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7-9, Regina Elisabeta Blvd., Bucharest, Code 030016, Romania

Tel: (+4021) 314 26 96, 314 26 97, Fax: (+4021) 314 26 66

E-mail: rjea@ier.ro, <http://www.ier.ro/rjea>

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THE MONETARY UNION: THE DECADE AHEAD. THE CASE OF NON-MEMBER STATES

Daniel Dăianu, Laurian Lungu*

Abstract.** *What are the prospects for New Member States to join the euro-zone in the not too distant future? They seem to be in a catch-22 situation. Because of the current financial crisis some Maastricht criteria it would be more difficult to fulfil in the short and medium term, which would make it hard for them to join the eurozone. But there is also an argument, which highlights benefits of a faster accession due to dynamic effects for the countries involved and for the eurozone as a whole.*

Keywords: *finance, EU, Europe, eurozone, enlargement*

I. Introduction

Since its emergence in 1999, the Euro zone area¹ (as a proxy for the EU) has established itself as a major global economic power. From the financial and monetary point of view it has been a remarkable success. The credibility of the European Central Bank (ECB) has been established rather quickly, owing, inter alia, to the positive long-track record of some of the member countries central banks, such as the Bundesbank. In addition, the eurozone has proved to operate as a shelter during the current world financial crisis. But some of its weaknesses have also been better revealed during this crisis.

These weaknesses are best exposed nowadays, at a time of an unprecedented global financial crisis. The intensification of financial turmoil together with the

impairment of the functioning of credit markets would restrain economic activity in the near future. Both households, with good credit histories, and businesses, confront themselves with diminished access to credit. The more prolonged the current financial crisis becomes, the deeper it would affect the real economy, impacting on output and unemployment. From the euro zone economy's point of view two issues stand out. First, does the MU have the adequate mechanisms in place to deal with crisis like this? Second, how fast would the Monetary Union (MU) economy recover, following these shocks? Are its markets (i.e. goods and services, money and labour) resilient enough to have a quick recovery? Complex decision mechanisms required getting an MU-wide consensus, the absence of some sort of a Central Fiscal Authority, which would have made

* **Daniel Dăianu** is Professor of Economics at the National School of Political and Administrative Studies in Bucharest and Member of the European Parliament (daiandan@b.astral.ro); **Laurian Lungu** teaches at the Cardiff Business School (lungul@Cardiff.ac.uk)

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¹ For the purpose of this paper, the Eurozone countries are: Austria (AT), Belgium (BE), Cyprus (CY), Finland (FI), France (FR), Germany (DE), Greece (EL), Ireland (IE), Italy (IT), Luxembourg (LU), Malta (MT), the Netherlands (NL), Portugal (PT), Slovenia (SL), Slovakia (SK) and Spain (ES). Although Slovakia will join the Eurozone in January 2009, it has been included in the euro countries group. The Non Member States, NMSs, are defined as Bulgaria (BG), Czech Republic (CZ), Estonia (EE), Hungary (HU), Latvia (LV), Lithuania (LT), Poland (PL) and Romania (RO).

possible a more effective coordination with monetary policy, and rigid labour markets would likely impair both the timing response to the crisis as well as the recovery process.

Most of the issues related to the functioning of the eurozone are found in the optimal currency area theory. Some of the euro zone economic challenges have been highlighted since its inception; others have emerged with the subsequent expansion of the euro zone. More recently Slovenia joined the single currency in 2007, Malta and Cyprus in January 2008, and Slovakia entered the EMU in January 2009. For the remaining NMSs there is an increasing uncertainty regarding the timeline of joining the euro zone. Most of the NMSs are a long way from fulfilling the Maastricht criteria, and the current global macroeconomic environment of increasing inflation and reduction in GDP growth creates additional uncertainty.

From an economic point of view, the challenges the NMSs face are threefold. The first set pertain to internal macroeconomic conditions: achieving sustainable inflation, reduced exchange rate volatility, prudent fiscal policy. The second set addresses the current global macroeconomic conditions, and the effects of the financial crisis. Third, a set of conditions relate to the institutional underpinnings of innovation and competitiveness –education being a paramount ingredient herein. Obviously, the three sets of challenges are interlinked and this is what makes it more difficult for the NMSs to fulfil the Maastricht criteria. It has been argued that the Maastricht criteria were devised for a different group of countries facing different problems in the 1990s and that some of these should be relaxed for the new countries joining the EMU.

The prevailing view, both in the academia and in official circles has advocated strict compliance with the Maastricht Treaty's convergence criteria, ruling out any relaxation of those. The concerns are more related to the long-term stability of the euro area, in this respect the macroeconomic stability of the new entrants is paramount. Moreover, it may not be in the interest of some NMSs to join EMU in the near future. Their economies need the flexibility of exchange rate to address their structural problems. With their monetary policy run by the ECB, the economic convergence with the rest of the euro zone countries would be harder to achieve. But there is another argument, too, which would highlight the benefits of a faster track of accession, which would look at dynamic costs and benefits for the countries involved and for the eurozone as a whole.

II. The first Decade of Monetary Union

The effect of EMU on financial markets in the euro zone has been quite impressive. One important factor has been the elimination of exchange rate uncertainty and transaction costs, which in turn has led to increased efficiency of financial markets in the euro zone. However, as the current financial crisis has highlighted, credit markets within the euro zone continue to remain relatively fragmented because of regulatory and tax differences. Cross border competition among banks has also been quite limited.

The divergence of real economic growth across the euro zone countries continues to be a major drawback. Moreover, low growth performance of the euro zone, as a whole, was another

minus. Countries which opted to stay out of the EMU improved, on average, their growth performance compared to euro zone countries.

There is some evidence of cyclical convergence within the euro area, but, overall, convergence still remains largely incomplete. This, in spite of the fact that, over the last two decades, the business cycles across the globe, especially among the wealthier nations, tended to become more synchronized.

Price dispersion continues to be high. Prices should, in theory, be equalised within the EMU but this is not the case. Low levels of intra-European migration, and the absence of a system for cross-national fiscal transfer, place the burden of adjustment squarely on wage flexibility. The inadequate level of economic integration leaves the national economies within the euro area exposed to asymmetrical shocks, since they do not benefit of an independent monetary policy.

During the first decade of the euro, inflation in the MU has been, on average, lower when compared to previous years. Clearly, the ECB mandate to price stability was paramount but a global low inflation environment also played a large role in easing the ECB' work to keep inflation below its agreed target.

III. Old and New Challenges for the Monetary Union

The challenges for the functioning of the MU are rooted in the economics of currency areas. The theoretical

foundations for these are derived from the optimum currency area (OCA) theory² which shows that the adoption of a single currency pays off when the monetary area is highly integrated economically and has the capacity to adjust quickly to asymmetrical shocks.

Traditionally there are five core OCA properties namely: wage and price flexibility, trade integration, cyclical convergence, factor mobility, and fiscal federalism, which are used to assess a success of an OCA area. On these accounts, the euro area still seems to have some way to go in order to achieve high efficiency.

Wage and price flexibility — Wage setting continues to be done, predominantly, at the national level, and quite often at the sectorial level. This mechanism reinforces the relative inflexibility of the individual countries labour markets. Within the euro-area real wages have tended to be downwardly rigid with a relatively high level of indexation. Moreover, although nominal interest rates have largely converged, there is a wide discrepancy among real interest rates of the euro zone members. In many euro zone countries there is a high and persistent rise in the price of services – often largely influenced by changes in local administered prices.

Trade integration — The common currency appears to have boosted trade flows between member states. The effect, however, is rather small⁴ and, although it could well increase in the future, the economic benefits of trade integration are likely to be hard to disentangle from

² See for instance, Mundell (1961) or McKinnon (1963).

³ For instance, in 2006 Spain had the lowest real interest rate in the euro-zone, around 0.4% while Germany the highest, around 2.4%.

⁴ Between 5-10%, according to Baldwin (2006).

other endogenous effects generated from the currency area.

Cyclical convergence — This is a process that started long ago, with the Internal Market programme. Although business cycles synchronization appear to have increased within the eurozone countries, much of it has to do with the recent fall in the amplitude of global business fluctuations, which benefited from low interest rates, high economic growth and low inflation. However, structural differences still remain at the euro-zone country member level. Spain and Ireland are recent examples where rapid economic growth rates, driven by their construction sectors, could slowdown markedly.

Factor mobility — The mobility of the two main production factors, capital and labour, is crucial for the economic success of the euro zone. While the European capital markets are substantially more open and integrated than they were a decade ago, to some extent this is part of a global trend. Within the euro zone, FDI has gathered pace, however there are still barriers in place, such as incomplete liberalisation of the rules for mergers and acquisitions, which hamper a more complete integration of those. On the other hand, European labour mobility remains fairly limited, despite persistent differences in regional unemployment. Only around 2% of the total EU workforce appears to have increased working mobility.

Fiscal federalism — Given the existence of an independent EU monetary authority, the ECB, the argument for an EU Fiscal Authority appears to be compelling. This would create more room for manoeuvre

for the fiscal mechanisms of purchasing power transfers in the face of idiosyncratic shocks. It would also place less pressure on the ECB when dealing with regional divergences. The EU budget is little more than 1% of the EU GDP, providing limited scope for stabilising cross-state transfers. Moreover, a large part of that budget is allocated towards spending on Common Agricultural Policy and Structural Funds, which are weakly related to cyclical fluctuations in the individual member states.

Given these shortcomings in the functioning of the EMU, it is not surprising that many EU officials have voiced their concerns of how best to address those issues. At the Euro's 10-year anniversary, in June 2008, the president of the ECB, Jean-Claude Trichet, acknowledged that over the next decade the euro zone will be confronted with three major challenges.

*"This anniversary is no time for complacency. But for continuous efforts, because the challenges lying ahead for Monetary Union will be numerous and demanding. As one of the major central banks in the industrialised world, we, like the others, have three challenges to cope with in our monetary policy-making: rapid technological progress, globalisation in all its dimensions, including the transformation of global finance, and population ageing"*⁵.

Some of the old challenges, such as the full and complete implementation of the Stability and Growth Pact – which is seen as a paramount component of EMU in the absence of a European federal budget – the pursuit of structural reforms aimed at raising Europe's long-

⁵ Jean-Claude Trichet – 'Address at the ceremony to mark the 10th anniversary of the European Central Bank and the European System of Central Banks', Frankfurt am Main, 2 June 2008.

term growth potential, and reduced fluctuations in national competitiveness indicators within the euro area members still remain.

There are two views on the OCA. The first one advocates the so-called ‘specialisation hypothesis’ This argument, based on trade theory, argues that single currency areas lead to greater geographical specialisation through higher economies of scale and lower transaction costs to trade. The resulting increased regional specialisation in turn, generates an increasing vulnerability to asymmetric shocks. The second view⁶ has been built around the ‘endogenous currency area’ argument and asserts that monetary integration reduces trading costs beyond those related to nominal exchange rate volatility. Moreover, a currency area could, by itself, induce

of these views is more valid.

A. Old Challenges

A.1. The Speed of Real Convergence

Probably this has been the most disappointing effect of the euro zone so far. Member countries in the euro zone have been growing at different rates. Moreover, real GDP growth among euro zone countries has been, on average, inferior to that recorded in the NMSs (which is not surprising in view of their catching up potential). As it can be seen in Fig 1, there have been wide disparities among average GDP growth rates in the euro zone.

Between 1999 and 2007, average GDP growth in France, Italy and Germany, the countries which together

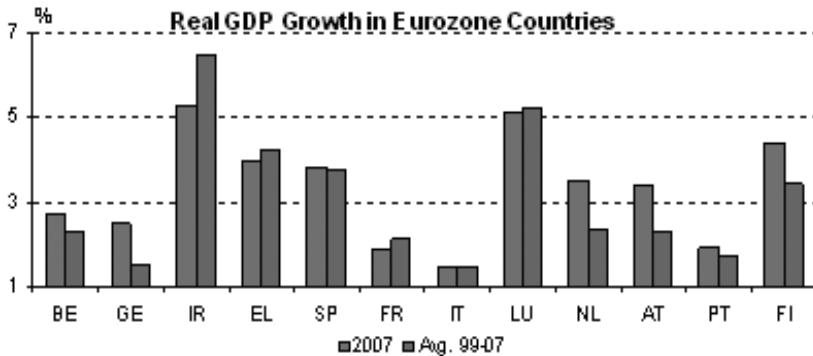


Fig. 1 (Source: Authors calculations based on AMECO data)

the required changes to allow member countries to integrate enough to make the currency area viable. If so, the currency union could produce political commitments which contribute to its optimality. There is some empirical support for each of the two theories and the next ten years would test which one

account for three quarters of the euro zone GDP, was the weakest among euro zone countries. Ireland has been by far the fastest growing economy, averaging 6.5% over the same period.

In contrast, as expected, economic growth in NMSs has been fastest (see Fig 2). Except Hungary, during the 1999-

⁶ See, for instance, Corsetti and Pesenti or Frankel and Rose.

2007 period all NMSs recorded growth in excess of 6%.

As growth differential between euro zone countries and NMSs would continue

rise to serious strains and inefficiencies.

The experience of Ireland and Spain within the euro zone has been illustrative in this respect. Since adopting the euro

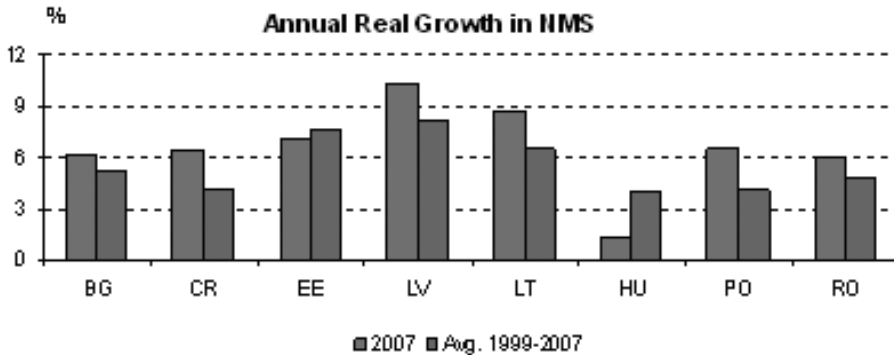


Fig. 2 (Source: Authors calculations based on AMECO data).

to persist in the medium term one important issue is the individual timing of the NMSs adoption of the euro.

A.2. One Size Fits all Monetary Policy

In normal circumstances a country uses both monetary and fiscal policy to react to economic shocks. Within the EMU however, its members loose control of the monetary policy, making the task of stabilizing their economies in the face of shocks more difficult. The interest rate is set by the ECB so as to reflect the economic conditions throughout the euro area. As the latter differ across member countries any changes in the interest rates could have very different effects on economic and financial conditions in various parts of the EMU. And, unless there is a reasonable convergence of the monetary policy transmission mechanism across the euro zone members, this could give

the countries have been growing much faster than the euro zone average, and would have needed higher nominal interest rate to stem off rising domestic inflation. On the other hand, the current global supply shock which raises inflation throughout the euro zone, would require higher interest rates. However, the consequences of this monetary action would differ from country to country in terms of timing and its impact on real variables, as there are differences in the monetary transmission across EMU countries. Since convergence within EMU has not been achieved yet, inevitably, the effects of the output-inflation trade-off in individual countries would be magnified. Thus, as even in good times (i.e. periods of macroeconomic stability) the cost of maintaining price stability will be unevenly spread across the monetary union, in bad times these costs will necessarily be higher.

A.3. Fiscal Policy and Strained Welfare Systems

The euro area is the only region in the world which has a centralised monetary policy but favours a rather independent approach to fiscal policy. The foundation for the latter is laid out in the Stability and Growth Pact (SGP) which is politically and legally binding and acts as a coordinating instrument across the EU. In order to maintain fiscal discipline within the EU, the deficit to GDP and debt to GDP ratios should not exceed 3% and 60% respectively over the economic cycle. As noted in a multitude of papers, from a longer term perspective, these constraints puts into question the sustainability of public finances.

The largest threat is, undoubtedly, the *ageing of population*. EU's projections of age-related expenditures in its 'no-policy change' scenario⁷ envisage an average debt-to-GDP ratio for the EU in 2050 of over 180%. Individual country debt-to-GDP ratios could be much higher with Greece at 450% and Portugal at 520%.

Long-term sustainability finances are important for the EU as a whole because the negative effects caused by the unsustainability in public finances from any individual EU country could spill over to other member states. Moreover, risk premiums for EU countries with a more precarious state of public finances could rise relative to other EU members, making harder for the former to refinance their debt⁸.

Adopting a long term view for the EU's fiscal policy, in which these issues

will have to be addressed, is mandatory. Multi-annual budgetary frameworks are useful because they limit the scope for opportunistic government interventions in fiscal policy but adopting a longer-term vision for the EU public finances would require changes in the way fiscal policy is conducted.

Ideally, from the point of view of coordinating monetary and fiscal policy, a monetary union should have a central fiscal authority. As responsibilities of the two institutions are different, it would be important to have a single fiscal authority counterpart to the MU's monetary authority. In practice however, this is likely to be difficult to achieve. Resistance of national governments, which would like to have some discretion over their fiscal policy and control their national budgets, would, most probably, continue to be very high.

Although the SGP provides a general framework for the euro zone governments to conduct fiscal policy, in situations with extreme economic conditions, such as the one the world faces nowadays, there is scope for overriding the restrictions imposed by SGP.

A.4. Diminished Adjustment Capacity in the Global Economy

The globalisation of financial markets together with the continuous acceleration of financial deepening in world markets have led to increased interconnection of the world's financial markets. The ongoing financial crisis revealed, once again, how difficult is to contain the propagation of

⁷ See Commission (2006).

⁸ So far, risk premiums for Belgium, Greece or Portugal, countries which have had the highest debt-to-GDP ratios within the EU have not risen. It may be because the markets thought that this trend could be reversed, which actually has started to happen.

shocks, especially financial shocks. In today's world, large money flows take advantage of investment opportunities across world's economies, facilitating an efficient allocation of resources. On the other hand, however, the sudden outflow of foreign funds could leave domestic financial markets depressed, which, in turn, could have a negative impact on the real side of the economy, with output contracting, sometimes threatening the very existence of the entire sectors, and unemployment going up. Subsequently, the recovery of the economy could take a long time.

In today's global economy, individual economies have a less limited adjustment capacity, compared to, two-three decades ago, let's say. They are much more flexible, indeed, but their desired economic objectives could be often difficult to meet. This is because the control over economic conditions is to a large extent, at least in the short term, outside the individual country's institutions' powers.

A.5. The International Role of the Euro

In its anniversary report, EMU@10, the EC acknowledged the fact that "the euro area must [...] build an international strategy commensurate with the international status of its currency". While, undoubtedly, building an international strategy that focuses on changes at the institutional level in international organisations, for instance, would help, the economic dimension itself, plays a major role in strengthening the euro's international exposure.

A currency has three major roles,

namely as a unit of account, medium of exchange and store of value. The international role of the euro focuses on enhancing the last two of these as the unit of account role is, implicitly, already fulfilled by giving the euro a meaningful interpretation of prices.

Credibility of the issuer plays an important role. And this comes with time, as the ECB will establish a longer track record. Stability of the euro will be another characteristic which will enhance euro's international role⁹.

As an international currency, the euro will need to be supported by financial instruments denominated in euro which can be easily traded in a liquid financial system. Here, however, the US bonds and T-bills market still offers investors a wider diversity. Moreover, the largest part of energy trade is still denominated in US dollars. A number of countries which are global suppliers of oil and gas for instance, have their domestic currencies pegged to the US dollar.

B. New Challenges and Re-emerging Threats

Apart from the challenges presented above, nowadays there are renewed pressures, some derived from the changing structure of the global economy and some from accelerating processes such as climate change or energy supply concerns.

B.1 Labour Productivity

In the absence of an individual exchange rate for any euro zone member country, one possible measure of

⁹ Although, as a ratio to GDP, the euro appears to have surpassed the US dollar as currency holdings circulating outside the euro area. In 2006, the ratio of UD dollar banknotes in circulation to euro banknotes in circulation reached 0.9

competitiveness within the monetary area is given by domestic unit labour costs. Fig 3 below shows the percentage deviation, relative to EU-27, of the real unit labour costs of individual member countries in 2007.

According to the data, Poland and Romania appear to have been the most competitive countries in EU¹⁰. Slovakia, the soon-to-be euro zone member follows suit. Unsurprisingly, Spain which has had this advantage for the last decade still benefits on a lower unit labour cost than the EU average. Among the core group of EU countries, Germany and Austria have been doing remarkably well. In part this is due to structural measures, in particular taken by Germany, to rebalance their economies. The agreement on wage policy German government had with trade unions has paid off.

On the other side of the spectrum, among the NMSs, countries which have their domestic currency pegged to

the euro, i.e. the Baltic countries and Bulgaria, fear the worst. Their currency board monetary regime prevents them to adjust and a strong euro puts an upside pressure on their domestic labour costs.

Overall, the euro zone appears to be slightly less competitive than average EU-27 but this happens mainly due to the large positive contributions of Poland and Romania.

B.2 Energy and Climate Change

The European energy policy plays an increasingly important role in the overall EU's policy framework. The energy package drafted by the EC envisages the fulfillment of a number of targets by the year 2020. Taking the year 1990 as a benchmark, the aim, at the EU-level, is to reduce by 20 percent the EU's greenhouse gas emissions, use a 20 percent share of renewable energies in the energy mix, and improve energy

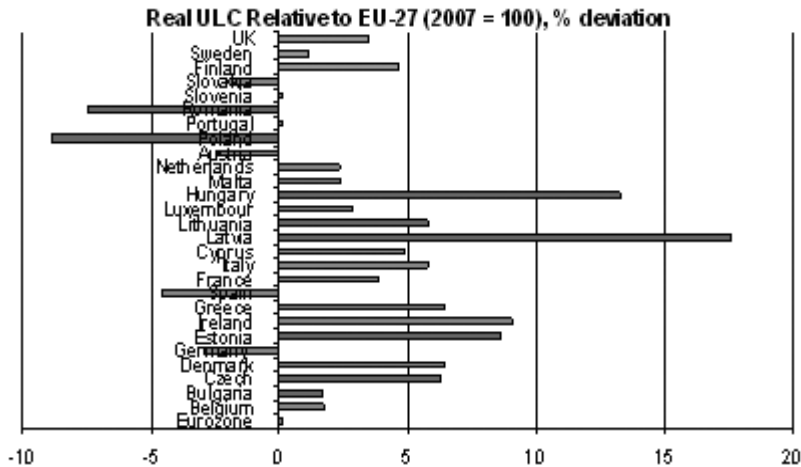


Fig. 3 (Source: Authors calculations based on AMECO data. Red lines are NMSs, blue lines are euro zone members).

¹⁰ It is true that, in Romania for instance, wages have been growing fast over the last years. But the increase in wages has been a phenomenon observed throughout NMSs, so in relative terms the increase has been much less. Moreover, the aggregate wage level in Romania is among the lowest in NMSs.

efficiency by 20 percent. These policies highlight the need to secure supply, fight climate change and build a competitive energy sector within the EU as a whole.

However, the initial costs associated with these changes are going to be large and they will affect various EU members to different degrees, and implicitly the euro zone members as well. This happens because of the existent different energy supply and economic structures countries within the EU. The relative price of energy shock would impact quite severely on the economies which have low valued added and consume energy disproportionately. (most NMSs range

by 2030. These changes alone are bound to bring about changes in the energy supply mechanisms and could transform profoundly the economic structure of individual countries.

For instance, industries which rely too much on oil and gas will become uncompetitive as the price of these goes up and the price of alternative energy supplies comes down¹¹. Moreover, the costs associated with these changes are both monetary and non-monetary. This makes it more difficult to come up with scenarios that quantify their impact on the individual EU countries.

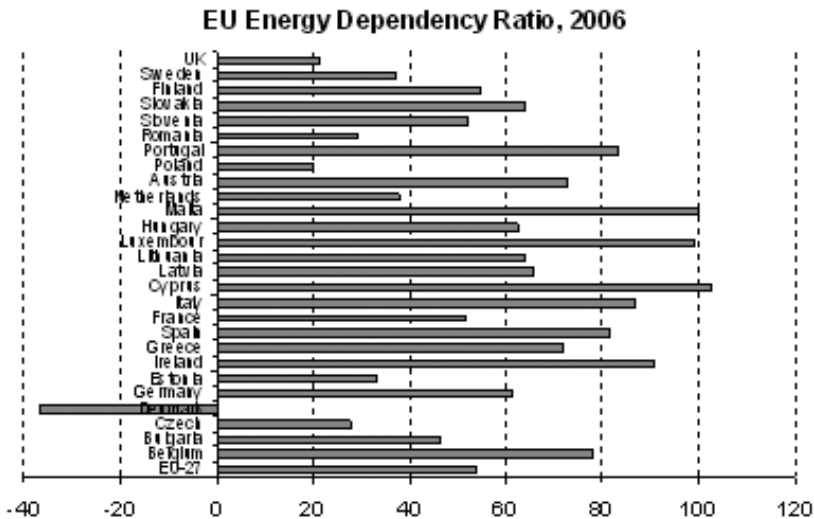


Fig. 4 (Source: Eurostat).

among them); this course will show up in adverse dynamics of ULCs.

The EU energy dependency ratio, expressed as net energy imports divided by gross energy consumption, is set to rise from the current 53% to some 65%

B.3 The Financial Integration

Although countries in the euro area appear to have continued the process of integration in European financial markets, there are still segments of these markets

¹¹ Also, in transport, energy use has grown rapidly over the last decade. A key characteristic that distinguishes energy use in transport is the almost total dependence on oil as a fuel. The social and economic effects of the measures aimed at maximising energy efficiency and renewable energy substitution in this sector are difficult to quantify yet.

which are not sufficiently integrated. Financial integration is an important issue in the context of a monetary area. Both economic theory and empirical findings tend to suggest that integration and development of financial markets contribute to economic growth and allow capital to be allocated more efficiently – provided financial innovation is of the right nature¹².

A study by the ECB (2004) performed over five key euro area markets namely, money, government bond, corporate bond, banking/credit and equity markets, shows that these have achieved different levels of integration. Money market appears to be the most integrated of the five but even so, differences persist between various sectors of the money market itself.

As euro zone financial institutions have extended their activities across national borders, the financial systems of different countries have increasingly become intertwined. This, in turn, increases the risks of international contagion. As the current financial crisis has shown, the emergence of a crisis in a specific country and a specific sector can rapidly propagate to other countries and financial sectors. In this context, the establishment of an adequate regulation and supervision system becomes important for the functioning of financial markets.

As the ongoing financial crisis has shown, the financial stability has become a major issue in itself. The financial sector has an important role to macroeconomic stability for a number of widely acknowledged reasons.

First, a financial crisis can cause major economic disruptions and sizable fiscal costs. Second, the resilience of the banking sector is paramount for pursuing a flexible interest rate policy as well as a predictable and effective monetary transmission. Third, an efficient financial intermediation is essential for enhancing growth. Fourth, risk management is very important, as it limits unhedged borrowing and discourages flows driven by moral hazard.

The current financial crisis has exposed a number of flaws, two of which stand out. The first relates to the control of monetary aggregates when credit expansion is very intense and financial innovation loosens the relationship between the monetary base, M0, and broad money, M2. Over the last three decades, the relationship between M0, over which a central bank has control, and M2, over which a central bank does not have control, has weakened considerably. This has made the task of implementing monetary policy by a central bank slightly more difficult. In hindsight, the increase in M2 in a low global inflation environment has been made possible with increased leverage by the financial institutions – helped by the development of complex financial product and the creation of a parallel architecture to the banking system – as it used to exist two decades ago. This leads to the second flaw exposed by the ongoing financial crisis, namely, that related to the regulation and supervision of the so-called shadow banking system.

This crisis has outlined the need for preventing a regulatory arbitrage in the global economy. Arguably, an institution

¹² This is easily to illustrate by examining the episodes of financial crises of recent decades. As the report on securitization produced by the Committee of Wise Men, which was headed by Alexander Lamfalussy, underlines there is a trade off between financial innovation (especially if it is not well regulated) and financial stability (2001).

which would perform such a task would be faced with a rather complicated supervision process. Coordination with national supervisory institutions would be essential and this could increase the likelihood of a delayed response in the event of a sudden crisis. Nevertheless, some form of co-coordinated action plan among MU member countries, should be in place *a priori*, with contingency plans drawn up.

B.4 Regulation and Supervision in the MU

The ongoing international financial crisis should compel everybody to reexamine financial regulatory frameworks. Some are tempted to see the crisis as a recurrent accident, albeit more severe, along an economic cycle and following worldwide very cheap credit for several years in a row. But a careful reading would go at structural roots of the crisis. Globalisation of financial markets and very intense financial innovation, with precarious and, sometimes, missing regulations, and a plethora of conflicts of interest, have created the milieu for the current crisis. There is a growing debate among top policy makers on how to address the causes of this crisis.

One type of arguments refers to cooperation among supervisory agencies. Thus, the former Italian minister Tommaso Padoa-Schioppa makes a cogent argument when he advocates the setting up of a single European rulebook and an integrated supervision of EU-wide groups. In our view, these proposals deserve a more sympathetic hearing from ECOFIN minister members and EU governments. As a matter of fact, the logic of the single market and increasing cross-border operations ask for increased cooperation

among supervisory authorities in the EU. But, arguably, it is not sufficient to focus on strengthening the supervision of banking institutions. For, apart from an irresponsible relaxation of lending criteria in the US sub-prime mortgage and other markets, the origin of the current financial crisis is to be sought in implications brought about by massive cross-border capital flows and the increasing use of financial instruments/derivatives (the securitization of various obligations) which are not transparent and traded effectively.

Financial markets have become, in certain areas, increasingly opaque and, identifying those who bear the risk together with evaluating it represent formidable tasks. The size of the so-called "shadow banking sector", which is lightly regulated, has been constantly increasing over the last 10-15 years. This evolution brings to memory the Gurley-Shaw report of decades ago, which highlighted the imprecision in distinguishing between credit and money; and, consequently, major hurdles for effective monetary policy. Banks themselves have been caught in this game by their origination and distribution operations, flawed risk management practices.

Not a few leading banks have engaged in highly questionable packaging and selling of debt tied to high risk mortgages. And several Wall Street major banks have come under the scrutiny of prosecutors lately. A Glass-Steagall type recreation of Chinese walls for the sake of restoring trust and transparency would, quite likely, be impossible nowadays, albeit not unimaginable. But there is an obvious need to regulate financial markets more widely and better. The deepening of the financial turmoil refutes glaringly those who said that the financial industry is

capable of self-regulation. It is quite unfortunate that more thorough lessons from the LTCM episode, the dotcom bubble, the Enron and Parmalat affairs, etc. have not been learned by national regulators more thoroughly. There is, arguably, a need to revise the regulatory frameworks for the operation of investment vehicles. There is also a need to regulate the very use of financial instruments (of CDOs and CDSs, for instance), so that the transparency of markets be restored and investors be adequately informed. As banks are required to hold minimum reserves a similar rule could apply to other financial institutions. Likewise, the magnitude of the leveraging should be subjected to constraints and efforts to mitigate the effects of procyclicality should be taken into account. And a final note: better regulation does not mean a reversal of financial openness; the opposite is true. Financial openness, in order to be sustainable (and not produce irreparable damage), demands proper (enforceable) regulations and effective oversight.

