agit ainsi d'évènements de grande portée tels que la manifestation de la capitale européenne de la culture³⁰, l'organisation de colloques traitant sur des questions d'intérêt culturel commun, l'organisation d'événements culturels novateurs concernant des domaines comme les arts ou le patrimoine culturel, ainsi que la remise des prix européens dans différents domaines artistiques (littérature, architecture, traduction,...), ou encore « le soutien à des projets de conservation et de sauvegarde du patrimoine culturel d'importance exceptionnelle »³¹. Les fonds alloués à ce type d'actions représentent 10% du budget du programme.

A l'instar des programmes précédents, le programme « Culture 2000 » est ouvert aux pays de l'EEE, et à d'autres pays tiers « ayant conclu des accords d'association ou de coopération comportant des clauses culturelles »³² mais également et surtout aux pays associés d'Europe centrale et orientale, en l'occurrence la Roumanie et la Bulgarie. En effet, l'adhésion de ces derniers à l'UE conduit à une volonté de multiplier les rapprochements qui se traduit sur le volet culturel par un renforcement des actions avec ces futurs pays membres. Le programme est d'ailleurs également ouvert « à une action conjointe avec des organisations internationales compétentes dans le domaine de la culture, telles que l'Unesco ou le Conseil de l'Europe »³³.

²⁹ Ibid., p. 6.

³⁰ Lancée sur l'initiative de Méline Mercuri, en 1985, la manifestation de Capitale européenne de la Culture, initialement intitulée Ville européenne de la Culture, connaît une importance accrue et devient un symbole de la dimension culturelle européenne au fil des années. En 2006, la ville de Patras est capitale européenne de la culture, avant de céder ce titre en 2007 aux villes de Luxembourg et de Sibiu.

³¹ JO n° L 063 du 10. 03. 2000, p. 6.

³² Ibid., p. 3.

³³ JO n° L 063 du 10. 03. 2000, p. 3.

Ainsi, le programme « Culture 2000 » vient élargir l'action culturelle communautaire et lui donner plus de poids dans le cadre de la Communauté. Cela découle principalement de la conception plus ample de la culture adoptée par les acteurs communautaires et qui se trouve à la base du programme lui offrant la possibilité d'embrasser une vision plus globale de la question culturelle par rapport aux programmes précédents. Il faut observer également l'implication directe du Conseil qui assume un rôle moteur dans l'établissement du programme « Culture 2000 » adoptant ainsi une attitude moins réservée qu'auparavant. Devons-nous voir dans cette attitude un recul de sa retenue face à l'intervention de la Communauté dans le domaine de la culture ? Ou bien cette attitude est-elle le fruit des débats soulevés autour de la question de l'exception culturelle au milieu des années quatre-vingt-dix et qui amènent les Etats membres à une prise de conscience de l'importance du domaine culturel ?

Toujours est-il que le programme « Culture 2000 » par sa volonté de cohérence, de globalité et d'homogénéité vient asseoir une politique culturelle communautaire même si elle reste limitée par les compétences des Etats membres et demeure perfectible.

Quelles ambitions pour la dimension culturelle européenne ?

Le programme « Culture 2000 » est sans doute le programme le plus abouti et le

plus complexe mis en place depuis l'introduction de l'article sur la culture dans la Traité sur l'Union européenne. En effet, en essayant d'édifier une vision globale de l'action culturelle communautaire, le programme répond entièrement à l'objectif primordial de l'article 151, contrairement aux anciens programmes qui ayant une portée limitée en ce qui concerne les domaines visés ne le font que partiellement. Ainsi, cette mise à jour qu'apporte le programme « Culture 2000 », fait ressortir davantage le fondement qui doit se trouver à la base de l'action culturelle communautaire et qui est explicité dans le premier paragraphe de l'article sur la culture : « le respect de [la] diversité nationale et régionale, tout en mettant en évidence l'héritage culturel commun ». Et le grand défi du programme « Culture 2000 » semble alors bien être l'application de cette idée fondamentale et a priori paradoxale. Et c'est sans doute à travers ce défi-là que la finalité de la mise en place d'une politique culturelle européenne peut être aperçue, notamment dans son rapport avec la problématique de l'élaboration de l'identité européenne.

