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E-GOVERNMENT, SECURITY AND LIBERTY IN THE EU: A ROLE FOR NATIONAL PARLIAMENTS?

Juliet Lodge*

Abstract. *This paper shows how in the EU the institutionalisation of the norms, practices and procedures of accountability and transparency reflects political and legal values and commitments to sustaining them, in ways that are visible, open, embedded, just, legitimate and not arbitrary. While administrative practices and cultures uphold them to a greater or lesser degree, practice erodes them and compromises both liberty and security. First, the paper outlines the norms; then it argues that institutions are not sufficient in themselves to sustain liberty and freedom because new communication technologies (ICTs) impact on e-government and e-justice in ways that are not simply procedural. They may expedite administration and result in 'efficiency gains', but they also impact on the practices of transparency and accountability, something underscored by their appropriation by the champions of 'security'.*

Keywords: *e-government, accountability, democracy, communication technology*

The increasing use of information and communication technologies (ICTs) in public administration, commonly loosely referred to as 'e-government', raises serious questions about the role of parliaments and the nature of political legitimacy and accountability for the conduct of e-government. This presents the EU and the member governments with a paradox. On the one hand, they subscribe to the norms associated with the practice of open, transparent and accountable liberal democracy. On the other hand, they have inadvertently introduced new technologies that endanger those values. This has happened as governments have sought to increase the efficiency of their administrations, expedite the transmission of information between departments responsible for the delivery of public services, and modernise their states by getting all citizens 'online'. The message sent to citizens to persuade them to comply with this is framed in terms of efficiency and personal convenience gains. The impact on the nature and practice of democracy and political communication has been ignored. This is somewhat surprising given the simultaneous efforts by MPs and the European Parliament to ensure that any EU treaty reforms enhance the opportunity for and impact of parliamentary scrutiny by boosting co-decision and inserting procedures to enable national parliaments to play a role in EU decision-making: all in the name of liberal democratic norms and practice.

The argument for universal co-decision has been put most consistently in respect of pillar III and all the areas associated with achieving freedom, security and justice

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in the EU. The European Parliament's LIBE committee has paved the way for criticism of current practice, soft law measures, and a raft of steps regarding enhanced border controls, allegedly to protect and enhance the security and liberty of citizens. Vital as this is, the concerns raised about how ICTs impact upon individual and collective liberties potentially in a corrosive manner, apply beyond the boundaries of the area of freedom, security and justice (AFSJ).

In the absence of the Lisbon Treaty, national parliaments would retain their weakness in the area of internal security (AFSJ). Yet, even when considering the treaty, the (non) role of national parliaments outside the AFSJ compromises, and challenges us to rethink, the conduct of democratically accountable policymaking across the board as new technologies become the medium of choice for processing and transmitting all types of information within departments, across their boundaries, across states, and in collaboration with private and public sector bodies responsible for fulfilling public policy goals determined by elected politicians at local, regional, national and European levels.

National parliaments' and the European Parliament's powers vis-à-vis pillar III and related matters of judicial, police and migration cooperation have been progressively augmented. The Lisbon Treaty further constitutionalised the reinforcement especially of (i) the European Parliament's control powers, and (ii) the time granted for deliberation to national parliaments in respect of EU draft legislation. Collaboration between the two parliamentary layers has improved. This is beneficial for democracy and democratic accountability, but it is insufficient to ensure that liberty and security remain in balance and subject to the democratic control of elected parliamentarians because the practice of information exchange and communication is vulnerable to ICT-led insecurities and practice.

This paper begins by considering the background to ICT information exchange in the EU. Against this background, it examines the reasons for the inadequacies of institutional fixations with formal, territorial-based methods of controlling power. It then examines the current scenario of political communication. It concludes with some preliminary ideas on making digi-space amenable, at least in some part, to parliamentary control.

1. Inter-institutional information exchange in perspective

Improving the exchange of information among the EC's institutions using telematic information system exchange (as it was then called) dates back to 1974[1]. This is an important date because it coincides with two important developments in the democratisation and parlamentarisation of the EU. The first related to the implementation of the new roles of the unelected European Assembly (still not officially called the European Parliament) in respect of budgetary matters. This was the prelude to it becoming a co-equal partner with the Council of Ministers on budgetary affairs, and the point at which it began chipping away at expenditure

[1] Commission of the European Communities, Proposal for a Council Decision Relating to the Coordination of the Activities of the member states and Community Institutions with a view to setting up a Community Inter-Institutional Information System, COM(81)351 final, 6 July 1981.

on the common agricultural policy (CAP) and re-directing a greater proportion of EU revenues to other policies, like regional development. The second related to mounting pressure from MEPs and some governments of the then Nine member states to hold the first elections to the European Parliament agreed in 1975, and outlined in the Schelto Patijn and Tindemans reports. Simultaneously, the Italian communists dropped their opposition to participating in the European Assembly. This was critical for federalist Commissioner and later MEP Altiero Spinelli and a policy of small steps followed on a cross-party basis within the European Parliament (EP) to make EU executive power (the Commission and the Council) accountable to the (still to be elected) European Parliament. These heralded a transformation in the balance of power between the three key institutions in favour of openness, transparency and democratic accountability. These were seen as, and remain important to, sustaining the EU's legitimacy.

To make inter-institutional accountability work in practice, administrative reform had to accompany political reform. One of the longest and biggest complaints of MEPs had been that they were denied access to information on which the Commission (as the arm responsible for amending proposals) and the Council (solely responsible for approving them) were deliberating. Therefore, the right of the EP to give an Opinion could be negated by non-compliance on providing access to information. The idea of making information available to the EP to enhance its deliberations (and potentially therefore also meaningful oversight) over draft legislation could be dressed up in terms of enhancing public accountability of the Commission (since the Council of Ministers was to escape it for many more years) or of boosting democracy (by enabling the EP to perform the traditional role of parliaments as 'grand forum' for the people - Herman and Lodge, 1979). In practice administrators could weaken its impact but the prospect of using ICTs to expedite information sharing and exchange, even in the 1980s, opened the door to reform of bureaucratic strategies, practices and processes for exchanging information among these three institutions. Key to any action was expenditure. MEPs' attack on cutting CAP spending in favour of more diverse projects coincided with discussions over technology-led information exchange, then conceptualised very much in terms of centralised data bases and exchange hubs at supranational and national level.

Little political capital appears to have been made at the time even though ICT information exchange projects were initially funded from existing resources, and from 1982 expanded (from budget line 7711) with a specific budget from 1983. This is all the more curious in retrospect given that the arena for exploring information exchange was the CAP (CADDIA- Cooperation in Data and Documentation for Imports/Exports and Agriculture), and two pilots in the customs sector (TARIC II). In addition, the problematic technical implications of information exchange were already known: measures proposed for customs cooperation did not always match the needs of the agriculture sector and compatibility and interrelatedness issues compromised the ideals. Obtaining technical compatibility was problematic, notably regarding these systems and those covering wider Community needs likely to arise from the INSIS (interinstitutional

System for Information Services) world that overlapped with CADDIA in respect of data transmission.[2]

This focus in the 1970s and 1980s on the technical issues of information sharing and exchange (which today is reflected in the discourse on 'inter-operability'), meant that underlying democratic norms, political issues that were to preoccupy MEPs twenty years later, were not mentioned. Openness and transparency concerns became progressively hidden by a bureaucratic layer of emphasis on defining access to official documents. This in turn led to a focus on prescribing exemptions and exceptions, most of which remained subject to national rules and 'secrecy' codes. This was inevitable given that at the time the EC's scope and competence were still contested; 'security' remained taboo and the prerogative of national governments, and cooperation in justice and home affairs was conducted under political cooperation arrangements (pre-TREVI) as part of 'foreign policy' and subsequently internal market cooperation. Not until relatively recently have MEPs made the linkage explicit between technological issues and the assertion of democratic accountability for automated information and data exchange.

In the 1980s, it was taken for granted that ICTs would rationalise the procedures for the exchange of and access to information and that they in turn were bound to make the working of the institutions more efficient; boost competition, and encourage telecommunications administrations to create infrastructures for an integrated communication network. Practice reveals a different picture at variance with the ideal claimed for it, even though over thirty years ago, the governments were deliberating on many of the same problems that continue to afflict e-administration and e-government.

In its Resolution of 15 July 1974 on EC data processing policy, the Council noted its interest in joint projects. In 1979 the European Council instructed the Commission to act. In its proposal the European Council in November 1979 (COM (79) 650, it set out two principles which are reflected in modern day discourse: (i) a principle for a number of general measures seen as only being effective if carried out on a Community wide scale; and (ii) the EC institutions providing a demonstrative effect of information exchange among themselves, as a model for the transfer of information between the EC institutions and member state governments.

Following the Council Decision of 27 September 1977 instructing the Commission to study the setting up of an informatics system, a project leader was appointed in July 1978 to manage the study under the Commission's direction, and seven consultancy companies from seven different member states formed a consortium to undertake the study under a contract awarded in March 1979. The result was a ten-year development plan presented to the Commission in December 1980.

In 1981, priorities in four year plans up to 1990 were mapped out, problem

[2] Coordination of the Actions of Member States and the Commission relayed to activities preparatory to a long term programme for the use of telematics for Community information systems concerned with imports/exports and the management and financial control of agricultural market organisations: explanatory memorandum, pt. 3. COM(81)358 final.

areas identified (e.g. man-machine interface, information and training, inter-operability, standards and exchange protocol) and the need for technical transparency to users stressed. The latter was defined as end-to-end compatibility of exchange systems capable of conveying information from the new services set up between the institutions and the member states, the definition and use of exchange conventions allowing services to be supplied, and specifications for a framework to allow the new independent systems to converse with one another throughout the EC. The Commission rejected the notion of 'gateway' switching centres – one in each member state and one in the Commission – at which non-switching functions would be performed to enhance the value of information [COM 681(final) point 2, p.13]. No mention was made of citizens or the public in the context of users. It is striking that they were to be largely ignored for another decade.

Technocratised transparency versus personalised security

From the outset, there were problems within the consortium itself, difficulties at the political level and divisions at the bureaucratic levels. The rationale of boosting 'the efficiency of the Community machinery' was stressed. To that end, 'definition studies and pilot projects[3] were undertaken to identify medium and long term aims and to prepare 'general specifications for attaining them' (Explanatory Memorandum A(1)&(2) with 1982 set as the deadline for completing them, and 1986 as the point of entry into force, one year after the Isoglucose Case and the Milan summit on the Single European Act and the launch of the programme to complete the Single European Market. By 1993, ICT information exchange was common place, the EU was larger, had more competence for an expanding number of policy areas, successive IGCs had brought in treaty reforms, and the EU and member governments together were exploiting ICTs potential for enhancing cooperation among bureaucratic arms of government in the name of e-government and improved service delivery to citizens.

There was little change in the view that ICTs were a 'good thing'; and little criticism of their exponential costliness, impact on the nature of public administration, agenda setting, the feared consequences of bureaucratic engrengage (that had been a feature of anti-European federalists from the mid-1970s onwards) and parliaments. The implicit idea that technology was ideologically neutral was also initially rarely challenged as e-government was ruled out. The issues concerning the digital divide and social exclusion, therapeutic benefits of ICTs, including ambient and RFID technology, for citizens were later applauded.