B.5 Global Governance

The issue of global governance is a pretty wide one, however, from this chapter's point of view three of them would be addressed namely, the regulatory arbitrage in the global economy, local disequilibria and the need for institutions for global governance. In fact, they are all interlinked, one reinforcing the other.

In a world of increasing integration of financial services, local disequilibria could propagate rapidly across two dimensions, namely geographical borders and other products. For instance, although the current financial crisis has originated in the US subprime market,

subsequently it spread to almost all developed economies and it has done so across a broad range of other products such as car loans, insurance and so on. Apart from the extensive flaws in the US subprime mortgage securitization there have been wider information and incentive problems originating in the banking system. Moreover, the emergence of the totally unregulated 'shadow banking system' and its high levels of leverage compounded the initial problem.

In the view of recent events, the need for global institutions of global governance seems to be well founded. Devising the architecture and the functioning mechanisms of such institutions would probably take time because of the complexities involved in such a process. Response times in period of crisis is paramount this would be a trade-off with the level of complexity, as both national and EU institutions would have to be coordinated.

IV. Challenges for the New Member States (NMSs)

The eight NMSs aiming to join the euro are bound to face more challenges in their process of entering the monetary union compared to their predecessors. This is because fulfilling the required conditions for nominal convergence is bound to take longer today, as uncertainty in global markets deepens and adverse shocks do not abate. Moreover, the EC and the ECB have grown more lukewarm towards the expansion of the EMU and insist that convergence conditions should be met. We shall see whether the very serious impact of the financial crisis on NMSs would alter this stance.

A. *Preconditions for joining the MU*

The entry preconditions in the euro zone are embedded in the Maastricht Treaty. They require countries to achieve a high degree of sustainable nominal convergence before they can participate in EMU. The fulfilment of the Maastricht criteria is assessed by the EU Council on the basis of the reports prepared by the EC and the ECB at least once every two years or at the request of a member state wishing to adopt the euro.

The Maastricht criteria require the following:

Price stability – The average annual rate of inflation must not exceed by more than 1.5 percentage points the average rates of inflation of the three best performing EU countries. Inflation performance should also prove to be ‘sustainable’.

Long-term interest rates – The average nominal long-term interest rates over the latest twelve months should not exceed by more than 2 percentage points the average of the three best performing EU member countries in price stability terms.

Exchange rate stability – Countries are required to keep their exchange rates within the “normal” fluctuation margins of the European Monetary System (ERM-II) without severe disruptions for at least two years.

Fiscal sustainability – The fiscal deficits should not exceed 3 percent of GDP, and gross government debt should not exceed 60 percent of GDP. However, the assessment of fiscal sustainability under the excessive deficit procedure outlined in the Maastricht Treaty is

designed to evaluate whether the budget deficit ratio “has declined substantially and continuously and reached a level that comes close to the reference value” or that “the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value.” Similarly, the government debt ratio is allowed to be “sufficiently diminishing and approaching the reference value at a satisfactory pace.”

B. *What Hardens the Maastricht Criteria*¹³

To a large extent, challenges in meeting the Maastricht criteria by the NMSs stem from the necessary convergence processes in both prices and incomes to euro-area levels. Furthermore, the ensuing capital inflows and financial deepening could bring about significant developments in inflation and exchange rates. Given the fact that initial conditions are different in each NMSs country, the convergence process is likely to take different paths. In the NMSs, income levels are inferior to those in euro zone so the speed at which these would converge is an important consideration.

Usually income convergence should occur simultaneously with the convergence in price levels. In practice there are two mechanisms through which this could happen. Either the country involved in the catching up process needs to experience higher inflation relative to the euro zone or its nominal exchange rate must appreciate relative to the euro. Both mechanisms involve the appreciation of the real effective exchange rate¹⁴. With NMSs expecting to

¹³ A skeptical view on these criteria as applied to the NMSs holds, among others, Charles Wyplosz (2007).

¹⁴ This results from the definition of real exchange rate (or competitiveness) which equals the nominal exchange rate times the ratio of the two price levels.

grow at a higher rate, inflation would be growing faster relative to the euro zone¹⁵, so that there is a large risk that inflation would go up after joining the EMU – unless sufficient convergence has been achieved.

Price growth could be different in the tradable and non tradable sectors – the Balassa-Samuelson Effect – since in some NMSs productivity in the tradable goods sector tends to grow faster than in the tradable goods sector. The Balassa-Samuelson effect would be manifesting itself by putting pressure on prices or the exchange rate¹⁶.

C. Inflation challenge

As mentioned above, even in a stable global macroeconomic environment, inflation in the NMSs would be higher than that of the euro zone.

The global financial crisis, triggered by the US subprime market events in the summer of 2007, is bound to have effects in the medium term. One of the central banks responses¹⁷ to the crisis has been to inject liquidity in the money markets. This liquidity would not go away easily and with economic growth in developed countries expected to falter, there would be an inevitable rise in inflation. Current economic policies in the US tend to support measures for increasing demand,

a recipe for another inflation bout, though one can argue that monetary easing is not unwarranted during periods of bad equilibria and while inflation pressures seems to have largely subsided¹⁸.

Unsurprisingly, the inflation in NMSs has been higher than that of the euro zone. In 2007, however, in 6 out of the 8 NMSs inflation was higher than the average inflation recorded in the 1999-2007 period. This raises the question on the sustainability of low inflation in the NMSs.

In contrast, inflation in the euro zone countries tended to be more subdued. New euro zone members, such as Slovenia and soon-to-be member Slovakia, experienced by far the highest average inflation among euro zone economies. Fastest growing countries, such as Spain or Ireland also had higher inflation rates.

D. Growth and external deficits

A low real rate of interest and expectations of faster convergence by the NMSs justify higher private spending, in the form of either consumption or investment. This would require running current account deficits. As domestic savings rates are too low to finance the current level of investment and consumption, external borrowing is the

¹⁵ This is known as the Balassa-Samuelson effect and arises due to higher differences in productivity growth sectors vis-à-vis their corresponding wages. Productivity growth has tended to grow faster in the traded goods sector than in the nontraded goods sector, such as services. Rapid productivity growth in the traded goods sector pushes up wages in all sectors so that the prices of nontraded goods relative to those of traded goods will rise. Because productivity growth is faster in the catching-up accession countries relative to the EU countries, this implies, ceteris paribus, that inflation rises more rapidly in the catching up economies.

¹⁶ Empirical evidence on the Balassa-Samuelson effect estimated it between 0.2% and 2% per annum.

¹⁷ The Federal Reserve, Bank of England and the ECB have injected large amounts of liquidity in the money markets and created facilities which are still in place in order to offer access to more funds to the distressed banks.

¹⁸ As a matter of fact the FED is acting in a quite Keynesian fashion in order to forestall a deepening of the recession.

only way to speed up the convergence process. However, with large capital inflows potential vulnerabilities emerge. All NMSs experience rapid credit expansions, and in some countries there were concerns about overheating. Higher incomes create the opportunity to borrow more and banks have been scrambling to offer loans in their pursuit of market share. Domestic borrowers have been contracting loans in foreign currency – mostly euros – increasing the currency risk on their balance sheets. Obviously, currency mismatch makes the private sector vulnerable to the exchange rate depreciation, and raises the systemic risk through credit risk.

Within the EU, the largest current account deficits are run, with the exception of Greece, by NMSs (see Fig. 5). Again, the NMSs which have a currency board have the largest current account deficits domestic adjustment cannot occur in the face of strengthening of the euro.

the exchange rate on a stable path – as required by the ERM-II – would be harder.

E. Exchange Rate Arrangements, Currency Boards or Floating Rates

The exchange rate arrangement plays a crucial role in a country's progress towards its EU accession. Participation into the ERM-II requires a relative stability of domestic currencies vis-à-vis the euro for a period of two years. Out of the 8 NMSs, half, the Baltic countries and Bulgaria, have a currency board arrangement. At first, this might be perceived as an advantage since it could smooth out their participation into the ERM-II. Moreover, currency boards also help bringing down inflationary expectations at a time when these are high. The major problem, however, with a currency board arrangement is that countries loose control over their

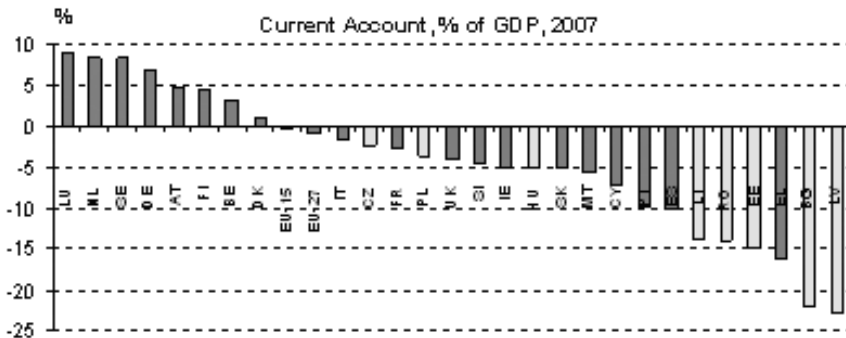


Fig. 5 (Source: Authors calculations based on AMECO data. Yellow lines correspond to NMSs).

Large current account deficits imply an external disequilibrium and, therefore, would necessitate an adjustment in the exchange rate. As long as transitory changes take place, the settlement of

monetary policy. And, during a time of rapid structural change, this could affect competitiveness and hamper the speed of their adjustment.

At the time of writing, the NMSs with

currency board agreements were having the highest inflation within the EU, being the only four countries which had double digit inflation (see Figure 6 below).

them for long period of times, when the economy undergoes a structural adjustment could prove to be costly. And these costs could be more painfully in

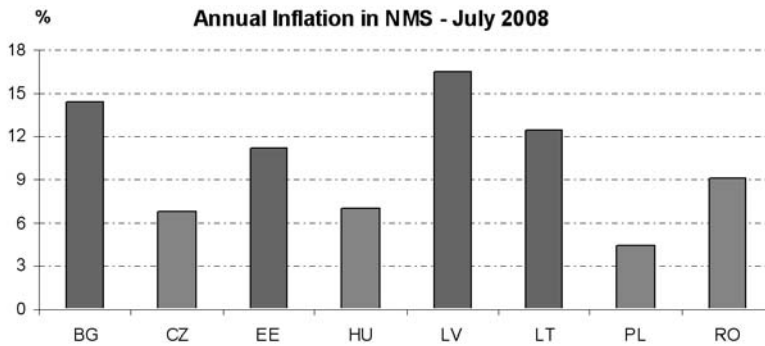


Fig. 6 (NMSs with currency board arrangements in red).

Part of the reason for this high inflation rates in NMSs with currency board agreement was due to higher wages. Due to the out-migration, the ensuing labour shortage has pushed up wages, which in turn, raised companies costs and thus inflation. A fixed exchange rate has worsened the problem by preventing an appreciation of the domestic exchange rate, which would have taken some pressure off inflation.

In contrast, NMSs countries with flexible exchange rates fared much better – in spite of similar prevailing labour shortage conditions. Romania’s July 2008 inflation edged a little over 9% but inflation in the Czech Republic, Hungary and Poland were between 4-7%, a little higher than euro zone inflation. The return of many Polish workers from abroad over the last months may have played its part in keeping inflation low in Poland.

Currency board arrangements may be a temporary solution when inflation is high and there is a need for rapidly establishing credibility for the disinflation process. But, maintaining

the future, if the country enters into the MU at an exchange rate parity which is not adequate with the macroeconomic fundamentals. From this point of view, the floating exchange rates of the NMSs seem to be a far better alternative on their road to euro adoption.

The advantages of different regime options are debatable in both academic and official circles. However, several considerations are worth taking into account by the NMSs authorities when deciding which monetary regime is more suitable for their economies. First, it is important to ensure that the monetary regime will be consistent with the country’s inflation objectives. This objective is part of the Maastricht criteria and achieving a low and sustainable level of inflation is possible only when structural economic adjustment has reached its final stages. The two mechanisms available to achieve the required real currency appreciation are to allow either the domestic currency to appreciate in nominal terms or domestic prices to rise. Second, the financial

deepening of the economies would raise additional issues regarding the transmission mechanism of the monetary policy. Transition economies have experienced shifts in money demand and, from this point of view, pursuing an IT regime might be perceived as being more challenging. However, this has to be put in balance with the benefits of the central bank having full control over monetary policy. Having a currency pegged to the euro – as Bulgaria and the Baltic states – seriously impair their central bank's response to current events, for instance. In the presence of potentially strong and variable capital inflows, which most of the NMSs economies experience currently, the monetary authority has limited room for manoeuvre. Moreover, large swings in real exchange rate affect output and expectations.

And, as today's ongoing financial crisis reveals, it may be that, for the small countries which have currency boards, their best choice would be to adopt the euro as early as possible. The alternative would be a prolonged recession since adjustment in the nominal exchange rate is not possible.

Allowing monetary policy to operate more flexibly seems to present a greater advantage in current circumstances.

Moreover, an IT regime gives the central bank some discretion if unexpected economic circumstances materialise. And, it also allows a better coordination with fiscal authorities in designing and pursuing the appropriate economic policies. This said, however, a free floating of the exchange rate (which is implied by a hard IT regime) poses its own strong perils – especially under the extreme volatility conditions which have been brought about by the current financial crisis.

F. Strains to budgetary policy

Within the EMU, the creation of the SGP may have made structural adjustment more difficult. While in a boom, meeting the SGP rules is easier, achieving fiscal balance through tax increases and budget cuts when the economy is weak could prove difficult. The onset of poor economic conditions in 2000 proved this point. The economic downturn reduced government revenues while accelerating unemployment increased government expenditures. These two trends combined to drive budget deficits above the 3 per cent ceiling in several EMU countries. And this could well happen again if the current financial crisis persists.

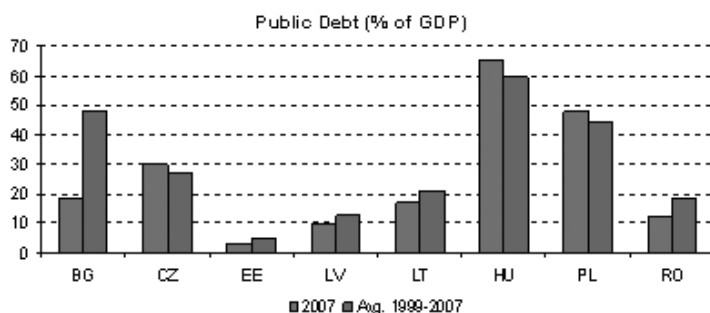


Fig. 7 (Source: Authors calculations based on AMECO data).

The NMSs would have to deal with these fiscal strains as well. And, on top of this, they will have to address issues such as co-financing EU projects on environment and infrastructure or large education, health care and pension costs. In the NMSs, public debt – which gives a perspective over the sustainability of fiscal policy in the long run – expressed as a percentage of GDP, is relatively low. Exceptions are Poland and Hungary with the latter already going over the Maastricht criteria limit.

In contrast, public debt in the euro area is much higher, on average (see Fig. 8). Italy, Belgium, and Greece have the highest ratios, around 100% of GDP.

G. Divergence of economic developments

Currently, a large number of countries within the euro zone exhibit divergent economic developments. These divergences are bound to become more prominent with the expansion of the euro-zone. Some of these divergences are structural but many of them have a political origin. As long as convergence with the euro-zone area is not fully achieved, a set of policies in the NMSs countries such as spending, taxation or social policies would be more efficient implemented at the national level.

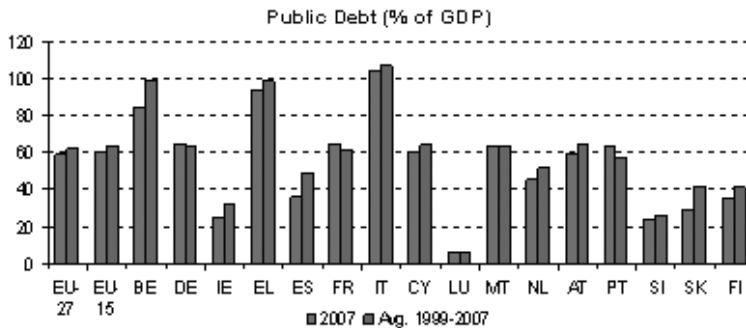


Fig. 8 (Source: Authors calculations based on AMECO data).

Fiscal policy, in particular, would need to be carefully devised in the NMSs within a long term framework. Although, in general the level of public debt in NMSs is relatively low, it could quickly grow if left unchecked. The old-age dependency ratio is set to rise drastically over the next 4 decades. Aging would put pressure on both government revenues – by lowering them – and expenditures – which would grow.

H. Does the Financial Crisis Strain the MU?

More than one year after it started, the global financial crisis appears to place an increasing strain on the workings of the European financial system¹⁹. The functioning of the existing EU arrangements for maintaining financial stability could well be hampered if the crisis continues to deepen. There are three main questions which are

¹⁹ The European financial system can be seen in a strict and a broader sense. The latter would include the EU member states that do not belong to the eurozone.

worthwhile answering in the current global context. The first is whether the existing Eurosystem operational framework is indeed suitable to deal with the effects – current and expected – of the financial crisis within the euro area. The second relates to the level of support – if any – the ECB should provide to the non-Eurozone member states. And finally, what are the major threats to the Euro-financial system which the ongoing crisis has been exposing so far.

The answer to the first question is rather unclear. So far, the European financial system appears to have survived a crisis of public confidence, in spite of a number of bankruptcies and large losses incurred by various European banks. But, as the bottom of the crisis appears to be some way ahead, the adequacy of ECB's instruments remains still to be tested. The ECB has at its disposal three categories of instruments namely, open market operations, minimum reserve requirements and standing facilities. The two commonly used open market operations employed by the ECB during the current crisis have been its refinancing operations – through which liquidity is temporarily lent to counterparties against eligible collateral – and fixed term deposits – used to absorb temporary liquidity from the financial system. The increased instability of money demand²⁰ within the euro-area's financial system has made the ECB to adjust more actively than usual the timing and maturity of its open market operations but there has been no change in the other two

instruments²¹. However, if the liquidity problems in the euro-zone financial system continue to worsen, the ECB may find itself in a difficult position vis-à-vis its capacity to supply the necessary liquidity to the markets. In turn, this would have a negative impact on interest rates – distorting the monetary transmission mechanism signal – impairing access to credit by both households and corporate sector. This has already started to happen in the US and some European countries. It is a serious issue since the euro-zone banks' share of loans and deposits in total financial assets and liabilities is rather large.

Dealing with such threats to financial stability would necessarily involve a coordination effort among various financial institutions. Coordination would also need to be established within the euro-zone countries. The credibility of the euro, as an international currency, would depend of the EU's ability to find a common response to a collapse that transcends its members' borders. For instance, debates about raising guarantees for private savings across the EU showed how large the disagreement still is among member countries. Many European governments have taken unilateral action.

Apart from coordination initiatives, other measures aimed at managing cross border crisis would have to be swiftly implemented. Among these are proposals on reducing barriers to cross border asset transferability by subsidiaries of a banking group clarifying the circumstances in

²⁰ In fact, the instability of euro-zone money demand has been well documented since the inception of the MU. But, in times of stress, the volatility of money demand grows even higher, making the conduct of monetary policy more difficult.

²¹ See 'The Eurosystem's Open Market Operations During the Recent Period of Financial Market Volatility', May 2008, Monthly Bulletin, ECB.

which a bank would be allowed to receive public financial support and a potential re-evaluation of conditions regarding the existing EU directive on the reorganization and winding-up of credit institutions to include subsidiaries.

1. The Financial crisis and Euro adoption

The Asian crisis of a decade ago made some to talk about a “two corner solution”²² for exchange rate arrangements in order to forestall financial misery. The current financial crisis has underlined the role of reserve currencies as “shelters” during periods of major distress; it is like we are going toward a “single corner solution” paradigm in exchange rate policy. This role of the single currency has reignited the controversy over euro-adoption for non-eurozone EU member states, new and, interestingly, older ones. For older member states joining the eurozone seems to be more of a political decision, though economic arguments can be highlighted as well. For NMSs euro adoption is more complicated for it involves complying with the Maastricht criteria, however disputed these are in their case.

Regarding older EU member states, which do not belong to the eurozone, analysts (Buiter and Sibert (2008)) identify several aspects which make their economies look vulnerable to stress in international financial markets. Namely, countries which are small, possess a large, internationally exposed banking sector, have their own currency and have a limited fiscal spare capacity relative

to the possible size of the banking sector solvency gap are in particular vulnerable. In the EU these are Denmark, Sweden and the UK, although the latter is larger compared to the other two and has a legacy of a reserve currency. It can be submitted that both Denmark and Sweden will speed up procedures to adopt the euro. For the UK things seem to be murkier in this regard.

Recent developments in financial markets in Europe have made the ECB to step in and guarantee support for some NMSs²³. This is an unprecedented move. The ECB used, for some time, to provide technical assistance to central banks in countries neighbouring the euro-zone. Such dialogue reinforces cooperation between the EU and its neighbors, including countries which are supposed to adopt the euro. However, the ECB never acted as a potential lender of last resort for a non euro-zone country so far. The ECB’s decision indicates how much the European financial landscape has changed since the creation of the MU. This is now characterized by a growing number and increasing strength of banking groups with significant cross-border activities. And, although in theory each subsidiary of a banking group is a legal entity subject to the legislation of the EU’s member state in which it is established, in practice, a deteriorating position in one location could well lead to significant contagion effects. This crisis has brought about a quite paradoxical situation: it is not subsidiaries in NMSs which cause the trouble in the main, but overall practices (such as over-leverage and involvement in the origination and

²² Either a free float, or a currency board.

²³ In the case of Hungary ECB assistance was combined with support from the IMF and the WB in a package of over 20 billion USD.

distribution of securities) of banking groups headquartered in countries which belong to the eurozone! Ironically, the ECB is forced to step in because, not least, of poor practices in its principal geographic area of concern. From this point of view, the ECB's financial support which was extended to, for example, the National Bank of Hungary may be seen as a pre-emptive move attempting to maintain the existing financial stability in a wider euro-zone area. But this highlights also the vulnerability of financial systems in NMSs, not necessarily of their own doing.

In late 2008, a number of countries in Eastern Europe, such as Poland, Hungary or Romania experienced increased speculation on their currencies. In times of financial distress, small open economies with shallow financial markets and dual monetary systems²⁴ (with a large volume of euro-denominated credits) are particularly at risk in the face of such events. While the benefits of a weaker currency could be potentially reaped in the short term through higher exports, the medium term effects on the real economy – caused by higher interest rates and lower economic growth – are likely to be more lasting and more damaging. Moreover, a fast depreciating currency could cause a sudden crisis of confidence and trigger an old-fashioned run on the banking system. The search for higher yield by global investors who attempt to improve their earnings position could well destabilise – often unjustifiably – entire financial systems.

The wave of speculative attacks on NMSs currencies and the increasing threats to their financial stability prompts

some governments to seek earlier entry into the euro zone. The Polish government has already indicated that it plans such a course of action. Other governments think similarly. Arguably, this will be heavily debated in the period to come in several NMSs. But a major stumbling block for speedier euro accession are the Maastricht criteria – which look more difficult to fulfill in view of the ensuing global economic context.

The EC could, in theory, adopt a more permissive approach towards NMS countries willing to adopt the Euro by relaxing/adapting the Maastricht criteria requirements. But not a few influential people in Frankfurt, Berlin, Paris, etc might say that, allowing economies with a rather more “fragile” position to join the eurozone, would weaken the Euro. On the other hand the ECB has both an operational and moral duty to assist central banks in NMSs in case of need. And if this is the case contingent liabilities (involved by swap lines and other arrangements) may be quite significant; they may even be on the rise if NMS are increasingly at pain in coping with the effects of being outside the eurozone. Therefore, it may be that a cost-benefit analysis favours a faster track of euro zone accession for some NMSs when things are examined for the single currency area as a whole.

It is true that fears of an expanded free riding syndrome when it comes to fiscal rectitude are not groundless. Just keep in mind the experiences of Italy, Portugal, Greece after accession in the euroarea. But, arguably, some NMSs are more liable to be fiscally sounder, inside the Euroarea, than older member states like those mentioned above. And if this

²⁴ Euro denominated credits make up a significant share of the total, which indicates the perils of a sharp and sustained depreciation of the domestic currency.

is the case the menace of a weakening euro, because of a precipitate eastern enlargement of its area, loses much of its punch.

NMSs are, seemingly, in a catch-22 situation in view of the current financial crisis: if they stay outside the eurozone area they tend to become more vulnerable (speculative attacks against their currencies is a proof of this); if they get inside too quickly they risk not being able to cope with having renounced the flexibility of exchange rate and monetary policy tools. Nonetheless, a decision has to be made in view of the costs and benefits involved. In addition, there are important differences among the NMSs – just think about those countries that have currency boards vs. the floaters and the different magnitude of current account deficits.

V. Concluding Remarks

At the time of writing, the world economy is facing a severe financial crisis which has already started to be felt by the real economy. Financial deleveraging continues to wreak havoc on global financial markets and this leads to increased volatility and uncertainty. At the moment it is rather unclear how long the global recession would be and whether the fall in output would be associated with a period of high inflation – i.e. stagflation. What seems likely, however, is the fact that economic recovery would take a few years to materialise. The structure of the global financial system is being reshaped with a much lesser role for investment banks,

private equity funds, hedge funds, and the like. On the other hand, the increased control of government over financial institutions, through forced bailouts, would change the way the financial sector as a whole will behave.

The intensification of financial turmoil and the impairment of the functioning of credit markets would restrain economic activity in the near future. From the Euro zone economy's point of view two issues stand out. First, the MU needs better mechanisms in place to deal with crises of this magnitude. Second, its goods and services, money and labour markets do not seem to be resilient enough to allow for a speedier economic recovery.

What are then the prospects for NMS to join the euro-zone in the not too distant future? In short, things are open. Some Maastricht criteria would be more difficult to achieve by several NMSs in the short and medium term as fiscal policy would be needed to support economic recovery. A possible course of action by the ECB would be to support financially the NMSs which are in need, in effect treating them as 'de facto' eurozone members. But there is another argument, too, which would highlight the benefits of a faster track of accession, which would look at dynamic costs and benefits for the countries involved and for the eurozone as a whole.

If the logic of a "single corner solution" would get more in shape in the years to come that would be illustrated by three monetary blocs in the world: a US dollar-based one, a euro-based one, and an Asian currency-based one.

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LE BINOME EURO-DOLLAR SOUS LE SIGNE DE L'INCERTITUDE

Ana Bal*

Abstract. *Will the Dollar remain the dominant international currency (mainly as a reserve currency)? To answer this question, the paper presents in the first part the opinions of the most prominent experts concerning the determinant factors of an international currency status, in the two sphere of utilization: public and private. The most important are: the magnitude of the economies of emission, the externalities of network, the liquidity of their financial market, the confidence in their stability. Then there follows the evaluations concerning the two international currencies, Dollar and Euro, from these perspectives. Finally, the paper evaluates their role as measure of value, instrument of reserve and instrument of payment in the international economic relations. In the second part, the paper evaluates the recent tendencies of the exchange rate Euro/Dollar (2006-2008) from the point of view of fundamentals. After a period of depreciation, from the middle of the year 2008 until now, the dollar marked an unexpected appreciation towards the euro. But, the global financial and economic crisis increases the incertitude concerning the evolution of the exchange rate euro/dollar. Undoubtedly the two currencies will remain the prominent international currencies and the dollar the main reserve currency. Finally the paper presents Mundell's proposal of stabilization of the binomial euro/dollar.*

Keywords: *international currency, exchange rate, fundamentals, appreciation, depreciation.*

JEL: F31, F33

Le présent article approche le thème de la relation entre l'euro et le dollar premièrement du point de vue de leur importance dans les relations économiques internationales. L'ascension continue de l'euro en tant que monnaie internationale, ayant toutes ses fonctions, est analysée de deux points de vue. Le premier point de vue est celui de l'analyse des facteurs qui déterminent le statut de monnaie internationale, identifiés par quelques-uns des plus importants spécialistes du domaine. La deuxième

approche vise l'analyse de l'évolution du taux de change euro/dollar dans les années 2006-2008 et certaines prévisions concernant sa perspective.

1. Les déterminants de l'euro et du dollar en tant que monnaies internationales

Une monnaie internationale¹ remplit les mêmes fonctions que toute autre monnaie: intermédiaire des échanges, unité de compte (mesure de la valeur)

* Ana Bal is Professor with the Faculty of International Business and Economics, Academy of Economic Studies in Bucharest. E-mail: anabal@rdslink.ro

¹ Une monnaie internationale peut être définie en tant que devise qui est utilisée non pas uniquement par les résidents d'un pays, mais aussi par les non-résidents. La proportion dans laquelle les non-résidents utilisent une devise par rapport à une autre définit son rôle international.

et instrument de réserve. Sur le plan international, on peut distinguer entre l'usage public et celui privé d'une monnaie internationale. Dans le premier cas, son rôle peut être celui de monnaie d'intervention sur les marchés des changes, de monnaie de réserve, ainsi que celui d'ancre pour une monnaie nationale. Dans le deuxième cas, elle joue le rôle de monnaie de facturation, monnaie de cotation, monnaie d'investissement ou bien monnaie de placements financiers. Le rôle international d'une monnaie peut aussi être évalué en fonction de la proportion dans laquelle le taux d'intérêt directrice du pays d'émission et l'évolution de son taux de change influencent l'évolution des taux de change d'autres monnaies.

Les principaux facteurs qui déterminent le statut de monnaie internationale sont, à l'opinion des plus influents spécialistes (Hartmann & Issing, 2001):

- a) la profondeur, la liquidité et l'ouverture des marchés financiers des pays d'émission;
- b) la stabilité de la monnaie et la confiance dans son équilibre futur;
- c) l'ampleur (en tant qu'étendue et volume) des relations économiques internationales de l'économie d'émission;
- d) son usage antérieur (l'effet d'inertie).

Pour détailler, nous allons passer en revue les opinions de quelques-uns des spécialistes les plus renommés dans le domaine (selon Lim, 2006) concernant les facteurs déterminants du statut de monnaie internationale du dollar et de l'euro.

Bergsten et Mundell considèrent que le statut de monnaie internationale est déterminé de manière décisive par deux aspects: *l'amplitude des économies émettrices et l'inclination des opérateurs vers la diversification de leur portefeuille de devises* (en tant qu'instrument de réserve, mais aussi comme moyen d'investissement). Il faut remarquer que la plupart des spécialistes considèrent qu'une monnaie internationale doit s'appuyer sur une économie dominante. McKinnon s'est rallié à ces opinions en affirmant que la dimension de l'économie de la zone euro est même plus importante que son importance politique (celle-ci plus réduite par rapport à celle des États-Unis, vu le manque d'unification politique de l'Union Européenne). À la fin des années '90, Mundell soutenait que l'Euroland sera un géant économique comparable aux États-Unis. Son appréciation a été juste. De cette façon, selon les données fournies par la Commission Européenne, la Banque Centrale Européenne (BCE) et le Fonds Monétaire International (FMI)², la zone euro et les États-Unis ont pesé en 2007 d'un poids relativement égal par rapport au PIB mondial, à savoir 14,6% et, respectivement, 19,7%.