a. Un héritage commun

L'expression « héritage culturel commun » présente dans l'article sur la culture est reprise parmi les objectifs que le programme « Culture 2000 » vise à atteindre : « le partage et la mise en valeur, au niveau européen, de l'héritage culturel commun d'importance européenne ; la diffusion du savoir-faire et la promotion des bonnes pratiques en ce qui concerne la conservation et la sauvegarde de cet

héritage culturel »³⁴. Force est de constater qu'aucune explication supplémentaire ne vient nous éclairer sur ce que comprend une expression aussi essentielle et pourtant si problématique au niveau communautaire que celle d'« héritage culturel commun ». Toutefois, cet objectif nous laisse comprendre ce que peut recouvrir cette expression.

En effet, les termes « conservation » et « sauvegarde », qui font notamment écho aux objectifs déjà présents dans le programme Raphaël, nous amènent à voir derrière cette idée d'« héritage culturel commun » la sphère du patrimoine culturel. Cependant, compte tenu de la volonté du programme « Culture 2000 » de dépasser la définition restreinte de « haute culture », il faut sans doute voir une conception du patrimoine culturel plus vaste qu'auparavant. En effet, cette notion de patrimoine culturel que l'article 151 évoque en invitant à « la conservation et la sauvegarde du patrimoine culturel d'importance européenne », peut être conçue comme une valeur commune primordiale de l'Europe. Toutefois cette expression demeure très floue et nous amène de toute évidence à nous interroger sur ce que nous devons comprendre par « patrimoine culturel d'importance européenne ».

En effet, comme le montre Dominique Poulot dans l'article « Le patrimoine culturel, valeur commune de l'Europe », définir le concept de patrimoine culturel est une démarche extrêmement laborieuse. Reprenant la définition donnée par Roland Barthes (« un désir collectif de la chose ancienne là où elle se trouve »³⁵), Dominique Poulot dégage tout d'abord l'idée que le patrimoine correspond à un

³⁴ JO n° L063 du 10.03.2000, p. 3.

³⁵ Roland Barthes, *Culture et Communication*, n° spécial « L'année du patrimoine », 1980, cité par Dominique Poulot in « Le patrimoine culturel, valeur commune de l'Europe », *Relations internationales*, printemps 1993, n° 73, p. 44.

intérêt pour le passé lié à l'évolution des « mentalités » et exige sans cesse d'être redéfini. S'engageant dès lors à en dégager une définition, il envisage le patrimoine « comme ce que nous revendiquons pour nôtre et comme ce qui se situe au-delà d'un seuil, à partir duquel une intervention est requise afin d'assurer préservation et intelligibilité de la trace »³⁶. Les objets que recouvre alors une telle notion sont aussi bien d'ordre architectural, archéologique, naturel qu'ethnographique et autres. Cette conception conduit « au postulat de la pérennité d'un corpus de traditions, d'idées, de souvenirs, etc. lié à des sites naturels et à des artefacts humains au sein de toute communauté »³⁷. Et elle apparaît avant tout liée au processus de création d'une identité nationale par celle d'une mémoire patriotique. Toutefois, la conception de patrimoine semble pouvoir dépasser ce dernier fait et s'appliquer au niveau européen. En effet, la définition du patrimoine au niveau communautaire « n'est plus étroitement nationale mais tend à s'identifier à un espace culturel européen »³⁸, marquée par un « abandon de l'ancrage patriotique »³⁹. Le patrimoine n'est alors plus compris au sens traditionnel du terme et certains tendent à considérer que « nous pouvons parfaitement appartenir à des traditions différentes et avoir à répondre d'un même passé »⁴⁰. Cette idée peut nous éclairer alors sur l'objectif du programme « Culture 2000 » soucieux de la mise en valeur et du partage d'un « héritage culturel commun d'importance européenne ». Toutefois, si nous pouvons nous demander dans quelle mesure le concept de patrimoine culturel demeure valable, une

fois séparé d'un élément aussi fondamental que le « patriotisme », il faut observer que l'objectif de la mise en valeur du patrimoine culturel européen semble contenir l'idée sous-jacente de participer à la création d'une identité commune. Cette intention explique alors l'accent mis sur des objets jugés, selon le critère au premier abord plutôt vague et subjectif, « d'importance européenne », autrement dit pouvant créer symboliquement un sentiment d'appartenance à un même passé.