ICT use for political communication purposes expanded and Data Protection codes and practices were boosted notably in the 1990s. The negative potential and consequences of ICTs became muddied by confusion over the instruments and applications of ICT enabled surveillance. 'Big Brother' became the synonym for highly diverse applications, purposes and policy goals especially in internal and external security. Public suspicion grew

[3] Study of information systems, Council Decision 77/619/EEC, OJ L 255, 6 October 1977, p.32.

over inter-operability and automated data exchange by agencies in respect of 'security' matters (police, customs, border controls, immigration, transport authorities, lawyers and social welfare offices). They were seen as threatening individual and collective liberties; as unethical, menacing intrusions into the private lives of citizens by unknown and unseen 'alien' agency officials (including those responsible for Passenger Name Record data exchange, and especially of other EU states (Tchorbadjiyska).[4] This did not accord with the public diplomacy and government rhetoric as to the advantage of information exchange for the purpose of 'good government'. Issues of data ownership and personal identity, data misuse, forensic mining and coupling of data aggravated distrust indicating that government rhetoric as to the added-value ICTs allegedly brought to individual and collective security were doubted by the public.

By the late 1990s, against this fast-changing scenario, security concerns came to focus on what could be seen by the individual. The nefarious potential for data misuse and the abuse of power was identified with the public sector adoption of ICTs. The adoption of a panoply of measures under the broad rubric of that alien trans-atlantic concept of 'homeland security', without the simultaneous adoption of parliamentary controls over the executive, changed the balance between security and liberty pitting them against each other rather than in a relationship of mutual dependence. This helps to explain a public fixation on data protection. Legitimate as this concern is, it means that the roll-out of ICTs for public policy purposes proceeded relatively unchallenged with serious implications for the conduct of democratic politics and the relevance of their normative underpinnings. Instead, legal rather than political contestation over the implementing measures took over.

Technocratised contestation

In the public sphere, the response from infant national and EU level data protection agencies was robust. Data protection honed in on data protection measures that compromised individual privacy and collective openness and transparency. It was generally accepted that it was legitimate and desirable for every administration to protect sensitive security information for the benefit of individual and collective security. Even 'open' Sweden exempted disclosure of negotiating positions and information potentially detrimental to its relations with other states.[5] But given that the EU had in 1994 begun a process of defining transparency requirements with reference to technocratically mediated 'access to documents' – the precondition of information exchange-blanket exemptions of broad categories of documents from openness and transparency codes not only contradicted the spirit of democratic openness but were deemed undesirable and contrary to the case law of the Court of Justice. This implied that:- broad categories of documents should not be exempted without explicit scrutiny as to the applicability or otherwise of one

[4] Recommendation for a Council decision concerning the accession of Bulgaria and Romania to the Convention of 26 July 1995, drawn up on the basis of Article K.3 of the Treaty on European Union, on the use of information technology for customs purposes. COM/2007/0211 final –CNS 2007/0079.

[5] Interview data, 22 June 2007.

of the grounds of exception (protecting justified interests, defence, privacy and so on); partial access must be granted to documents where non-confidential information is included; and general principles of proportionality are to be respected.(Curtin).

However, new technologies and the potential they opened for expediting information exchange and sharing, contributed to a process where the old distinctions between domestic and international politics were being eroded. They brought the normative commitment to transparency and openness into high relief. In the past, member governments had been able to justify 'exceptions' to the norm of transparency on the grounds of legitimate security concerns requiring 'secrecy'. The slippery and fuzzy arena of 'homeland security', differentiation in defence policy-making, recourse to soft law instruments and the launch of pillar II's actions in 'non-military crisis management' illustrated how the scope of exceptions would broaden in response to the imperative to combat terrorism. Not only would third states have roles unforeseen and unchallengeable by national parliaments and the European Parliament, but ICTs would facilitate erosion of protective regimes in ways not envisaged by political and administrative policy makers. The failure of parliamentary controls and accountability to keep pace with the accelerating speed of technological change and possibilities of harnessing nano-technology for security purposes is hardly surprising. Government priority-setting has escaped territorial borders and this trend is most notable in the field of ICTs for e-government.

2. The problem: inadequacies of institutional fixations with formal and territorial- based methods of controlling power

ICTs are being increasingly deployed in the name of enhancing collective territorial security without sufficient or adequate controls being made mandatory either for the technology deployed in the name of public administrative efficiency gains, or in respect of open political control over their use. The political scenario now comprises the following three elements:

1.- the new security policies of ICTs applied in domestic transactions for commerce, leisure and socio-economic welfare service access (including health, tax, licences, ID cards and even e-voting, all nominally but misleadingly called 'e-government') cannot be grasped by parliaments or by popularly elected bodies in territorial space (e.g. states)

2. – ICT applications for transfrontier transactions, from information exchange to cooperation between judicial and police authorities, while crossing jurisdiction exacerbate divergence and erode the quintessential equality of the citizen's access to justice and government.

3. - ICTs elude transparent 'control' by anyone other than those who (a) devised their programmes and (b) those who use them (for legitimate or criminal purposes).

The third point applies to ICTs regardless of whether they are used for 'domestic' or 'security' purposes. The fiascos over the ease with which hackers decoded the new generation of digital biometric passports, or worse still discovered – as in the Belgian case - that encryption was missing, suggests that makers of ICT programmes and systems

competing for market share prioritise vested commercial interests over data protection and system security.

ICTs facilitate the social construction of non-territorially defined public spheres by individuals communicating with each other over common interests, whether trivial or political. It is difficult to insert into this individualised scenario the concept of transparent and legitimate sources of authority that can be held accountable to territorially based institutions. Instead, there is a legitimate concern with ensuring that (i) territorial governments do not use new ICTs to enhance secrecy over the conduct of public affairs (paid for by the public), and (ii) do not apply ICTs in unknown ways that compromise individual privacy and liberty.

Little attention has been paid to the desirability or ability of parliaments – as the elected voice of the people – to ensure that ICT use by public agencies (let alone elusive private or commercial interests) are 'controlled' and answerable to parliament. Instead of an over-arching principle and genuine political control and accountability, there has been piecemeal legislation on data protection, spam, retention of internet data, data mining, fraud and misuse. Insecurity has been transmitted in the name of security. Transparency and openness codes have been prescribed and periodically updated without sufficient attention being given to the e-administration of government which potentially denudes parliaments of real control and capacity to hold government accountable.

3. Implications for parliaments of i2015 : Digi-space, communication and the public sphere

Historically, the cause of openness in the European Community and EU institutions has run in parallel with the adoption of ICTs. The problem is that the question of accountability has taken two separate paths: (i) the constitutionalisation of greater legislative power for the European Parliament; and (ii) the advocacy of codes of practice in respect of data management by ICT suppliers and creators. Common to both has been concern with 'communication' by enhancing (and accelerating) the exchange of information procedurally and openly by the legislative arms of the EU. When openness and transparency norms encounter ICTs, a new dimension of confusion appears and the obsolescence of traditional means of preventing the abuse of power is highlighted. The question is then, what would be an appropriate role for parliaments?

To address this question, it will be useful to reflect briefly on communication in the public sphere. Traditionally parliaments are expected to perform the Grand Forum role in democratic polities. As channels of communication, of information exchange, they are framing issues, shaping debate and influencing, albeit it to a limited degree, the content of draft legislation. The ability to do so in the area of freedom, security and justice is constrained constitutionally. It is also limited by the exemptions to rules on transparency and access to official documents, as well as by national practices on exceptions (notably regarding state security, secrecy and related issues) and national and

supranational discrepancies arising from differential application of the principles of access obligations enshrined in legislative commitments to openness and transparency within sub-committees, ad hoc or expert committees of national parliaments and, notably, in comitology[6] in the EU (Vos et al).

Exemptions are widespread and actual openness depends often on the discretion of officials as well as on the letter of the law. Moreover, the emphasis on improving access to documents has resulted in efforts to define what is meant by 'document'. This in turn has expanded the scope of document from the traditional paper 'document' to include digi-documents, microfiche etc. The problem with the latter is one of durability: paper survives better. Moreover, there is the question of definition: digi-documents require a greater degree of precision and uniformity in defining data fields, data content and terminology, if the intention is to permit automated data exchange. Data exchange and information exchange are not the same thing as intelligence exchange.

Whereas the granting of access to official documents both at EU level, notably by the Council, and at the level of member states continues to be uneven, public access is improving. At the same time, actual access may depend on the discretion invested in civil servants, and the completeness and the timing of the release of official information typically skewed to reflect and suit given institutions' interests. This operates at various levels and traditionally impedes the effectiveness of scrutiny of executive proposals by parliaments (notably in the European Community until first the cooperation procedure and then co-decision were entrenched). It also has a public face in the form of an element of political communication dubbed 'spin'.

Political communication in the public arena has traditionally been mediated by parliaments and the media, with MPs and governments being seen and depicted as the ultimate locus of authority and legitimacy. Parliaments, through ideologically inspired elected representatives of the people, have performed the role of discussion partner. Their target has normally and primarily been citizens in territorial bounded space. The problem is that this role has slipped and is being eroded by new media and means of communication and governance (Collins). Why?

The paradox of modern political communication matches that of the proximity paradox of bringing the EU closer to the citizen (Lodge, 2005). ICT tools expedite the transmission of information to the individual directly on a self-selecting, immediate and personalised basis. ICTs facilitate the social construction of non-territorially defined public sphere by citizens communicating with each other over common interests, whether trivial or political. Without going into the debate on the framing of the public sphere, it is important to note that alongside political communication by traditional voices and interest aggregators (parties, MPs and governments) ICTs have helped individuals establish an 'alternative' public sphere. The latter is shaped by self-interested information providers in a non-territorially bounded cyber-space

[6] Comitology: committees have delegated tasks (mainly from the Commission) in respect of the adoption of measures to implement legislative tasks.

devoid of authority and, crucially, eluding public accountability. Irresponsible and criminal activity (such as by traffickers, pornography merchants and paedophiles) can be tracked, traced and surveilled, using ICTs, and territorial forces used to capture the purveyors according to territorial rules and practices. The public generally accepts this application in ICTs to combat crime as necessary, legitimate, desirable and defensible. But insufficient distinctions are drawn between this use of ICTs and those associated with other domains from surveillance (giving rise to suspicion of Big Brother societies) to commerce, on-line transactions, blogging and leisure. A cursory look at spoofing and phishing for financial gain by criminals highlights the problem of policing and mediation in cyber space.

The proliferation of information and lack of means of verifying the dependability, accuracy, legitimacy, factual objectivity and authenticity of information placed on the web (such as that created in wikis) means that it is not immediately clear, least of all to the unsuspecting citizen, what the source or legitimacy of the source is. While there has been greater publicity about the dangers of online fraud, bogus banking sites and insider fraud in respect of commerce, a 'health warning' as to the validity of political or judicial sites is rare. Instead, there is publicity over corruption and public authority failures to ensure the security of personal information lodged in data banks accessible by other public authorities or agencies.[7] This leads to (i) falling public trust in government, and (ii) a serious shift in perceptions as to the loci of responsibility and accountability. Combined with seeming securitisation of an every increasing number of domestic policy issues, this obscures the issue at the heart of the dilemma of modern government: the tools chosen for communicating information.

4. E-Government: the unintended corrosive impact on parliamentary accountability?

In the absence of political authority and of an authoritative mediator, can political authority in cyberspace be established without a critical understanding and knowledge of the nature and practice of legitimate authority? Can the use of ICTs both by governments and individuals liberate citizens to engage in a public political sphere and protect their security? Or is the unintended consequence of ICT tools for private and public purposes the end of the principles and practice of political accountability? Do ICT tools inexorably rob parliaments and government of authority, and erase public consent over the ultimate locus of legitimate political authority?

The impact of ICTs on the public administration of government highlights an unforeseen and uncharted dilemma of ensuring public accountability for policy outcomes. ICTs change the way in which government is administered.