Un autre groupe d'économistes (McKinnon, Kenen, Cooper) ouvre le débat sur un autre aspect important pour le statut de monnaie internationale, à savoir *les externalités de réseau*. Selon ceux-ci, l'existence de marchés financiers bien développés et liquides dans les économies d'origine est décisive pour le positionnement d'une monnaie sur le plan international. Les argumentations sont nuancées en quelque sorte différemment d'un économiste à l'autre.

² <http://www.eurodisigncontest.eu/emu.cfm?lang=enal>.

Ainsi, McKinnon apporte les arguments suivants pour la position solide du dollar en tant que monnaie étalon du Système Monétaire Internationale (SMI), étalon « de papier », selon les commentaires de S. Strange (1997):

a) le dollar est la monnaie utilisée de manière prédominante dans les transactions interbancaires (environ 90%);

b) le dollar est la principale monnaie de facturation dans certaines transactions internationales commerciales:

- transactions de produits de base (pétrole, blé, cuivre), parce que ces produits sont commercialisés sur les marchés globaux et il est plus efficace pour les opérateurs d'utiliser une monnaie avec laquelle tous les participants sont familiarisés;

- transactions de produits industriels, surtout dans les rapports des pays en voie de développement avec les États-Unis et le Japon;

c) le dollar est la principale devise utilisée par les gouvernements afin d'influencer le taux de change sur les marchés de change (parce que c'est plus économique et plus efficace d'intervenir en utilisant une monnaie de facturation);

d) le dollar est la principale devise de réserve (les gouvernements ont l'habitude de garder leurs réserves en monnaie d'intervention).

À son tour, Kenen souligne l'importance des externalités de réseau, en argumentant que pour les pays à monnaies non convertibles il est plus efficace d'utiliser le dollar en tant que monnaie directe de transaction, vu les économies importantes de coûts de transaction, par rapport à la situation où l'on effectue des transactions de change segmentées, en différentes devises.

Pour Cooper, à part l'aspect

central des marchés, ce qui compte premièrement c'est le fait que les États-Unis ont la capacité d'émettre des bons du Trésor très liquides (qui peuvent être vendus et achetés de manière anonyme, 24h/24, dans de gros montants). Ces titres financiers ont eu un risque de liquidité très bas jusqu'à l'actuelle crise financière, étant donné : leur maturité à court terme, le marché secondaire ample et le support de la part de la Fed (à travers les opérations de « open-market »). Cooper souligne, par contraste, qu'un marché similaire pour l'euro aura besoin de décennies à se développer parce que, pour l'instant, le marché monétaire de la zone euro n'est pas un marché homogène (les instruments de dette sont émis par des gouvernements différents et ils s'associent à des primes de risque de liquidité différentes, ainsi qu'à des procédures différentes d'utilisation).

Eichengreen croit pourtant que les externalités de marché ne sont pas tellement importantes. Beaucoup plus important pour lui est *l'effet de diversification* lorsque les dites monnaies internationales jouent aussi le rôle de monnaies de réserve. Dans les conditions actuelles, d'une volatilité plus accrue sur les marchés de change déterminée par les incertitudes apportées par la crise, les opérateurs préfèrent de diversifier leurs portefeuilles de devises pour réduire les risques.

McKinnon ouvre le débat sur un autre aspect important dans l'appréciation du statut du dollar en tant que monnaie internationale, à savoir son rôle *d'ancrage nominale des taux de change*. Il montre que tant que l'économie des États-Unis a été stable (ce qui signifie qu'elle a eu des prix stables), les pays de la zone d'influence du dollar ont choisi d'ancrer leurs monnaies nationales sur le dollar,

pour plusieurs raisons:

- afin de limiter l'impact des fluctuations monétaires sur les marchés internes;
- afin d'éviter les effets adverses des déséquilibres de la balance des paiements externes (tant les débiteurs en dollars, que les créditeurs des États-Unis).

Les liaisons commerciales prépondérantes déroulées par certains pays avec la zone euro les ont déterminés, à leur tour, à ancrer leurs monnaies sur l'euro. Leur nombre est pourtant moindre que celui des pays qui utilisent le dollar dans le même but. Le Fond Monétaire International a estimé en 2007 qu'environ un tiers des pays ayant un ancrage utilisait l'euro (selon La Banque Centrale Européenne environ 40 pays), et deux tiers le dollar.

Ce fait est expliqué par McKinnon par la situation que les pays qui utilisent l'ancrage de leurs monnaies, utiliseront naturellement la monnaie d'ancrage en tant que monnaie d'intervention et, donc, comme monnaie de réserve. La situation actuelle des pays qui ont les plus grandes réserves dans le monde, la Chine (environ 2000 milliards dollars), le Japon (presque 1000 milliards, en 2007, selon les estimations du FMI) confirme empiriquement cette explication. Conséquemment, le déficit du compte courant des États-Unis (environ 850 milliards de dollars en 2007) n'influencera pas de manière décisive le statut du dollar en tant que principale monnaie de réserve. Ainsi, les pays créditeurs continueront à accumuler des réserves dans la monnaie respectives (quelque important que soit le déficit du compte courant), afin d'éviter une appréciation significative de leur monnaie. Les pays périphériques qui ont des stratégies de

développement fondées sur la promotion des exportations se confrontent à une situation similaire vu qu'ils désirent protéger leurs parts de marché.

D'autres spécialistes (par exemple, ceux de la Deutsche Bank) pensent cependant que ce déficit important crée pourtant une vulnérabilité du dollar, tant du point de vue de son rôle de monnaie de réserve, que du point de vue de la stabilité de son taux de change.

La consolidation du rôle de l'euro en tant que monnaie de réserve (sa part dans la totalité des réserves officielles a été en 2007 environ 25%, par rapport à celle du dollar, de 65%) sera à l'avenir déterminée tout d'abord par les facteurs suivants (Becker, 2007):

- la faiblesse de l'économie des États-Unis et l'instabilité du dollar;
- les changements survenus dans les régimes monétaires (voir la Chine);
- le penchant croissant des banques centrales vers les investissements et la concentration de plus en plus accentuée de leur intérêt sur l'obtention de revenus à l'aide des réserves officielles.

Le statut de monnaie de réserve de l'euro a ses pour et ses contre. Les avantages de l'euro en tant que monnaie internationale de réserve seraient:

- la capacité d'effectuer des acquisitions à l'étranger en utilisant leur propre monnaie par les membres de la zone euro, où que ce soit dans le monde;
- la capacité des pays de la zone euro de financer leurs déficits externes par leurs monnaies;
- les bénéfices du seigneurage.

Le principal *désavantage* serait le fait que l'obligation de fournir des liquidités peut entraîner des tendances inflationnistes qui peuvent ralentir la croissance économique.

Mais, selon McKinnon, l'euro ne sapera pas la position dominante du dollar en tant que monnaie de réserve, mais il deviendra de plus en plus la monnaie la plus importante dans l'Europe (y compris dans les pays non membres de l'Union Européenne, comme la Grande Bretagne, le Danemark et la Suède). La position du dollar dans le monde ne pourrait être ébranlée que par une inflation majeure aux Etats-Unis, à son avis.

Les perspectives à moyen terme de l'évolution de l'euro comme monnaie internationale polaire sont déterminées de manière décisive par les évolutions suivantes, considèrent la plupart de spécialistes (selon Lim, 2006; Chinn & Frankel, 2005):

- Les réformes structurelles en Europe (l'amélioration des performances économiques, l'intégration des marchés monétaires et de capitaux, l'intégration du marché du travail).
- L'expansion de la zone euro (l'inclusion de la Grande Bretagne pourrait propulser l'euro en tant que première monnaie internationale).
- L'innovation financière (certaines innovations pourraient affaiblir l'importance des externalités de réseau en réduisant les coûts de conversion et ainsi en soutenant l'ascension de l'euro).
- Un management macroéconomique peu inspiré des États-Unis qui nuirait à la crédibilité du dollar (voir aussi la crise financière et économique actuelle).

L'euro est-il préparé à devenir la première monnaie internationale du monde?

Les réponses des spécialistes sont partagées, chaque groupe invoquant certains arguments. De cette manière, les souteneurs montrent que:

- l'euro est devenu dans un temps relative court la deuxième monnaie utilisée comme instrument de paiement dans le commerce international;
- en 2007, l'euro couvrait, à côté du dollar, environ 80% des paiements internationaux (les calculs ont en vue toutes les deux parties des transactions, c'est à dire un total de 200%);
- à partir de 2003 le taux de l'euro a augmenté presque constamment, faisant preuve de stabilité;
- la position du dollar semble fragilisé à cause de la persistance du déficit du compte courant et maintenant, en plus, à cause de la perspective d'un déficit public de plus en plus large (vue l'intervention de l'État pour le sauvetage des institutions financières).

À leur tour, les opposants argumentent leur position de la façon suivante:

- La Banque Centrale Européenne n'a pas comme objectif de soutenir la monnaie;
- Il y a des différences importantes de vision sur la politique de taux de change entre les pays européens, tout comme sur d'autres politiques économiques importantes pour l'évolution de la monnaie (par exemple, celle fiscale);
- Il est improbable que la Banque Centrale Européenne assume le rôle de « prêteur en dernier ressort » sur le plan international, au moins dans la mesure où les États-Unis l'ont assumé à l'occasion des différentes crises financières des années '90 (pour le Mexique, en 1994, ou les pays de l'Asie de l'Est, en 1997).

2. Les déterminants du taux de change euro/dollar

1. *Le taux de change euro/dollar a enregistré une tendance de croissance continue à partir du moment où on a introduit l'euro en tant que monnaie fiduciaire (2002), même si des fluctuations à court terme ont toujours existé pendant toute cette période (voir graphique 1).*

Après la crise de 1997, les pays d'Asie ont accumulé des importantes réserves en dollars, pour faire face à des éventuelles pressions sur le taux de change de leurs monnaies. Contraints de préserver la compétitivité de leurs exports ces pays ont laissé leurs monnaies d'être sous-évaluées dont la suite a été un déséquilibre persistant de la balance commerciale américaine et la maintenance de la surévaluation du dollar. Dans cette situation, la parité euro/dollar a joué le rôle de "soupape" sur les marchés internationaux de change, ce fait expliquant la dimension excessive de l'appréciation de l'euro envers le dollar,

après son entrée en fonction, par rapport aux certains fondamentaux.

Les tableaux ci-dessous montrent les évolutions des fondamentaux pendant la période 1999-2008. Le pouvoir explicatif des "fondamentaux" pour l'évolution du taux de change reste en dispute, il est vrai, mais surtout en long terme ils sont considérés pourtant pertinents, ayant en vue que ces variables reflètent les tendances essentielles de l'économie réelle (Guillochon, 1995).

Les performances comparatives de la zone euro et des États Unis en visage deux catégories des indicateurs: les indicateurs nominaux et les indicateurs réels. Dans le premier groupe on a pris en compte: le taux d'inflation, le déficit public, la dette publique, les coûts unitaires de la main d'œuvre, la balance du compte courant. Parmi les indicateurs réels on a comptabilisé: le taux d'intérêt réel à long terme, le niveau de vie, le niveau de chômage, la productivité du travail.

Tableau 1: Performances nominales dans la période 1999-2008, en moyennes annuelles

	Zone euro	Les États-Unis
Taux d'inflation	2,2	2,8
Coûts unitaires de la main d'œuvre	1,7	2,3
Solde public (en % du PIB)	-1,7	-2,6
Dette publique nette (en % du PIB)	48,4	41,4
Solde du compte courant (en % du PIB)	0,3	-4,9

Source: statistiques de l'OCDE

Tableau 2: Performances réels dans la période 1999-2008, en moyennes annuelles

	Zone euro	Les États-Unis
Taux de croissance du PIB (en %)	2,1	2,6
Taux de croissance du PIB par tête (en%)	1,8	1,3
Taux de chômage (% de la population active)	8,2	5,0
Taux d'intérêt réel en long terme (en%)	2,2	1,9
Taux de croissance de la productivité du travail (en %)	0,8	1,8

Source: statistiques de l'OCDE

II. Une évolution plus stable a connu le taux de change euro/dollar dans la période 2006-2008. *L'appréciation continue de l'euro face au dollar* dès le début de l'année 2006 jusqu'au milieu de 2008 (voir graphique 2) est expliquée par certains spécialistes (Bizimana, 2008) à travers trois évolutions:

a) Les divergences d'évolution des cycles économiques des deux zones;

b) La réaction des marchés monétaires et financiers face à l'évolution des économies des deux monnaies (le pessimisme quant aux États-Unis et l'exubérance quant à la zone euro);

c) La faible amélioration des fondamentaux en zone euro (le solde de la balance de base avec les États-Unis, la dynamique de la productivité, le différentiel de taux d'intérêt et le différentiel de taux d'inflation).

Nous allons détailler toutes ces explications :

a) Dès le début de l'année 2006, les États-Unis ont enregistré une tendance de ralentissement de leur croissance économique, alors que la zone euro a accéléré sa croissance. Conséquemment,

si pendant la période antérieure le différentiel de croissance entre les deux zones a toujours été favorable aux États-Unis, dans cette période il a été du côté de l'euro. En 2007, par exemple, la croissance économique en zone euro a été de 2,6%, alors qu'aux États-Unis elle n'a été que de 2,2%³. Les évolutions du début de l'année 2008 ont montré une tendance d'accentuation des écarts de rythme, le premier trimestre 2008 enregistrant dans les deux zones en question des rythmes de 0,7% et, respectivement, 0,1%, par rapport au trimestre antérieur⁴.

b) Les cotations en bourse sur les marchés financiers des deux zones ont reflété aussi l'évolution des cycles économiques et, en même temps, les attentes des investisseurs. Ainsi, l'indice Euro Stoxx a indiqué une croissance de 60% entre la fin de 2005 et celle de 2007, alors que la croissance enregistrée par S&P 500 n'a été que de 16%. On estime, en même temps, que les investisseurs ont simultanément manifesté une tendance d'évaluation pessimiste du futur de l'économie des États-Unis à court terme par rapport à une tendance d'exubérance excessive quant aux

³ PIB réel, d'après World Economic Outlook, IMF, avril 2008, p. 66, disponible sur <http://www.imf.org/>

⁴ Conjoncture en Europe: analyse de la conjoncture en Europe (économie), 5 mars, 16 mai 2008, disponible sur <http://www.gautiergirard.com/>.

perspectives de croissance en zone euro. Les deux tendances ont entraîné une surappréciation de l'euro face au dollar. De cette façon, beaucoup des spécialistes pensaient qu'en fait le taux de change d'équilibre euro/dollar était au voisinage de 1,25-1,4 par rapport aux fondamentaux et aux niveaux record enregistrés sur les premiers mois de l'année 2008 lorsque le taux était d'environ 1,5-1,6.

c) Dès l'année 2006, la balance de base⁵ bilatérale entre la zone euro et les États-Unis a connu une évolution favorable à la première de ces deux zones. La raison principale a été la réduction des investissements européens aux États-Unis et la croissance des investissements américains en zone euro. Selon les estimations de la BCE, le différentiel de taux d'intérêt (de 4,8% en zone euro et de 4% aux États-Unis, à la fin de 2007) et le différentiel de taux d'inflation (de 2,9% aux États-Unis et, respectivement, 2,1% en zone euro en 2007, mesuré en fonction de l'évolution de l'indice des prix à la consommation IPC) ont expliqué aussi l'appréciation de l'euro face au dollar jusqu'au milieu de 2008.

La majorité des spécialistes pensent que le déclin du dollar était inévitable, la seule question qui pouvait encore se poser étant s'il allait se produire de manière brusque ou lente.

La réduction du déficit commercial, en tant que mesure de réduction de la vulnérabilité économique américaine et du dollar, supposerait une redistribution des dépenses mondiales dans le sens de la réduction des dépenses internes des États-Unis et de la croissance de ses dépenses à l'étranger, apprécie Krugman

(2007). Alors qu'il estime qu'une telle évolution entraînerait une dépréciation réelle du dollar, J. Williamson pense qu'elle pourrait aussi avoir lieu sans une modification du taux réel du dollar.

Le déclin sera lent si les investisseurs étrangers apprécieront que la différence entre le taux de change d'équilibre et le taux de change courant n'est pas significative à long terme.

Le déclin rapide supposerait un manque de perspective de la part des investisseurs étrangers (Krugman, 2007), vu que ce ne sera pas à leur avantage, mais en faveur des États-Unis. Un facteur important d'influence de ce point de vue est représenté par la soutenabilité de la dette. Le taux de change du rapport « dette/PIB » est différent du taux donné par le rapport « déficit du compte courant/PIB ». Les États-Unis tendent à détenir des actifs réels à l'étranger dénommés en euro ou en d'autres monnaies internationales, alors que leurs passifs sont exprimés en dollars. Une éventuelle dépréciation réduirait le taux d'accumulation de la dette dans le PIB. En même temps, elle accroîtrait le rapport « actifs à l'étranger/PIB » (exprimé en dollars), sans augmenter la valeur des passifs. Par conséquent, la dépréciation du dollar diminue la dette externe nette.

D'un autre point de vue, Eichengreen pense que le rapport « dette étrangère nette/PIB » est déterminant pour l'évolution du taux du dollar. Si ce rapport augmente, il finira par saper la confiance dans le dollar et entraînera, donc, le risque d'être engagé dans une spirale inflationniste et de dépréciation continue.

⁵ Celle-ci inclut: le solde du compte de transactions courantes et du compte de capital, ainsi que les flux de capitaux à long terme (investissements directs étrangers et investissements de portefeuille).

Quels seraient les avantages et les inconvénients d'un euro fort à long terme?

D'une part, les avantages d'un euro fort seraient:

- des gains pour les consommateurs (l'appréciation mène à la baisse des prix à l'importation, le pouvoir d'achat des ménages étant donc consolidé de ce point de vue);
- la possible apparition d'un phénomène de « désinflation importée » qui mène à une baisse généralisée des prix;
- la baisse du taux d'intérêt suite à la réduction des tensions inflationnistes et, donc, la stimulation des investissements.

D'autre part, les inconvénients seraient:

- des pertes de parts de marché à l'international suite à l'appréciation, si les exportateurs ne sont pas capables d'accroître la compétitivité des produits autrement que par le prix externe;
- une possible diminution des marges de profit à court terme suite à la tentative de conserver des parts de marché à l'aide d'un prix stable;
- la réduction temporaire des investissements internes due à une éventuelle diminution des marges de profit.

Conclusions

L'accroissement du rôle de l'euro en tant que monnaie internationale munie de toutes ses fonctions est soutenu par la dimension ample de l'économie de la zone euro, par le penchant des investisseurs vers la diversification de leur portefeuille de devises, ainsi que par les vulnérabilités de l'économie des États-Unis et du dollar.

Le dollar continue pourtant à remplir la fonction de monnaie standard du SMI et de première monnaie de réserve grâce aux externalités de réseau dont elle bénéficie, à la dépendance au sentier (l'effet d'inertie) des utilisateurs, mais aussi grâce aux marchés financiers puissants et à haut degré de liquidité des États-Unis.

Le facteur le plus important qui peut décider du rapport entre le dollar et l'euro en tant que monnaies dominantes au plan international semble être l'évolution de l'économie américaine à moyen et long terme et, implicitement, celle du taux de change euro/dollar.

Paradoxalement, les désordres financiers qui se sont accentués dans la deuxième moitié de l'année 2008 ont conduit à l'ascension du dollar, vu encore comme la plus sûre monnaie pendant des temps de crise! C'est probablement une illustration de l'effet d'inertie, ci-dessus mentionné. Ainsi, l'appréciation du dollar envers l'euro a été de presque 25% jusqu'au début de l'année 2009, à la suite d'une demande en essor des investisseurs ayant à faire des paiements en dollars (voir le graphique 3).

C'est important pour l'économie mondiale de maintenir une plus grande stabilité du taux de change euro/dollar. Selon Mundell (2003), si les États-Unis et les pays membres de la zone euro souhaiteraient stabiliser le taux de change euro/dollar, ils devraient parcourir les étapes suivantes:

- a) Établir une cible d'inflation commune;
- b) Constituer une institution commune qui coordonne leurs politiques monétaires,
- c) Se mettre d'accord sur le partage des bénéfices du seigneurage. Parmi les plus importants bénéfices du seigneurage sont:

- l'obtention de revenus supplémentaires pour les banques du pays d'émission et, de cette façon, l'entraînement de la croissance économique d'ensemble du pays en question;

- des contraintes moins sévères d'ajustement de la balance des paiements externes pour le pays d'émission de la monnaie respective.

d) Établir des zones-objectifs (voir les explications du cadre ci-dessous) pour le taux de change.

Le maintien d'un taux de change

stable à l'intérieur des « zones-objectifs » peut être réalisé de deux manières:

- à l'intermédiaire des interventions concertées des banques centrales, ou
- à travers une coordination étroite, en amont du taux, des politiques monétaires et budgétaires.

Pour que les « zones-objectifs » fonctionnent, elles doivent être crédibles, autrement elles peuvent augmenter la menace potentielle de la part des attaques spéculatives sur les monnaies respectives.

La théorie des « zones-objectifs »

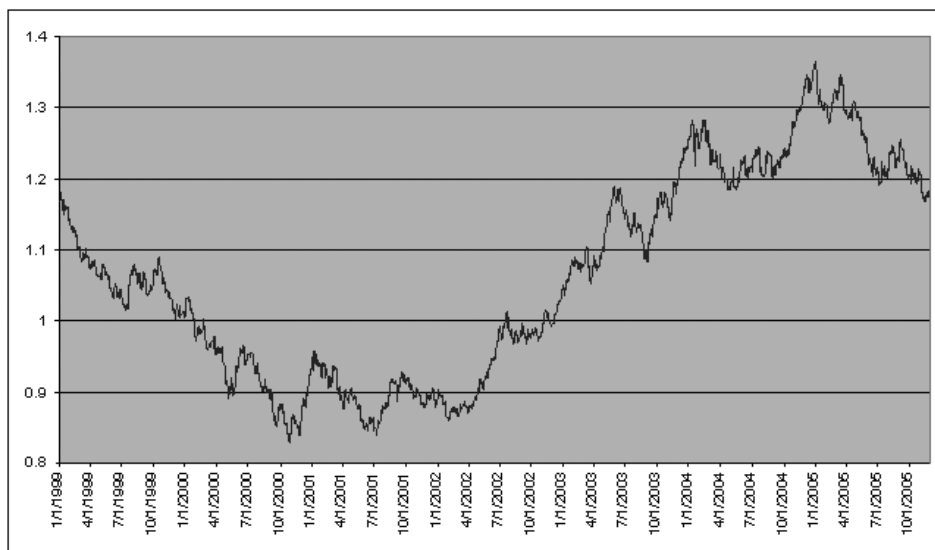
La théorie des « zones-objectifs » a été élaborée par J. Williamson (1985) suite aux tentatives de trouver et d'argumenter théoriquement des solutions pour contrecarrer les effets de l'instabilité monétaire accrue depuis les années '70, à l'aide de la coopération intergouvernementale.

Ayant constaté la fréquence de plus en plus importante des phénomènes d'instabilité entre les plus importantes monnaies fortes et ayant évalué ce phénomène en tant qu'extrêmement négatif pour l'économie mondiale en général, il a proposé comme solution d'établir, d'un commun accord entre les États des monnaies respectives, des « zones-objectifs ».

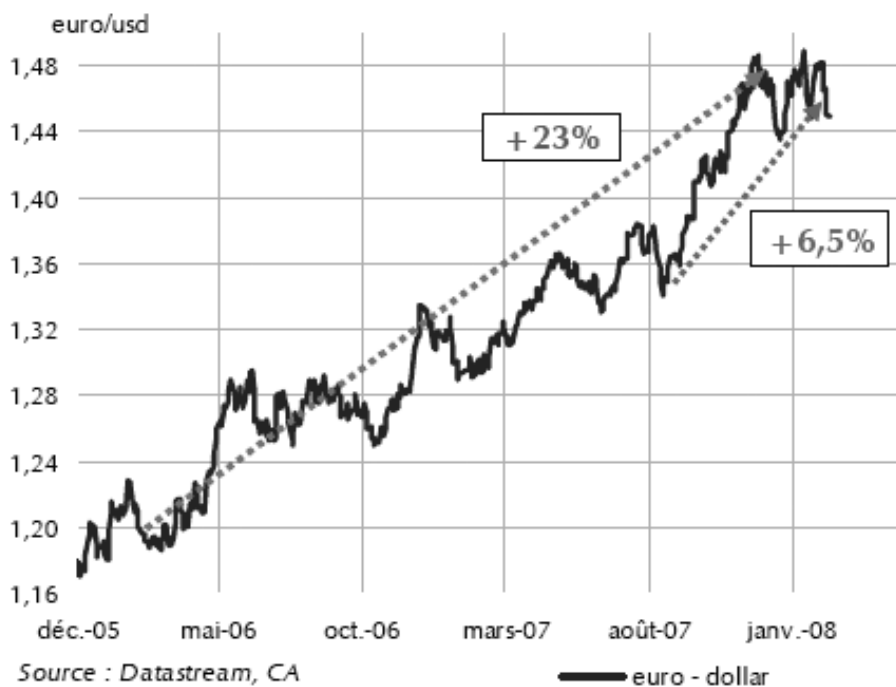
Celles-ci sont définies en tant que : « marges de fluctuation négociées des taux de change réciproques, en rapport avec un taux de change d'équilibre fondamental ».

À son tour, le taux de change d'équilibre fondamental est défini par Williamson comme la valeur du taux capable d'engendrer "un excédent ou un déficit de la balance des comptes courants égal aux flux de capitaux et qui corresponde au meilleur niveau d'équilibre interne qu'un pays peut obtenir faute d'appliquer des barrières commerciales » (d'après Y. Creuzet et autres, 2001).

Graphique 1: Taux de change euro/dollar sur la période 1.1.1999 -1.10.2005



Graphique 2: Taux de change euro/dollar sur la période déc. 2005-janv. 2008



Graphique 3: Taux de change euro/dollar sur la période mai 2008- février 2009

Source : La Banque Centrale Européenne

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TO TALK OR NOT TO TALK? - REFLECTIONS ON CENTRAL BANK COMMUNICATION IN TIMES OF CRISES

Anton Comănescu*

Abstract. *During the last decade, central bank communication and transparency became undisputable conditions of an effective monetary policy. Central banks around the world seek to consolidate their credibility by communicating effectively their policy goals to the financial markets and the public at large. Nevertheless, transparency has its challenges, particularly in times of financial turmoil when markets can misinterpret central bank messages. The way central banks manage to maintain credibility through effective communication both in normal and exceptional situations remains part of the art of monetary policy. Important challenges are posed to communication, in the context of conflicting pressures towards disclosure versus secrecy. The mantra of transparency still has its ayatollahs but some precepts have to be reconciled with the risks of misguiding the markets. Crowding out of private information, potential fuelling of banking panics and moral hazard are few of the problems that could threaten the performance of a central bank in communicating to its various audience.*

Keywords: *central bank, communication, transparency, financial crisis.*

JEL: *E58, F34, G14*

Preamble

The current financial turmoil with sweeping consequences at global level, fuels the concern over the capacity of central banks to navigate the uncharted waters of turbulent phenomena in the financial markets. With a limited room for manoeuvre in monetary terms, central banks have to rely increasingly on their ability to inspire confidence to the public, on the basis of their knowledge about the markets. In a situation where their material capacity to steer liquidity is diminished, central banks throughout the world are seeking ways to provide for financial stability by improving the strategic communication and the provision of information to their audience.

The ability to convey a sense of being in command could for example make the difference between a monetary authority that earns public trust and one that fails to do so despite effective policy measures. In 67 BC, when the Roman Senate granted Gnaeus Pompeius a special task-force to eliminate the pirates from the Mediterranean who were threatening the supply of grain from Sicily, the price of grain plunged on the same day as a result of the mere announcement of Pompeius' nomination. In times of crises, state authorities can fight against contagion and panic by appropriately correcting public misperceptions through the provision of understanding about the real threats and the solutions to the crisis. Needless to say that words have to be matched

* **Anton Comănescu** is Economist at the National Bank of Romania and Lecturer at City University in Bucharest. E-mail: anton.comanescu@bnro.ro

by deeds, otherwise confidence could vanish irreversibly. As Mervin King, the governor of the Bank of England put it, speaking about transparency in monetary policy making: *“Do as you say and say as you do”*¹.

There is undoubtedly a certain mystique in the art of monetary policy that a priori confers to a central banker a political clout that is perceived as such by the public, despite the legal independence of the central bank from inputs from the political world. To say that the central bank is a political institution goes in the sense that preserving the value of money is a matter of utmost importance for the functioning of a society. Tomaso Padoa-Schioppa remarks that: *“When we say that a currency is a “safe haven”, we refer not only to the quality and credibility of its central bank, but to the solidity of the whole social, political and economic structure to which it belongs”* (Padoa-Schioppa, 1999).

To what extent central banks, and in particular the ECB, manage to sustain this architecture of trust in the course of a financial turmoil, will be the core theme of my reflections. More specifically, I will look at the challenges posed to communication, in the context of conflicting pressures towards disclosure versus secrecy. Central bankers aggregate private information and in-depth knowledge about the economy, to make it available to the public and the markets, thus being responsible for the impact that they might have on market agents' behaviour. Crowding out of private information, potential fuelling of banking panics and moral hazard are

few of the problems that could threaten the performance of a central bank in communicating to its various audience.

To Talk ...

After more than a decade of fundamental changes of vision regarding the central bank's stance in terms of providing information to the public, speaking in support of transparency became almost superfluous. Joseph Stiglitz wittingly observed that *“no-one would dare say that they were against transparency (...): It would be like saying you were against motherhood or apple pie”*². One after another, the most important central banks were caught by the wave of transparent monetary policy, drastically changing their minds about how to speak to the public and the financial markets.

In 1987, Alan Greenspan famously said to a senator: *“Since becoming a central banker, I have learned to mumble with great incoherence. If I seem unduly clear to you, you must have misunderstood what I said.”*³ In a less playful spirit, his conviction was that *“immediate release of the directive could threaten to roil markets unnecessarily,”* and *“concern about market reaction could reduce flexibility in decision making.”* Well after a decade he was of a completely different opinion: *“Openness is more than just useful in shaping better economic performance. Openness is an obligation of a central bank in a free and democratic society.”*⁴

Or to start from the hard days at the Bank of England during the Great

¹ Symposium at the Bank of England, 2002.

² *Financial Times*, October 5, 1998.

³ Testimony to Congress, 1987.