Ainsi, dégager de la notion d'« héritage culturel commun » cette conception de patrimoine culturel qui peut la sous-tendre est sans doute l'interprétation la plus pertinente dans la mesure où elle nous permet de mieux comprendre ou en tout cas de révéler les enjeux fondamentaux de la politique culturelle européenne, sur lesquels nous allons revenir. Toutefois cette idée de patrimoine culturel européen soulève de nombreuses interrogations. Comment concevoir à partir d'une multitude de cultures une unité sans la rendre artificielle ? Même si nous partons du principe que les différentes cultures européennes peuvent regrouper des traits communs, ces derniers demeurent certainement beaucoup moins avérés que les traits qui distinguent les cultures entre elles. Comment alors considérer un patrimoine culturel européen illustrant l'idée d'un « héritage culturel commun » dans une palette culturelle aussi variée que celle présente sur le territoire de l'UE ?

b. L'unité dans la diversité

Si identifier et définir un « héritage culturel commun » apparaît comme un

³⁶ Dominique Poulot, « Le patrimoine culturel, valeur commune de l'Europe », *Relations internationales*, printemps 1993, n° 73, p. 45.

³⁷ *Ibid.*, p. 47.

³⁸ Dominique Poulot, « Le patrimoine culturel, valeur commune de l'Europe », *art. cit.*, p. 60.

³⁹ *Ibid.*

⁴⁰ Jean-Michel Chaumont, « Introduction. Critique, tradition, passé », *Hermès*, n° 10, 1991, Presses du CNRS, cité par Dominique Poulot in « Le patrimoine culturel, valeur commune de l'Europe », *art. cit.*, pp. 61-62.

travail particulièrement difficile et complexe, la diversité culturelle s'impose au niveau européen comme une évidence. Ainsi, l'objectif de l'action culturelle européenne qui se dessine dans ce sens est celui d'attacher une attention particulière à cette diversité. Cela est d'ailleurs facilement identifiable parmi les objectifs du programme « Culture 2000 » : « la mise en valeur de la diversité culturelle et le développement de nouvelles formes d'expression culturelle »⁴¹. Il en résulte alors que la Communauté n'entend pas uniquement veiller au respect de la diversité des cultures présentes sur son territoire mais souhaite également apporter son soutien à la valorisation et à la promotion de cette diversité. En vue de réaliser cela, le programme « Culture 2000 » vise à soutenir le dialogue culturel, la diffusion transnationale de la culture et l'échange mutuel entre les cultures européennes. Ainsi, par ce biais, la Communauté envisage de participer à la prise de conscience de la présence de la diversité culturelle comme une caractéristique des peuples européens et à promouvoir le partage de celle-ci. Et cette attitude favorable à l'égard de cette diversité culturelle peut trouver plusieurs explications.

En effet, cet intérêt pour le multiculturalisme européen s'ancre certainement dans un premier temps dans la volonté de préserver cette diversité pouvant être menacée par le mouvement à tendance uniformisante de globalisation. Cette préoccupation amène alors à la prise de conscience de la valeur que peut représenter une telle diversité culturelle et conduit en outre à réaliser à quel point celle-ci est une spécificité essentielle de l'UE.

Toutefois, selon Hugues Dumont, cette attitude de sauvegarde ne doit pas conduire l'Europe à une autarcie culturelle, et ne doit pas l'inviter à « un confortable repli sur soi fondé sur la fallacieuse certitude d'être culturellement au centre du monde depuis toujours et pour toujours »⁴². Mais ce risque semble peu probable et l'un des objectifs du programme « Culture 2000 » vient d'ailleurs le contrecarrer en encourageant le dialogue avec des cultures non européennes.