[7] Particular concerns arose during successive EU enlargements and methods for expediting new states' participation in police and judicial agencies through, for instance, the 2005 Act of accession of Bulgaria and Romania. It introduced a simplified system which by virtue of the Act of Accession Bulgaria and Romania accede to the conventions (and protocols) concluded by the Member States on the basis of Art. 34 TEU (previously Art. K.3 TEU) or Art. 293 EC. See the Convention of 26 May 1997, drawn up on the basis of Article K.3(2)(c) of the Treaty on European Union, on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union. See COM/2007/0218 final-CNS 2007/0072.

They dissolve administrative boundaries. They transform the nature and practice of democracy, and the relationship between the state and the citizen. They require a re-assessment of political claims-making regarding democratic norms, and the principles of transparency and openness, the custodians of which are national parliaments in democratic polities in general, and the European Parliament in the EU in particular.

If e-government erodes administrative boundaries what is the consequence for codes of transparency and openness and ministers' accountability to parliament? Is transparency rapidly becoming no more than an ideal or a slogan? Do ICTs erode it in practice as administrative boundaries disintegrate?: The answer is either zero sum – most exceptions resulting for security leakage, or more openness and universalised co-decision. It is not clear that the adoption of more and more codes of general exemption deliver the goal that they are claimed to. It is, however, obvious that some papers cannot be disclosed for good tactical and strategic reasons (e.g. negotiating position papers; those likely to harm relations with other states; high level policy briefings). It is equally important to recognise that the disclosure of participants or those privy to some discussions is not the same thing as openness and public accountability. However, disclosure of lists of who's an outside expert whom a committee may consult; departmental participation; and critically disclosure of ICT providers (the vested interests) offers a modicum of transparency. From this, there is some chance of tracking activity on a post hoc basis, at least to determine possible sources and channels of influence, whether undue or legitimate.

Observance of codes and practices of transparency and openness are supposed to lend legitimacy to decision-makers. ICTs for the purpose of e-government provide virtual openness and visibility but no means of exacting political accountability: e-democracy is a misnomer. E-Voting is but one element of democratic practice. In the specific arena of freedom, security and justice, and as administrative boundaries merge, two contradictory obligations collide: transparency and the principle of availability. The first is a prerequisite of parliamentary accountability and democratic legitimacy; the second a prerequisite of enhancing crossborder and police cooperation in respect of 'criminal' matters, however differentially and expansively that term is defined. The first can be antithetical in practice to operational goal attainment and the effective apprehension of suspects; and the second vulnerable to known risks accruing from dependence on automated information exchange and, potentially, universalised inter-operability. All may seriously compromise optimal goal attainment (EP, LIBE 2007). The risks include: system incompatibilities; system obsolescence; insider attack; fraud; hostile intrusion; incomplete data; data storage and degradation; data mining; imperfect data management codes of conduct for managing data inputters and data transfer; authentication; verification; legal codes; data ownership; data protection and privacy and laws on use, misuse, re-use, re-sale and reconfiguration misuse of computerised information.

Automated data exchange moreover side-steps the human face of information exchange and the mutual trust and security networks built up by human contact. ICTs do not replicate them, for the time being. Claims that information

can be securely exchanged among mutually trusted agencies on bilateral or multilateral bases may be true but not necessarily universally so, and the underlying ICT systems may not be universally compatible or transferable from one policy arena to another, even if an increasing number of governments opts for open-source software applications.

5. Privatising accountability versus ICTs amenable to national parliamentary control

The problem for governments and parliaments regarding the responsibility for public policy and data use for public policy purposes lies with the way in which the roll out of ICTs has occurred. In practice, by relying on discretionary codes of practice for managing the input, use and storage of personal data, governments have allowed a form of privatised control over public policy to occur. Individual privacy has been compromised by the behaviour of private and government agencies (as in the well documented cases of data loss and theft). Parliaments appear to have suffered a loss in their authority as a result. This means that if they are to be effective in exercising their grand forum and voice of the people scrutiny and control roles, they have to be both more vigilant, more expert and more adept at exchanging and use ICTs for their own information exchange purposes. Few are sufficiently able to do this. In addition, they need to exploit the expertise of the data protection supervisors and work with the European Data Protection Supervisor, ombudsmen and especially the EP's LIBE committee to be in a position to be able to question and hold the EU Commission and both national governments singly and collectively (in the Council of Ministers) to account. Post hoc reliance on legal redress is a necessary but not a sufficient condition of ensuring openness, legitimacy and democratic accountability. Without those, individual and collective liberty and security are at risk.

Evidence grows of rising breaches of data privacy, weak public accountability by public bodies using ICTs for transmitting information and personal data for public purposes, and a raft of problems over the inadequacies of the security architectures in place. For example, the European Commission launched proceedings against Germany, Austria and the United Kingdom for breaches of Community data protection law. In April 2007, France's data protection authority, the CNIL (Commission Nationale de l'informatique et des Libertés) fined the US-based Tyco Healthcare France corporation 30,000 Euros for non-cooperation and for providing CNIL with erroneous information. In March 2007, the Garante, Italy's data protection authority, issued a guidance paper to assist employers to overcome some of the hurdles and to allow monitoring in a way that satisfies the requirements of the EU Data Protection Directive as implemented in Italy. The paper contained a legally binding interpretation of the statutory requirements for monitoring in the workplace.[8] In Britain, the government was repeatedly embarrassed by data losses arising from sloppy handling.

This is just the tip of an iceberg. The problems of ensuring parliamentary

[8] Privacy Laws and Business Newsletter, May 2007.

control at any level, whether local, regional, national or European, are extremely difficult in a situation where technical and technocratic 'expertise' dominate. Prioritising efficiency gains and cost-cutting is risky to states and individuals, but lucrative to ICT vendors. Parliamentary accountability mechanisms have not caught up with contemporary realities and civil servants are often ill-placed to assess the risks. Over simplistic assumptions and claims are made; over-optimistic goals set (as with the elaboration and realisation of a common consular space, cooperative offices; and biometric visa processing in localised offices). Avoidable breaches of data processing security ensue. The question of who is responsible and accountable in these mixed private public partnerships cannot go on being dealt with on an ad hoc basis when 'scandals' occur without compromising still further public trust in government and parliaments. Trust is at the heart of legitimacy.

Conclusion

The roll-out of ICTs for public service efficiency gains and citizen convenience gains (ignoring the digi-divide and the socially excluded) is accompanied by disingenuous, sometimes naïve assumptions as to their allegedly 'democratic' character, and by credulous but deceptive political claims-making as to their contribution to enhancing transparency and openness. Yet, if the latter are not to be robbed of genuine import and meaning, accountability to parliament must be realised. Accordingly, the European Parliament should adopt a more critical approach to transparency and demand genuine transparency regarding the ICT tools used for public policy purposes. Its' lever lies in the Reform Treaty and pillar I (asylum and immigration); pillar III (police and judicial cooperation); the Hague Programme; and other sectoral policies. It should begin by embedding and mainstreaming ICT risk assessment and requirements for all policies subject to EU competence, including soft law instruments. It should review 'discretionary' power to exempt issues from transparency and openness and make them uniform, including issues on declassifying documents (such as 50 year secrecy rules, and discretion to define any matter secret). Data Protection supervisors should be critical and forward-looking, pro-active and co-opted by the EP to alert governments to likely problems and empowered to look into data management procedures to ensure protection. The EP and national parliaments should 'embarrass' governments over the improper use of data, powers to act against agencies who refuse to submit files for scrutiny claiming that they are subject to exceptions (and exemption from transparency and openness access rules). Obligatory reports to EU authorities should be detailed; those which are not sufficiently detailed and which fail to meet standards set by the EU Data Protection Advisor (EDPS) should entail penalties that immediately compromise the ability of the local agencies to conduct their business. For instance, if an agency does not comply with both data protection legislation and high uniform standards of data procedures, access to important data bases (e.g .Schengen II) should be barred.

In short, the EP has to take the initiative to ensure greater cooperation with national parliaments and do so before the next Euro-elections. Tangible results, close to the people, are likely to

have greater mobilisation potential and be of greater interest to the individual, than the prospect of MEPs electing the Commission President, interesting as that constitutional requirement may be in its own right. Declining public trust in the integrity of government and politics, the authoritativeness of the media and the trustworthiness of private and public bodies handling personal information, undermines the credibility of states' claims about how ICTs contribute to personal and collective liberty and security. The Council of the European Union recognised this in November 2008. But action should not stop at the Commission's forthcoming communication on future priorities in the fields of Liberty, Security and Justice in Europe which will prefigure the next long-term programme (2010-2014) and the fight against cybercrime. The EP must critically assess the Commission's evaluation of the implementation of Directive 2006/24/CE of the European Parliament and the Council of 15 March 2006, regarding data retention, and follow up the work of the Article 29 Committee[9] to ensure that the latest Council statements (Council 2008) are not eroded by the practical realities of ICT advances in domestic e-government and commercial activity. It must take insufficient steps to reassert democratic controls and accountability. Baking-in them into the design of e-government should be the norm.

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BEYOND CONNECTIVITY. FUTURE CHALLENGES FOR E-INCLUSION POLICIES

Radu Gheorghiu, Manuela Unguru*

Abstract. ** *The information society stays at the core of the Lisbon Strategy, despite the dot-com crisis and the still hidden macroeconomic impact of information and communication technology (ICT). Thus, i2010 has been the first concrete initiative of the revised Lisbon Strategy in 2005, while ICT represents by far the field with the largest budget in the 7th Framework Programme (FP7). On the industry side, the stakes are still high in the global competition, where Europe hopes for a place at least for communication technologies and services. However, the extreme dynamics of technology with its sometimes breathtaking promises, poses new challenges for e-inclusion. Firstly, the accelerating pace of innovation maintains a generation type of digital divide between countries with different level of development. Secondly, the changing nature of the network (e.g. web 2.0 with virtual communities; web 3.0 with location based interaction; semantic web; ambient intelligence and "the internet of things") blurs the very distinction between inside and outside the information space. The paper explores these challenges and the associated policy options.*

Keywords: *Information society, e-inclusion, i2010, EU Framework Programme, ICT industry*

JEL: *O33, O38, I28, L63, L86*

Introduction

Throughout the development of the information society, the benefits were not equally distributed inside and among countries. The concerns about unequal social and economic opportunities have been initially gathered under the generic name of *digital divide*, term replaced in the last years by digital *inclusion* or *e-inclusion*, which further express the implicit role the information society has gained for the life of the citizens.

The year 2006 represents a turning point in understanding and monitoring e-inclusion at European level. With the

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Riga Declaration, the European policy switches from the objective of increasing the capacity of accessing information and communication technologies (ICT) to the utilization of the technology for achieving the social inclusion objectives (see Riga Declaration, point 4). The Riga Declaration has identified six relevant themes for e-inclusion: *e-accessibility* (guarantee of the accessibility to ICT technologies by all the categories of population, especially for disable people), *e-ageing* (ensuring to elderly people the possibility to continue taking part to economic and social life); *e-skills* (ensuring to all the citizens the necessary level of education and skills); *socio–cultural e-inclusion* (facilitation of the social integration of minorities, immigrants and periphery groups through ICT access); geographical *e-inclusion*; and promotion of an *inclusive e-Government* (by providing better and more diversified services and by encouraging democratic participation of the citizens to the set-up and implementation of policies).

Up to now, the achievements of e-inclusion initiatives are below the targets. Riga Dashboard, which measures the progress towards the commitments of the European e-Inclusion Initiative, concluded in 2007 that "progress towards the Riga targets is only happening at half the speed which is necessary to reach them by 2010. Without policy intervention disparities are deemed to stay and in some cases widen."

Unfortunately, improving e-inclusion is not a linear process, but one with moving targets. On one hand the technologies permanently evolve, creating new waves of diffusion and so new temporary disparities, on the other hand the intensity of ICT use is also under constant transformations, as new patterns of ICT consumption emerge not only at individual level, but also at communities' level (e.g. web 2.0).