⁴ Remarks at the Federal Reserve Bank of St. Louis, Economic Policy Conference, 2001

Depression, one would be more than surprised today to hear the words of Deputy Governor at the time, Sir Ernest Harvey, speaking to the Committee on Finance and Industry in 1931, as he was answering questions of a Committee member named Keynes:

Keynes: *"Is it a practice of the Bank of England never to explain what its policy is?"*

Harvey: *"Well, I think it has been our practice to leave our actions to explain our policy."*

Keynes: *"Or the reasons for its policy?"*

Harvey: *"It is a dangerous thing to start to give reasons."*

Keynes: *"Or to defend itself against criticism?"*

Harvey: *"As regards criticism, I am afraid, though the Committee may not all agree, we do not admit there is need for defence; to defend ourselves is somewhat akin to a lady starting to defend her virtue."*

This philosophy was maintained till not very long time ago at the Bank of England. Richard Lambert, an external member of the Bank of England's Monetary Policy Committee and former journalist, admitted that during his time as a press officer at the bank, his job was explicitly to *"keep the Bank out of the press, and the press out of the Bank."*⁵ The great leap forward from that type of thinking is proved by the very fact that Lambert was confessing this at a recent seminar on central bank communication, where he was pleading for many of the virtues of transparency.

An important step towards

transparency of central banks was made with the process of granting them independence⁶ from the political power. Bank of England gained operational independence in 1997 and the ECB was a 'born free' institution (Dyson, 2000) as provided for in Article 107 of the EU Treaty: *"When exercising the powers and carrying out the tasks and duties conferred upon them by this Treaty and the Statute of the ESCB, neither ECB, nor a national bank, nor any member of the decision-making bodies shall seek or take instructions from Community institutions or bodies, from any Government of a Member State or from any other body."* The FED has been highly autonomous in making its monetary policies since the day of its inception, but as far as transparency is concerned, it was only in 1995 that it adopted the policy of announcing all its decisions immediately. Furthermore, the minutes of the Federal Open Markets Committee are made available to the public three weeks after the FOMC meeting.

But independent central banks ought to be accountable in order to be invested with legitimacy by the public. The importance of accountability in relation with ECB's legitimacy is stated clearly in the first ECB Report: *"To retain democratic legitimacy, an independent central bank must be accountable (ECB Annual Report, 1999)."* Accountability is in the same time an aspect of status and role. An institution is accountable in the sense that it is obliged by law to explain its actions – the status dimension, and also in the sense that the environment in which it operates has to produce the

⁵ Speech at the IMF Regional Seminar on Central Bank Communications, Mumbai, 2006.

⁶ It should be noted that some authors prefer different terms such as *"autonomy"* or *"autonomy with discretion"* because of the terminological risk that *"independence"* could imply a decision without any form of restriction.

incentives and the instruments to make that institution responsible as regards its accountability – the role dimension.

In the case of the ECB, a sound framework was established allowing the general public and the competent political institutions to monitor and assess whether it is accomplishing the tasks conferred upon and is acting within the scope of its responsibilities. Several channels for the practical implementation of the ECB's accountability are stipulated in the Treaty⁷. Thus, the ECB is subject to stringent reporting requirements vis-à-vis the European Parliament, the EU Council, the European Commission and also the European Council.

The need for a mechanism of democratic accountability may be also explained because of the area where the ECB operates, namely monetary policy that controls the supply of money. Monetary policy is generally part of the larger area of economic policy, which is under the responsibility of the democratically elected government. In the EU, the Broad Economic Policy Guidelines are decided by the European Council and monitored by the Council on the basis of reports submitted by the Commission⁸ raising issues of co-ordination with the monetary policy. Secondly the money was always a political expression of statehood and national identity. In such condition the functioning of a successful monetary union may well require support from the public opinion and economic agents, a support reinforced through the mechanism of democratic accountability. Consequently a large body of literature both in economic and political science discuss the issues of independence versus

accountability of the ECB (Randzio-Plath and Padoa-Schioppa (2000); *Smaghi and Gros*, (2000). Most authors have no problem with the ECB independence but their concern increases with respect to the ECB democratic accountability. However, accountability should be seen as a complement, if not a necessary requirement for independence. Some observers in fact stressed that accountability is essential to keep central bank credible in the long-run (*Eijffinger and De Haan*, 1996).

The constant preoccupation for anti-inflationary policies as well as the academic interest for explaining inflation, has stressed the practical importance of accountability as the need to solve the credibility problems that can arise when policy is conducted under discretion, i.e. by an independent central bank. In the view of *Barro and Gordon* (1983), discretion leads to a socially inflation bias; a discretionary policy regime that doesn't ensure accountability runs the risk to erode what the German tradition calls '*stability culture*'. A discretionary policy, with lack of transparency, can control the inflation only by making the economic agents to react to short term monetary incentives. When the ability to monitor is imperfect, incentives that are too low powered fail to ensure accountability (moral hazard problems) while ones that are too high powered can distort policy responses to changing economic conditions (*Amttenbrink*, 1999). The optimal power of the incentive must balance accountability and independence. For example, any policy that succeeds in raising the costs of responding to short-run political pressures

⁷ Article 109 TEU.

⁸ Article 99 TEC.

for greater economic expansion will also limit the central bank's response to economic disturbances (Walsh, 2000).

Accountability is imperfect if the information on which the central bank bases its policy is restricted and publicly unverifiable. Thus, the accountability can also be described in terms of the transparency of policy; a transparent policy improves the accountability. The ECB, "*committed to the principles of transparency and accountability*"⁹, is conducting a communication policy directed on providing information to the public through various audiences, reports, bulletins, brochures, working papers, press conferences, public speeches etc. Kohn & Sack (2003), Ehrmann & Fratzscher (2005) underline the fact that transparency not only improves the public's understanding and support of monetary policy but also facilitates the accountability of the central bank to the public.

A transparent policy regime is one in which the public knows what the central bank should do. Whatever arrangements concerning democratic accountability may exist, their scope is limited without transparency because information concerning the institutional behaviour is crucial for the evaluation of its performance. When monetary decisions are transparent it is easier to make a judgement and to hold the central bank officials accountable for their behaviour.

Hence, a central bank should be required to report at regular intervals on its past performance as well as on future plans for monetary policy in accordance with the monetary objective. As Smaghi and Gros (2000) explain, "*transparency increases the credibility of the central*

bank, especially when the latter does not enjoy a particularly high reputation. It thus enables the central bank to conduct a less restrictive monetary policy than would otherwise be required. Transparency and accountability increase the overall welfare of the economy."

An important formalisation of the impact of credibility for the monetary policy is the Barro-Gordon Model. Barro and Gordon (1983) correlated rules, discretion and reputation in a model of monetary policy, suggesting that often the rules can be substituted by reputational forces. In a discretionary regime, the monetary authority can print money and create more inflation than people expect. The benefits from this surprise inflation may include expansion of economic activity and reductions in the real value of the government debt. However, because sooner or later people understand the policymaker's incentives, these types of surprises – and their potentially resulting benefits – cannot arise systematically in equilibrium. People adjust their inflationary expectations in order to eliminate surprises and to protect themselves against real losses. In this case, enforced commitments on monetary behaviour, as embodied in monetary norms, eliminate the potential for surprises, insuring a high degree of predictability as regards the monetary policy. Because of the repeated interactions between the policymaker and the private agents, it is possible that reputational forces can support the rule. The potential or real loss of reputation – or credibility – affects the policy and motivates the policymaker to abide by the rule. Then, the policymaker gives up the short-term benefits from inflation

⁹ ECB Annual Report 1999, p. 128

shocks in order to secure the gain from low average inflation over the long term.

As the monetary policy acts directly only on short term interest rates, the transmission mechanism towards the long end of the interest rate spectrum depends essentially on market expectations about future central bank decisions. The role of expectations is clearly explained by *Blinder* (1998): “Central banks generally control only the overnight interest rate, an interest rate that is relevant to virtually no economically interesting transactions. Monetary policy has important macroeconomic effects only to the extent that it moves financial market

banks. A higher grade indicates a better understanding.

Given its track record and elaborated communication strategy, it is probably not surprising that all respondents give the US Federal Reserve a top rating of 4.3 for intelligible monetary policy. Moreover, votes are relatively highly concentrated on the two top ratings. Clearly behind the Fed comes the Bank of England. At 3.5 and 3.3, respectively, these central banks differ only slightly in transparency. On fourth place comes the ECB with a rating of only 2.2, which was fairly reasonable at that time due to the recent inception of the ECB.

Distribution of ratings (in percent)						
	1	2	3	4	5	Average
US Federal Reserve	0.0	1.8	7.1	48.7	42.5	4.3
Bank of England	5.5	10.0	42.7	33.6	8.2	3.3
ECB	21.2	43.4	27.4	7.1	0.9	2.2

Source: Goldman Sachs

prices that really matter—like long-term interest rates, stock market values and exchange rates. The links from the direct lever of monetary policy (the overnight rate) to the prices that matter depend almost entirely upon market expectations.” *Woodford* (2005) goes even further, stating that expectations are in fact the most important transmission mechanism for monetary policy: “not only do expectations about policy matter, but (...) very little else matters.”

In February 2000, Goldman Sachs conducted a direct survey in order to assess whether market participants understand the overall monetary policy strategy of major central banks. A sample of financial markets participants was asked to rate on a scale of 1 to 5 how well they understood the reasoning behind monetary policy decisions at four central

A more comprehensive and elaborated index of central bank transparency has been constructed by *Gerrats & Eijffinger* (2003), (2006). The results of their research not only illustrate the underlying determinants of central bank transparency but also indicate a significant correlation between transparency and monetary policy performance, i.e. lower nominal interest rates. In their analysis, transparency is proved to enhance the credibility, reputation, and flexibility of monetary policy, thus leading in the long run to the result of lower nominal interest rates. Compared with the scores of Goldman Sachs, ECB performs better as assessed in 2003 and even better in the 2006 survey. More recently, *Crowe & Meade* (2008) measure with a new methodology the levels of central bank independence and transparency in large set of countries. They find that independence and

transparency are significantly correlated, while transparency is also determined by the quality of the national institutions. Furthermore they identify an interesting determinant of transparency in the feedback the central bank receives from its communication to the private sector.

	Transparency 1999	Transparency 2006
Austria	0.20	0.60
Belgium	0.30	0.60
Bulgaria	0.30	
Czech Rep.	0.80	0.70
Finland	0.60	0.60
France	0.40	0.60
Germany	0.35	0.60
Hungary	0.50	0.90
Iceland	0.65	0.70
Ireland	0.65	0.60
Italy	0.60	0.60
Latvia	0.40	
Luxembourg	0.30	0.60
Netherlands	0.70	0.60
Norway	0.60	0.70
Poland	0.70	0.90
Romania	0.55	0.60
UK	0.90	1.00
Brazil		0.65
China	0.65	0.15
India	0.50	0.15
Japan		0.85
USA	0.85	0.80

Source: Crowe and Meade (2008)

A conceptual framework better illuminates the intricacies of transparency and communication in the case of a central bank. *Winkler* (2000) has constructed a pyramid of a transparent monetary policy strategy in which he stresses the importance of simplified and condensed information in the communication strategy of a central bank to the different external target audiences. He relates

greater transparency expressed by central banks with greater clarity.

Honesty is defined as the degree to which the representation of information employed in external communication corresponds to the actual structuring of information adopted internally. The external communication reflects to a certain extent the internal framework in structuring and interpreting the information. Concluding, it is not only the degree of openness but also the informational efficiency, relevance and clarity for the audience, which should be taken into account to assess the degree of transparency of the ECB. Beyond the provision of information, it is more the provision of understanding about the economic outlook and the monetary policy objectives that the central bank has to convey to the public. In a sense, *Issing* (2000) considers central bank communication a more complicated matter than simple public relations - by underlying the importance of a whole setting of accountability and transparency - but in another sense he regards communication as a method to simply create the subjective feeling of familiarity.

... Or Not to Talk

But can we speak about central bank transparency as a categorical imperative? While communication and transparency are closely related in many ways, they are not identical: although communication can be a means to achieve transparency, not all communication necessarily contributes to transparency. As we will see, it is not only that communication is a risky business for a central banker but even transparency has its drawbacks. Experience shows that the way policies



The Transparency triangle of monetary policy (Winkler, 2000)

are perceived by the public can be at times beneficial but also detrimental for the performance of the policy maker. Speaking about the activity of the Commission, in his public report before the European Parliament, Jaques Santer said: *"We know and you know that perceptions can make or brake policies, even the best ones"¹⁰.* There is probably a way to transmit information to the public in such a form that it creates the optimal context for the realization of policy goals, but this can only remain an ideal for policy makers. As Issing (2005) observed, in an ideal world, *"the optimum amount of information is determined by the point where the supply and demand curves intersect"¹¹.*

Crujisen, Eijffinger & Hoogduin (2008) show that transparency has its pitfalls. They suggest that there is an optimal level of central bank transparency beyond which communication risks to become redundant and to spoil the perceptions of the public vis-à-vis the implementation of the monetary policy. The risks are that people might: (1) start to attach too much weight to the conditionality of their forecasts, and/or (2) get confused by the large and increasing amount of information they receive. Gerrats, Eijffinger & Crujisen (2006), in their analysis of transparency scores for major central banks, also point out the fact that

in some cases increased transparency is negatively correlated with interest rates. This fact seemed to have been even speculated by the Fed in 1994, with the unusual announcement of an interest rate decision.

Mishkin (2004) finds that transparency could go too far when excessive focus on central bank communication could weaken support for monetary policy long term objectives. This time-inconsistency problem is further amplified by interference of central bank communication and objectives with the political process that often directs perceptions on a completely different time horizon of policy making. Gerrats, Eijffinger & Crujisen (2006) identify even a time-inconsistency problem inherent in the central bank's transparency as it is influenced by economic circumstances. Evidence suggests that central banks tend to become more transparent when interest rates are low compared to the macroeconomic situation and to become more opaque when things go the wrong way. Furthermore, central banks are not far from spin-doctoring public perceptions, a fact that poses moral problems but can also be traced back to an honest approach to effective central bank communication that has to use simple words (Woodford, 2005) to portray complex situations, thus giving the impression that the world is

¹⁰ Commission's Report for the European Parliament, 1996

¹¹ Otmar Issing: Communication, Transparency, Accountability: Monetary Policy in the Twenty-First Century. Federal Bank of St. Louis Review, March/April, 2005.

more straightforward and secure than it actually is (Issing, 2005).

Morris & Shin (2000), continued by *Amato & Shin* (2003), suggest that too much information can harm the capacity of market participants to take actions appropriate to underlying fundamentals. If it is desirable for monetary policy to be accompanied by timely publications, statistics and media addresses, excessive disclosure of central bank information to the public could result in crowding out of private information from other sources. One conclusion is that in the absence of private information, the dissemination of public information increases welfare, but when agents have access to independent sources of information, the welfare effect of increased public disclosure is ambiguous. It is illustrative for this argument that the first version of the *Morris and Shin* paper was circulated under the title "*The CNBC Effect*" suggesting the pernicious effects of markets moved by a single source of information. At the end of the day, as J.M. Keynes observed there is always a risk of herd behavior in the financial markets that could lead to a tendency of blindly following the average opinion or in the worst case to bank panics and runs. Here is how he describes the underlying mechanism, talking about the way people form their investment preferences:

"Professional investment may be likened to those newspaper competitions in which the competitors have to pick out the six prettiest faces from a hundred photographs, the prize being awarded to the competitor whose choice most nearly corresponds to the average preferences of the competitors as a whole; so that each competitor has to pick, not those faces which he himself finds prettiest, but

*those which he thinks likeliest to catch the fancy of the other competitors, all of whom are looking at the problem from the same point of view. It is not a case of choosing those which, to the best of one's judgment, are really the prettiest, nor even those which average opinion genuinely thinks the prettiest. We have reached the third degree where we devote our intelligences to anticipating what average opinion expects the average opinion to be."*¹²

How to Talk in Times of Crises

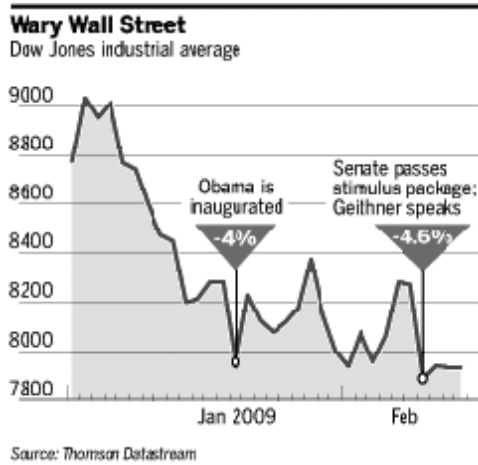
Angeletos & Werning (2004), apply the rationale of *Morris & Shin* (2002) to currency crises, bank runs, debt crises or financial crashes, arguing that in such circumstances, public information leads even more dramatically to the collapse of informational multiplicity. People tend to progressively ignore alternative sources when they observe fundamentals with small enough idiosyncratic noise, relying predominantly on public information. If a crisis emerges in this context, the lack of informational multiplicity negatively affects coordination capacity and reactivity, creating informational asymmetries and adverse selection. In a model of currency crises with self-fulfilling expectations, *Metz* (2003) shows that show that if the fundamental state of the economy is good, the probability of a currency crisis decreases in the precision of public information, but increases in the precision of private information. In case of bad fundamentals, however, more precise public information increases the likelihood of a crisis, whereas more precise private information leads to a lower crisis probability. In a world where

¹² *The General Theory of Employment, Interest and Money*, 1936.

“we will never have a perfect model for risk”¹³, relying unilaterally on a limited number of information sources can put the market participants at peril.

Talking to the markets in times of crises is an even greater challenge for the central banker. “Finding the right words at the right time, with respect to monetary policy as well as financial stability, remains at the core of the art of central banking” remarked Tommaso Padoa-Schioppa, speaking to a Frankfurt audience after the financial turbulences of the dotcom crisis. Not only finding the right words but also the right personality at the right time is a matter of utmost importance in communicating to an unsettled audience. As the sub-prime crisis was unfolding in the US, the solution of a “bail-out” plan, as thoughtful as it may have been conceived, sounded dreadful to a distressed public that would have been less contemptuous to hear for example about a “rescue plan”. Not only the nuances in wording but also the role of personalities in shaping perceptions could make an important difference. The refreshing charisma of Barack Obama and his well choreographed interventions helped the American public and the financial markets restore confidence in a rather quick recovery. After the presidential inauguration of Obama, the Dow Jones Industrial Average, spectacularly surged. A month later, after the Senate successfully passed the stimulus package proposed by the Obama administration, the failure of the Treasury Secretary, Timothy Geithner to inspire confidence in that sense of being in command, sent the DJIA down at unprecedented levels since the start of

the crisis. In the aftermath of Geithner’s speech, Lloyd Blankfein, CEO and chairman of Goldman Sachs declared “In my 26 years at Goldman Sachs, I have never seen a wider gulf between the financial services industry and the public.”¹⁴



Providing liquidity to the financial system, as in the plan of the US Treasury, is actually the task of most central banks. If transparency of such actions would normally reduce volatility in the financial markets, central bank announcements about interventions in a turbulent context might prove to be a double-edged sword. Although there is some evidence that historical transparency of a central bank can predict future performance in crisis management (Fry, Julius & Mahadeva, 2000), maintaining such transparency in the case of emergency refinancing for ailing banks might create anxiety and even panic in the markets.

When the news about the Bank of England providing Northern Rock with liquidity went to the public, the run

¹³ Alan Greenspan, *Financial Times*, March 2008.

¹⁴ Testimony to the Financial Services Committee of the US House of Representatives.

on deposits was inevitable. This is the reason for which, the well established transparency principles of the Bank of England are bypassed by the total secrecy about the amounts and the subjects of such operations. Classic cases of bank runs after central bank announcements of emergency lending are observable in all major financial crises in the last decades. As a consequence, during the current crisis, due to the reputational risks, many banks refuse to make use of the liquidity made available by the lender of last resort. Roth (2008) provides some solutions for central bank intervention to support banks in trouble without inducing reputational risks: i) communicate about exceptional lending in a way that trivializes it; ii) adopting silence as the sole effective communication strategy; or even iii) changing transparency rules about central bank actions in a context of financial turmoil.

The communication problem when it comes to the operations of a lender

of last resort in times of crises becomes relevant also in the case of international financial institutions such as the IMF. The long track record of the IMF in helping countries to solve their liquidity problems is still subject to debate about how to avoid market perceptions vis-à-vis possible default risks. Suspicion that the country is in serious trouble may cause the markets to abruptly curtail its provision of credit, thus creating a vicious circle that could create self-fulfilling pessimism about the IMF intervention. This could be one of the reasons for which both the IMF representatives and the Romanian government denied any intention of signing an agreement, despite repeated meetings during the recent period. It could be a proof of a good communication strategy that only after the public got used with the trivialities of IMF discussions, the Romanian ministry of finance announced that an agreement with the IMF could be signed in the coming couple of months.

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NEW DEVELOPMENTS IN THE EU INTERNAL MARKET - HARMONISATION vs. MUTUAL RECOGNITION

Ljubica Dzabirova*

Abstract. *This paper studies the recent developments of harmonisation measures in the area of free movement of goods, establishments, services and the recognition of professional qualifications at the European Union (EU) level, regarding the principle of mutual recognition.¹ The new harmonisation measures² signify a new practice and a different approach, by presenting mutual recognition in a different way, in the context of harmonisation measures. There is also an interrelation between different EU institutions concerning their action, i.e., an interesting link between the legislative processes on the EU level and the actions of the European Court of Justice (ECJ). This situation can be illustrated by the Commission seizing upon mutual recognition as a strategy for market integration in the wake of the Cassis de Dijon³ judgment. An open market may impact the weaker economies that could suffer in the increased competitiveness of more open markets. As Dehousse⁴ argues, “market integration has to be accompanied by improvements in social and economic cohesion, if it was to be politically acceptable.” Similarly, Armstrong⁵ notes that the removal of barriers to trade through mutual recognition can create positive trade possibilities for states with efficient production, while less efficiently producing states face the prospect of domestic production being displaced by competition, which may need to be cushioned through negotiations of Structural Funds.*

Keywords: *harmonisation measures, legislative process, ECJ, mutual recognition, Structural Funds, Internal Market, services*

1. New ideas for making the principle of mutual recognition work more effectively

“...The Single Market does not seek to eliminate differences in language, culture,

identity or traditions. On the contrary, it is based on recognition by Member States of each other’s national regulations, as well as on the subsidiarity principle, whereby decisions are to be taken as

* Ljubica Dzabirova is a PhD researcher at the University of Amsterdam, Department of International Law, currently doing a field research at the World Trade Organisation. Employed by the Macedonian Government, she is also working as a lecturer and researcher within the NGO Education and Research Forum.

E-mail: L.Dzabirova@uva.nl

¹ Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another member state and repealing Decision 3052/95/EC, Brussels, 14.2.2007, COM (2007) 36 final, 2007/0028 (cod); Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36–68; Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255 of 30 September

² See Ibid.

³ See Ibid, Case 120/78.

⁴ R, Dehousse, *Completing the Internal Market: Institutional Constrains and Challenges. In 1992: One European Market?* Baden Baden, Nomos 1998

⁵ K. A. Armstrong, “Mutual recognition” in Barnard, C & Scott, J, *The Law of the Single European Market: Unpacking the premises*, Hart Publishing, Oxford and Portland, Oregon 2002

close as possible to the citizens..."⁶

This was the initial idea when creating the Single Market, repeated subsequently on many occasions by having mutual recognition as a way of eliminating differences between different categories of 'free movements' among the Member States. Mutual recognition is one of the main principles used for the abolition of all barriers of all kinds, strengthening the cooperation between countries and encouraging European firms to work together.⁷

It is a rule to remove unjustified barriers to the free movement of goods between EU Member States, whereby the time consuming legislative procedures for harmonisation of each and every national requirement or procedure at European level can be avoided. At the same time, the principle of mutual recognition enables Member States to restrict the free movement of goods if, and, as far as it is justified, on the basis of over-riding requirements.

The principle of mutual recognition is the cornerstone of the market to developing an area without frontiers and achieving the initial goal for the Single Market, rather than making all the rules uniform. It is an instrument, which applies in the absence of harmonisation rules where the countries accept each others' rules. Mutual recognition signifies

the acceptance by a party of a person, of goods, services or investments that, according to an equivalent standard or standards-related measure of another party without modification, testing, certification, re-naming or undergoing any other duplicative conformity assessment procedure. The Commission adopted a Communication⁸ on mutual recognition as a follow up to its Action Plan for the Single Market, where mutual recognition seemed to lie in the fact that: "It allows free movement of goods and services without the need for harmonisation of national legislation at Community level".⁹ The Commission's paper begins by making clear the importance of mutual recognition for the single market.¹⁰

However, there have been profound changes taking place in the EU's economic structure, due to increasing market size, which are leading to, or will lead to changes in the Union's legal system.¹¹ This increases potential for future changes in the legal structure. Everything done at the EU level has an effect on the Member States' internal regulations. Opening the markets for all creates different effects, and different procedures might be introduced to test the quality of a product or a service. For this reason, new instruments have been introduced at EU level. These are explained further in this paper.

⁶ J. M. Cuevas *An imperfect reality: The view from Spain*, in L. Cockfield, J.M Cuevas, H.D Genscher, T. Kannisto, M. Monti, L. Soudek, S. I. Valliance, K. von Wogau, *Is the Single Market Working*, The Philip Morris Institute for Public Policy Research, November, 1996

⁷ Completing the Internal Market: White Paper from the Commission to the European Council (Milan, 28-29 June 1985), COM(85) 310, June 1985.

⁸ Action Plan for the Single Market, SEC (97) 1 final; Commission communication, Mutual recognition in the context of the follow-up to the Action Plan for the Single Market, June 1999.

⁹ See *Ibid*, p.3

¹⁰ See *Ibid*, p.4

¹¹ See more in: J.M de Vet, "The analysis of the EU Enlargement and Pre-accession: Reflections concerning Central and Eastern Europe" <http://www.geo.ut.ee/nbc/paper/devet.htm>

Nowadays, the idea of improving the efficiency of the Single Market is beyond question the same. Nevertheless, the current developments of introducing harmonisation measures¹² in the Internal Market for goods and services reveals a beginning of a new practise and different approach, by presenting mutual recognition in a different way, based on harmonised measures. There is a Regulation on mutual recognition for the goods' market and the Directive adopted in the field of services in the internal market.¹³

It is clear that some of the most important aims of the EC Treaty, such as the free movement of persons, services or goods, may be achieved by means of harmonisation or codification. Yet, it is not very clear if by introducing harmonisation measures in the internal market for goods and services we offer a response to the growing incoherence of the European law and the economies of the Member States, and if it means harmonisation in a substantive sense. It is by this harmonisation of the procedures that the mutual recognition is presented in a different way.

It is clear that these questions shift the emphasis from difference in national legislations to a new issue: harmonisation of procedures aimed at making the mutual recognition principle work more efficiently. Armstrong¹⁴ emphasises that "mutual recognition encourages Europeanization of regulation not

through the adoption and enforcement of harmonised European norms (a vertical Europeanization) but instead through requiring openness to the other regulatory systems of Member States (a horizontal Europeanization)". Questions arise here of what is the current development track: Is it "Europeanization" done through mutual recognition and mutual trust or through harmonisation and codification? Or maybe it is just a combination and compromise between these concepts?

It is interesting to analyse how these new developments of harmonisation and codification at the EU level touch upon the issue of mutual recognition. The reason is that they have distinctive characteristics, most of them totally opposed.

Even though harmonisation measures may lead to substantive changes, the case might be that their content is essentially technical, aimed at increasing the mutual trust which is obviously lacking among the countries in the internal market and making the mutual recognition work more effectively. The effect could also be that the role of the Commission would increase, in a case of unjustified action by the Member States. Furthermore, once they are adopted, as a tool of revising the *acquis*, the national legislators will have to accept it as a part of their legal system.

We will see further in the text what are the effects of the harmonisation measures dealing with mutual recognition.

¹² Proposal for a Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another member state and repealing decision 3052/95/EC, Brussels, 14.2.2007, COM (2007) 36 final, 2007/0028 (cod).; Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36–68

¹³ See *Ibid.*

¹⁴ See more: K. Armstrong & S. Bulmer, *The Governance of the Single European Market*, Manchester University Press, 1998

2. Applying mutual recognition in the European Internal Market - current stay of play: strong points and shortcomings

Applying mutual recognition seems to be an efficient tool. It avoids the need for products to fully comply with every technical rule in every Member State where a product is or will be marketed. Under mutual recognition different national technical rules continue to co-exist within the Internal Market.¹⁵ Member States of destination cannot forbid the sale on their territories of products which are not subject to Community harmonisation and that are lawfully marketed in another Member State.

Whenever national technical rules are being applied to products lawfully marketed in another Member State in the non-harmonised area it is done in accordance with Articles 28-30 of the EC Treaty. Technical obstacles to the free movement of goods within EU can be related to designation, form, size, composition, weight, presentation, labelling etc. If those technical rules do not implement secondary EC legislation, they constitute technical obstacles to which Articles 28 and 30 of the ECT apply. Subsequently, Articles 28 and 30 only apply in the absence of the EC harmonisation of technical rules and there is no need to intervene by regulatory measures.

Mutual recognition remains the "lex generalis" unless a "lex specialis" (a harmonisation measure) organises intercommunity trade for a product differently.¹⁶ Some Member States have technical rules for specific types of products while others do not. The idea behind mutual recognition is to eliminate technical obstacles. Member States, who have technical rules on specific types of products, may apply the mutual recognition principle. This would be the perfect scenario for the internal market, if the Member States are ready to apply mutual recognition without any hesitation or lack of mutual trust about other Member States' procedures.