En outre, d'après Manuel Maria Carrilho, une nouvelle conception de la culture contribue dans un second temps à considérer les rapports entre les diverses cultures européennes d'une manière différente :

« les cultures ne sont plus des ensembles intégrés et autonomes, conception que l'on doit voir en écho au projet politique et européen au XIX^e siècle de faire coïncider les ethnies, les Etats et les langues ; non, les cultures prennent aujourd'hui la forme de flux multiples »⁴³.

Les mouvements d'entrecroisement et de superposition de ces derniers correspondent alors à un rapport d'influence entre les cultures, autrement dit à une interculturalité à laquelle invite d'ailleurs le programme « Culture 2000 » en particulier dans son objectif d'encourager « la promotion d'un dialogue interculturel et d'un échange mutuel entre les cultures européennes »⁴⁴. En effet, ce phénomène d'interculturalité peut générer une synergie féconde et permet de concevoir la diversité non plus comme un obstacle mais comme un facteur enrichissant et unificateur.

Cette dernière explication permet alors de dégager la cohérence de l'attitude de la Communauté face à la dimension culturelle, déployant son action sur le

⁴¹ JO n° L 063 du 10. 03. 2000, p. 2.

⁴² Hugues Dumont, « Les compétences culturelles de la Communauté européenne », dans Jacques Lenoble et Nicole Dewandre, *L'Europe au soir du siècle. Identité et démocratie*, Ed. Esprit, 1992, p. 213.

⁴³ Manuel Maria Carrilho, « Culture et diversité, un chantier pour l'Europe », *Culture Europe*, décembre 2002, n° 38, p. 23.

⁴⁴ JO n° L 063 du 10. 03. 2000, p. 3.

principe d'une unité dans la diversité. En effet, il semble que ces deux idées ne sont pas incompatibles dans un mouvement de formation d'une société pluraliste fondée «sur des principes redéfinis par l'apport de différentes cultures [...] pour former une culture commune européenne»⁴⁵. Multiplier les rapports entre des sujets européens de cultures différentes peut alors apparaître comme une nécessité dans le mouvement d'approfondissement de l'UE, comme une action pouvant notamment conduire à la formation d'une identité commune.

Ainsi, le double mouvement fondamental de l'action culturelle au sein de la Communauté, s'évertuant à mettre en avant un héritage culturel commun tout en mettant l'accent sur la diversité ne semble-t-il pas aussi paradoxal. Il semble même répondre à une logique dans l'objectif qu'il se donne de générer une identité européenne. Il paraît d'ailleurs s'inscrire dans un axe temporel sur lequel cette dernière pourrait se fonder, l'héritage culturel mettant en avant un passé commun, tandis que la diversité culturelle et l'interculturalité marquent un présent et un avenir. Cette logique est toutefois discutable. En effet, dans quelle mesure pouvons-nous parler d'un passé qui soit commun à tous les peuples de la Communauté ? Cette idée demeure de toute évidence particulièrement relative. En outre, nous pouvons nous interroger à la suite de Manuel Maria Carrilho si «nous sommes encore capables d'une telle expérience d'interculturalité, et notamment du défi qu'elle comporte [...], de faire de l'identité européenne [...] un projet qui

s'ouvre sur l'avenir, quelque chose qui s'invente et se construit»⁴⁶.

c. Culture et identité européenne

Comme nous avons pu le voir auparavant, la visée essentielle du programme « Culture 2000 » de mettre en valeur l'« héritage culturel commun » ainsi que la diversité culturelle de l'UE dépasse dans sa finalité la sphère de la politique culturelle européenne et comporte comme idée sous-jacente celle de participer à l'établissement d'une identité européenne. Cependant, il apparaît que les rapports entre les deux concepts de culture et d'identité européenne ne semblent pas aussi évidents qu'ils le paraissent.