After a brief introduction into the evolution of the digital divide and e-inclusion concepts, the paper analyses the dynamics of the ICT penetration rates and of the gaps between the EU countries on the life cycle of already mature technologies, as fixed and mobile telephony and broadband. Further on, the paper describes the emergent ICT generations, having as drivers of change the convergence of technologies, semantic web, the geo-positioning systems or the "Internet of things" with the associated changes in interaction behaviour, and tries to identify the factors of new types of digital divide. Finally, the policy challenges are discussed and several conclusions are drawn.

Digital divide and e-inclusion: evolving concepts

The distinction between *information haves* and *information have-nots* dates back from the early 1990s, as part of the US debate regarding the universal service obligations. From the initial issue of universal access to telephony, it gradually extended to computer equipment, Internet and broadband. With the 1996 Telecommunication Act, in US the discussions focused on Internet access and the role of education to fill the divide.

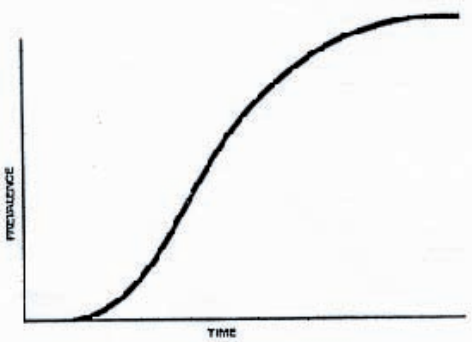
The project of the European Information Society, launched with the Bangemann Report (EC 1994), mirrors the American experience, trying to take advantage of the Internet opportunities by ensuring a large adoption of the technologies and the associated services.

From a moral perspective, the digital divide concerns have been

initially connected with the access to the democratic life. Today, although e-democracy represents an issue in itself, it is shadowed by the preoccupations for equal economic and social opportunities. Given the importance ICT has gained, the Nobel owner Amartya Sen considered the digital inclusion or e-inclusion as one of the positive liberties. Based on Sen's acceptation, the eEurope Advisory Group (Kaplan, 2005) states that „ICT are becoming key enablers of the modern life" and that e-inclusion refers to the effective participation of individuals and communities in all dimensions of the knowledge based economy and society.

Beyond the moral issue, e-inclusion is an outcome of the ICT adoption cycle, which is a gradual process by its nature. The general framework of the adoption models (tested on different technologies, from corn hybrids 80 years ago, to steel and television) is represented by a logistic curve (the S curve): after a slow start, the technology adoption enters a rapid diffusion and then slows, continuing asymptotically towards the total potential population (Figure 1). The first stage, in which the increase is quite slow, is called *expansion period*. It follows the *maturity period*, and then the slope's curve is diminishing again, the technology getting close to the *saturation* level. The latter differs according to the technology: for the fixed telephony it might be the number of households, for the mobile one, it might be the number of individuals in a certain age group (or greater, since there are individuals with several mobile phones), while for internet the number of households and/or companies (or lower, since the internet access at the workplace or school could be a substitute for the internet access at home).

FIGURE 1



The S-curve of adoption of an innovation

The idea of saturation level determined by the target population has been contested because it ignores the resistance against innovation (Rogers, 2003). We consider that this phenomenon is less pregnant in the case of ICT, due to the fact that these are general purpose *technologies*. Nevertheless, it is possible that a share of population rejects ICT adoption (e.g. for reasons of psychological discomfort), raising serious problems on long term, when public services and the majority of jobs would necessarily demand certain ICT skills.

The general framework of the S adoption curve has been completed in the literature by the models of the adoption decision. The decision for adoption is based according to the literature on the cost-benefit analysis (models called "probit") and the number of existing adopters (new adopters are encouraged by the existing ones in the "order" models, while new adopters avoid a technology with already too many adopters in the "stock" models).

But the ICT adoption, while presents the characteristics of other general purpose technologies (e.g. steam engine, electricity), involves also specific aspects. Warschauer (2003)

observed that e-inclusion is not assured by mere connectivity, and that different other authors suggested the need for a multimodal definition of e-inclusion. Inspired by the specific challenges of Latin America, Tambascia (2006) identified three layers of bottlenecks towards e-inclusion: *connectivity* (i.e. access to the equipments and networks), *accessibility and usability* (i.e. the cognitive and physical capacities for using the technology, including by the persons with disabilities, and interpreting the digital content); *intelligibility* (i.e. the adequacy of the digital content to the local culture, including the availability of content in the national language).

The Riga Dashboard is monitoring the progress towards meeting the targets of i2010 initiative by four indicators, two of them dealing with the supply side (*broadband coverage and e-Accessibility of public websites*) and the other two with the demand side (*internet use and digital literacy*). Although the target of this monitoring exercise is on the average value of indicators, it reveals some issues of digital divide. Regarding the **use of internet**, the gap between *groups at-risk of exclusion* (unemployed, age 65-74, inactive and low educated) is closing very slowly. As for the **broadband coverage**, *geographical disparities* are persisting, this indicator being much lower in rural areas (71%), with lower traffic speeds available than in urban areas and less competition between alternative providers. Finally, regarding **digital literacy**, *gaps in internet and computer skills* are still important especially for groups at risk with low education, economically inactive, and the older population. These are also the groups which have shown to have larger disparities in the rate of regular internet usage, and will not likely meet the Riga targets by 2010.

The digital divide between countries

Understanding the digital gaps between countries requires a dynamic analysis of the ICT penetration rates, i.e. comparing the adoption curves between technologies and between countries and understanding the digital divide as following the life cycles of technologies.

For instance, while it is largely acknowledged that GDP represents an important explanatory variable for the digital divide between countries, most of the literature ignores that GDP is more relevant in the maturity period of technologies than in the expansion and saturation periods. The graph below reveals the evolution in time of the GDP disparities as explanatory variables for the digital divide between EU countries for three technologies: fixed telephony, mobile telephony and broadband.

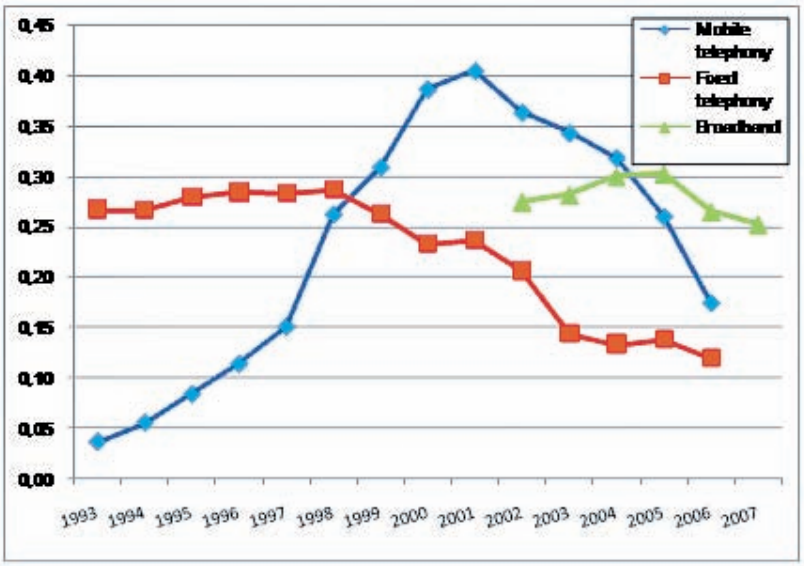
GDP has been a significant driver for the adoption of fixed telephony until the technology has reached saturation and started to compete with the mobile[1]. Similarly, for the mobile telephony in EU countries GDP per capita has been a significant driver for adoption only over the expansion period, up to the maturity ceiling of this technology.[2]

The starting moment is also important for the shape of the adoption curve. An

[1] The statement is based on the estimation in a panel of a fixed effects model, data for fixed and mobile telephones for 12 European countries, 1995-2006

[2] We have considered 10% expansion ceiling and 80% the ceiling for the maturity period in the process of adopting mobile telephones

Graph 1: The dynamics of the importance of GDP for the digital divide between countries*



* The values were computed as yearly slopes of the linear function between GDP in PPS as exogenous, and ICT penetration rates as endogenous, for a set of 31 European countries
Source: own computations, based on EUROSTAT data

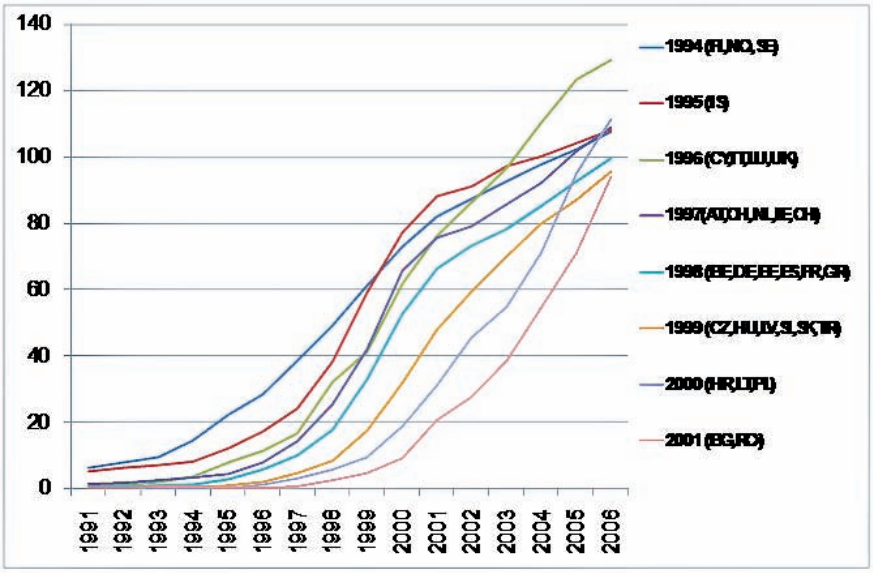
analysis of the mobile phone adoption in the European Union (EU) countries shows that the countries which first reached the expansion ceiling (i.e. 10% penetration rate) maintained their advance and reached earlier the saturation point. The graph below presents the average mobile penetration rates by groups of countries that completed the expansion period in the same year. For the groups of countries that started earlier, the S shape is obvious and they have reached faster the saturation level, while, for countries with a delayed start the shape of the curve is smoother and its second inflexion point of the 'S' shape is practically missing (see Graph 2).

When comparing the role GDP played in the speed of completing the expansion stage, the econometric analysis show that it represented a major variable for telephony and a less important, but still significant one, for broadband. This suggests that, given the larger complexity of the broadband adoption capacity, other factors than GDP might play an important role. A recent study (OECD, 2007) finds as significant factors for the broadband adoption the size of the domestic market, education and the degree of urbanisation.

Other types of analyses underline the benefits among the explanatory variables of broadband adoption. The benefits may differ between countries based on the implementation (e.g. different studies show that US managed to increase much more than EU the economic productivity, due to ICT) or the local network effect.

The network benefits increase for each participant with the growth of the number of participants (Kelly, 1999). In the case

Graph 2: Penetration rate of mobile phones, by groups of countries, according to the year of completing the expansion period*



* We have considered 10% as ceiling for the expansion period
Source: own computations, based on EUROSTAT data

of global networks, as the Internet, the network benefits could be considered either equally distributed between the countries, or, on the contrary, the benefits could be rather related with the national and local level of development, being complementary to the flows from the real economy. The evidence from the literature rather indicates the complementarity between national virtual networks and global networks, with smaller differences for English speaking countries.