However, in the Commissions impact assessment paper¹⁷ it is stated that with regard to national technical rules the difficulties in the Internal Market for goods still arise. It means that the Member States are not always prepared to accept each others' rules. Technical barriers refer to the many divergent national requirements affecting the cross frontier sale of goods. Some of these barriers take a legal form, originating in national legislation. Others arise from industry standards. The common effect of those barriers, whatever their character might be, fragmentation of the market, i.e., goods to be sold in one Member State, could not be sold in another country or there are time and money consuming procedures to effectuate the

¹⁵ See more in the: Commission Staff Working Document Accompanying document to the Proposal for a Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC, Impact Assessment {COM(2007) 36 FINAL SEC(2007) 113}

¹⁶ Communication from the Commission to the European Parliament, the council and the European economic and Social Committee the Internal Market for Goods: A cornerstone of Europe's competitiveness, Brussels, 14.2.2007 Com (2007) 35 Final

¹⁷ See Ibid {COM(2007) 36 FINAL SEC(2007) 113} Press, 1998

free market.¹⁸ Looking on the other side when applying the mutual recognition principle, there is often lack of awareness of the mutual recognition principle on the part of enterprises and national authorities; legal uncertainty about the scope of the principle and the burden of proof; the risk for enterprises that their products will not get access to, or will have to be withdrawn from, the market of the Member State of destination; and absence of a dialogue between competent authorities in different Member States.¹⁹

Applying the principle of mutual recognition does not require paperwork and new bureaucracy. That is one of its main strong points. However, the outcome is that there is no reliable reporting and no statistics about how mutual recognition is applied. Consequently, there is little chance to have a record of possible national technical barriers to the free movement of products within the EU. However, general research by the OECD shows that regulatory impediments to product market competition have declined in recent years, and that the extent of government involvement in product markets has fallen considerably.²⁰ Member States'

product conformity requirements are the main regulatory concern of the European companies, forcing them to adapt product design, reorganise production processes and repackaging and re-test their products before they can be put onto the market.²¹

Having effective mutual recognition in the internal market presupposes mutual trust in other Member States. Mutual recognition does not require a comparison in its real meaning but it presumes that the Member States have similar levels of protection and control. If that is not the case, perhaps that should be the main focus of action to reduce the disparities of these procedures which may help in building mutual trust. Member States of destination analyse the necessity and proportionality of its own technical rule in a specific case. A case-by-case assessment is therefore unavoidable in the field of mutual recognition.²²

Considering the previously mentioned arguments, it is obvious that further action is necessary to make the mutual recognition in the internal market work as efficiently as possible. When there is a sufficient legal basis, the Community is allowed to take legislative action, insofar

¹⁸ See more: K. Armstrong & S. Bulmer, *The Governance of the Single European Market*, Manchester University Press, 1998¹⁶ Communication from the Commission to the European Parliament, the council and the European economic and Social Committee the Internal Market for Goods: A cornerstone of Europe's competitiveness, Brussels, 14.2.2007 Com (2007) 35 Final

¹⁸ Completing the Internal Market: White Paper from the Commission to the European Council (Milan, 28-29 June 1985), COM (85) 310 final, 14 June 1985

¹⁹ See more in the: Commission Staff Working Document Accompanying document to the Proposal for a Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC, Impact Assessment {COM(2007) 36 FINAL SEC(2007) 113}

²⁰ Paul Conway, Véronique Janod, Guiseppa Nicoletti, "Product Market Regulation in OECD Countries: 1998 to 2003", OECD Economics Department Working Paper No 419, 17 February 2005.

²¹ Single Market Monitor Survey, September 2001, *Flash Eurobarometer 106* (http://ec.europa.eu/internal_market/score/docs/score09/monitor-survey_en.pdf)

²² N. Bernard, "Flexibility in the European Single Market", in Catherine Barnard and Joanne Scott (ed.), *The Law of the Single European Market – Unpacking the Premises*, Hart Publishing, Oxford, 2002.

as the objectives of the proposed action cannot be sufficiently achieved by the Member States²³ whereas any action taken cannot go beyond what is necessary in order to achieve the objectives of the Treaty for creating a functioning Internal Market.²⁴

It remains an interesting issue to analyse whether the mutual recognition is convenient for the legislators to achieve the Treaty goal of having an open market for goods, persons, services and capital. However, it is even more interesting to analyse the link with the harmonisation measures and their convenience and effect towards achieving this goal.

3. Adopting a Regulation on mutual recognition in the internal market for goods – Is that the right solution? Benefits vs. limitations

As explained before in the text, the principle of mutual recognition, which derives from the case-law of the Court of Justice of the European Communities, is one of the means of ensuring the free movement of goods within the internal market. It means that the mutual recognition applies to products which are not subject to Community harmonisation legislation, or to aspects of products falling outside the scope of such legislation. However, its implementation was hampered by problems, mentioned before, such as the legal uncertainty, the burden of proof, etc.

Due to these numerous problems that still exist as regards the correct application of the principle of mutual recognition by

the Member States, one could expect that there will be discussions about introducing uniform procedures for minimising the possibility of technical rules' creating unlawful obstacles to the free movement of goods between Member States.

The absence of procedures in the Member States created obstacles to the free movement of goods, because enterprises are discouraged from selling their products, lawfully marketed in another Member State, on the territory of the Member State applying technical rules.

Many enterprises either adapt their products in order to comply with the technical rules of Member States, or refrain from marketing them in those Member States. The competent authorities also lack the appropriate procedures for the application of their technical rules to specific products lawfully marketed in another Member State. The lack of such procedures compromises their ability to assess the conformity of products in accordance with the Treaty.

Since the objective of the elimination of technical obstacles to the free movement of goods between Member States cannot be sufficiently achieved by the Member States, the Community had a justification in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty, and, in accordance with the principle of proportionality, as set out in that Article, to adopt the Regulation on mutual recognition.²⁵ The Regulation only applies to the "non-harmonised" field of goods, and does not apply to goods that are already subject to EU harmonising legislation. It will be in force from 13 May 2009.

²³ According to the principle of subsidiarity (Article 5 ECT)

²⁴ According to the principle of proportionality; Art. 5 ECT

²⁵ Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC, No 764/2008

It is feasible that the Regulation can lead to positive developments, considering the abovementioned facts concerning the application of the principle of mutual recognition. Indeed, the proposed Regulation can have an immediate effect on enterprises. Besides the fact that enterprises would become aware of their rights and obligations through regulation, there can be a reduction in risk for enterprises that their products will not get access to, or will have to be withdrawn from the market of the Member State of destination. It can also eliminate the lack of awareness within national administrations and solve the problem of the burden of proof.

The biggest problem about the uncertainty is the lack of awareness about the products to which mutual recognition applies. The creation of a website with a list of products to which mutual recognition applies could clarify this. It should reduce the risk for enterprises that their products will not get access to, or will have to be withdrawn from the market of the Member State of destination.

Mutual recognition clauses will no longer be necessary, but the Member States will have to accept the Regulation²⁶ as a part of their national systems. The Regulation standardises the rights and obligations of the national authorities, and the rights and obligations of the enterprises.²⁷ It is limited to cases where technical obstacles arise, and could arise and it does not involve areas where the internal market functions well.²⁸

Specifically, in relation to the regulations as a legislative instrument, the idea is it that they are accepted into the legal systems of the Member States just as they are. They do not leave the national authorities the choice of form or methods for their implementation.²⁹ The regulations, indeed, do not allow the objectives of the Community's legal order to be harnessed to the established patterns of national law. So, the fact that the Member States have differing legal systems is not always taken into account.

A regulation must have as object the improvement of the conditions for the establishment and functioning of the internal market.³⁰ However, in our opinion it is insufficient to justify Article 95 EC as a legal basis for adopting a regulation, just because of the simple result of disparities between the national rules and of the abstract risk of obstacles to the exercise of fundamental freedoms or of distortions of competition liable to result from this assumption. Nonetheless, the situation in case of introducing the Regulation on mutual recognition for the goods market seems to be a result of the lack of mutual trust in the procedures, which might bring consequences of fragmentation and protectionism. The mutual trust was an open issue and it was obvious that further rules were needed to build the confidence of the Member States in each others actions.

There is no doubt that the Regulation³¹ can have a positive impact, as outlined above. However, the interesting point

²⁶ See *Ibid.* COM (2007) 36 final, 2007/0028 (cod).

²⁷ See *Ibid.* COM (2007) 36 final, 2007/0028 (cod).

²⁸ See *Ibid.* COM (2007) 36 final, 2007/0028 (cod).

²⁹ Article 249 ECT.

³⁰ According to Articles 94, 95 ECT

³¹ See *Ibid.* COM (2007) 36 final, 2007/0028 (cod).

to analyse here is not only the scope of the Regulation, but also the necessity of introducing harmonisation instruments and the current shift towards the harmonisation of procedures.

According to its content, the Regulation³² does not change the substance of the technical rules. It just sets up procedures, when products have been restricted, to move freely in the Internal Market. However, it is more than clear that the solution to adopt a Regulation on mutual recognition implies that there will be further harmonisation under article 95 ECT. Even the Commission itself states³³ that "Harmonisation or further harmonisation of national technical rules remains without doubt one of the most effective instruments, both for businesses and for the national administrations. Mutual recognition cannot be a miracle solution for ensuring the free movement of goods in the single market. Therefore, greater harmonisation will continue to be indispensable in sectors where the divergence of technical rules poses too many problems in order to permit the proper application of the principle of mutual recognition."³⁴

The European and the national legislators share legislative responsibilities. None of them is the superior authority, which has the final

say on who is responsible for what. The same applies to the Court system. National courts apply the national law as it stands after accepting harmonisation measures in their legal system. Nevertheless, adopting a Regulation on mutual recognition³⁵ may disturb the domestic systems of the Member States. In other words, in this model, the legislator stretches the possibilities provided by article 249 (3) of the Treaty to the very limits. This is illustrated well in the Tobacco advertising case³⁶ where the EU passed legislation restricting the advertising of tobacco products. This legislation was challenged successfully by Germany, on the grounds that Art. 95 does not create an unlimited power to harmonize the national laws of Member States. The ECJ pointed out that not every instance of disparity between national laws would be sufficient to disturb the internal market, and there was no reason to think that differences in the law related to tobacco advertising would have such an effect.³⁷

Most of the citizens and enterprises are generally satisfied with the way the Internal Market for Goods operates.³⁸ The Eurobarometer³⁹ shows that 3 in 4 citizens (75%) believe that the Internal Market for Goods has a positive impact.

³² See Ibid COM (2007) 36 final, 2007/0028 (cod).

³³ See more in the: Commission Staff Working Document Accompanying document to the Proposal for a Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC, Impact Assessment {COM(2007) 36 FINAL SEC(2007) 113}

³⁴ See Ibid

³⁵ See *ibid.*

³⁶ Case C-376/98, Federal Republic of Germany v European Parliament and Council of the European Union., E.C.R., 2000, I-08419

³⁷ See *ibid.*

³⁸ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee the Internal Market for Goods: A cornerstone of Europe's competitiveness, Brussels, 14.2.2007 COM (2007) 35 Final

³⁹ http://ec.europa.eu/internal_market/strategy/index_en.htm

Today it would be difficult to imagine life in the EU without products from outside one's home country. The same should be applied to all the categories of the "free movements".

The establishment of "Product Contact Points" can create the basis for a dialogue between competent authorities, which without any doubt would be a positive step. However, this was an obligation for the Member States even before, when the Regulation was not considered yet. In the Commission's document named "Main administrative structures required for implementing the *acquis*",⁴⁰ there were criteria that each country should be able to fulfil in order to be a part of the Internal Market. Indeed, one of the criteria was to make sure that there is an administrative entity responsible for the follow-up and implementation of Articles 28-30 of the EC Treaty, and the application and implementation of the principle of mutual recognition. One of the most important novelties in the Regulation was the introduction of contact points in the administrations of the Member States for overcoming the current weaknesses of the application of the mutual recognition principle. Taking the above-mentioned into account we can see that this is not really a novelty. However, after adopting the Regulation, the countries will have a binding obligation to establish contact

points dealing with mutual recognition and they will have to respect the set procedures.

It is a fact that the predominant form of policy in the EC pillar is regulatory. As Majone⁴¹ puts it, regulatory policy requires little by way of a central budget, since the direct costs of such a policy are largely administrative. "The real costs of most regulatory programmes are borne directly by the firms and the individuals who have to comply with them. Compared with these costs, the recourses needed to produce the regulations are trivial."⁴² Moreover a regulatory type of policy is less controversial for a fragile polity. Guy Peters⁴³ examines that the regulatory instruments tend to mask the effects of policies and make winners and losers less visible than the expenditure programs do. The Regulatory Policy may thus minimize conflicts over the Community Policy.

The Community's supremacy was given added force⁴⁴ and it is clear that the Community law would take precedence even over national legislation, which was adopted after the passage of the relevant EC norms. The Regulation on Mutual recognition in the goods market⁴⁵ hinders the Member States when introducing new requirements, unless they pass non-discrimination, proportionality and necessity tests. They will have to notify

⁴⁰ Commissions Informal Guide to the Main Administrative Structures Required for Implementing the *acquis* (updated: may 2005)

⁴¹ Majone, G, *Regulating Europe*, Rutledge, London, 1996.

⁴² Majone, G, "Cross-National Sources of Regulatory Policymaking in European Union and the United States", *Journal of Public Policy*, 1991, p.79-106

⁴³ Peters B. G, *Bureaucratic Politics and the Institutions of the European Community*, in Sbragia, A (ed.), *Euro-Politics: Institutions and Policymaking in the 'New' European Community*, The Brooking Institution, Washington, D.C., 1992

⁴⁴ See Case 106/77, Amministrazione delle finanze dello Stato v. Simmenthal SpA (1978) ECR 629

⁴⁵ Proposal for a Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision 3052/95/EC, Brussels, 14.2.2007, COM(2007) 36 final, 2007/0028 (cod).

the Commission of their action, and the Commission will be able to request removal.

As Peters⁴⁶ puts it: "Regulatory policy may...minimize national, regional and even class conflicts over Community Policy. The choice of policy instrument enhances the relative power of the Commission and the bureaucracy." Nevertheless, the current situation within the internal market, regarding the application of the mutual recognition principle implies that an action was necessary in order to make it more efficient.

3.1 New practice for applying the mutual recognition principle

As emphasized several times before according to the present practise, technical obstacles can either be eliminated by harmonising national rules, or by applying the mutual recognition principle. Under this principle, the Member States of destination cannot forbid the sale on their territories of products which are not subject to Community harmonisation and that are lawfully marketed in another Member State, unless the restrictions laid down by the Member State of destination are justified on the grounds specified in Article 30 of the EC Treaty, or on the basis of overriding requirements of general public importance, recognised

by the case law of the ECJ, and are proportionate.

Mutual recognition is moreover regarded as an example of subsidiarity, in the sense that it avoids the need for the "systematic creation of rules at Community level", thereby allowing for greater observance of "local, regional and national traditions".⁴⁷ Indeed, the general thrust of the Commission's approach was to move away from the concept of harmonisation towards mutual recognition and equivalence,⁴⁸ by building on the *Cassis de Dijon*⁴⁹ jurisprudence. The ECJ has signalled in *Cassis*⁵⁰ that national rules which, although they diverge in detail, nonetheless converged in terms of their regulatory goals and do not need to be harmonised if the principle of mutual recognition was applied. Therefore, this limits the task of the EC legislation to the harmonisation of "essential requirements"⁵¹ which identify only what is important for the products to comply with, and that the residual part on how to achieve the compliance is mutually recognised. They deal with the protection of health and safety of users (usually consumers and workers) and they define the results to be achieved or the hazards to be dealt with, but do not specify or predict the technical solution for doing so. Hence, Member States are free to choose the most suitable means to achieve the essential requirements.

The whole point of mutual recognition

⁴⁶ Peters, B.G., *Bureaucratic Politics and the Institutions of the European Community*, in Sbragia, A(ed.), *Euro-politics: Institutions and Policymaking in the 'New' European Community*, The Brookings Institution, Washington D.C., 1992

⁴⁸ COM (85) 310, 14 June 1985

⁴⁹ Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein*, 1979 E.C.R. 649

⁵⁰ See *Ibid.*

⁵¹ See more: K. Armstrong & S. Bulmer, *The Governance of the Single European Market*, Manchester University Press, 1998

is to allow for flexible integration leaving market regulation in the hands of the Member States, while, at the same time, preventing the use of that competence in a way that would partition the market.⁵² Arguably, the only institution which was apparently advancing market integration was the ECJ through its accumulated jurisprudence. Indeed, it was the *Cassis de Dijon*⁵³ ruling, which paved the way for a new strategy for completing the Internal Market. However, with the Regulation⁵⁴ the legislator is introducing a harmonisation instrument, dealing with mutual recognition, which is based on uniform procedural aspects in applying the mutual recognition principle. In this way, the countries and the private entities can become aware when they have the right to apply the mutual recognition principle.

The mutual recognition will now be included in the harmonisation measures and presented in a different way. However, it is important that according to the Regulation⁵⁵ countries will be obliged to have uniform procedures in applying mutual recognition.

4. Mutual recognition of the regulatory control – new developments

Following the same line of developments, as regards the mutual recognition of the regulatory control in the goods market, there is a new package of measures harmonising procedural aspects.⁵⁶

For the industrial products it is proposed for the existing market surveillance systems to be strengthened and aligned with import controls. Furthermore, accreditation has been introduced as a formal system, which may now be used to ensure that conformity assessment bodies, or testing and certification laboratories, provide the high quality services that manufacturers need.

It was also apparent that further action was needed to reinforce the role and credibility of CE marking. Besides the clarifications on the meaning of CE marking, it will also be protected as a community collective trade mark, which will give the authorities additional means to take legal action against manufacturers who abuse it.

As in the case of the Regulation on mutual recognition, this moves towards harmonisation of procedures, which

⁵² See N. Bernard, *Flexibility in the European Single Market* in Barnard, C & Scott, J, *The Law of the Single European Market: Unpacking the premises*, Hart Publishing, Oxford and Portland, Oregon 2002

⁵³ See *Ibid*, Case 120/78

⁵⁴ See *Ibid* COM (2007) 36 final, 2007/0028 (cod).

⁵⁵ Regulation of the European Parliament and of the Council laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another member state and repealing decision 3052/95/EC, No 764/2008

⁵⁶ A proposal for a Regulation of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products; A proposal for a Decision of the European Parliament and of the Council on a common framework for the marketing of products; An interpretative communication on procedures for the registration of motor vehicles originating in another Member State; See more details in the: Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, "The internal market for goods: a cornerstone of Europe's competitiveness", Brussels, 14.2.2007, COM (2007)35 Final

might help in enhancing confidence between the countries, regarding the quality of conformity assessments for products, through reinforced rules on requirements for the notification of conformity assessment bodies including the increased use of accreditation. Thus, there will be a common legal framework for industrial products with common definitions of expressions, which are sometimes used differently.

Among the new proposals there is a Decision on a Common Framework for the Marketing of Products.⁵⁷ Article 2 of the Decision⁵⁸ states that “where recourse to essential requirements is not possible or not appropriate, detailed specifications may be set out in the Community legislation concerned”.

Although it is more than clear why procedural aspects need to be harmonised, still this provision opens a new question. The transfer from the Council to the external agencies⁵⁹ of one important area of regulation - that concerning technical standards - represented a further shift in the character of governance. Indeed, the “New Approach”, introduced, among other things, a clear separation of responsibilities from the EC legislator to the European standards bodies⁶⁰ in

the legal framework allowing for the free movement of goods.⁶¹ Regulatory compatibility is sought to be achieved through harmonisation to technical standards and regulations.

The New Approach leads to the simplification of the administrative burdens of regulation. It represented an innovative way towards technical harmonisation and mutual recognition and it was limited in order to only what is essential. Thus, efforts should be made in all cases of product regulation to apply the New Approach before going back to the Old Approach. It is an inherent part of the New Approach, that if it does not work in a specific sector, one should go back to harmonisation in that particular sector.

With the old approach there is unnecessary uniformity. Everything is regulated in detail and there is no space to apply the mutual recognition principle. Individual Member States must conform to harmonisation directives and transpose them into their national legislation. The Community legislator does not leave enough space for alternative solutions. Total, vertical harmonisation⁶² proved to be problematic, and in practical terms, such an approach places enormous strain on the legislative capacities of the EC and

⁵⁷ Proposal for a Decision of the European Parliament and of the Council on a common framework for the marketing of products, Brussels, 14.2.2007, COM(2007) 53 final, 2007/0030 (COD)

⁵⁸ See Ibid, Article 2 of the Decision, COM(2007) 53 final, 2007/0030 (COD)

⁵⁹ The European Committee for Standardization (CEN) in Brussels, Belgium; the European Committee for Electrotechnical Standardization (CENELEC) in Brussels, Belgium; and the European Telecommunications Standards Institute (ETSI), in Sophia Antipolis, France

⁶⁰ The European Committee for Standardization (CEN) in Brussels, Belgium; the European Committee for Electro technical Standardization (CENELEC) in Brussels, Belgium; and the European Telecommunications Standards Institute (ETSI), in Sophia Antipolis, France.

⁶¹ Council Resolution of 7 May 1985 on a new approach to technical harmonization and standards, OJ C 136, 04/06/1985 P. 0001 - 0009.

⁶² As described by Dashwood in: Dashwood, A, *Hastening Slowly: The Community's Path towards Harmonization*, in Wallace at al. 1983.

the Member States, as soon as became evident.⁶³ As Pelkmans⁶⁴ puts it: "In the 'old' approach approximation of national economic regulation usually boiled down to extremely detailed lawmaking at the Community level. Partly, this was caused by unanimity – a recalcitrant Member State could insist on any detail. Partly, it reflected a lack of trust among Member States." Moreover, the 'old' approach can be inflexible in the face of new technological developments.

The realisation of the single market through the Old Approach would entail excessive amounts of legislation.⁶⁵ Technical harmonisation is a difficult task - especially against a background of different national regulatory traditions. Technical developments meant, moreover, that the Commission was fighting a losing battle. As fast as it succeeded in securing the passage of a directive to cover one technical problem, ten more would emerge on the horizon.⁶⁶

Under the New Approach and the mutual recognition, the advantages in the markets for goods can be established far more easily and more quickly than with the Old Approach of approximation. However, we could expect at this stage that the harmonisation of the procedures and the changes introduced with the new package will increase the confidence among the countries and will make the mutual recognition principle work

more effectively, so that the detailed specifications will not be needed very often. The New Approach is embedded in a kind of "procedural harmonisation" which should make the "new approach" more effective and more palatable.

5. Mutual recognition: Jurisprudence of the European Court of Justice vs. legislative processes on the EU level

In the internal market domain, the interpretations of the ECJ have played a significant role in shaping policy. The principle of mutual recognition, which started to be applied in the Internal Market after *Cassis*⁶⁷ is much more a sovereignty-friendly approach than the expectation that a single market could only be achieved by legislative harmonisation. Therefore, it starts with the *Cassis*⁶⁸ since when we can test the link between the actions of the different institutions at EU level, regarding the application of the mutual recognition principle.

The Commission seemed to recognise the new possibilities towards achieving the internal market after *Cassis*⁶⁹, when it started the various proposals following the New Approach. The principle of mutual recognition was encouraged in most of the Commission's reports and it was considered as the main principle for making the Single Market a success story. The New Approach gave a basis

⁶³ See more: K. Armstrong & S. Bulmer, *The Governance of the Single European Market*, Manchester University Press, 1998.

⁶⁴ Pelkmans, J, *European Integration, Methods and Economic Analysis*, Essex, London, 1997, p. 38

⁶⁵ D.Chalmers, C.Hadjjiemmanuil, G. Monti, A.Tompkins, *European Union Law: Texts and materials*, Cambridge University press, 2006, P. 478.

⁶⁶ Barnard, C & Scott, J, *The Law of the Single European Market: Unpacking the premises*, Hart Publishing, Oxford and Portland, Oregon 2002.

⁶⁷ See *Ibid* , Case 120/78.

⁶⁸ See *Ibid* , Case 120/78.

⁶⁹ See *Ibid* , Case 120/78.

for application of the principle of mutual recognition in the area of technical harmonisation and use of standards. It was limited only to what is essential and there was no need to harmonise each and every aspect of the technical regulations.

Disputes between private parties or disputes involving supranational institutions or the member governments can lead to the establishment of important principles. Since the Commission's role is to act as "conscience of Europe"⁷⁰ and closely monitor the work of the European Courts⁷¹, the Commission systematically intervenes in all the cases⁷² occurred in litigations brought before the Court, and is thus well placed to draw lessons from consequent jurisprudence. Accordingly, the judicial and the legislative process seem to be complementary to one another.

Besides the situation as illustrated by the Commission seizing upon mutual recognition as a regulatory strategy for market integration in the wake of the *Cassis de Dijon*⁷³ judgment, the same can be noticed in the current developments, as explained further in the text.

Compared to the *Dassonville*⁷⁴ and the *Cassis de Dijon*⁷⁵ cases, which indirectly provided a potential new route map for the goal of a common market, based on the mutual recognition of products, the current track leads to a different approach. A recent Court ruling is actually shows

the modification track on the case law on the free movement of goods.⁷⁶

Indeed, the fact that the image storage media was examined and classified by a competent United Kingdom (UK) Authority, did not give sufficient guarantees for the German Authorities. The Dynamic Medien, a competitor of Avides, the company which imported and sold in Germany image storage media, asked the Regional Court to prohibit Avides from selling the image storage media in question, by mail order and over the internet, on the ground that they have not been examined and classified in Germany under the relevant domestic rules and bear no minimum age indication corresponding to a classification decision adopted by a competent German authority.

By its question to the Court, the Landgericht Koblenz asked whether the prohibition of mail order sales of such image storage media constitutes a measure having equivalent effect within the meaning of Article 28 EC and if so, if it can be justified under Article 30 EC, having regard to Directive 2000/31/EC.⁷⁷

As explained before, under Article 28 ECT quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States. It is well established in the case-law that a product which is lawfully marketed in one Member State must,

⁷⁰ Rose, R, *Lessons Drawing in Public Policy: A Guide to Learning across Time and Space*, Chatham House, Chatham (NJ), (1993) and Sabatier, P, *An Advocacy Coalition Framework of Policy Change and the Role of policy-Oriented Learning Therein*, Policy Sciences, 1998

⁷¹ European Court of Justice and the Court of First Instance

⁷² In accordance with Article 234 of the Treaty

⁷³ See *Ibid*, Case 120/78

⁷⁴ See Case 8/74, *Procureur du Roi v. Dassonville*, 1974 E.C.R. 837,

⁷⁵ See Case 8/74, *Procureur du Roi v. Dassonville*, 1974 E.C.R. 837,

⁷⁶ See Case C 244/06 *Dynamic Medien Vertriebs GmbH v Avides Media AG*

⁷⁷ OJ 2000 L 178, p. 1

in principle, be able to be marketed in any other Member State, without being subject to additional controls, save in the case of exceptions provided for or allowed by the Community law.⁷⁸

In this particular case⁷⁹ it is clear that further examination and classification for the same purpose would lead to additional costs and delays in the marketing of such products in Germany. Moreover, in accordance with the *Dassonville*⁸⁰ formula, all trading rules adopted by the Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade are to be regarded as measures having an effect equivalent to quantitative restriction.⁸¹

The German rules in question oblige the traders concerned to label image storage media. That is a national measure that establishes a labelling requirement with which the goods must comply. Even more, the required labelling presupposes the carrying out of a national examination procedure, even if there is a comparable procedure and labelling. That is definitely sufficient to be characterized as measure having an equivalent effect to quantitative restrictions. The Court established in its previous practice that "...a measure introduced by a Member State cannot be regarded as necessary to

achieve the aim pursued if it essentially duplicates controls which have already been carried out in the context of other procedures, either in the same State or in another Member State".⁸²

There is also another side in this case, where the argument is that the prohibition of mail order sales in question relates to a selling arrangement as laid down in the *Keck and Mithouard* judgment,⁸³ with the result that it falls outside the scope of Article 28 EC. However, even if it were considered that the case in point related only to the regulation of a selling arrangement, the second of the conditions laid down in the *Keck and Mithouard*⁸⁴ judgment will not be met, since according to the UK Government, the image storage media produced in Germany can meet the requirements of German law as concerns the suitability of the content for young persons more easily than those produced elsewhere.

The Court concluded that the German rules do not constitute a selling arrangement within the meaning of *Keck and Mithouard*⁸⁵ and subsequent cases. It recalled that rules restricting the marketing of products to certain points of sale and having the effect of limiting the commercial freedom of economic operators without affecting the actual characteristics of the products referred

⁷⁸ Case 120/78 Rewe-Zentral [1979] ECR 649, paragraph 14, and Case C-123/00 Bellamy and English Shop Wholesale [2001] ECR I-2795, paragraph 18.

⁷⁹ See *Ibid*, C-244/06

⁸⁰ See Case 8/74, *Procureur du Roi v. Dassonville*, 1974 E.C.R. 837,

⁸¹ See Case 8/74, *Procureur du Roi v. Dassonville*, 1974 E.C.R. 837, paragraph 5; Case C-143/06 *Ludwig Apothekerverband*, paragraph 67; and Case C-420/01 *Commission v. Italy*, paragraph 25

⁸² See Case C- 390/99, *Canal Satélite Digital SL v Administración General del Estado*, and *Distribuidora de Televisión Digital SA (DTS)*, ECR 2002 Page I-00607, at para. 36 and 37

⁸³ See joined Cases 267/91 & 268/91, *Criminal Proceedings against Bernard Keck and Daniel Mithouard*, 1993 E.C.R. I-6097

⁸⁴ See *Ibid* C-8/74

⁸⁵ See joined Cases 267/91 & 268/91, *Criminal Proceedings against Bernard Keck and Daniel Mithouard*, 1993 E.C.R. I-6097

to, constitute a selling arrangement. Therefore, the need to adapt the products in question to the rules in force in the Member State in which they are marketed prevents the German requirements from being treated as selling arrangements.⁸⁶

However, regarding the justification under Article 30, of whether the German measures could be justified as being necessary to protect young people, being an objective linked to public morality and public policy, the Court concluded that, while it seemed *prima facie* that the German system was proportionate, the national court must examine whether it is in fact proportionate. Consequently, the German system of examination must be proportionate, in the sense that it must be readily accessible, can be completed within a reasonable period, and, if it leads to a refusal, the decision of refusal must be open to challenge before the courts.

As Genscher puts it⁸⁷:

*“Europe must make its contribution to co-operative regionalism which, unlike confrontational regionalism, does not merely repeat at a higher level the old policy of rivalry between nation-states. A world economy based on multilateral principles is a decisive precondition for the creation of a co-operative and peaceful order. That’s why the Single Market’s further consolidation should not be allowed to lead to new forms of protectionism.”*⁸⁸

⁸⁶ Case C-390/99 Canal Satélite Digital SL v. Administración General del Estado at para. 30

⁸⁷ SH. D. Genscher, *Responding to challenges of globalization*, in L. Cockfield, J.M Cuevas, H.D Genscher, T. Kannisto, M. Monti, L. Soudek, S. I. Valliance, K. von Wogau, *Is the Single Market Working*, The Philip Morris Institute for Public Policy Research, November, 1996

⁸⁸ See *Ibid.*

⁸⁹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, *OJ L 376*, 27.12.2006, p. 36–68

⁹⁰ Unless pass non-discrimination, proportionality and necessity test

⁹¹ Case 120/78, Rewe - Zentral AG v. Bundesmonopolverwaltung für Branntwein, 1979 E.C.R. 649

⁹² See W. Nassal, WM 1994, 1645, 1646

⁹³ See ECJ judgment of 29/04 1982, Case 17/81 Pobst & Richarz KG v. Hauptzollamt Oldenburg, (1982) ECR 1331, at para. 12

6. Introducing harmonisation measures and codification of the case law at EU level for services and establishments

The ECJ’s case-by-case approach is often used as main justification for introducing a regulatory instrument and codification of the current case law in this area. On the other hand, the Directive⁸⁹ means that Member States are not allowed to introduce new requirements and will have to notify the Commission.⁹⁰ Then, the Commission will be able to request removal.

The historical position of the European Court of Justice is clear; it is the final arbiter of the validity of European Law. The ECJ plays an active role and the most important principles of the EC law, such as the principle of mutual recognition itself,⁹¹ have been established by the ECJ. All national cases whose outcome depends on the interpretation of EC law are referred to the ECJ, at the latest in the last instance, if the correct interpretation of the EC is not clear. Indeed, according to the established ECJ case law, it is not the responsibility of the ECJ to decide national cases, but only to interpret EC law.⁹² It is then for the national court to apply the EC law as interpreted by the ECJ to the instant case.⁹³

While national courts may refer questions on European law to the ECJ, it is the ECJ that will then finally decide. There is always a danger that the national courts may not get things right, or will adopt a narrower perspective than the ECJ may have taken.