Ainsi, la pensée dominante tend à considérer que « l'identité européenne est définie davantage par des valeurs politiques que par des affinités culturelles au sens étroit, c'est-à-dire se référant au patrimoine littéraire et artistique »⁴⁷. Selon la pensée de Jürgen Habermas, l'identité peut d'ailleurs se concrétiser au niveau européen par l'établissement de ce qu'il appelle un « patriotisme constitutionnel » qui « doit se relier à des principes juridiques universalistes uniques à partir de perspectives différentes imprégnées par les histoires nationales »⁴⁸ et qui découle de :

«la différenciation des cultures nationales d'une part et d'une culture politique commune d'autre part : différenciation entre une culture politique commune et des traditions nationales qui se sont ramifiées depuis l'aube de la modernité

⁴⁵ Riva Kastoryano, « Des multiculturalismes en Europe au multiculturalisme européen », *Politique étrangère*, 2000, n° 1, p. 174.

⁴⁶ Manuel Maria Carrilho, « Culture et diversité, un chantier pour l'Europe », art. cit., p. 23.

⁴⁷ Marie-Thérèse Bitsch, « Les institutions européennes, reflet ou promoteur des identités européennes ? », dans Marie-Thérèse Bitsch, Wilfried Loth, Raymond Poidevin, *Institutions européennes et identités européennes*, Bruxelles, Ed. Bruylant, 1998, p. 505.

⁴⁸ Jürgen Habermas, « Citoyenneté et identité nationale. Réflexions sur l'avenir de l'Europe », dans Jacques Lenoble et Nicole Dewandre, *L'Europe au soir du siècle. Identité et démocratie*, Ed. Esprit, 1992, p. 37.

dans la littérature, dans l'art, dans l'historiographie, dans la philosophie etc.»⁴⁹

Il en résulte alors dans ce principe que l'identité européenne se fonde sur des valeurs politiques telles que le respect des droits de l'homme, l'Etat de droit, les valeurs démocratiques mais aussi la valeur de la vie humaine ou la solidarité sociale⁵⁰ tandis que l'élément culturel, illustré par les traditions, la langue, la littérature etc. demeure un élément essentiel de l'identité nationale. Nous pouvons alors constater qu'au moins au premier abord la culture n'est pas systématiquement considérée comme un élément clé dans la formation de l'identité européenne.

En outre, en analysant les traités de Maastricht, d'Amsterdam et de Nice, nous pouvons observer que l'identité est évoquée à deux reprises. En effet, l'identité est présente tout d'abord dans les dispositions concernant la politique étrangère et de sécurité. Ainsi, tandis que dans le traité de Maastricht, «l'Union se donne pour objectifs d'affirmer son identité sur la scène internationale [...] par la mise en œuvre d'une politique étrangère et de sécurité commune», les signataires du traité d'Amsterdam et de Nice s'affirment «résolus à mettre en œuvre une politique étrangère et de sécurité commune [...] renforçant ainsi l'identité de l'Europe». D'autre part, l'identité est également évoquée dans les dispositions consacrées à la liberté, la sécurité et le droit, et dans lesquelles, aussi bien dans le traité de Maastricht que dans celui d'Amsterdam ou encore celui de Nice, l'UE s'engage à respecter « l'identité

nationale de ses Etats membres». Cette situation de fait révèle non seulement que la dimension culturelle n'est pas envisagée d'une manière directe comme un élément essentiel pouvant contribuer à la création de l'identité européenne mais aussi la complexité du problème posé par le concept d'identité. Ainsi, force est de constater qu'il y a dans les traités «une double affirmation du concept d'identité : d'une part celle de l'Union dans le contexte international ; d'autre part, celle des Etats membres»⁵¹. Il en résulte alors que «le concept d'identité de l'Union se définit davantage par opposition aux autres que par l'identité elle-même»⁵².