A technology-driven future of e-inclusion

Most experts agree that ICT are very dynamic and that the technologies expected to be developed and adopted in the next ten years will induce important transformations in work and private life. Several years ago the Institute of Prospective Technological Studies of the European Commission provided as a possible scenario for 2010 the "ambient intelligence" (IPTS 2001; Cai and Abascal, 2006), namely an environment enriched by complex information interactions reducing the need for administrative real interactions. Other overall concepts as the "disappearing computer" (Streitz et al. 2007), or the "always on" type of connection, suggest the huge transformations which are ahead of us on relatively short term.

As reaction to the growing diversity of technologies, menacing with uncontrolable complexity, both the industry and the governments encouraged in the last years the **convergence of technologies**. According to Ganswindt (2006), the convergence

takes place on three levels: *network* (i.e. fixed telephony, mobile and data networks), *devices* (i.e. telephones and computers) and *applications* (i.e. voice and data applications). The convergence of technologies often results in new types of usage and new types of offers (Afeche, 2006), including bundling of services. An effect of contamination of services is thus supported, as for instance the digital television may encourage the Internet adoption.

A complementary trend contributing to an increased usability of ICT is represented by the **hidden interaction of the networks**. Still in the infancy, the collaboration of networks would enable the users of laptops, cell phones or PDAs not to pay attention to the transmission standards they are using, which dynamically adapt to their needs and location. Such user oriented services would also enable the user to be accessible at all times at a single number, wherever they are.

Different prospective exercises (e.g. Silberglitt et al, 2006) announce already as a strong trend the **multimodal access**: the ICT users may chose different communication devices or channels to interact with the online content. As a result, the already traditional connection between a user and a certain device blurs, the user gaining freedom to interact dynamically with the online content.

After human to human asynchronous interaction and computer to computer negotiations, the Internet may exponentially increase by the **interaction of objects**. With the promises of new Internet protocols, different devices (i.e. computers, sensors, actuators, mobile phones, other electronic devices) may become addressable and identifiable, thus being able to collaboratively perform different tasks. The range of applications is practically unlimited: from improving car safety by increased interaction of the car with the external environment sensors; energy optimisation systems; crops monitoring; to fully automated supply networks. The power of distributed intelligent systems has been acknowledged in the literature as very high, even when the intelligence of each participant unit is quite limited. "The Internet of Things will become a reality over the next 20 years; with omnipresent smart devices wirelessly communicating over hybrid and ad-hoc networks of devices, sensors and actuators working in synergy to improve the quality of our lives and consistently reducing the ecological impact of mankind on the planet" (EC, 2008a).

The "net of things" may dramatically increase internet traffic and create a competition between "private" users and business users of the network. The new intelligent distributed systems may raise new concerns about trust and privacy and also about their sustainable energy consumption.

The signs of the net of things are already strong: while the PC market is slowing, the market for embedded software and machine to machine software is registering growth rates over 50% per year. The drivers of the convergence are the standards, not as much in the IT industry, but in the network industry. There is a need for putting everything over an Internet Protocol (IP), but the current IP is inadequate, because although it enables data exchange, it does not have an "intelligence of the network", i.e. the language of the application it is not yet understood by the network and vice versa (Ganswindt, 2006).

A transformation in the nature of the

network itself is already announced by the telecommunication operators under the term **New Generation Network (NGN)**. The novelty is given by a shift from the classic model of telephony (with circuit switched networks and end-to-end quality service) to the package model of the Internet. Instead of dedicated lines between a sender and a receiver, the transfer of data (including voice or image) will be made by an intelligent network on alternative routes optimised by the network itself. This developing network would represent an evolution compared to the current Internet, as would enable a certain control over the traffic.

"From the Internet community standpoint, NGN is in contrast with some of the basic principles of the Internet structure, based on a dumb "*cheap and cheerful*" core technology allowing constant and spontaneous innovation at the edges" (OECD 2006a). Hence, the emergence of NGN calls for a redefinition of universal service obligations, their coverage, how they are financed and who is responsible for providing them (OECD 2006b). NGN may substantially increase availability and affordability of the telecommunication services, while contributing to an explosion of services and technologies. As the digital inclusion issues are not supposed to end with NGN, future e-inclusion policies require additional efforts to focus on users' needs simultaneously with care for technological neutrality.

While NGN involves a transformation in the intelligence of the network, a similar intelligence upgrade is announced for the content in the form of the **semantic web**. Currently the web pages do not contain information about their contents and the subjects to which they refer and therefore the search engines select the relevant pages based on frequency of words and the historical reputation of the pages (links towards the page). With the semantic web the pages would include alongside their content brief descriptions according to standard classifications of the content called ontology. This would enable very accurate reach of information and even automatic computation (e.g. compare prices of hotels from different sites). The impact of semantic web will be huge, as currently only a very small amount of total information on the web is actually read by somebody. At the same time, the semantic web enables machine to machine interaction, populating the web with electronic agents that grasp information and negotiate with different sites in the name of certain users (e.g. prepare a trip with all details).

A different type of transformation in the information society has been produced not so much by the evolution of technology, but by a leap in the peers' behaviour with the emergence of **web 2.0**. Web 2.0 has a rather large spectrum of definitions, however, the experts agree on the importance of online communities and their asynchronous interaction. Two types of online communities can be now distinguished: *commercial communities* (e.g. eBay, Amazon) and *communities of practice* (i.e. sharing knowledge or video content).

At the beginning of the 1990's the virtual space was supposed to act as a substitute for the physical one (Rallet and Rochelander, 2007) and when the online communities emerged, they have been considered as very similar to the real ones. Recent studies show that, although there are similarities between the real communities and the online ones, in the latter the participants have a much loose involvement in time, their participation

is more focused on the topic of the community. Instead of the distinction between members and non-members, a more feasible one is between different degrees of participation.

Online communities are more dynamic than the real ones – the number of participants can explode in days, but can also vanish quickly. Most of the active online communities are based on a relatively small number of dedicated participants. The motivations of the contributors in the same community may have a large variety, from intellectual motivations to professional visibility.

The collaborative level of communities may reach unexpected levels as in the case of open source software. The contributors to open source are usually unpaid, the supervision is minimal, while the intellectual property rights content are modest (Lerne and Tirole, 2004). A study (Lakhami and Wolf, 2005) shows that 29% of open source contributors are motivated by education/ intellectual stimulation, 25% by hobby, 25% by professional interest and 19% by communitarian reasons. The psycho-social reasons are often connected to signalling, many contributors managing to obtain paid contacts from the software companies.

Less integrated, but with higher success are the online communities sharing video and music content. YouTube, with its over 40 million shared video recordings and 200 terabytes of data, and the growing number of blogs, show that on the Internet the production exceeds the capacity of absorption. The participative web competes with the editing industry and the television: certain blogs reached larger audience than public television or newspapers, forcing some of them to migrate from providing content to enabling content collection.

More recently, at the European level, mainly under the influence of the large companies such as Nokia, the concept of **web 3.0** has been launched. While its definition is even more debated than of web 2.0, it is generally agreed that it involves community collaboration augmented by positioning. The Global Position Systems (GPS) are already largely spread, but their integration into communication is still explorative. Future applications may enable new types of interaction for the groups of persons located in short distances (e.g. meet friends in the city) and location oriented services (e.g. search for the closest bank or restaurant).

Development of interaction with determined position is also boosted by the set of short range communication technologies, as Bluetooth for computers and DECT for cordless phones.[3] The combination of long and short range communication technologies will be critical for the development of location based interaction. Certain experts take into account also the possibility that in large cities the communication may rely on a large number of short range communication devices, creating the so called “dust networks”.

Impact on e-inclusion of technological trends

The expected changes into the nature of the information society draw us apart from the classic representation of

[3] Webb (2007) provides a review of such technologies which include: UWB, W-LAN, DECT, BlooTooth, Zigbee, RFID.

a gradual diffusion of information and communication technologies and poses new challenges for e-inclusion. Let's take one by one the above trends and chase for their possible future impact on e-inclusion issues:

- The convergence of technologies reduces some of the complexity the users are confronted within the context of very rapid technological development and encourage the contamination between the diffusion mechanisms of different technologies. At the same time, the bundling of services does not guarantee a real use of some of these services.
- The multimodal access and the disappearing computer increase the chances for access to the network, and a new type of gap between the users may emerge from the quality of services used.
- The Internet of things, expected to reach over a thousand sensors per capita in the next ten years, practically interwave the real space and the virtual one. This fact fades the classic abilities of using the technology for a personally defined purpose, towards the understanding and exploiting the functions of the different environments the person is in (e.g. an intelligent house).
- The New Generation Network provides the promises of cheap communication of voice, image and data, simultaneously with an increasing diversity of technologies, which calls for a redefinition of the universal service obligations.
- Semantic web may contribute to a spectacular openness of "the deep Internet", the Internet which is beyond three clicks and which is now practically inaccessible. In this environment the persons will be able to define electronic agents for negotiating in the network in their benefit (e.g. finding best price for a product). The definition of such tasks involves a completely new type of skills.
- The online communities already proved able to contribute to the development of consistent shared knowledge and reputation mechanisms. However, the language barrier represents an important issue for accessing some of the communities.
- Web 3.0 with position-based interaction may bring completely new forms of collaboration. At the same time, the short-range communication seems to be much more relevant in highly populated regions with creating a new form of natural urban-rural gap.

Policy challenges

Throughout the first three years of the revised Lisbon Agenda, there has been an increasing focus by Member States on the ICT policies. National strategic plans are increasingly addressing a variety of information society issues, often with dedicated strategies along the lines of the EU i2010 initiative, but commitments are not homogenous among the EU countries.

As shown in the previous section, the technology is very fast moving. Compared to the United States (US), Europe is lagging behind in IT, but has some advance in telecommunication technologies. Trying to close the gap with the US, the EU policy in Research and Development is focused on the ICT, which became the most important subject in FP7, cumulating 43% of total funds dedicated to Partnership Programme.

Since the Riga Declaration, e-inclusion means both inclusive ICT and the use of the ICT in order to achieve wider inclusion objectives, and includes issues

in the fields of active ageing, geographical digital divide, accessibility, digital literacy and competences, cultural diversity and inclusive e-Government. EU considers that particular attention must be paid to further improve user motivation, as well as trust and confidence through better security and privacy protection. Furthermore, greater gender balance in the information society remains a key objective.

To convincingly address e-Inclusion, the gaps in Internet usage of the older population, people with disabilities, women, and low-education groups, unemployed and less-developed regions are committed to be reduced to a half, from 2005 to 2010, according to the Riga Declaration. For a more inclusive e-Government, there is need to develop further the infrastructure and the services. As revealed by a recent study (Niehaves and Becker 2008), measures should also take into account the important changes that ICT developments in network capacity, in wireless and mobile technologies, as well as in collaborative applications are bringing to economies and societies.

The critical directions for the e-inclusion in the EU are the access of individuals to the labour market; stimulation of the participation to public life and policy; stimulation of long-life learning; minimization of effects of ageing, illness and handicap (Bianchi et al. 2006).

The dynamics and the deep transformations the new ICT generations call for reconsidering the idea of general service obligations, producing a shift in the policies of developed countries, from ensuring simple access for disadvantaged categories (e.g. persons living in remote areas), towards monitoring the competition (OECD, 2007). An example is that of the Voice over Internet Protocol (VoIP) services offering lower prices compared with the fixed telephony services.

Conclusion

At the European level the information society is no longer emergent, and entered its maturity stage: the Internet penetration rates in most developed countries are already approaching the saturation level, with the promise of a pervasive access and a definitive integration of the ICT in life and work routines.

But the benefits of the information society are not evenly distributed, at least at a certain moment of time. First of all, the digital divide between the European countries, while apparently narrowing in absolute terms, persists when considering the different ICT generations (e.g. telephony, Internet, broadband). Secondly, in front of us new ICT generations, poses new challenges, not only in the inclusion of individuals into the information sphere, but also for the very distinction between in and out of this sphere.