This is something of which the national courts are also aware:⁹⁴

*“Sitting as a judge in a national court, asked to decide questions of Community law, I am very conscious of the advantages enjoyed by the Court of Justice. It is a panoramic view of the Community and its institutions, a detailed knowledge of the Treaties and of much subordinate legislation made under them, and an intimate familiarity with the functioning of the Community market which no national judge denied the collective experience of the Court of Justice could hope to achieve. Where questions of administrative intention and practise arise the Court of Justice can receive submissions from the Community institutions, as also where relations between the community and the Member States are in issue. Where the interests of the Member States are affected they can intervene to make their views known...”*⁹⁵

In the introductory text of the Services Directive⁹⁶ it is stated that a competitive market in the services sector is essential in order to promote economic growth and create jobs in the European Union.

Even more, the lack of mutual trust is mentioned as one of the main reasons to create barriers that affect the free movements.⁹⁷

Nevertheless, the Services Directive does not deal with the mutual recognition and the proposed solution is not a substantial change from the previous practise. Hence, the doubt is whether these goals can be achieved with the case law, without applying the mutual recognition.

It seems that the operation of mutual recognition is therefore dependent in practise on the exercise of their discretion by regulatory authorities of the Member States. For example the Directive on the mutual recognition of diplomas⁹⁸ allows the host state to impose compensatory measures, such as an aptitude test of a period of traineeship, where there is a “substantial” difference between the training acquired in another Member State and that required in the host state.⁹⁹ Subsequently, the application of the mutual recognition principle is often hindered by the formal content of the legislation itself, but also by the practical decisions made by the authorities that are in direct contact with the citizens or the economic operators.¹⁰⁰ The legislation provides a basis for an action but the countries often show no suppleness. The mutual trust is again the crucial precondition.

⁹⁴ See Justice Bingham’s remarks in *Commissioners of Customs and Excise v. Samex* (1983) 3 CMLR 194

⁹⁵ See *ibid.*

⁹⁶ See *Ibid OJ L 376, 27.12.2006, p. 36–68*

⁹⁷ See *Ibid OJ L 376, 27.12.2006, p. 36–68*

⁹⁸ Directive 2005/36/EC of The European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255/22, 30.09.2005

⁹⁹ See more in Case 340/89 *Vlassopolu* (1991) ECR 2357

¹⁰⁰ See SEC (1999) 1106, para. 5

7. Conclusion: Encouraging mutual recognition and further development of the Single Market

The Treaty ideals, especially the ones linked to the “free movements” are clearly stated.¹⁰¹ The creation of the Single Market is a major development in the history of the European integration. One interpretation is that the project provided a platform for a major revival of European integration itself. The motivation behind the project is various, but common to all of them was to give the EU a new relevance to meeting the economic challenges of the era.¹⁰²

The corollary of the Single Market upon economic and political actors takes time to become clear, so that much of the manoeuvring for power and control in the market will often change tactics during the years. The Internal Market is not new; it is merely a re-formulation of the existing treaty goals. In that respect it should have much to do with “policy learning”: learning from the failures of the Old Approach¹⁰³ and the lessons from the *Cassis*¹⁰⁴ judgement.

National authorities need to make sense of the regulatory history of a good or a service or a worker within their own domestic processes and that should stimulate a bureaucratic learning process as how other systems regulate rather

than acceptance or rejection. Mutual recognition shall be the tool of establishing mutual trust, information sharing and cooperation between Member States.¹⁰⁵

The White Paper¹⁰⁶ set forward a strategy for completing the internal market that was driven by an attack on barriers and obstacles. In consequence, it did not follow the division of labour within the Treaty of Rome of separating out the so-called four freedoms (of goods, services, labour and capital). The initial idea seemed to be that there was not a different approach of opening the markets for the different categories of the free movements or having a different approach to mutual recognition. Rather, it used the attack on frontiers and barriers as a specific strategy. Lord Cockfield justified this approach in the following terms:¹⁰⁷

“If the Community was to become a United Europe...the frontiers and the controls associated with them would have to go. It is useless simplifying the controls and leaving the frontiers in place. As long as the frontiers are there they will attract controls: each control will be the excuse for some other control.”

The democratic strength of the new and enlarged Europe will have to rest not only on its Institutions but perhaps more on the values that it holds. If citizens are to feel that they have a stake, they must trust

¹⁰¹ Under: Title I. Free movement of goods & Title III. Free movement of persons, services and capital

¹⁰² See more: K. Armstrong & S. Bulmer, *The Governance of the Single European Market*, Manchester University Press, 1998

¹⁰³ The old approach directives define the essential requirements that products must meet, when they are put on the market, but also the technical specifications of how to do so, are included.

¹⁰⁴ *Ibid*, See Case 120/78

¹⁰⁵ See more: G. Majone, *Mutual recognition in Federal Type Systems*, EUI Working Paper SPS No. 93/1

¹⁰⁶ Completing the Internal Market: White Paper from the Commission to the European Council (Milan, 28-29 June 1985), COM (85) 310 final, 14 June 1985

¹⁰⁷ See more: Lord Cockfield, *The European Union: creating the single market*, Wiley Chancery Law, London, 1994

the values and objectives of European Integration, trust the procedures, trust the people responsible for carrying them out and above all, the judicial protection provided within the Union.

The shift should be in the direction of removing the gaps and differences between the Member States, rather than focusing on instruments for power control. An open market may have an impact on the weaker economies that could suffer in the increased competitiveness of more open markets. As Dehousse¹⁰⁸ argues, "market integration has to be accompanied by improvements in social and economic cohesion, if it was to be politically acceptable." Similarly, Armstrong¹⁰⁹

notes that the removal of barriers to trade through mutual recognition can create positive trade possibilities for states with efficient production, while less efficiently producing states face the prospect of domestic production being displaced by competition, which may need to be cushioned through negotiations of Structural Funds.

The international trade between the EU and third countries makes it even more important to invest in this area and to find a structured and systematic approach to respond effectively to all the threats by reinforcing the synergy between the existing infrastructures and resources at EU and national level, as well as international organizations.

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MIGRATION EFFECTS OF ROMANIA'S ACCESSION TO THE EU: THE CASE OF MOLDOVA

Adrian Pop*

Abstract. *The paper aims to assess the main migration effects upon Romania following its accession to the EU, with a special focus on Moldova as Romania's immediate neighbour and ENP partner state at the EU Eastern border. It relies on key findings drawn from current literature in the field, statistics provided by the Ministry of Interior and Administrative Reform of Romania, and personal interviews of the author with relevant authorities and experts both in Romania and Moldova. The paper surveys the major source areas and countries for irregular migration affecting Romania, the methods and routes used in irregular migration, various aspects of Romania's visa policy towards Moldova, the main features of the process of regaining Romanian citizenship by Moldovan nationals and the most important characteristics of migration from Moldova to Romania. The paper also introduces a number of recommendations on regulating labour migration, combating irregular migration and organized crime, control procedures at border checkpoints, visa policy, and dissemination of information, whose aim is to help improve the migration policies of Romania, Moldova, and Ukraine as well as their cooperation from a cross-border perspective.*

Keywords: *irregular migration, labour migration, circular migration, visa policy*

Major source areas and countries for irregular migration affecting Romania

Located in South-Eastern Europe, Romania is both a transit country and, to a much lesser extent, a destination country for migrants. For majority of migrants, Romania is just an intermediate step on the way to Western Europe.

In order to forego mandatory visa application process, many foreign citizens enter Romania illegally. Lower-income persons have used falsified documents in order to obtain travel documents or the authorization for stay in Romania as

a transit or destination country. Others have crossed Romanian borders illegally, with the help of escorts or by hiding in transportation.

In order to save the effort of crossing several countries and to speed up illegal entry in the Schengen zone, migrants apply for the refugee status in Romania. After staying for some time in Romania, they travel further to the West, aiming to reach mainly Spain, Italy, and Germany. The EU has asked repeatedly for a common European asylum policy that would discourage the practice of "shopping in search for asylum". Under this practice

* **Adrian Pop** is Professor of International Relations with the Faculty of Political Sciences at the National School of Political and Administrative Studies in Bucharest. His main areas of expertise are CFSP and ESDP, ENP, EU policy in the area of Freedom, Security and Justice, EU-NATO security relationship, EU and NATO enlargement, and regional cooperation in the Black Sea region and South-Eastern Europe.

E-mail: apop1999_2000@yahoo.com.

the same individual files multiple asylum applications in various EU member states hoping that complicated and sometimes contradictory regulations for processing the asylum applications will augment her/his chances of success. In Romania, before EU accession, the number of applicants for refugee status has continually decreased from 544 in 2004 to 485 in 2005 and to 381 in 2006.

The incidence of illegal crossing of Romanian borders increased from 2004 to 2005 and then significantly decreased from 2005 to 2006. The most sought-after borders for entering Romania were those in the East and South. Legal crossings prevailed at the Southern border. By contrast, many border crossings at the Eastern border were illegal, probably, due to the involvement in these activities of organized criminal groups from the Russian Federation and other CIS countries. Although in 2004 there were no registered illegal crossings by foreign citizens at the northern border, from 2005 to 2006 the number of such almost quadrupled.

Major source regions and countries for irregular migration to or through Romania include:

- Middle East: Iraq, Iran, Syria, Lebanon, Jordan, Palestine, Yemen, Kuwait, Israel, Egypt, and Turkey;
- East Asia: China;
- Far East (South Asia): India, Pakistan, Bangladesh, Nepal, and Sri Lanka;
- Africa: Somalia, Nigeria, Angola, Algeria, Burkina Faso, Ivory Coast, Burundi, Congo, Democratic Republic of Congo (Zaire), Cameroon, Djibouti, Eritrea, Ethiopia, Guinea, Libya, Liberia, Morocco, Rwanda, Senegal, Sierra Leone, Sudan, Tunisia, Togo, Mauritania, Zimbabwe, and Malawi.

Other sources of immigrants seeking asylum in Romania are:

- The former Soviet area: Moldova, Ukraine, Georgia, Armenia, Belarus, Kazakhstan, Uzbekistan, and the Russian Federation;
- South Eastern Europe: Bosnia and Herzegovina, Serbia, Montenegro, Former Yugoslav Republic of Macedonia (FYROM), Albania, Bulgaria, Greece, and Italy;
- Central America: Cuba;
- South America: Bolivia, Colombia, Peru, and Venezuela;
- North America: USA.

Further analyzing the source regions and countries for irregular migration to Romania, whereby migrants apply for the refugee status, during three consecutive years (2004-2006), one reaches the following conclusions:

- In the top three of ex-Soviet countries, Georgia takes the first place, followed by the Republic of Moldova;
- Iraq leads in the top three Middle Eastern countries of origin, with a peak in 2005, followed by Turkey at a considerable distance;
- Among East Asian countries, China registered the biggest number of asylum seekers, with a peak in 2004;
- Although in 2004 the leading source countries among the Far East (South Asian) countries were India, Pakistan, and Bangladesh, these states have registered a downward trend in the two following years;
- Asylum seekers from the South Eastern European countries are rather sporadic, and asylum applications of persons from Bulgaria, Bosnia and Herzegovina, FYROM, and Greece were registered only in 2006;
- Somalia leads the top of the African countries, with a peak in the

number of asylum seekers in 2006, followed by Nigeria and Liberia, with peaks in the number of asylum seekers in 2005;

- There were only a limited number of asylum seekers originating from the Americas, due to factors such as distance, the well-developed economy of North America, and the availability of other, more promising, immigration options.

The comparative analysis of statistical data from 2004 – 2006 on the countries of origin of asylum seekers in Romania reveals the following:

- Iraq is the number one country of origin in 2005 and 2006;
- China, which was the leading country of origin in 2004, was in the third place in 2005 and 2006;
- Somalia was in the second place in 2006, as compared with the fifth place in 2004 and the eighth place in 2005;
- The Republic of Moldova occupied the eleventh place in 2004 and 2006 but was no longer in the top 11 countries in 2005;
- India, Nigeria, Liberia and Bangladesh were among the top 11 countries of origin in 2004 and 2005, but

in 2006, there were no asylum seekers from these countries.

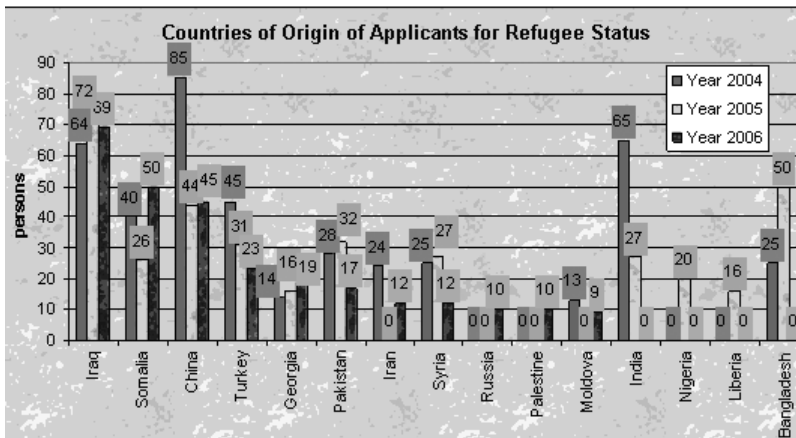
All in all, the states generating the majority of migrants to Romania are Iraq, Bangladesh, China, Pakistan, Syria, Somalia, and Turkey.

Methods and routes used in irregular migration

Irregular migrants to Romania commit illegal border crossings through the green border or border checkpoints and attempt to cross the border illegally by using forged passports and visas or hiding in transportation.

At present, the main routes for irregular migration through Romania are:

- The Asiatic Route: Republic of Moldova-Romania-Hungary-Austria-Western Europe;
- The African Route: Citizens of countries with high emigration rates, for instance Somalia, reach Romania by plane and target Western Europe;
- The Kurdish Route: Turkey (mainly Kurdish regions) - Bulgaria - Romania - Austria - Germany - The Netherlands or, as a variant, Turkey (mainly Kurdish regions)- Bulgaria -



Source: Ministry of Interior and Administrative Reform of Romania

Romania - Serbia - Italy/Spain.

In addition to these three main routes, there are five secondary routes:

- China - Russian Federation - Romania - Western European countries;
- Iraq-Turkey - Romania - Western European countries;
- India -- Republic of Moldova-Romania-Western European countries;
- Romania - France - Spain - UK;
- Republic of Moldova/Ukraine-Romania-Western European countries.

According to a study issued by the Romanian Border Police in 2007, there are certain particularities regarding the methods and routes of various irregular migrants.

For example, the *modus operandi* of migrating Chinese citizens is characterized by:

1. Legal entry through the "Henry Coanda" airport border checkpoints upon presentation of valid temporary stay visas;

2. Illegal crossing through the green border during a legal stay by the following routes:

- Romania-Bulgaria/FYROM - Greece - Italy;
- Romania - Serbia - Bosnia - Croatia-Italy/Germany;
- Romania - Hungary - Austria - Germany.

Typically, the *modus operandi* of ethnic Kurdish migrants from Turkey entails:

1. Legal entry upon presentation of temporary stay visas through the "Henry Coanda" airport border checkpoints or border checkpoints in Southern Romania;

2. Illegal departure through the green border during a legal stay along Romania-Hungary-Austria-Germany route.

Persons of Afro-Asiatic origin undertake the following:

1. Enter legally upon furnishing temporary visas through the "Henry Coanda" airport border checkpoints;

2. Enter illegally through the green border in the East or South and claim refugee status;

3. Illegally depart through the green border by the following routes:

- Romania-Hungary-Austria-Germany;
- Romania-Serbia-Bosnia-Croatia-Italy.

The *modus operandi* of Moldovan citizens sets itself apart by the following characteristics:

1. Legal entry only through the checkpoints for the international traffic at Romania's Eastern border;

2. Illegal departure through the green border between Romania and Hungary or Romania and Serbia or through border checkpoints hiding in transportation or by presenting falsified passports and visas. The following routes are used by migrants:

- Romania - Hungary - Slovakia - Czech Republic - Germany;
- Romania - Hungary - Austria - Germany;
- Romania - Serbia - Bosnia - Croatia - Italy.

Migration effects of Romania's accession to the EU

Following the latest EU enlargement, the EU external borders with Serbia, FYROM, Ukraine, and Turkey became more extended. A new external border now stretches to Moldova, and the Black Sea border makes the Southern Caucasus countries close neighbours. When the new Member States join the

Schengen zone, land borders inside the EU will likewise change. Changes in the EU borders trigger changes in migratory routes, the abandonment of the existing routes and emergence of new ones. New routes appear when the increased security by the enforcement agencies tackling illegal immigration and organized crime eliminates previous routes. In addition, in recent years migratory flows have increasingly diversified, and new migratory flows are emerging alongside the traditional and relatively long-standing ones. In this context, migration is more difficult to manage and the EU Member States seek for solutions by conducting cross-border dialogues and cooperation with and within the partner regions.

The EU enlargement process is reshaping the European migration space. According to some evaluations, between 60 and 70 percent of irregular migrants are reaching Western Europe through Ukraine. Since Ukraine's Western border has become much harder to cross after Romania's accession to the EU, and its Eastern and Northern borders are still more or less "porous", a great number of irregular migrants are likely to stay in Ukraine and Moldova. Since the economic situation in the countries of origin of irregular immigrants bears little signs of significant improvement, trafficking, organized crime, and irregular immigration are likely to remain a major security concern for Moldova, Ukraine, Romania, and the EU at large.

The main consequences of Romania's accession to the EU for migration include:

1. Increase in the number of irregular migrants along the Moldova-

Ukraine-Slovakia-Austria-Italy route.

2. Augmentation of migratory waves from the ex-Soviet region, especially from Georgia, Moldova, Azerbaijan, and Kazakhstan.

3. Development of networks of Romanian identification counterfeiters. A case in point is the one based at Chişinău airport with branches in Budapest and Frankfurt am Main. This network was discovered and destroyed by the Moldovan police.

4. Increase of migratory flows from Asia, especially from China, as Asiatic migrants seek new routes to the EU via Africa, the Mediterranean, and the Atlantic.

5. Inclusion of Romania and Bulgaria in the East Mediterranean route. Key transit and destination countries of this route are Cyprus and Malta. Already up to 120,000 migrants cross the Mediterranean Sea and enter the EU illegally each year, in spite of the EU's FRONTEX operation.

Partially, these trends have been confirmed by data on migrants provided by the Ministry of Interior and Administrative Reform of Romania. In the first quarter of 2007 the number of migrants in Romania having as their countries of origin Moldova, Turkey and China grew by 4 percent reaching 23,577 persons, i.e. 44 percent of the total foreigners residing in Romania.

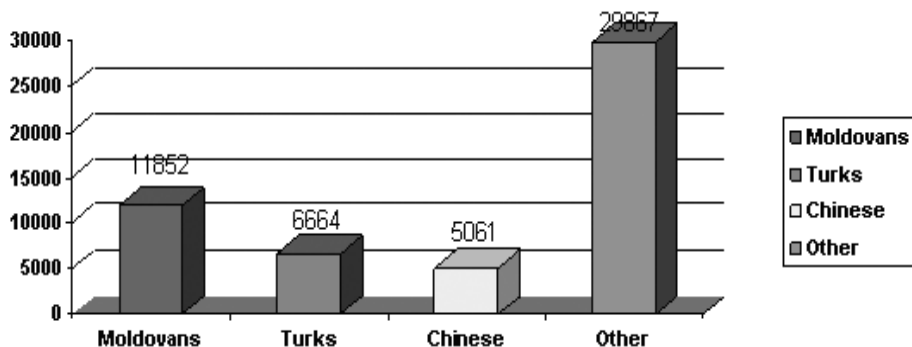
Out of the total number of foreigners residing in Romania, the greatest number (11,852 persons or 22 percent) were Moldovan citizens, to be followed by Turkish (12 percent) and Chinese citizens (9 percent).

MIGRANTS IN ROMANIA FROM MOLDOVA, TURKEY, AND CHINA IN THE FIRST QUARTER OF 2007



Source: Ministry of Interior and Administrative Reform of Romania

MIGRANTS IN ROMANIA FROM MOLDOVA, TURKEY, AND CHINA IN THE FIRST QUARTER OF 2007



Source: Ministry of Interior and Administrative Reform of Romania

All in all, the three foreign communities – Moldovan, Turkish and Chinese – comprised the biggest foreign communities residing in Romania in the first quarter of 2007.

Main aspects of Romania's visa policy towards Moldova

Before Romania's accession to the EU, Moldovan citizens enjoyed visa-free travel to Romania, which created an incentive for irregular migration to Western Europe.

Romania's accession to the EU triggered a series of changes in Moldovan citizens' travel regime in Romania, including the visa regime. On October

20th, 2006, a bilateral agreement between the governments of Romania and Moldova on the travel regime of their citizens was signed in Bucharest. The date of the beginning of the implementation of the agreement coincided with Romania's accession into the EU that took place on January 1st, 2007. The principles on which the agreement was based aimed at setting up a simple, flexible and asymmetric travel regime to the effect that the Moldovan citizens could travel in Romania with visas granted free of charge, and Romanian citizens could travel in Moldova without visa.

The main stipulations of the agreement are as follows:

- Romania grants visas free of

charge;

- Visa-free travel regime for Moldovan holders of diplomatic and work passports for a period up to 90 days, and for those working in diplomatic missions and their family members, for the entire duration of their mission to Romania;

- Visa-free travel regime for Romanian citizens for a period up to 90 days during six months from the date of the first entry;

- Exempting – on the basis of personal identifications and records in log books – certain categories of Moldovan citizens from the obligation of getting visas, including plane and ship crew members;

- Granting visas valid for one year for certain categories of Moldovan citizens, including railway workers, bus drivers, and persons who travel on the basis of bilateral agreements in science, technology, education, culture, art, religion, and sports;

- Granting visas valid for five years for Moldovan business people who own investments in Romania;

- Granting urgent visas to Moldovan citizens who travel to visit gravely ill family members, close relatives, or other persons in need of urgent medical assistance. Urgent visas granted also to Moldovan citizens travelling to a funeral of a deceased family member or a close relative, or to visit graves of deceased relatives; and to members of rescue teams in the event of catastrophes or other exceptional situations;

- Ensuring speedy visa processing.

In terms of flexibility, the new visa regime between Romania and Moldova is comparable, to a certain extent, with the previous Polish and Hungarian agreement. It remains to be seen whether

a third, mixed type of agreement, comprising visas of limited territorial validity and long-term national visas will be implemented after Romania becomes a fully-fledged Schengen state.

Evaluation of the current application process for a Romanian visa

In recent years, in order to process visa applications coming from Moldovan citizens or companies, the consular section of the Romanian Embassy in Chişinău increased the number of its employees and worked extended hours, sometimes on Saturdays and Sundays.

Throughout spring 2007, for instance, around 400 persons – up from 150 persons before January 1st, 2007 – could sign in daily in order to be scheduled for visa processing and the time span between the date of application and the date of the actual processing of the applications by the consulate was stabilized at seven working days.

However, the consular section of the Romanian Embassy in Chişinău is unable to process all visa applications. For that reason Moldovan citizens continue to apply at the Romanian Embassy in Kyiv and the general consulates in Cernăuţi and Odessa.

Moreover, the application process per se is still cumbersome. It is very difficult to schedule a visa interview. Moldovan citizens and economic agents queue for many hours in front of the gate to the consular section. Often, the visa-online system cannot be accessed at all. Moreover, neither the recommended time span of 24 hours for entering a visa into the system nor the required time span of three working days for issuing a visa is met.

Nevertheless, there is hope that the

prospective opening of consular offices in Cahul and Balti could considerably ease the visa application process.

Regaining Romanian citizenship by Moldovan nationals

Romania offered Moldovan citizens the possibility of obtaining Romanian citizenship without any residence requirement. Several thousands of Moldovan citizens took advantage of that opportunity at the end of 2000 and the beginning of 2001. That trend generated discontent in the Moldovan government. According to unofficial sources of information, more than 200,000 citizens of the Republic of Moldova hold Romanian citizenship and more than 50,000 hold Russian citizenship. The procedure for granting the citizenship, based on the confirmation of the fact that an ancestor of the applicant was a Romanian citizen, caused a diplomatic scandal between Bucharest and Chişinău.

The process of regaining Romanian citizenship by Moldovan nationals is regulated by the Law on Romanian citizenship no. 21/1991 (republished). That Law provides that persons who lost Romanian citizenship and their descendants are allowed to get the Romanian citizenship by request, even if they are citizens of other states and do not reside in Romania. Article 10 of the Law, introduced in 2003 by an Emergency Governmental Injunction (no. 42/2003), stipulates that the regaining of Romanian citizenship applies to individuals who, before December 22, 1989, lost it due to the reasons that are not imputable to them or against their will. These dispositions also apply to individuals' descendants, up to the second level of kinship (nephews or daughter/son). Moldovan nationals

applying for the Romanian citizenship should present a written document certifying that her/his hometown used to be on the Romanian territory up until August 1940. Applications for the regaining of the Romanian citizenship are processed over approximately 12 months.

Preparing for the EU accession and confronted with the fact that Moldova did not allow double citizenship until recently, in 2003, by the Law no. 165/2003, Romanian authorities decided to suspend, for a period of six months, the regulations of the Citizenship Law that allowed Moldovan citizens to get Romanian citizenship.

In spring 2007, the Ministry of Justice submitted to the Ministry of Foreign Affairs a draft for modifying the Law on Romanian Citizenship. The EC manifested a certain concern about the proposed amendments to the law. More precisely, the EC was concerned about the fact that a significant proportion of the Moldovan nationals applying for Romanian citizenship under the revised law would not be required to set up their residence in Romania. In the EC's interpretation, those individuals, although Romanian citizens and for that matter European citizens, would not be under the territorial jurisdiction of Romania and thus would not be "controlled."

Romanian authorities are intent that the new legislation undoes the citizenship consequences of the historical injustice triggered by the Soviet takeover of Bassarabia, Northern Bukovina, and Herta county in June 1940. Furthermore, Romania considers that it is in its major interest that those who are the catalysts for democratic change, progress and prosperity in Moldova - young persons who studied in Romania

and/or undertook specializations in the West - should have a chance to make good use of their capacities within and for their community. The insertion of the condition of legal stay in Romania would encourage labour migration, brain drain, and fraudulent marriages that already heavily affect the Republic of Moldova.

Mention should be made of the fact that the new legislation is in accordance with the internationally recognized norms and standards. Similar principles regarding the regaining of citizenship are to be found in the legislation of other states, including the Federal Republic of Germany, Bulgaria, the Czech Republic, Finland, Greece, Ireland and Poland.

On September 6th, 2007, new legislation modifying the Law on Romanian citizenship (1991) was approved by an Emergency Governmental Ordinance. The new legislation simplifies the process of granting, regaining, and loss of Romanian citizenship, reduces the intervals during which the applications for Romanian citizenship are considered, and facilitates the exchange of information between the applicants and the authorities.

The first new feature relates to the composition of the Commission on Citizenship and its working status. Until the implementation of the Emergency Governmental Ordinance, the Commission on citizenship included judges from the Bucharest Tribunal who convened occasionally, usually once or twice a week, to review citizenship cases. According to the new legislation, the Commission on citizenship has permanent activity and is composed of juridical staff working as magistrates from the Ministry of Justice.

The second change refers to the body that decides on the applications

for citizenship. Until recently, the government granted citizenship by issuing governmental decisions at the proposal of the Ministry of Justice. The process involved a complex procedure of drafting and endorsement, and it lasted weeks and even months. The current legislation changed that and it currently provides that Romanian citizenship be granted by the order of the Minister of Justice upon proposal from the Commission on Citizenship.

The new legislation also simplifies the procedure of filling in the citizenship file. Under the former system, in case not all the required documents were included in the citizenship file, the Commission on Citizenship would invite the applicant to submit them in person. Failure to do that for two consecutive intervals resulted in the rejection of the application. Under the new legislation, the applicant could complete the citizenship file by mail, within six months of receiving such a request.

In addition, the Emergency Governmental Ordinance shortens the period during which the oath of loyalty to Romania should be carried out from six to three months maximum. Thus, the citizenship is obtained on the date of presenting the oath of loyalty to Romania, a ceremony which is to take place three months after the publication in the Official Monitor of the order of the Minister of Justice who grants the citizenship. When the citizenship applicants are handicapped, ill, or otherwise unable to attend the ceremony, the citizenship is obtained starting with the date of the publication in the Official Monitor of the order of the Minister of Justice granting the citizenship.

The statistics of the Romanian Ministry of Interior and Administrative Reform

speak clearly about the amplitude of the phenomenon of getting or regaining Romanian citizenship by Moldovan nationals. The number of citizens from Moldova and Ukraine who obtained or regained Romanian citizenship between January 1st, 1990, and April 20th, 2007, is 105,030, out of whom 101, 656 are Moldovan nationals and 3,374 are Ukrainian nationals. During the same period of time, the number of citizens from Moldova and Ukraine who obtained a Romanian passport reached 104,071, out of whom 91,212 are Moldovan nationals and 12,859 are Ukrainian nationals. The

involved in the new wave of labour and irregular migration to the West. However, the process of processing the requests for citizenship submitted to the Romanian authorities is extremely slow.

It is noteworthy that in 2002 the Law on citizenship was amended. No applications have been examined during the administrative and legislative procedure of amending the draft. The amendments that entered into force in 2002 have had a significant impact on the rigorousness and the dynamic of the process, as the figures from 2003 onward show. However, for the first half of 2003,

THE DYNAMICS OF PROCESSING THE REQUESTS
FOR REGAINING ROMANIAN CITIZENSHIP
SUBMITTED TO THE ROMANIAN AUTHORITIES

Year	Number of requests submitted to the Romanian authorities for regaining Romanian citizenship	Number of requests positively solved by the Romanian Government
1991-2001	95 213	94 916
2002	3 060	0
2003	16 490	6
2004	5 107	257
2005	2 692	1 591
2006	3 178	488
2007	1 382	87
TOTAL	127 122	97 345

Source: Ministry of Interior and Administrative Reform of Romania

number of valid passports for individuals born in the Republic of Moldova and Ukraine reached 61,724, out of which 56,246 belong to Moldovan nationals and 5,478 to Ukrainian nationals.

The huge number of Moldovan nationals who want Romanian citizenship is to be ascribed to the difficulties of getting the Schengen visa and to Romania's introduction of visa regime for Moldovans. Many of the applicants are

the process of examining applications was suspended.

At present, due to the significant increase in number of applicants for Romanian citizenship, the Romanian consulate in Chişinău is confronted with a gap of approximately five years between the date of application and the scheduling for filing the citizenship dossier at the consulate.

Characteristics of migration from Moldova to Romania

General Characteristics

Moldovan migrants enter Romania legally, carrying legitimate personal passports and visas legally obtained at Romanian diplomatic missions and consular offices abroad. However, they try to exit Romania illegally over the Western or Southern border, over the green border, or through border crossing points, carrying fake Romanian identifications or identifications belonging to other persons or hiding in transportation.