Toutefois, la culture est mentionnée comme élément participant à l'établissement d'une identité européenne dans des textes comme la *Déclaration sur l'identité européenne* de 1973 et la *Déclaration solennelle sur l'Union européenne* de 1983 ou encore dans la résolution du Parlement européen de 1976. Ainsi, dans la *Déclaration sur l'identité européenne*, «qui peut toujours être considérée comme la déclaration officielle en matière d'identité européenne»⁵³, les signataires mettent l'accent sur la diversité culturelle déclarant que « cette variété des cultures dans le cadre d'une même civilisation européenne [...] donnent à l'identité européenne son caractère original et son dynamisme propre »⁵⁴. Ensuite, dans la *Déclaration solennelle sur l'Union européenne*, l'accent est mis sur l'importance de promouvoir «une coopération plus étroite en matière culturelle, pour affirmer la conscience d'un héritage culturel

⁴⁹ *Ibid.*, p. 38.

⁵⁰ Constantin Stephanou, « L'identité européenne et les identités nationales », dans Gérard-François Dumont, *Les racines de l'identité européenne*, Paris, Ed. Economica, 1999, p. 256.

⁵¹ Frank Pfetsch, « La problématique de l'identité européenne », dans Gérard-François Dumont, *Les racines de l'identité européenne*, Paris, Ed. Economica, 1999, p. 260.

⁵² *Ibid.*

⁵³ *Ibid.*, p. 261.

⁵⁴ *Déclaration sur l'identité européenne*, (Page consultée le 5 mars 2004), <http://www.franceurope.org/indexIE.htm>.

commun en tant qu'élément de l'identité européenne »⁵⁵. Enfin, dans la résolution sur « l'action communautaire dans le secteur culturel » de 1976, le Parlement européen affirme que « la promotion des échanges culturels, sous tous ses aspects, est un excellent moyen de faire prendre aux citoyens de la Communauté une conscience plus aiguë de l'identité européenne »⁵⁶. Force est alors de constater que ces textes non seulement mettent en avant le volet culturel comme facteur pouvant renforcer l'identité européenne, mais soulignent explicitement certains éléments devant être valorisés au niveau de la dimension culturelle européenne et en particulier la diversité culturelle et l'« héritage culturel commun ». La présence de ces deux éléments dès 1992 dans l'article 128 fait d'ailleurs certainement référence à ces différentes réflexions autour du problème de l'identité européenne et démontre que même si cela est fait de façon implicite, la culture est considérée comme pouvant contribuer à l'élaboration de cette dernière. La dimension culturelle européenne s'établit alors comme objectifs fondamentaux la mise en valeur de l'« héritage culturel commun » et celle de la

diversité culturelle, dans le respect du principe selon lequel « la formation de l'identité est [...] liée à la tension dialectique entre passé et futur »⁵⁷. Et il n'est alors pas étonnant que le programme « Culture 2000 » se concentre sur ces deux éléments en travaillant à la valorisation du patrimoine culturel européen et au développement de l'interculturalité.

Il en résulte alors que même si l'établissement de l'identité européenne se fonde avant tout sur des valeurs politiques qui sont facilement identifiables comme valeurs communes, la culture n'en est pas pour autant exclue. Ainsi, par le rôle qu'elle peut jouer dans cette entreprise en renforçant les liens entre les différentes cultures de l'Union, il apparaît que la politique culturelle n'est pas une fin en soi, et vient consolider la construction de l'identité européenne qui « se fonde sur une singulière diversité, qui est, dans sa forme de mosaïque, le fruit d'une combinaison où chaque élément peut contribuer à la consolidation de l'ensemble sans perdre, bien au contraire, ses traits les plus spécifiques »⁵⁸.

⁵⁵ Déclaration solennelle sur l'Union européenne, (Page consultée le 15 mars 2004), <http://www.franceurope.org/indexIE.htm>.

⁵⁶ JO n° C 79 du 5. 04. 1976, p. 6.

⁵⁷ André Berten, « Identité européenne une ou multiple. Réflexion sur les processus de formation de l'identité », dans Jacques Lenoble et Nicole Dewandre, *L'Europe au soir du siècle. Identité et démocratie*, Ed. Esprit, 1992, p. 87.

⁵⁸ Manuel Maria Carrilho, « Culture et diversité, un chantier pour l'Europe », art. cit., p. 23.

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