These suggest the need for understanding the digital divide and its drivers during the life cycle of technologies. The apparent diminishing gaps should not be seen only in relative terms, but in temporal terms.

The digital divide between countries could be explained for the maturity period of technologies by the differences in the general level of development. The various technologies exist in parallel and they could be either substitute of complement overlaps that should be dynamically analysed. Our estimations show that GDP has been significant for the fixed telephony until the technology

has reached saturation and started to compete with the mobile. The mobile itself followed the same pattern, while broadband is still in the maturity stage. Beside GDP, there are other factors that may speed the adoption of the ICT technology as market size, education, degree of urbanisation or local content available.

The starting moment for the technology adoption is also important for explaining the long term digital gaps between countries. An analysis of the mobile phone adoption in the EU countries shows that the countries which started earlier have faster reached the saturation level (like Finland, Norway, Sweden, Iceland), while for countries with a delayed start (Croatia, Latvia, Poland, Bulgaria and Romania) the shape of the penetration rate curve is smoother and the gap between countries is maintained.

The rapid evolution of the information society is supported by the continous technological development and the assotiated changes in users' behavior. The new ICT generation in expected to bring more user-friendly ICT and greater benefits in day-by-day life. At the same time, the border between inside and outside information society will gradually vanish, as the whole environment will be pointed with interaction forms of electronic informational type.

The increasing pace of technological development creates faster and faster waves of ICT adoption, maintaining the digital divide. In this context the e-inclusion policy responses are challenged not only to maintain technological neutrality, but also to use anticipatory intelligence.

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THE POLITICS OF EVALUATION IN CO-FINANCED PROJECTS: THE CASE OF THE SCOTTISH EXECUTIVE AND THE EVALUATION OF THE STRUCTURAL FUNDS

Delia M. Costân*

Abstract. *This paper combines an analysis of the different theories expressed in the literature in relation to the process of evaluation and their empirical application to the case of a project evaluation undertaken by the Scottish Executive. The evaluation undertaken by the Scottish Executive is analysed in the context of the various theories and hypotheses expressed in the evaluation literature. Insight into the activity undertaken by the Scottish Executive and access to primary documents used, was facilitated by the author's participation in a six week internship within the Structural Funds Division of the Scottish Executive. The analysis of the evaluation of the co-financed projects in Scotland revealed that the challenges to the process of evaluation in Scotland resulted in part from the existence of different understandings by the various stakeholders involved in the setting of the goals of the evaluation process. The author's findings on the application of Article 4 in Scotland are that the different interpretations of Article 4 come from the European Commissions' general approach to evaluation; 'the Scottish Executives' emphasis on meeting the absorption requirements of the Structural Funds and less on detailed evaluation, and the Programme Management Executives' focus on supporting the project beneficiaries and less on evaluating the projects.*

Keywords: *evaluation theories, EU Structural Funds, evaluation of co-financed projects, Scottish Executive*

1. Theories and hypotheses in the evaluation process

Evaluation is a process that has been practiced for a long time, but received the attention of scholars of social research rather recently. Originated in the United States of America (USA) and identified with the evaluation of "poverty programme" in the 60s, the evaluation research became the focus of the American scholars of social research, and generated debate in the literature and controversies between the different evaluation paradigms. The adoption of the evaluation practice and the development of an evaluation culture in Europe have to be seen gradually in correlation with the other tendencies emerging on the continent.

In the European countries, evaluation has roots in the reforms of the public sector in the United Kingdom (UK) in the 80s and the approach to the principle of "value for money" that created a new way

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of thinking, where every penny had to be justified, and, therefore, more attention was concentrated on the efficiency of public service. The challenge of reducing public spending continued in most of the industrialized states, and emerged with the introduction of the New Public Management culture. The era of New Public Management was developed and its principles and rules were adopted by many other continental countries at the beginning of the 80s. One of the consequences was a growing attention to efficiency and, in relation to that, an approach to the practice of evaluation. Gradually, the reforms of the public sector in the Anglo Saxon countries and the increasing emphasis on efficiency in developing public policies lead to the adoption of evaluation culture in most European countries.

International organizations such as the European Union (EU) become the laboratory of new approaches to evaluation, especially through the development of the Structural Funds' policies, which expend a considerable amount of human and financial resources, and require monitoring and evaluation. Despite its relatively recent introduction in Europe, the evaluation research gained rapidly importance, and became the object of academic controversies and a source of challenges for practitioners.

Several paradigms have been developed in an attempt to explain what evaluation is or should be. As suggested by Patton (1997: 22), a simple brainstorming exercise reveals that evaluation can equal measurement, rating, standardization or comparison, but on deeper reflection, evaluating implies more than a process of measuring, observing, reporting, and, in the best case, interpreting and utilizing the results. Evaluation is increasingly associated with the allocation or cutting of funds, political pressure or support, changes in administration, changes in the careers of the administrators and the jobs of the programmes' staff and the learning process, etc. It could be argued that essentially evaluation is a concept that could be defined as determining "the worth, merit and value of something". (Scriven, 1991: 1)

But how evaluation should be undertaken? Who should be involved? What is the role of evaluation or which are the consequences of evaluation? These are only some of the questions that have drawn the attention of both scholars and practitioners in the field.

On one side of the evaluation paradigms is the rational analytical school, whose scholars state that there is one single reality where the goal of evaluation is to seek "the truth". The highest aspiration in the logical positivist tradition is to make statements about the world that are true, and, thereby, universally generalised. As a consequence, the evaluation research may contribute to the quality of the decision making process by providing a "true knowledge" and the "right" policy theory that will ensure that the "right" instruments are deployed in the "right manner" and efficiency in attaining the "desired objectives". (Peter van der Knaap, 2004: 27)

At the opposite side of the scale there is the responsive school, represented by Guba and Lincolns' (1989) constructivist evaluation. They contradict the existence of a unique reality, and therefore the scope of evaluation as the search for the "truth". In the responsive school tradition, the evaluation forms part of a continuous process driven by political and other interests that may be leading at best to

some agreement on "images of realities". In this vision, the process of evaluation implies taking into consideration the claims and interests of all stakeholders and the core characteristic of this paradigm is the emphasis on negotiation and consensus where "the evaluator must be the orchestrator of the negotiation process." Guba and Lincoln (1989: 10)

Despite the controversy between the positivist and constructivist paradigms, both visions of evaluation, agree on the political nature of the process. While most of the scholars recognize that evaluations operate within political constraints and that evaluation research should be understood as inherently political, Taylor and Balloch go further and suggest that "evaluation itself is socially constructed and politically articulated" (2005: 1). The same political nature of the evaluation process is stressed by scholars from the realistic evaluation paradigm, such as Pawson and Tilley. They state that "the very act of engaging in evaluation constitutes a political statement" (2000: 11), while Guba and Lincoln argue that "to approach evaluation scientifically is to miss completely its fundamental social, political and value orientated character".

Probably one of the scholars who mostly stressed the political nature of evaluation is Carol H. Weiss. When analyzing the evaluation process of the public policies she offered three reasons why should evaluation be considered a political act: programmes and politics are "creatures of political decisions" and evaluations implicitly judge those decisions, evaluations feed political decisions making and compete with other perspectives in the political process; evaluation is inherently political by its very nature because of the issues it address and the conclusion it reaches (1993: 94).

Among the various models of evaluation expressed in the literature, the approaches are given to goal setting generated controversies in the field as well. Two main theories received the attention of scholars from the social research area: goal based evaluation whose promoter is Tyler and goal free evaluation proposed by Scriven.

Credited as being the pioneer of goal based evaluation, Tyler (1942: 492) argues that setting clear objectives and goals is a precondition for evaluation. The traditional approach to goal setting in the evaluation process states that in order to have a valuable evaluation it is essential that the goals are clearly set so that the evaluator knows what to look for. Focusing on attainment of goals implies, on one hand, measurement of the achievement of the programme goals, whether the results are in accord with the goals and, on the other hand, whether the results are produced by the programme. (Vedung, 1997: 37) It has been argued that "if evaluators agree in anything, it is that programme objectives written in unambiguous terms are useful information for any evaluation study." (Worthen and Sanders in Patton, 1997: 149) However, practitioners in the evaluation field have stated that this rarely happens in reality and that, most of the time, the goals of the programmes are ambiguous or the programme staff has unclear views about what are the goals of the programme.

The solution proposed by goal based evaluation theorists is focusing the process of evaluation on the goals of the programme. It is stated that the first step the evaluator has to do, is to clarify the objectives or goals of the programme, for playing what Patton calls a "goal clarification game". (1997: 149) This

might avoid the situations in which the programme staff will declare at the end of the evaluation process that this is not what they wanted to achieve. The measure of success is how well the goals initially stated have been met in the results of the programme. The goal based model of evaluation has for a long time been generally accepted in the literature. However, the critics of this model argue that by focusing on attainment of objectives, the goal based evaluation neglects the implied costs in terms of human resources, money and time. Moreover, by focusing on the goals initially established, the evaluator will neglect the unintended effects of the evaluation, which might be more relevant than the expected results. It could also be argued that sometimes goals can not be measured and therefore made the object of the evaluation.

The strongest critic of the goal based evaluation is Michael Scriven. He proposes the goal free evaluation as an alternative to the goal based evaluation. The solution proposed by Scriven implies "gathering data on the actual effects and evaluating the importance of these effects in meeting demonstrated needs". (in Patton, 1997: 181) By focusing on what was actually obtained and not on trying to find out what was initially settled as a goal or what the programme is trying to do, Scriven offers four reasons for choosing a goal free or what he also calls, needs based evaluation. He states that this model of evaluation avoids the risk of missing unanticipated outcomes, removes the negative connotations of the language from "unanticipated effects", "side effects" or "secondary effects" that sometimes might well be the crucial achievement of the programme. Moreover, needs-based evaluation eliminates the perceptual biases introduced into an evaluation by the knowledge of the goals, and maintains the independence and objectivity of the evaluator through a goal free evaluation. (Scriven, in Patton, 1997: 181) The importance of the stakeholders and the utilization of evaluation results are also stressed by Scriven, who argues that "evaluations exist to make value judgements on whether the programme was of use to its stakeholders." (McCoy and Hargie, 1996: 3)

The goal based theories bring in to attention the approaches given in the literature to the goal setting and the problems encountered in practice. It has been argued that practitioners have to deal with the ambiguity of the goals for what regards both the programme goals, and the evaluation goals. The question that may rise in this context is why are goals left ambiguous? It has been argued that one of the reasons that may explain the ambiguity of the programme goals is that the programme staff will describe large objectives in order to ensure funding. Patton (1997: 153) stated that "fuzzy goals may be a conscious strategy for avoiding an outbreak of goals wars among competing and conflicting interests." On the other hand, it could also be argued that, stating general and ambiguous goals could be the consequence of failure to meet the diversity of evaluation processes. This explanation is suggested by Stame, who argues that by stating "general goals", the European Commission found "a way of coping with the complexity of reality and of allowing each context to fully exploit its own abilities to move toward the accomplishment of global goals". (2004: 70)

Some other reasons have been expressed in the literature regarding

the ambiguity of programme goals. Nay (in McCoy and Hargie, 2001: 7) states that "there is generally no reward for practitioners, defining measurable objectives in hard work, increases the risks and promises no obvious professional reward for success", while Shadish (in McCoy and Hargie, 2001: 7) claimed that vague formulation of goals allowed organisations to make themselves "immune" to negative evaluations.