After the introduction of the visa regime for Moldovan citizens travelling to Romania, "well-wishers," or persons who offer visa applicants fake Romanian identifications or passports, or identifications and passports of other persons, for a high fee ranging from €2,000-2,500, have suddenly appeared around the Romanian Embassy in Chişinău.

Throughout 2006-2007, Moldovan citizens have carried out many illegal crossings of Romania's Western border. Networks of traffickers have facilitated illegal crossing of Romanian borders by Moldovan migrants in three main ways:

- By providing fake Romanian identity cards/passports;
- By providing original Romanian identifications; Moldovan migrants then alter their appearance in order to resemble the identification's lawful holders as much as possible;
- By hiding the migrants in transportation, mainly T.I.R. (Transport International de Route) trucks.

By comparing the main features of the irregular Moldovan migration to Romania

in the first quarter of 2007 with that in the first quarter of 2005 and 2006, one could conclude that:

- At least 20 Moldovan citizens tried to enter Romania illegally by hiding in transportation. No such cases were registered in the corresponding periods of 2005 and 2006;

- The number of Moldovan citizens who tried to exit Romania illegally by hiding in transportation has risen, after a short-lived downward trend, and has reached 28 persons (divided in 2 groups of 14 persons each), as compared with 18 persons in the first quarter of 2005 and 14 persons in the first quarter of 2006;

- The number of illegal crossings over the green border has significantly diminished and constitutes 20 persons, as compared to 60 persons in the first quarter of 2005 and 53 persons in the first quarter of 2006, i.e. approximately three times less;

- The number of Moldovan citizens who have used fake documents in order to illegally exit Romania has risen to 25 persons, as compared to 19 persons in the first quarter of 2005 and 20 persons in the first quarter of 2006. There has also been a change in the type of falsified documents used by Moldovan migrants: Whereas before Romania's accession to the EU, Moldovan migrants used falsified Romanian passports, after January 1st, 2007, they have typically used falsified Romanian identity cards in order to exit Romania illegally.

Modus Operandi

Considering the methods employed by irregular Moldovan migrants in Romania, several aspects should be highlighted:

A. *Entering Romania through the Eastern border*

- *through border checkpoints*
 - A great number of Moldovan citizens enter Romania legally using visas obtained legally at Romanian diplomatic missions and consular offices abroad.
- *through the green border*
 - The main categories of Moldovan citizens who enter Romania illegally include those who are under interdiction to enter Romania and those who intend to commit criminal acts in Romania, work in Romania unofficially, or travel illegally to other EU member states.

B. *Exiting Romania through the Western and South-South-Western borders*

Typically, Moldovan citizens aspire to exit Romania through its borders with Hungary and Serbia. After entering Romania illegally through the Eastern border, they transport themselves to Romania's Western and South-South-Western borders by the following means:

- By train, from Iasi/Galati to Bucharest, where they stay for 1-2 days (often for getting forged passports) and then from Bucharest to Arad/Oradea/Timişoara.

- By car, with the help of Romanian transportation companies, cars of fellow countrymen or taxis, which organize "pirate" runs to Arad, Oradea or Timişoara.

- *through border checkpoints*
 - After entering Romania, Moldovan citizens attempt to exit it illegally with the help of go-betweens – Romanian or Moldovan citizens – by using Romanian passports, falsified Romanian identification cards (and sometimes also driving licenses, birth certificates and car documents) or identification cards

belonging to other persons.

- Alternatively, irregular Moldovan migrants hide themselves in vehicles carrying various goods.

- *through the green border*

- Once they reach Western or South-South-Western border, the Moldovan migrants are taken over by escorts as agreed beforehand over the phone. Intermediaries, who tend to be Moldovan citizens, members of the network, or those who have crossed illegally Romania's borders on their way to Western Europe using the same network, facilitate crossings.

- Moldovan migrants attempt to exit illegally through Romanian-Hungarian and Romanian-Serbian borders. More recently, some of them have also tried to cross illegally through Romanian-Bulgarian border in the vicinity of Baneasa, Constanta county.

Routes

- Republic of Moldova – Romania – Hungary – Italy;
- Romania – Hungary – Austria – Slovenia – Italy;
- Republic of Moldova – Romania – Bulgaria.

Among the internal routes, Moldovan migrants used most frequently the following ones:

- Galati – Bucharest – Brasov – Cluj Napoca – Satu Mare;
- Iasi – Roman – Moisei – Sighetu Marmatiei – Baia Mare – Satu Mare;
- Iasi – Bucharest – Arad;
- Dornesti – Suceava – Constanta;
- Bucharest – Timisoara – Oravita.

Overall, in the first quarter of 2007, 11,852 Moldovan citizens were present in Romania, out of whom 11,693 had

temporary residence status and 159 had permanent residence status. Additionally, five Moldovan citizens applied for refugee status in Romania.

Stated Purposes

Obtaining education is the main purpose of Moldovan citizens' residence in Romania (68.5 percent). In 2007 over 8,000 persons were enrolled in various training or specialization courses. Almost 95 percent of Moldovan students proved their ethnic Romanian origin and, consequently, benefited from free permits for staying in Romania. Many of them arrived in Romania through the Department for Romanians living abroad. Approximately 50 percent of them were students receiving stipend

member state.

A significant percentage of Moldovan students attempt to get Romanian citizenship during their studies and settle down in Romania. In order to keep the stipends offered by Romanian Government, some Moldovan students, who had obtained Romanian citizenship, applied for residence permits. In addition, Moldovan students work unofficially at various firms – including full-time – or open businesses.

Besides studying, Moldovans travelled or stayed in Romania in the first quarter of 2007 for employment, commercial activities, and family visits.

An upward trend has been noticed for all these categories: incidence of labour employment increased from 510 to 899 cases; incidence of commercial activities

The distribution of Moldovan migrants among different education programmes was as follows:

Secondary School Students	Preparation Year	University Students	Specialization	Ph.D. Students	Total
2,626	8	4,930	377	74	8,015

Source: Ministry of Interior and Administrative Reform of Romania

from the Romanian Government, 25 percent were students financing their education themselves, 24.5 percent were students who did not receive stipend and did not have to pay tuition fees, and 0.5 percent had their studies paid by various companies in Romania or the Republic of Moldova.

When comparing the first quarter of 2007 with the corresponding period of 2006, one can notice an increase of four percent, from 7,687 to 8,015, in the number of Moldovans pursuing training or specialization courses in Romania. This increase can be explained by greater attractiveness of Romania as an EU

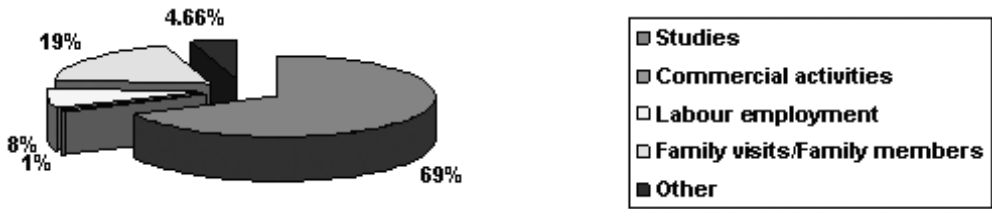
increased from 24 to 54 cases; family visits/family members increased from 1,541 to 2,189 cases.

Overall, in 2007 the officially registered Moldovan citizens working in Romania comprised 15 percent of all foreign citizens employed and holding work permits in Romania.

Dispersion across Romanian Counties

The top ten Romanian counties hosting Moldovan citizens in 2007 were Bucharest, Iasi, Galati, Cluj, Suceava, Timis, Bacau, Brasov, Constanta and Neamt.

PURPOSES FOR MOLDOVANS' TRAVELLING OR STAYING IN ROMANIA IN THE FIRST QUARTER OF 2007



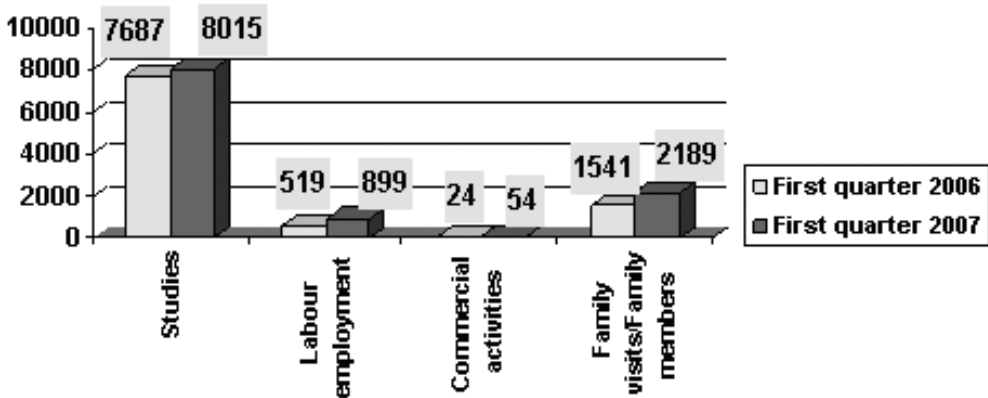
Source: Ministry of Interior and Administrative Reform of Romania

The dispersion among counties of Moldovan citizens who enjoyed temporary or permanent residence status in Romania was as follows:

One can easily notice that the

of Moldovan citizens is located in the counties belonging to Romania's Moldova region. This fact is explained by the region's vicinity with the homeland of Moldovan migrants as well as by their

THE DYNAMICS OF THE PURPOSES OF MOLDOVANS TRAVELLING OR STAYING IN ROMANIA



Source: Ministry of Interior and Administrative Reform of Romania

greatest number of Moldovan nationals is to be found in university centres. The characteristic confirms the fact that the bulk of Moldovan citizens come to Romania to study. Although Moldovan citizens are scattered in every Romanian county – from north to south, and from east to west – with the sole exception of Bucharest (which, as capital, presents a special case), the greatest number

common traditions and customs with Romanians from that part of the country.

Regulations for Moldovan Citizens Leaving Romania

The number of Moldovan citizens who committed illegal acts and received orders to leave Romania in the first quarter of 2007 reached 262 persons,

as compared with 183 during the same period in 2006, marking an increase by 43.2 percent. An upward trend was noticed also in the number of returned Moldovan citizens in the first quarter of 2007, when 94 persons, as compared with 56 during the same period in 2006,

returned to Moldova. That signified an increase by 67.9 percent. By contrast, the number of Moldovan citizens placed in public custody has slightly diminished, from 15 in the first quarter of 2006 to 12 in the first quarter of 2007.

THE TOP TEN ROMANIAN COUNTIES HOSTING MOLDOVAN CITIZENS IN THE FIRST QUARTER OF 2007

No.	County	Number of Moldovan Citizens
1.	Bucharest	2,691
2.	Iasi	2,107
3.	Galati	1,032
4.	Cluj	643
5.	Suceava	484
6.	Timis	417
7.	Bacau	351
8.	Brasov	347
9.	Constanta	334




Source: Ministry of Interior and Administrative Reform of Romania

THE DISPERSION AMONG ROMANIAN COUNTIES OF MOLDOVAN CITIZENS IN THE FIRST QUARTER OF 2007



Source: Ministry of Interior and Administrative Reform of Romania

REGULATIONS FOR MOLDOVAN CITIZENS' LEAVING ROMANIA

Type of regulations	First quarter 2006	First quarter 2007	Trend
Number of orders issued	183	262	
Number of returned persons	56	94	
Number of persons placed in public custody	15	12	

Source: Ministry of Interior and Administrative Reform of Romania

Recommendations

Taking as basis the fact that the main objective of managing migration should be the legalisation of the process and the adequate reintegration of migrants who choose to return to their homeland, the following recommendations aim to help improve the migration policies of Moldova, Ukraine and Romania as well as their cooperation from a cross border perspective. Besides the general recommendations with a regional scope, they include recommendations on regulating labour migration, combating irregular migration and organized crime, control procedures at border checkpoints, visa policy, and dissemination of information.

General recommendations with a regional scope

With regards to migration and related issues at the regional level, the experience could be drawn from the Söderköping and Budapest processes as well as the Migration Asylum Refugee Regional Initiative (MARRI).

The Recommendations of the Regional Round Table of the Pan-European Dialogue on the creation of the

Pan-European Data Sharing Mechanism on Migration should be implemented in partnership with the International Organization for Migration (IOM) and with the support of the EU member states and the European Commission (EC).

In promoting a comprehensive migration policy, particularly in terms of transit migration and trafficking, the Black Sea region is especially important. Given the changes in the EU borders following the enlargement, a special attention should be paid to promoting regional cooperation with and within the Black Sea region on border control and illegal immigration. The cooperation structures in the Baltic Sea can serve as a source of inspiration when assessing the feasibility of launching a regional cooperation platform. In an effort to improve migration management, the platform could entail the cooperation of the relevant EU Member States, EU agencies, other countries bordering the Black Sea, and regional organizations and initiatives such as Regional Center for Combating Transborder Crime (SECI Center), Black Sea Economic Cooperation Organization (BSECO), and the Black Sea Forum. In this context, information sharing should be promoted and patrol and surveillance activities should be

coordinated, especially by creating joint Romanian-Bulgarian Black Sea patrols. The EU contributions can range from training (twinning) of law enforcement officials to cooperation with FRONTEX and EUROPOL, and from issues such as social protection and training of officials in labour matters to rehabilitation of victims of trafficking.

Recommendations regarding regulating labour migration

Moldova should strengthen the capacities of the National Agency for Employment and its local territorial centres in the area of labour migration management, controlling overseas employment, market research, professional reintegration upon return, vocational and enterprise start-up trainings, and management of employment mediation services in the domestic labour market.

The National Agency for Employment should maintain a constant dialogue with social partners (employers, trade unions, and NGOs) and private employment agencies that facilitate employment abroad for Moldovans.

In order to improve the regulation of migration, the Moldovan authorities should focus on establishing proper mechanisms for maximizing its benefits for all parties involved. Circular migration schemes deserve special attention.

Circular migration of Moldovan citizens settled in the EU should be encouraged and actively promoted by the Moldovan Government. Towards that end, the government should undertake the following measures: strengthen the capacities of the Information Centres for Moldovan Citizens Abroad in Moldovan diplomatic missions, continue opening

the Moldovan Institutes Abroad, develop monitored programmes for promoting investments by Moldovan citizens working or living abroad in Moldova, and initiating policies and programmes encouraging circularity among members of Moldovan Diaspora in the EU member states, specifically targeting the highly-skilled and well-financed migrants.

Circular migration of Moldovan citizens should be facilitated by concluding bilateral agreements for circular labour migration between Moldova and the relevant EU member states (Spain, Portugal, Italy, France, Greece, etc.); developing bilateral study and training programmes on the condition that the participants will be obligated to return and work in Moldova; launching programmes for reducing the risk and impact of brain drain and reversing the phenomenon; introducing people-to-people exchange programmes; and developing monitored programmes for promoting investments in Moldova by Moldovan citizens working or living abroad; and initiating policies and programmes encouraging circular migration among members of Moldovan Diaspora in the EU member states, specifically targeting the highly-skilled and well-financed migrants.

The Moldovan Government should ensure effective management of circular migration by developing circular migration partnerships between Moldova and EU member states, providing access to the information on legal circular migration to EU member states, finalizing the negotiations with Portugal, Spain, France, and Greece on bilateral labour migration and social protection agreements, and concluding new bilateral agreements on these matters with other EU member states. The Moldovan Government should

also develop effective mechanisms for returning migrant workers by introducing, among other measures, incentives and penalties, establishing a comprehensive and sustainable system for reintegrating returning migrants, developing schemes for enhancing the positive impact of remittances on development by channelling them toward investment/entrepreneurial use, and by ensuring due protection of migrant workers' rights.

The Moldovan Government should continue the dialogue with the EU member states and the EC regarding the creation of the consolidated partnership for facilitating temporary legal migration of Moldovan citizens wishing to study, work, or obtain training abroad.

The EU Member States that offer employment for Moldovan citizens should conclude bilateral agreements on the recognition of studies. Those already concluded, such as the Moldovan-Romanian agreement on the matter, should be consistently implemented.

The Moldovan Government should devise and implement appropriate investment policies, improve business and investment climate, strengthen the regulatory and institutional framework for leveraging migrant remittances for entrepreneurial growth in Moldova, and stamp out corruption and red tape. These measures will give migrants incentives to invest in Moldova money earned abroad. In addition, the Government should introduce measures for co-development by fostering broad development programmes addressing the root causes for migration. In communities of migrants' origin, the government should create economic opportunities by promoting savings and investment of migrant

remittances and local area development. Furthermore, the government should develop EU-Moldova bilateral schemes for social and economic reintegration of the returning migrants through employment referral mechanisms, job counselling and mediation, and assistance in starting small businesses.

The state agency that grants licences to private labour employment agencies should be enabled to exercise full control over their activities. The government should actively promote the establishment of an Association of private labour employment agencies.

Moldova's diplomatic missions abroad should be in charge of social protection of Moldovan migrants. Labour attachés should be set up at Moldova's consular sections. A prerequisite for these initiatives is the opening of new Moldovan embassies in the migration target countries. The Moldovan government should provide support for training consular officials and labour attachés in marketing, social protection, and labour migration opportunities and regulations in the EU member states.

The system of public legal aid for the potential and actual temporary migrant workers in Moldova and abroad should be improved.

Moldovan authorities should work on building capacity of the private sector in helping Moldovan workers find employment or training abroad. Networking and strengthening the legal and administrative framework would help prevent recruitment abuse. Proactive linkage programmes involving the Moldovan Diaspora should be further implemented, too.

Recommendations regarding combating irregular migration and organized crime

The Republic of Moldova should conclude and implement the Agreement on Operational Cooperation with EUROPOL and the Cooperation Agreement with FRONTEX.

In order to help legalize the status of the majority of Moldovan migrants, target countries should negotiate with the Moldovan Government comprehensive agreements introducing grace periods during which migrants would be able to work freely without the need to sort out their status. The Moldovan national readmission system should be strengthened.

A number of measures for controlling immigration to Moldova should be introduced. For instance, the Moldovan Government should require that Moldovan citizens' invitations for foreigners be accompanied by bank deposits provided by Moldovan hosts. These deposits could be used by the Moldovan authorities to cover costs of deportation of foreigners who remain in Moldova beyond authorized stay.

In the counter-trafficking domain in Moldova, the cooperation between the social, judiciary, administrative, customs, police, and migration management authorities and between these agencies and NGOs should be strengthened. The police should monitor job advertisements in order to eliminate the misleading job advertisements made by traffickers. Those who make those advertisements should be prosecuted.

Romania should strengthen its international police and judiciary cooperation by regulating the participation of police officers from Romanian and EU member states in

joint investigations on organized crime activities.

In partnership with the UN and OSCE, IOM and the EU should devise a common multilateral program of combating irregular migration in Ukraine-Moldova-Romania region. IOM and EU should carry out this initiative building on the "lessons learned" throughout the pilot projects on the control of immigration and the management of common border between Moldova and Ukraine and the EU Border Assistance Mission (EUBAM). In implementing such a comprehensive programme, it would be helpful to involve local, national and international NGOs, as well as national think tanks and experts.

The interaction between Romania, Moldova, and Ukraine on combating organized crime should be coordinated within the framework of BSECO. The basis for this interaction should be the supplementary protocol for the cooperation agreement signed by the ministries of interior of the BSECO member states.

In order to complement the readmission agreement concluded with the EU, the Moldovan Government should conclude also readmission agreements with other relevant countries for the migration process involving the Republic of Moldova (Turkey, Syria, Jordan, etc).

The Government should follow up on the international projects, such as the one implemented by the IOM under AENEAS programme. That project promoted prevention of and fight against trafficking in human beings in Ukraine, Moldova, and Belarus and it provided support for return and reintegration of victims of trafficking.

It is necessary to promote twining

projects between the relevant agencies from the EU Member States and Moldova that deal with prevention and fight against illegal migration (such as the Ministry of Internal Affairs) and facilitators of legal temporary labour migration and reintegration of the returnees (such as the Ministry of Economy and Trade, the National Agency for Employment, and the Ministry of Social Protection, Family and Child).

Recommendations regarding control procedures at border checkpoints

Romania, Moldova and Ukraine should actively promote confidence-building measures by instituting common border checkpoints.

Romania must consistently harmonize measures for enforcing the Schengen acquis and management of EU's Eastern border. In order to reach a uniform high level of control, modernization of the equipment and infrastructure along the green and blue borders is required. Other necessary measures include: the acceleration of the preparations for the future participation in the Schengen Information System (SIS II); staffing all remaining border police vacancies until the end of 2009; professional training of contractual agents and new staff in the border police, in accordance with the Police Status Law; strengthening the risk analysis capacity of the border police; and enhancing the surveillance capacity along the Black Sea coast and the Danube, in close cooperation with Bulgaria.

The quality of the EUBAM random checks at the Moldovan-Ukrainian border and the efficiency of the Moldova-Ukraine border guards should be improved. Training for those involved in the border control - border guards, police, customs

controllers, and those administering sanitarian and veterinarian checks - should be more extensive and targeted. Moldova and Ukraine should adjust their border control regulations according to the EU standards for controlling movement of persons and goods. In order to avoid duplication and to improve the coordination, integrated border control system should be introduced. This system should abide by the EU standards, and it could entail experience exchanges and common control teams. Furthermore, EUBAM's experience should be used not only in customs and border management but also in the cooperation on readmission procedures and investigations.

Recommendations regarding visa policy

Fostering a pilot mobility partnership with Moldova, including in particular possibilities for visa facilitation and work permits should be considered a priority by the EU.

Moldova should develop guidelines for implementing the Moldova-EU short-term visa facilitation and readmission agreements.

The activity of the EU Common Visa Application Centre in Chişinău should be expanded in close cooperation between the EU Member States, the EC, and Moldovan authorities by strengthening the consular representation of the EU Member States in Moldova.

Moldova and Ukraine should create common databases listing all visas issued to citizens from the countries that are potential providers of irregular immigrants, registering the travel of stateless persons to and through Moldova and Ukraine, and recording border crossing by all citizens who do

not require a visa to enter Moldova and Ukraine (a special attention should be paid to visa-free travellers from CIS). The list of countries with stimuli for emigration, such as armed conflicts, unfavourable socio-economic conditions, low living standards, and overpopulation, should be constantly updated.

The consular section of the Romanian Embassy in Chişinău should identify solutions for speeding up the visa application process for Moldovan citizens. The following measures may help achieve that objective: enlargement of the physical space of the consular office, facilitation of visa interview scheduling, improvement of security of the on-line visa system, and entering a visa into the visa system within the recommended time span of 24 hours, and granting a visa within the required time span of three working days.

Romania and Moldova should finalize negotiations for opening Romanian consular offices in Cahul and Balti in order to make easier the visa application process for Moldovan nationals.

In order to hamper the regaining of the Romanian citizenship solely for travelling visa-free to the EU Member States, the Department for Citizenship in the Romanian Ministry of Justice should exchange information, consult permanently, and, when the need arises, work in tandem with the relevant foreign embassies in Chişinău and Bucharest for supplemental screening of those applicants for the Romanian citizenship who were previously denied visas to the EU. This initiative will be facilitated by the fact that some EU target countries, such as Italy, which is the third most popular destination for Moldovan migrants, have embassies in Bucharest, but not in Chişinău.

The dialogue on visas between Romania and Moldova should continue. Romania should establish a more flexible visa regime for Moldovan citizens. An example for the visa regime could be the cooperation between Slovakia and Ukraine in resolving their mutual visa problems and special visa provisions granted by Hungary for the ethnic Hungarians from non-EU countries. This regime might include: multiple-entry one-year visas for specialists and children (besides railway workers and bus drivers on frequent runs); three-year visas for individuals who travel under bilateral cultural, scientific, religious, and sports exchange programmes; five-year visas for frequent travellers, including students (besides business persons who own investments in Romania); and special arrangements for those living in the border regions of the two countries.

A roadmap for visa-free travel should be based upon the reasonable application of the EU criteria that were previously applied to Romania and Bulgaria. Moldova and Ukraine should use Romania's experience in developing and implementing the relevant national strategies that will lead to the visa-free travel to the EU in future.

Recommendations regarding information dissemination

Moldovan authorities should organize information campaigns about the opportunities and obligations of the Moldovan citizens emerging from the new visa facilitation and readmission agreements between Moldova and EU.

Moldovan citizens should be informed about the advantages, opportunities, and conditions of the circular and temporary labour migration; procedures ensuring

legal and safe job recruitment and travel; risks posed by illegal migration; required skills and vacancies in destination countries; and admission procedures in destination countries. This information will help increase access for Moldovan citizens to labour markets of the EU member states.

The Moldovan Government should intensify targeted information campaigns on seasonal labour market needs within the EU by strengthening the capacities of the Info Centres for Moldovan Citizens Abroad established near the Moldovan diplomatic missions and continuing the creation of the Moldovan Institutes Abroad.

For an efficient information exchange, Moldova, Ukraine, and Romania should set up a common computerized database

on migration. This database should be integrated within the information resources of the SECI Center in Bucharest, Romania, and coordinated with the information resources of the Black Sea Border Coordination and Information Center (BBIC) in Burgas, Bulgaria.

Awareness campaigns among potential victims of trafficking in human beings should be intensified in Moldova. They should involve stakeholders from the government, inter-governmental international organizations (International Organization for Migration, International Labour Organization) and non-governmental international organizations (the International Centre "La Strada", Winrock International), as well as mass media.

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LA DIFFERENCIATION - « SOLUTION MIRACLE » POUR L'AVENIR DE L'UNION EUROPÉENNE?

Bogdana Petrică*

Abstract. *The differentiation has always accompanied the process of integration and it became more evident with the succession of enlargements. This concept originated in the practice of a tighter co-operation between some Member States in certain areas, or in the exceptional derogations given to other Member States which refused participation. Not only these exceptions may become the rule in an enlarged Union, but they appear as being the only solution, sometimes sensitive, and thus spring the need to be well organized. Beginning with the Treaties of Amsterdam and Nice the differentiation is legally enshrined, but it is the works of the Convention for the Drafting of the Constitutional Treaty that advanced the debate on this subject. Finally, the Lisbon Treaty kept most of the provisions of the Constitutional Treaty regarding this subject and for its ratification; it is precisely the concept of differentiation that we shall employ. The Irish “No” demonstrated once more the inevitable obstructions of the unanimity rule, and differentiation might be a solution, while still respecting the diversity of Member States.*

Keywords: *differentiation, Treaty of Lisbon, CFSP, ESDP, enhanced cooperation, structured cooperation*

L'idée d'intégration différenciée n'est ni neuve, ni dirigée contre les pays d'Europe Centrale et Orientale¹. Elle a toujours accompagné le processus d'intégration et la différenciation s'est accentuée au fur et à mesure des élargissements successifs. Il est vrai cependant, que cette idée n'a acquis une résonance particulière qu'au milieu des années '80 en rapport avec l'accord de Schengen, mais aussi avec le combat britannique contre la discipline

communautaire. C'est à cette époque que sont apparues des expressions comme « Europe à plusieurs vitesses », « géométrie variable », ou « intégration à la carte ».

La différenciation au sein de l'Union Européenne est donc un concept relativement nouveau qui a connu plusieurs formes au moins en théorie. Ce concept est né de la pratique d'une coopération plus étroite entre quelques Etats membres dans certains domaines, ou bien des dérogations exceptionnelles

* **Bogdana Petrică** is a Lecturer in European studies and international relations at the University of Bucharest where she is currently teaching several specialized classes on: *The political system of the European Union and European protection of human rights, EU common foreign and security policy, justice and home affairs and EU common policies*. She holds a PhD (2004) and a MA (1997) in European and international law from the “Jean Monnet” Law School - Paris Sud University (xi) and a MA in European studies from the University of Bucharest (Department of political science). Her most recent publications include: “Politica de extindere a uniunii europene” (“The European Union Enlargement Policy”), ALL Publishing House, 2007. E-mail: bogdana.petrica@fspub.ro

¹ Draus, F., « L'Europe élargie peut-elle être un acteur international influent ? Les PECO et les finalités politiques de l'intégration européenne », *Groupeement d'études et de recherches Notre Europe*, président : Jacques Delors, *Etudes et recherches no 32*, février 2004, http://www.notre-europe.eu/uploads/tx_publication/Etud32-fr.pdf p. 14

accordées à d'autres Etats membres qui refusaient la participation. Ces exceptions non seulement pourraient devenir la règle dans une Union élargie, mais apparaissent comme étant la seule solution, parfois délicate, d'où la nécessité d'être bien organisée.

Après le « non » irlandais qui a montré encore une fois les blocages inévitables de la règle de l'unanimité, il faudrait peut-être se tourner vers la différenciation, une des voies qui pourraient les surmonter, tout en respectant la diversité des Etats membres.

La consécration juridique de la différenciation par les traités d'Amsterdam et Nice

Le traité d'Amsterdam a offert pour la première fois à quelques Etats membres la possibilité d'instaurer entre eux une coopération particulière dans le cadre institutionnel du traité, c'est-à-dire en faisant appel aux institutions et procédures de l'Union.

Ces dispositions prévoient des conditions de déclenchement strictes. Les Etats membres peuvent recourir à ce mécanisme dans les domaines couverts par le traité instituant la Communauté Européenne, le premier pilier et sur les questions relatives à la coopération policière et judiciaire en matière pénale. La coopération renforcée étant exclue dans le domaine de la PESC. Les conditions et procédures en matière de coopération renforcée figurent aux articles 40 et 43 à 45 du TUE ainsi qu'à l'article 11 CE. Ces conditions accordaient un droit de

veto à tout Etat membre qui s'opposait à une coopération renforcée même s'il ne souhaitait pas y participer. Chaque Etat pouvait faire valoir des raisons de politique nationale importante à s'opposer pour que le Conseil décide à la majorité qualifiée d'autoriser une coopération renforcée². De plus, les dispositions du traité d'Amsterdam exigeaient une majorité d'Etats membres pour engager une coopération renforcée.

Ces conditions ont été jugées trop strictes et l'on estimait généralement que les Etats membres qui ne veulent pas ou ne peuvent pas participer à ces coopérations renforcées ne devraient pas pouvoir faire obstacle à l'action des autres.

Ceux qui étaient réticents aux changements faisaient valoir que les dispositions du traité d'Amsterdam venaient d'entrer en vigueur et que tout changement nécessitait une définition claire des futurs domaines susceptibles de faire l'objet de la coopération renforcée. D'autres estimaient que ce mécanisme mis en place par le traité n'avait jamais été appliqué jusqu'à la révision du traité parce qu'il était inutilisable, il était donc impératif d'intervenir pour lui conférer plus de souplesse.

Il est généralement admis que dans une Union élargie, où les différences économiques et géographiques seront plus sensibles, une coopération renforcée dans le cadre institutionnel pourrait être nécessaire au développement de l'Union.

Selon Françoise de la Serre, les coopérations renforcées proposées par le traité d'Amsterdam sont des « trompe-

² Beurdeley, L., « L'élargissement de l'Union européenne aux pays d'Europe Centrale et Orientale et aux îles du bassin méditerranéen », Questions contemporaines, Editions l'Harmattan, Paris, 2004, p.102

l'œil »³, « un exercice compliqué », qu'elle définit comme « des dispositions permettant à un groupe d'Etats membres d'aller plus loin dans la voie de l'intégration », une « solution miracle permettant d'avoir le meilleur de deux mondes »⁴, c'est à dire organiser les différences dans une Europe de plus en plus hétérogène, tout en maintenant la dynamique de l'intégration.

Ainsi, l'Europe différenciée aura enfin un contenu. Le titre VII du traité d'Amsterdam intitulé « Coopération plus étroite », « solution de dernier ressort », délimitée quant à son champ d'application (sont exclus les domaines relevant de la compétence exclusive de la Communauté, par exemple, et surtout l'acquis communautaire). Mais cette solution n'apparaît pas comme facilitant l'absorption des nouveaux Etats membres, au cœur des négociations avec les Etats candidats se trouvaient justement l'acquis communautaire qui ne pouvait pas se prêter aux coopérations renforcées proposées par le traité.

Le traité de Nice procède à une refonte⁵ des dispositions relatives aux coopérations renforcées. Les nouvelles dispositions apportent des modifications au texte du traité d'Amsterdam.

La grande nouveauté est la possibilité

d'instaurer une coopération renforcée dans le deuxième pilier, la PESC, pour la mise en œuvre d'une action commune ou une position commune, les stratégies communes qui relèvent du Conseil européen ne pouvant être décidées que par l'accord de tous les Etats membres. Elle ne peut toutefois porter sur des questions ayant des implications militaires ou dans le domaine de la défense.

Le nombre minimal d'Etats membres pour former une coopération renforcée est fixé à huit dans les trois piliers, et non plus une majorité d'Etats, cette disposition va faciliter certainement son lancement, surtout avec l'arrivée des nouveaux Etats membres. La possibilité du veto a été remise en cause, car, toutefois, chaque Etat membre aura la possibilité de saisir le Conseil. Cette faculté d'évocation ne change pas le fait que la décision d'autoriser une coopération renforcée est prise par le Conseil à la majorité qualifiée.⁶ Dans le deuxième pilier, la décision finale appartient au Conseil européen statuant à l'unanimité, chaque Etat disposant ainsi de la possibilité de bloquer le processus, puisqu'il a la faculté de demander que le Conseil européen soit saisi en vue d'une décision à l'unanimité.

Au sein du pilier communautaire, l'autorisation d'engager une coopération

³ De la Serre, F., et Lequesne, C., « Vers l'élargissement de l'Union: intégration ou implosion ? », dans « Quelle Union pour quelle Europe ? L'après traité d'Amsterdam », sous la direction de De la Serre, F., et Lequesne, C., Editions Complexe, Espace International, Collection du Centre d'études et de recherches internationales de la Fondation nationale des sciences politiques, Paris, 1998, p. 141

⁴ De la Serre, F., Wallace H., « *Les coopérations renforcées : une fausse bonne idée ?* », Fondation Notre Europe, Paris, 1997

⁵ Même si considéré non négligeable, l'apport du traité dans ce domaine est considéré par certains auteurs comme « particulièrement décevant dans la perspective de l'élargissement » car il contribue « en effet, à complexifier le processus décisionnel » pour plus de détails voir Beurdeley, L., « L'élargissement de l'Union européenne aux pays d'Europe Centrale et Orientale et aux îles du bassin méditerranéen », Questions contemporaines, Editions l'Harmattan, Paris, 2004, p.104

⁶ Cf. au nouvel article 11 TCE, dorénavant dans le cadre du pilier communautaire, un membre du Conseil opposé au lancement d'une coopération renforcée pourra seulement demander que le Conseil européen soit saisi de cette question, ensuite sauf conclusion contraire de ce dernier, le Conseil peut statuer à la majorité qualifiée.

implique toujours l'accord de la Commission et dans les domaines, de plus en plus nombreux qui relèvent de la codécision, l'avis conforme du Parlement est obligatoire, ce qui ne manquera pas « d'alourdir le déclenchement de la procédure »⁷.

Ayant comme priorité de réussir l'élargissement de l'Union à l'Europe Centrale et Orientale dès 2004, les chefs d'Etat ou de gouvernement réunis à Nice⁸ ont évité d'aborder les questions très délicates, comme les changements institutionnels nécessaires pour la construction d'une politique européenne de sécurité commune fonctionnelle et efficace et d'une véritable politique européenne de sécurité et défense (PESD).

La rencontre franco-britannique de Saint-Malo a donné les impulsions politiques et précisé les orientations nécessaires à l'élaboration de la politique européenne de sécurité et de défense. Après ce sommet, la PESD est devenue un sujet à l'ordre du jour des agendas des Conseils européens. Lors de la réunion du Conseil européen de Cologne le 3-4 juin 1999, les chefs d'Etat ou de gouvernement des Etats membres de l'Union européenne ont pris la décision de doter l'Union d'une capacité d'action autonome soutenue par des forces militaires crédibles, qui a les moyens de réagir face aux crises internationales, sans préjudice des actions entreprises par l'OTAN. Au Conseil européen d'Helsinki, les chefs d'Etat ou de gouvernement ont confirmé qu'ils entendaient doter l'Union européenne d'une capacité de décision autonome. Ils ont précisé leur

intention, là où l'OTAN en tant que telle n'est pas engagée, de lancer et conduire des opérations militaires sous la direction de l'Union européenne en réponse à des crises internationales. Après Cologne et Helsinki on avait décidé les étapes de sa mise en place, l'objectif immédiat étant la création d'une force européenne de réaction rapide capable d'intervenir pour gérer toute crise risquant d'affecter la paix et la stabilité de l'Europe.

Cette décision de l'UE de développer sa capacité à gérer les crises reflétait surtout le sentiment d'impuissance fortement ressenti par les Européens lors de la crise de Kosovo. Face aux questions soulevées par la possibilité de duplication entre cette force européenne et l'OTAN, on a longuement insisté sur le caractère complémentaire de l'action de l'UE par rapport à celle de l'OTAN. L'UE et l'OTAN ont conclu le 16 décembre 2002, un accord historique qui permettra l'accès de l'UE aux capacités logistiques de l'OTAN pour mener des opérations militaires de maintien de la paix. L'accord a été conclu par une déclaration commune signée par le Secrétaire général de l'Alliance Nord Atlantique, Lord George Roberston et le Haut représentant de l'UE pour la PESD, Javier Solana.

La Mission de police de l'UE en Bosnie lancée le 1er janvier 2003, avec un mandat de trois ans, a assuré la relève du Groupe international de police des Nations Unies. Son principal objectif était de mettre en place des dispositifs de police durables sous gestion de la Bosnie-Herzégovine. Suite à la demande du président de l'ancienne République yougoslave de Macédoine (ARYM), Boris Trajkovski,

⁷ Beurdeley, L., « L'élargissement de l'Union européenne... », op. cit. p.103

⁸ Les Conclusions de la Présidence du Conseil européen de Nice, du 7, 8 et 9 décembre 2000, http://europa.eu.int/european_council/conclusions/index_fr.html

L'Union européenne avait lancé, le 31 mars 2003, une opération militaire qui faisait suite à celle de l'OTAN. Prévue initialement pour une durée de six mois, CONCORDIA a été prolongée jusqu'au 15 décembre 2003, conformément à la demande que le gouvernement de l'ARYM avait adressée à l'Union européenne. L'opération faisait appel aux moyens et capacités de l'OTAN, ce qui a été rendu possible par l'achèvement des travaux sur les arrangements UE-OTAN. L'objectif principal de l'opération était celui de contribuer à la mise en place d'un environnement stable et sûr, afin de permettre la mise en œuvre de l'accord-cadre conclu à Ohrid en août 2001 (mettant fin au conflit interne éclaté en ARYM).

La mission établie suite à la résolution 1484 adoptée le 30 mai 2003 par le Conseil de Sécurité des Nations Unies autorisant le déploiement, jusqu'au 1er septembre 2003, d'une force multinationale intérimaire d'urgence à Bunia, dans la région de l'Ituri en République Démocratique du Congo (RDC). L'Union européenne avait lancé en RDC une nouvelle opération militaire, dont le nom de code était ARTEMIS. La force militaire européenne travaillait en coordination étroite avec la MONUC, la mission de l'ONU en République démocratique du Congo. Ce déploiement visait notamment à contribuer à stabiliser les conditions de sécurité et à améliorer la situation humanitaire à Bunia. La France a assumé le rôle de « nation cadre » pour cette opération ce qui a permis son

lancement très rapide. C'est la première opération militaire menée d'une manière autonome par l'UE (sans employer les capacités logistiques de l'OTAN).

Les missions CONCORDIA et ARTEMIS ont consacré les capacités d'intervention de l'Union en tant qu'opérationnelles. Cependant la participation aux missions reste volontaire et l'unanimité continue à être la règle.

Dans le nouveau contexte international, après les attaques terroristes du 11 septembre 2001 contre les Etats-Unis, l'Europe se retrouve pressée de répondre aux défis posés par ce nouveau genre de menaces à la stabilité et à la sécurité internationales. Le terrorisme, la prolifération des armes de destruction massive au Moyen-Orient et en Asie et le crime organisé dominant le contexte international. Mme Nicole Gnesotto résume la situation en soulignant que « le monde réel va plus vite que le monde institutionnel /... / et que l'Europe va devoir vivre, s'élargir et prospérer dans un contexte de sécurité, à bien des égards imprévisible, où la surprise stratégique sera plutôt la règle »⁹.

On se pose de plus en plus de questions sur le rôle que l'UE était censée jouer sur la scène politique internationale. Devrait-elle rester un acteur essentiellement économique, ou devrait-elle développer les capacités militaires nécessaires pour lui donner la possibilité d'intervenir dans les situations de crise? Ou plus encore, devrait-elle limiter sa zone d'intérêt aux régions voisines ou bien se convertir dans

⁹ Intervention de Mme Nicole Gnesotto, directeur de l'Institut d'Etudes de Sécurité de l'UE (ISS-UE) au Séminaire sur la défense, organise le 7 novembre 2002 à l'intention des membres de la Convention sur l'avenir de l'Europe, Note de l'Institut – Rapport du Séminaire, IESUE/SEM (02)27, doc CONV417/02 (Annexe).

un acteur global au modèle des Etats-Unis? Les sondages d'opinion avaient tous montré le soutien des citoyens européens au renforcement de la PESC/PESD¹⁰.

Les dirigeants politiques regardaient pourtant avec précaution le sujet. De Londres à Paris, Berlin ou Varsovie, on s'accorde sur la nécessité de renforcer la présence de l'Union politique sur la scène politique internationale, mais savoir comment le faire posait beaucoup plus de questions.

La différenciation dans le traité constitutionnel

C'était à la Convention sur l'avenir de l'Europe et à la CIG lancée en 2003 de trouver la réponse, au moins en ce qui concerne l'introduction de plus de flexibilité au niveau de la PESD. La solution proposée par la Convention a comme modèle la coopération renforcée employée dans le domaine de la PESC.

Le Groupe de travail sur la défense, formé au sein de la Convention sur l'avenir de l'Europe, dirigé par M. Michel Barnier a présenté son rapport final le 10 décembre 2002, le but n'étant pas « de transformer l'Union dans une alliance militaire, mais de lui donner les instruments nécessaires pour protéger ses objectifs et ces valeurs et pour contribuer à la paix et la stabilité partout dans le monde »¹¹.

Les propositions du groupe essayent de répondre aux soucis de ses membres dont onze sont membres de l'OTAN et

quatre des Etats neutres.

Après des longs débats¹², certains membres de la Convention doutaient des bénéfices de la mise en place des coopérations renforcées, en considérant qu'elles pourraient entraîner des divisions au sein de l'Union (voir la Finlande et la Suède). Les adeptes de cette formule, dont Mar Brock (PE, PPE-DE, D), Carlos Carnero (PE, PSE, E), Dominique de Villepin (le représentant du gouvernement français à la Convention) ou bien Andrew Duff (PE, EDLR, RU) ont soutenu son potentiel de donner à l'Union une impulsion qui lui manquait. Pour sa part, Gianfranco Fini (le représentant du gouvernement italien à la Convention), tout en admettant que la coopération renforcée peut dynamiser l'Union, a insisté pour que « cette démarche s'inscrive dans le cadre du traité ». Danuta Hubner (représentant du gouvernement polonais à la Convention) a souligné qu'une telle procédure devait être inclusive et ouverte à tous les Etats membres. Le langage européen s'enrichit d'une nouvelle formule - « la coopération structurée » - qui essaye de reprendre, dans le domaine de la défense, le modèle employé pour la mise en place de la monnaie européenne. La coopération structurée est une procédure mise à la disposition des Etats membres qui « remplissent des critères des capacités militaires plus élevés et qui ont souscrit entre eux à des engagements plus contraignants en cette matière en vue des missions les plus exigeantes »¹³.

À la différence de la coopération renforcée, la mise en place de la

¹⁰ A voir les résultats des sondages d'opinion réalisés par l'Eurobaromètre en 2002 et 2003 sur le site www.europa.eu

¹¹ M. Barnier, dans Fraser Cameron, « *The Convention and Common Foreign and Security Policy* », p.23, EPC Working Paper, The European Policy Center, mars 2003/ WP 03

¹² Communiqué de presse, Convention 16/05: Action extérieure et défense, Bruxelles, le 16 mai 2003, Cdp037.03

¹³ Article I-40 paragraphe 6 du projet de Traité constitutionnel de la Convention à l'intention de la CIG.

coopération structurée n'est pas conditionnée par la participation d'un certain nombre d'Etats membres. Les critères de participation et les engagements assumés par les Etats participants seront indiqués dans un Protocole annexé au Traité.

Le projet de Traité proposé par la Convention prévoyait que les mêmes procédures législatives applicables au cas de la coopération renforcée s'appliqueraient aussi à la coopération structurée au titre de l'Article III-213 (5). La coopération structurée est ouverte à la participation ultérieure de tout autre Etat membre, « en souscrivant aux obligations qu'elle impose » au titre de l'Article III-213 (2). La décision sur une telle demande de participation revenait au Conseil des ministres composé des représentants des Etats membres participant à la coopération structurée.¹⁴

Pour ce qui est de l'objet de la coopération structurée c'est toujours le Conseil de ministres composé des représentants des Etats membres participant qui décident, tandis que les autres Etats membres de l'Union seront informés régulièrement sur tout développement au sein de la coopération structurée par le futur ministre européen des affaires étrangères.¹⁵

Le paragraphe 4 du même article III-213 prévoit que le Conseil de ministres peut « confier aux Etats membres participants (à une coopération structurée) la réalisation, dans le cadre de l'Union, d'une mission visée à l'article III-210 (...) » « Les missions /.../ dans lesquelles

l'Union peut avoir recours à des moyens civils et militaires, incluent les actions conjointes en matière de désarmement, les missions humanitaires et d'évacuation, les missions de conseil et d'assistance en matière militaire, les missions de prévention des conflits et de maintien de la paix, les missions de forces de combat pour la gestion des crises, y compris les missions de rétablissement de la paix et des opérations de stabilisation à la fin des conflits »¹⁶. Avec ces dispositions, le projet de traité ouvrait la voie au lancement des opérations militaires, si une majorité d'Etats membres de l'UE votent pour et les autres s'abstiennent. Une fois l'opération lancée, les Etats qui se sont abstenus ne participeraient pas aux prises de décision quant à l'implémentation. Ceux-ci sont pourtant libres de s'y joindre à une étape ultérieure à condition d'obtenir l'accord du Conseil des ministres des Etats participant à la coopération structurée.

Les ministres des affaires étrangères de la Suède et de la Finlande ont fait connaître, pendant les travaux de la CIG, leur opposition à ce qu'un nombre limité des pays membres se voient confier les pouvoirs de mener tous seuls des opérations de gestion des crises. L'argument de leur position était qu'une telle possibilité risque de provoquer des divisions au sein de l'Union sur les questions de politique étrangère.¹⁷

Les ministres des affaires étrangères réunis dans à Naples, le 9 décembre 2003 sont parvenus à un accord, en apportant des précisions sur le concept de coopération structurée. Les principaux

¹⁴ Article III-213 (2), projet de Traité constitutionnel de l'UE

¹⁵ Article III-213 (3), projet de Traité constitutionnel de l'UE

¹⁶ Article III-210 (1), projet de Traité constitutionnel de l'UE

¹⁷ Hemmer Phil, L. « Sweden and Finland support EU security policy », *EU Observer*, 12.11.2003, www.euobserver.com

changements portent sur les critères de participation et d'admission des nouveaux Etats participants.

Les critères de participation à la coopération structurée seront fixés par un Protocole inclus dans le Traité constitutionnel qui précisera aussi que cette forme de coopération sera ouverte à tout Etat membre intéressé.¹⁸ La décision de recevoir de nouveaux participants après la mise en place de la coopération structurée sera toujours prise par les Etats qui y participent déjà, mais on a essayé d'éliminer la possibilité d'une décision subjective, en précisant que « tout Etat qui respecte les critères et les engagements stipulés dans le Protocole est en droit d'être reçu »¹⁹. Il n'y aura pas de nombre minimal d'Etats participants pour l'établissement d'une coopération structurée et le traité prévoit également la possibilité de retrait ou d'être suspendu en cas de non-respect des engagements assumés.

Les partisans de l'intégration différenciée la conçoivent comme un système ouvert à tous les pays qui remplissent les conditions nécessaires. La perception de la différenciation par les nouveaux Etats membres est toute autre, ces pays la considèrent comme une «

méthode de discrimination, de division, voire un facteur de désintégration de l'Union »²⁰. A leurs yeux, l'intégration différenciée contredit l'égalité des Etats membres et risquerait de déboucher sur une avant-garde d'Etats prétendant de piloter l'intégration.²¹

Parmi les nouveaux Etats membres, la question suscitait des craintes particulières en Pologne, République Tchèque et Hongrie. La Bulgarie était le seul pays candidat à considérer que le mécanisme de « coopération renforcée » pourrait faciliter à la fois l'approfondissement et l'élargissement de l'Union européenne. En Pologne, on considère que cette formule comporte un risque, sinon la volonté, de diviser l'Europe élargie en deux classes d'Etats, et les coopérations renforcées pourraient être utilisées éventuellement comme un instrument de discrimination à l'égard des Etats membres « économiquement plus faibles »²² ou que ce type particulier d'intégration serait conçu expressément afin d'empêcher les nouveaux Etats membres de co-décider de l'avenir de l'intégration européenne.²³ Pendant la CIG 2000, le gouvernement polonais avait exprimé sa conviction que les dispositions du traité d'Amsterdam sur la coopération renforcée étaient

¹⁸ Article I du Protocole sur la coopération structurée permanente établie par les Articles I – 40(6) et III-213 de la Constitution, Addendum 1 à la Note de la Présidence, Bruxelles le 9 décembre 2003, PRESID 14, CIG 60/03 (OR en, fr)

¹⁹ Article III-213, paragraphe 3, Annexe 22, La politique européenne de sécurité et défense, Addendum 1 à la Note de la Présidence, Bruxelles le 9 décembre 2003, PRESID 14, CIG 60/03 (OR en, fr)¹⁶ Article III-210 (1), projet de Traité constitutionnel de l'UE

²⁰ Draus, F., « L'Europe élargie... », op. cit., p. 14

²¹ Draus, F., « Un élargissement pas comme les autres... Réflexion sur les spécificités des pays candidats d'Europe centrale et orientale », Groupement d'études et de recherches Notre Europe, président : Jacques Delors, Etudes et recherches no 11, novembre 2000, http://www.notre-europe.eu/uploads/tx_publication/Etud11-fr.pdf p. 27

²² Propos exprimé par le négociateur polonais J. Kulakowski, *Financial Times*, le 28 octobre 1999

²³ J. Bielecki, « L'Europe pour les élus », *Rzeczpospolita*, en polonais, cité par DRAUS, F., « L'Europe élargie... », op. cit., p.30

« parfaitement suffisantes »²⁴. Dans le document adressé à la CIG en juillet 2000, la position de la Pologne était que la CIG devrait tenir compte que « les coopérations renforcées éventuelles ne doivent pas conduire à l'émergence d'un groupe d'Etats qui ne participerait pas pleinement au progrès dynamique de l'intégration européenne... et en aucun cas cela ne devrait pas conduire à l'exclusion des futurs Etats membres de nouvelles mesures de coopération importantes ».

Considéré au début de la CIG un problème presque impossible à résoudre, le compromis en matière de PESD a été finalement loin de poser les mêmes difficultés que la question du vote dans le Conseil de l'UE. Finalement ce n'était pas la défense, mais le refus de l'Espagne et de la Pologne de renoncer au système de la majorité qualifiée tel qu'il a été agréé à Nice en 2000 en faveur d'un vote à double majorité (des Etats et de la population), formule soutenue par la France et l'Allemagne, qui a déterminé la suspension des travaux de la CIG, le 13 décembre 2003 à Bruxelles.

La différenciation, le traité de Lisbonne et les solutions pour sa ratification

Les principales « nouveautés » en matière de différenciation introduites par le traité de Lisbonne, concernent notamment la facilitation de l'utilisation des coopérations renforcées dans les domaines de la justice, des affaires intérieures et de la défense.²⁵

Le nouveau traité modifie certaines dispositions applicables aux coopérations renforcées par les traités antérieurs. Ainsi, le nombre minimal de participants est fixé à 9 Etats membres et l'approbation du PE est désormais nécessaire dans tous les domaines à l'exception de la PESC et de la coopération en matière de JAI. Le recours aux coopérations renforcées est facilité dans le domaine de la JAI, en cas de désaccord d'un Etat membre sur une décision devant être prise à l'unanimité, et en cas de persistance du désaccord après la saisine du Conseil européen, les autres Etats membres (au moins 9) peuvent informer le Parlement, le Conseil et la Commission de leur souhait de nouer une coopération renforcée. Celle-ci sera alors immédiatement réputée adoptée sans qu'un nouveau vote au Conseil soit nécessaire.

Dans le domaine de la PESC, l'avis du Haut représentant pour les affaires étrangères et l'unanimité du Conseil sont requis pour autoriser une coopération renforcée désormais possible dans le domaine de la défense et des questions ayant des implications militaires sous la forme d'une « coopération structurée permanente ». Celle-ci concerne « les Etats membres qui remplissent des critères plus élevés de capacités militaires et qui ont souscrit des engagements plus contraignants en la matière en vue des missions les plus exigeantes ». Elle n'est pas soumise à l'exigence d'un nombre minimum d'Etats participants. Elle est autorisée par le Conseil statuant à la majorité qualifiée, après consultation du Haut représentant. Au sein de la

²⁴ *Uniting Europe*, 106, le 3 juillet 2000

²⁵ Pour une analyse des possibilités ouvertes en matières de coopération renforcée par le traité de Lisbonne voir *Questions d'Europe* 106 et 107 de la Fondation Robert Schuman Chopin T, Jamet J-F « La différenciation peut-elle contribuer à l'approfondissement de l'intégration communautaire ? » 21 juillet 2008 http://www.robert-schuman.org/question_europe.php?num=qe-106

coopération structurée permanente, les décisions sont prises à l'unanimité.

Les principales nouveautés introduites par le traité de Lisbonne concernent la facilitation de l'utilisation des coopérations renforcées dans les domaines de la justice, des affaires intérieures et de la défense.

La différenciation présente selon Thierry Chopin et Jean-François Jamet un double avantage celui « d'ouvrir des espaces d'action commune en dépit de la diversité des visions et des intérêts nationaux » tout en répondant aux exigences d'efficacité et de légitimité. Les auteurs considèrent que cette démarche permettrait de « rompre avec le fantasme de l'unité et de l'homogénéité ».²⁶

La coopération structurée qui fait l'objet d'un protocole annexé au traité de Lisbonne marque un nouvel essai de différenciation entre les pays membres de l'UE. Le principe de différenciation apparaît de plus en plus comme la clé de tout futur avancement de l'Union européenne à 27, 30 ou plus d'Etats membres.

De plus, il y a des voix qui considèrent que cet échec encouragera le développement d'une Europe à plusieurs vitesses, le développement de la différenciation dans plusieurs domaines, dont la défense est la première visée. Pourtant, il est difficile d'anticiper car tout projet sur un « noyau dur » de l'Union regroupe les membres fondateurs, or l'Italie a fait déjà savoir qu'elle n'est pas

intéressée et les Pays-Bas ne semblent non plus trop enthousiastes.²⁷

En ce qui concerne les scénarios possibles²⁸ pour la ratification du traité de Lisbonne en 2009, le plus probable serait non pas la ratification parlementaire qui passerait outre la volonté exprimée du peuple irlandais, ni celui de l'organisation d'un second referendum sans modifier le traité compte tenu du taux de participation au premier referendum, mais de revoter selon un « scénario à la danoise ». Les Irlandais pourraient donc obtenir par exemple des dérogations en ce qui concerne l'application de la Charte des droits fondamentaux ou des dispositions relatives à la défense. Ce serait une solution miracle ou pas en tout cas une possibilité ouverte par la différenciation. Il nous reste à espérer comme le professeur Laurent Pech « qu'il est possible qu'une telle manœuvre permette de convaincre les sceptiques que le traité de Lisbonne ne conduirait pas des Irlandais à mourir pour la Géorgie ou le pays à reconnaître l'avortement ».

Le ministre irlandais des Affaires étrangères Micheál Martin a déclaré le 15 novembre 2008 que le gouvernement devrait décider au cours des prochaines semaines s'il organisera ou non un second référendum. Le gouvernement irlandais a montré sa volonté de résoudre la crise et a promis qu'il arriverait avec une solution avant le Conseil européen du 12 décembre.²⁹

Selon un nouveau sondage d'opinion

²⁶ Chopin T, Jamet J-F « La différenciation... », op. cit

²⁷ Pour une analyse des perspectives de l'UE après l'échec de la réunion de la CIG de 12-13 décembre voir « The Economist, Who killed the Constitution? », le 18 décembre 2003, www.economist.com

²⁸ Pour une analyse de l'opportunité d'organiser un referendum en Irlande et les divers scénarios possibles voir Questions d'Europe no 115 de la Fondation Robert Schuman Pech, L., « Le référendum en Irlande pour ratifier les traités européens : obligatoire ou coutumier? », le 27 octobre 2008 http://www.robert-schuman.org/doc/questions_europe/qe-115-fr.pdf

²⁹ Demandé lors d'un entretien TV le 16 novembre si ne rien faire serait une solution, le ministre irlandais des Affaires étrangères Micheál Martin a déclaré : "Absolutely not, that would leave us at the margins in terms of Europe. We

publié le 17 novembre 2008 par le Irish Times, les Irlandais pourraient approuver le traité de Lisbonne lors d'un nouveau référendum à condition qu'une série de sauvegardes soient ajoutées au texte. Une enquête réalisée par Irish Times³⁰ montrait que les électeurs penchent désormais pour le « oui » après l'échec du référendum au mois de juin dernier. Aujourd'hui, 43 % des Irlandais ont indiqué qu'ils voteraient oui, alors que 39 % d'entre eux refuseraient le texte et que 18 % n'auraient pas d'opinion. Si on ne tient pas compte des abstentions, le camp du « oui » disposerait donc de 52,5 % et celui du « non » 47,5 %, alors qu'en juin dernier, le référendum avait été rejeté par 53,4 % contre 46,6 % de « oui ». Mais cette éventuelle percée du « oui » aurait un prix: l'enquête présente en effet les intentions de vote des Irlandais pour un traité de Lisbonne modifié en vue de permettre à l'Irlande de garder son commissaire européen et de prévoir des déclarations sur la neutralité, l'avortement et la fiscalité qui répondent aux préoccupations irlandaises.

Parmi les demandes des Irlandais, la plus problématique est de loin celle concernant le maintien du commissaire, car il serait impossible de modifier les dispositions visant à conserver le système actuel d'un commissaire par pays, sans modifier le traité de Lisbonne. La réouverture du texte impliquerait une nouvelle ronde de

ratification à travers l'UE, ce qui serait « non seulement chronophage, mais aussi politiquement risquée »³¹. Il faudrait trouver une autre solution, mais selon certains analystes: « Si les chefs d'Etat et de gouvernement de l'UE décidaient de conserver le système actuel par le biais d'une simple décision du Conseil en vue de satisfaire l'Irlande, Microsoft ou toute autre compagnie en litige avec l'exécutif européen pourraient alors prétendre que la prochaine Commission est illégale ».³²

La meilleure solution serait donc d'utiliser pleinement les possibilités ouvertes par les traités en matière de différenciation et obtenir pour l'Irlande des dérogations dans le plein respect du droit communautaire.

C'est cette solution qui a été retenue par les 27 à l'occasion du Conseil européen du 12 décembre 2008, l'Irlande obtenant satisfaction sur plusieurs points. Tout d'abord, il s'agit du maintien d'un commissaire pour chaque Etat membre, partageant ainsi sa victoire avec les autres Etats membres: « Le Conseil européen convient que, à condition que le traité de Lisbonne entre en vigueur, une décision sera prise [...] pour que la Commission puisse continuer de comprendre un national de chaque Etat membre ». L'Irlande voit aussi confirmé son statut de neutralité dans le cadre de la politique de sécurité et de défense de l'UE, ainsi que

want to be at the heart of European decision-making. We want to restore the goodwill that we have built over many, many years. That would enable us to have some impact on decisions into the future and that would strengthen our hand in negotiations on agriculture and budgets and so forth." De Breadun, D., « Decision on Lisbon re-run 'by December' », Irish Times, 17 novembre 2008,

<http://www.irishtimes.com/newspaper/ireland/2008/11/17/1226700658961.html>

³⁰ Collins, S., « Voters may approve new Lisbon Treaty, poll reveals » Irish Times, le 17 novembre 2008, http://www.irishtimes.com/newspaper/frontpage/2008/11/17/1226700659487_pf.html

³¹ Poll: Irish may say 'yes' to Lisbon Treaty », EurActiv, le 20 novembre 2008, <http://www.euractiv.com/en/future-eu/poll-irish-may-lisbon-treaty/article-177243>

³² Idem

ses demandes en matière de politique fiscale. Enfin, « les dispositions de la Constitution irlandaise concernant le droit à la vie, l'éducation et la famille ne sont pas du tout affectées par l'attribution par le traité de Lisbonne d'un statut juridique à la Charte des droits fondamentaux de l'UE [...] ». En contrepartie, sous réserve que les

partenaires de l'Irlande remplissent leurs engagements « d'ici la mi-2009 », l'Irlande « s'engage à rechercher la ratification du traité de Lisbonne jusqu'à la fin du mandat de l'actuelle Commission », soit l'automne 2009.

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The ideal length of an article (in English or French) is from 4 000 to 8 000 words, including a 200-word abstract in English and a very brief autobiographical note. Book reviews should be no longer than 2 000 words. All articles should be presented in Microsoft Office Word format, Times New Roman, 12, at 1.5 lines, and will be sent to the address rjea@ier.ro mentioning “For RJEА”.

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