Evaluation, as it is being undertaken at EU level, has raised many questions in relation to who sets the goals in evaluation, who is responsible for their implementation or the different models of evaluation that exist within the Member States. The next section offers a brief overview of the development of evaluation practice and culture in the EU and a case study that focuses on the evaluation at the level of the co-financed projects. The case study selected allows theoretical insights reviewed in this chapter to be tested against empirical evidence of evaluation in practice.

2. Evaluation in the European Union

2.1. General background

Evaluation in the EU is identified, in large part, with the evaluation of the Structural Funds. It is agreed that what prepared the emergence of an evaluation culture at the European level is the development of the European Structural Funds, which involve a significant expenditure of both financial and human resources which requires monitoring and evaluation. (Toulemonde, 2000: 9) Different trends in the evaluation research within the continent or the EU have led to the development of the current evaluation regime for the Structural Funds. It has been argued that the increasing budget attached to the Structural Funds after the Treaty of Amsterdam, the emphasis on efficiency coming from the UK's principles of "value for money" in the 80s, as well as the rise of the "New Public Management" agenda, contributed to the development of the evaluation practice and culture of the Structural Funds.

Moreover, the accession of more Member States to the European Union has raised concerns amongst richer countries about the way money is being spent, and highlighted the importance of efficiency and of the instruments of control and evaluation. The admission of ten new Member States in the EU in 2004 brought a better monitoring and evaluation of the Structural Funds to the centre of attention of the Member States' governments and of the European Commission and required new approaches to the instruments of financial control and the way money is being allocated within the regional policy.

The evaluation of the Structural Funds has to be integrated into the whole picture of the events that have marked the EU history in general and the perspectives given to the process of evaluation in particular. The reforms of the Structural Funds describe a process of gradual decentralization of the responsibility for evaluation from the European Commission to the sub national authorities of the Member States.

The reforms of the Structural Funds brought changes to the practice of evaluation as well. It has been argued that before the 1988 Reform of the Structural Funds the evaluation had a low profile in the EU. (Toulemonde, 2000: 9) Some approaches to evaluation were evident in the UK, along with the adoption of the principles of the New

Public Management and the stress on efficiency and the principle of "value for money". The new emphasis on efficiency, which required a better evaluation of the money spent, was soon adopted by other European countries. One of the events that marked the introduction of systematic evaluation of the Structural Funds was the signing of the Single European Act in 1987, when the funds allocated for the regional policies were doubled. The 1988 Reform followed the signing of the Single European Act and one of its consequences was that the Member States became more concerned about the way the money was being spent. For example, the first strong reference to effectiveness was contained in this document. The adoption of the New Public Management vision together with the concern of the main contributors to the European budget, led to a more systematic approach within the EU to the principles of sound financial management of the Structural Funds.

The annual reports of the European Court of Auditors also pointed out the necessity of a more rigorous financial control and a better evaluation. The 1988 Reform of the Structural Funds made evaluation a mandatory instrument in the management of the structural funds. At the same time Toulemonde (2000: 4) suggests that evaluation was not put into practice because the Structural Funds were managed by means of co-financed programmes, and an evaluation culture was foreign to most of the Member States. However, the 1988 Reform marked two important events that affected the development of evaluation culture in the EU: the enhancement of the Structural Funds to be allocated, and the requirement of evaluation as mandatory.

The 1993 Reform of the Structural Funds followed the signing the Treaty of Maastricht. The Commission stressed much more on the need for national and regional authorities to comply with the EU provisions on evaluation. Pollack M. states that the 1993 Reform represented a "renationalisation of the policy sector", arguing that the changes introduced were the result of central governments reasserting their control over the day-to-day operation of the policy sector. (in Sutcliff, 2000: 298) The 1993 Reform of the Structural Funds meant essentially the reassertion of the national governments over the structural policy. It could be stated that in the context of the new Members States that joined the EU, which became further the main candidates to Structural Funds, the richer countries stressed the importance of better instruments for evaluation.

The 1999 Reform that brought the present regulations on Structural Funds and the approach taken to evaluation on this occasion could also be seen in the framework of the signing of the Treaty of Amsterdam and the adoption of the Agenda 2000 package. It is accepted that that the new Regulations on the Structural Funds reduced to some extent the Commissions' role in the management and monitoring of the Structural Funds programmes, by leaving to the Member States the interpretation of the legal provisions. For instance, the EC Regulation No 1260/1999 states in relation to the financial control in Article 38, that "the Member States shall take the responsibility in the first instance for the financial control of assistance".

The EC Regulation No 1260/1999 shows a development towards a more strategic management of the Structural Funds. A strong emphasis on results, as compared to the rules and

the decentralization of responsibility for attaining them are completed by stronger feedback instruments, particularly evaluation. The scope of financial control is "to ensure that Community funds are being used efficiently and correctly", and that the funds "are used in accordance with the principles of sound financial management." (Reg 1260/1999, Art 38) The legal frameworks of the 1999 Reform, as well as the provisions contained in the Agenda 2000, stressed the responsibilities of the Member States in evaluating the Structural Funds.

The EC Regulation No 438/2001 was issued with the purpose of bringing new emphasis on the responsibilities that the Member States have in the process of evaluation. The Regulation points out again the role of the sub national authorities in the management of the Structural Funds. In Article 2 it is stated that: "Each Member State shall ensure that managing and paying authorities and intermediate bodies receive adequate guidance on the provision of management and control systems necessary to ensure the sound financial management of the Structural Funds in accordance with generally accepted principles and standards, and in particularly to provide adequate assurance of the correctness, regularity and eligibility of claims on Community assistance." (Article 2 of EC Regulation 438/2001)

It could be stated that the present legal framework for the evaluation of the Structural Funds offers general provisions in relation to the management of the Structural Funds and the process of evaluation, but leaves to the Member States the liberty of interpretation and implementation. Due to their degree of generality, the application of the EC Regulations on Structural Funds within the Member States resulted in different interpretations and applications, in accordance with the diversity of the institutional settings and the evaluation practice and culture in place or not in each of the Member States.

As a consequence of the diverse outcomes of the evaluations in the Member States and the difficulty in analysing these results in a meaningful manner, in April 2006 the European Commission issued a Working Document concerning good practices in relation to management verifications to be carried out by Member States on projects co-financed within Cohesion Fund. The Working document specifies that it was issued with the scope of disseminating good practices in relation to the management of the Structural Funds on the basis of Article 4 of Commission Regulation No 438/2001 and Article 4 of Commission Regulation No 1386/2001. The document emphasises the diversity of the institutional settings of the Member States and the impossibility of covering all aspects when it comes to the Article 4 checks. It is stated that "Commission audit missions carried out since the introduction of the abovementioned regulations (EC Reg. No 438/2001 and EC Reg. No 1386/2001) and also in the context of the accession of the ten new Member States have highlighted the diversity of methods and procedures for carrying out management verifications". (Working document, 2006:1)

It could be stated that the results of the evaluation made so far by the Member States, due to the diversity of evaluation models and cultures, made a centralization and utilization of the results difficult. Therefore, the European Commission finds itself in the situation of recommending the Member States

to converge towards a uniform model of evaluation by suggesting some examples of good practices. However, the Working Document does not bring other input besides the specification on the evaluation practices to be adopted, and still leaves to the Member States the choice of interpreting and implementing the legal provisions on the practice of evaluation. The nominally framework was left to the Member States, but Commission has to then try to offer best practice by producing a Working Document so that evaluation results can be made useful.

This appears to be a classic case of ambiguous goals resulting from the unwillingness of stakeholders to agree on a single framework or what Patton calls "fuzzy goals" (1997: 153). The consequence of the lack of clarity when it comes to responsibility, and the emergent "fuzzy goals" had implications for the functioning and utility of the evaluation process as in the case study of Article 4 checks in the Scottish Executive exemplifies.

2.2 The case of the Scottish Executive

The evaluation of the Structural Funds starts with the evaluation of the single co-financed project. The focus of this chapter is on the Article 4 checks of the EC Regulation No 438/2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds and the way these provisions have been interpreted and applied in Scotland since the adoption of the regulation until the present time.

Article 4 of the Commission Regulation No 438/2001 states that:

"Management and control systems shall include procedures to verify the delivery of the products and services co-financed and the reality of expenditure claimed and to ensure compliance with the terms of the relevant Commission decision under Article 28 of Regulation (EC) No 1260/1999 and with applicable national and Community rules on, in particular, the eligibility of expenditure for support from the Structural Funds under the assistance concerned, public procurement, State aid (including the rules on the cumulations of aid), protection of the environment and equality of opportunity. The procedures shall require the recording of verifications of individual operations on the spot. The records shall state the work done, the results of the verification and the measures taken in respect of discrepancies. Where any physical or administrative verifications are not exhaustive, but performed on a sample of operations, the records shall identify the operations selected and describe the sampling method."

The Article 4 checks have been carried out by the Member States since 2001, since when the EU Regulation No 438 was put into practice. Since no further recommendations for the development of Article 4 checks were initially given by the European Commission; the Scottish Executive developed Article 4 checks according to its own interpretation. The application of Article 4 has been subject to several audit missions from Directorate General for Regional Policy (DG Regio) and its reports have identified deficiencies in the Article 4 checks undertaken by the Scottish Executive, and made overtime some recommendations for improvement and compliance.

The evaluation on the basis of Article 4, as stated in the EC Regulation No 438/2001, and as it has been undertaken by the Scottish Executive, as well as the negative findings of the Audit mission, raise questions about who sets the goals in the evaluation process. Similar questions arise in relation to the consequences or unintended effects of the changing of the evaluation goals.

The diversity of the evaluation methods in the Member States caused the European Commission to issue a Working document concerning good practice in relation to management verifications to be carried out by Members States on projects co-financed by the Structural Funds and Cohesion Fund in April 2006. Besides bringing some examples of good practices in relation to Article 4 checks, the Working document issued in 2006 identified the diversity of methods of evaluation within the Member States and the consequent difficulty in assessing and utilizing these results. In the Working document the European Commission states: "Commission audit missions carried out since the introduction of the abovementioned regulations and also in the context of the accession of the ten new Member States have highlighted the diversity of methods and procedures for carrying out management verifications." At the same time, it is stated that negative findings in relation to Article 4 checks identified in other Member States required the issuing of this document with the purpose of offering examples of good practice to the Member States.

The Scottish Executive holds, as the Managing Authority, the responsibility for the compliance with Article 4 provisions in Scotland. According to the legal provisions, the Managing Authority has the possibility of delegating some of its responsibilities to intermediate bodies, but still retaining the responsibility for the outcomes of Article 4 checks. The same provision was emphasized in 2006 within the Working document, where it is stated that "Article 4 verifications are essentially a responsibility of the managing authority, which has the possibility of delegating tasks to intermediate bodies". Since 2001, the Article 4 checks have been delegated by the Scottish Executive to intermediate bodies, called Programme Management Executives (PMEs), which are being held accountable to the Scottish Executive, while, however, having their financial support assured by a board of partners. These conditions have the value of stressing the independence of the PMEs from the Scottish Executive, but, on the other hand, raise controversies when it comes to the independence of the PMEs from the partners who not only assure the financial support of the PMEs, but are also beneficiaries of the PMEs services and beneficiaries of the Structural Funds.

According to the members of the SF Division, the negative results of the Audit Reports in relation to the Article 4 checks could have a double explanation. On one hand, since 2001, the European Commission emphasized the absorption requirements in relation to the Structural Funds, and the necessity of focusing human and financial efforts on the absorption of the Structural Funds. The Article 4 checks had a secondary importance. In the Report issued in July 2007 to DG Regio, the Scottish Executive stated: "The early years of the 2000 - 2006 programmes had focused on the development of innovative projects and the achievement of N + 2 spending target. We now accept that monitoring activity was not given a high enough priority at that time. This is an issue that we will

address in our workflow planning for the new programmes. Monitoring plans were approved in 2001 which involved a less intense programme of Article 4 visits than has now been agreed."

However, members of the SF Division stated that the Scottish Executive has issued guidelines and recommendation to the PMEs in relation to the Article 4 checks since 2001, but they also admit that, following the Commission's perspective, they also stressed more heavily the PMEs' role in supporting the project beneficiaries, and put less emphasis on their role as evaluators. The representatives from PMEs also declared that over time the PMEs have seen themselves more as supporting the projects' beneficiaries, than as evaluators of the projects. They stated that after the Operating Agreement, their role doubled from being not only the body that offered support to the project beneficiaries, but also as one of performing an audit function. This matter seems to be subject of controversy between the Scottish Executive and the PMEs since the SF Division members argue that this has always been the PMEs' role of both offering support to the project beneficiaries, and of evaluating the projects. Another controversy raised also in relation to the negative findings of the Audit Reports of the DG Regio that mentioned several times that the PMEs have to adhere to the Scottish Executive's rules.

This non compliance of the PMEs was explained by the SF Division members as being due to the fact that the PMEs' source of funding is assured by a board of partners, which is likely to lead to a close attachment to these partners who are also the beneficiaries of the projects, and less to the compliance with the Scottish Executive rules, despite their accountability to the latter.

3. Evaluation theories and practice

To reassert, the aim of this paper is to provide a better understanding of the nature and challenges that the process of evaluation implies by combining the knowledge offered by a review of the theories expressed in the social research field with the practice of evaluation as it is been undertaken within the Scottish Executive. The focus of this paper on the Article 4 checks of the EC Regulation No 438/2001 brings the hypotheses expressed in the evaluation research into the empirical context of the practical evaluation of co-financed projects and reveals the challenges faced in the practice of evaluation at the project level.

The European Commission' requirements contained in Article 4 present a high degree of generality, while the interpretation and implementation of the legal provisions are left to the sub national authorities of the Member States, to the Scottish Executive in this case. The generality of the goals stated by the European Commission in the evaluation process could be seen through the concept of "fuzzy goals" introduced by Patton, who argued that stating general goals may be a strategy of dealing with contradictory and maybe conflicting interests of the various stakeholders in the evaluation process (1997: 153). The difficulty in reaching an agreement between the Members States in relation to a model of evaluation that could fit all the European countries, might have led to Commissions' decision of issuing general provisions, and leaving the content of Article 4 to the interpretation of each of the Member States, and, therefore, to

the adoption of a solution of ambiguous goals in the evaluation process as stated in the European regulations.

This approach is largely consistent with the argument that stating an evaluation model that could fit all Member States is a difficult, if not an impossible task, due to the diversity of the institutional settings of the Member States, and also to the different cultures of evaluation or the lack of an evaluation practice in some of the Member States. As stated before, it has been argued in the literature Toulemonde (2000: 9) that in some of the Member States the Structural Funds policies and the requirements of evaluation have constituted the reason for approaching an evaluation practice in the first place. As a consequence, the presentation of the evaluation goals in general terms might represent the Commission's attempt to cope with the diversity of institutional settings and cultures within the Member States. (Stame, 2004: 70)

The interpretation of the Article 4 by the Scottish Executive comes from the general character of the legal provision contained in this article. The freedom to choose the model of evaluation is seen not as an advantage, but as a result of the ambiguous goals coming from the European Commission. The Scottish Executive, indeed, highlights the fact that the European Commission changed the interpretation of Article 4 over time. It is argued that initially the focus was on supporting the project sponsor in the development of the projects and not on detailed verification. Changing the interpretation of Article 4 and, as a consequence, the evaluation goals, has required the Scottish Executive to adapt its evaluation model in relation with the Article 4 checks, and has required a continuous and ongoing effort to comply with the European Commission requirements in relation to the evaluation of co-financed projects.

The third perspective is that of the Programme Management Executives which argue that from being initially a body supporting the project beneficiaries, their role changed over time, and they became more of an audit body which follows the signing of the Operating Agreement. A member of one of the PMEs stated: "At the beginning of this Programme, Scottish Executive guidance clearly stated that Article 4 Monitoring Visits were not audits. The visits were designed to provide 'pastoral care' to project sponsors and to give an indication that systems and procedures were in place to insure compliance with European Regulations. The visits are now considered to be mini-audits and to be similar to the monitoring activity undertaken by the Scottish Executive under Article 10."

The approach given to Article 4 by the Programme Management Executives brings into discussion the paradigms expressed in the literature in relation to the role of the evaluator. The constructivist vision of evaluation through Guba and Lincoln's model of evaluation (1989) sees the evaluator not as a judge, but as a facilitator of the judgement and of the decision making process. It could be stated that, by developing their initial roles, the Programme Management Executives were acting more as negotiators for the stakeholder's interests and less as a judge in the evaluation process.

However, the role of negotiators played by the Programme Management Executives in the evaluation process and the nature of the financial support of the Programme Management Executives also reveals that the relationship created

between the Programme Management Executives, and the project beneficiaries risks the emergence of what Stake called the "cosy managerial relationship". (in Guba and Lincoln. (1989: 230) Although accountable to the Scottish Executive, the financial support of the Programme Management Executives is assured by those who are required to evaluate, and this puts them in a delicate position.

An analysis of the Programme Management Executives' position in the evaluation process could lead to the interpretation that their approach to evaluation embraces the goal free model of evaluation suggested by Scriven (in Patton, 1997: 181) as compared with the Scottish Executive and European Commission perspectives and the stress on goal achievement in the evaluation process. The same interpretation could be given in relation to the new checking form, issued by the Scottish Executive in May 2007, as part of the Action Plan and which has been criticized by one of the Programme Management Executives as not addressing the relevant questions in relation to the "success" of the project that might come from unintended effects, but focusing merely on the accomplishment of the initially declared goals, and misses valuable information.

By stressing the importance of the overall goals the approach given by the Scottish Executive to evaluation is closer to Tyler's model of evaluation (1942) and the emphasis on the achievement of the goals set. However, this model of evaluation has proved to have some shortcomings, not least that stating clear objectives for the process of evaluation neglects the costs of human resources, time and money and neglects the unintended effects that sometimes have a bigger impact than the goals initially established.

4. Conclusion

My findings in relation to the evaluation of the co-financed projects in Scotland are that the application of Article 4 has generated different evaluation goals as a consequence of different interpretation of the same legal provision. The interpretation and application of Article 4 are seen differently at the three levels taken into consideration in this paper: the European Commission as the body that issued the guidelines on the application of the regulation, the Scottish Executive as the sub national authority that implemented the legal provision, and the Programme Management Executives as the actual evaluators of the co-financed projects on the basis of Article 4. Three different approaches to evaluation were identified and my findings showed that the existence of different evaluation goals in the process of evaluation of co-financed projects, led to some negative consequences for all the stakeholders involved.

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THE GLOBAL ECONOMIC CRISIS AND G20 SUMMIT OF APRIL 2009: A STEP FORWARD TOWARDS BETTER GLOBAL GOVERNANCE OR GLOBAL GOVERNMENT?

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Abstract.*The paper analyzes the implications of the current global economic crisis for the decision-making mechanisms and interactions among the major players. The analysis explores the possibility that the changes implied and required by the economic crisis may lead either to better global governance or even a step closer to a possible, virtual, global government. The latter hypothesis is approached in a different way as compared to similar topic papers in the sense that a possible global government is seen as a long term objective result of the various reactions and solutions taken by individual entities.*

Keywords: *global economic crisis, global governance, global government.*

A philosophical perspective of the crisis

The world economy is witnessing starting the second half of 2008 the beginning of one of those significant moments in its history when long term, structural changes are becoming more and more evident. This phenomenon started as a financial crisis in the United States but, driven inexorably by the intertwined forces of globalization, it soon became a global financial crisis and then, almost by the book, it became a world economic crisis.

A lot has been already written about the causes and consequences of this crisis but we want to deal here with a different perspective: that of the structural changes in the institutions, decision making mechanisms and balance of power at a global level.

Before going any further maybe it is worthwhile to reflect upon the term "crisis" itself. Coming from the Greek "*krinein*" – meaning "*to decide*", it means "an unstable or crucial time or state of affairs in which a decisive change is impending" or " a turning point for better or for worse".[1] Therefore a first important observation is that a crisis is a moment in time, it cannot be an era, a long period of time, or a permanent state of fact. Secondly, a crisis refers to a decisive change; it is not about a temporary problem to be solved after which the things return to their previous state of affairs. Thirdly, the crisis implies almost intrinsically a decision; the crisis is not the decision itself, though the decision is unavoidable because of the crisis.

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[1] www.merriam-webster.com

To sum up, if one speaks about a global economic crisis, then the meaning of that has in view:

- a moment of instability, of threat, involving fundamental aspects;
- in this context a decision is necessary, even if it is desirable or not;
- the post-crisis state of the economic system will be different in comparison with the initial one;
- all of the above refer to a global economic context.

The global economic crisis of today and the post-war economic paradigm

After the Second World War and particularly after the '80s, the developed countries adopted more or less consciously a paradigm of development based on a fast replacement of goods and ever larger use of services, sometimes even beyond current needs (the so-called consumer society). The paradigm itself became a sort of model for other countries, especially after 1990, as in the case of Central and Eastern Europe, or in other parts of the globe, even if at a lower and limited scale (like in Russian Federation, China, India).

The paradigm was based on the consumerist approach but enlarged at an unprecedented scale. The mechanism was simple: people obtained easy money from credits and they bought more products and services than they needed or replaced the existing ones much faster than physical or moral depreciation. It was not unusual to see people change their mobile phone or laptop every 6 – 8 months, to replace the TV sets or DVDs every year and their cars every 3 – 4 years.

The surge in demand generated a good opportunity for the supply side to work at full speed which, in turn, meant more jobs, higher salaries and more creditworthiness for the respective employees who, in turn, could obtain more credits, buy more goods and services, create or maintain jobs, and so on.

This economic process appeared as a real virtuous circle. But, for how long? And on what scale, that is for how many people? Or, to combine the two questions, for how many people, for how long?

The first problem with that model was that it was not sustainable for several reasons related on a fundamental level to the second law of thermodynamics.[2]

In a simple way, this second law of thermodynamics deals with entropy which is a measure of unavailable energy (so called bound energy, for instance energy heat, energy contained in soil or sea water, an energy we cannot normally use). If human society wants to put to use in its interest the unavailable energy, other free energy from outside its system has to be used. As result, the total quantity of unavailable energy in the universe increases.

The above considerations may seem a bit abstract but they had a significant impact on economics and particularly led to the concept of bio-economy, or, if we use a widely-known concept, to sustainable development.

If one applies the entropy concept to the economic process described above the following results. The paradigm that described the economic processes in the

[2] Nicholas-Georgescu ROEGEN, *The Entropy Law and the Economic Process*, Harvard University Press, 1971

first decades after the Second World War implied the ever larger use of energy and raw materials for more and more goods and services to be used primarily in the developed countries and to less but growing extent in the developing ones. The result of this process implied more entropy, that is more unavailable energy, more pollution and, in the end, even climate change.

At the same time, this economic process required the "import" of available energy from outside the initial system (represented by the developed countries).

From this perspective, globalization has been an objective phenomenon, as a high development or maintenance of high living standards in already developed countries could not be obtained without the "import" of available energy from other parts of the world which, in this way, became themselves parts of the system.

The functioning of such a system requires to "bring in" more and more parts of the world into the process and thus the system (the economic system) becomes larger and larger. In current terms we can speak in fact about a more integrated system rather than a larger system. This in fact is true because basically at the beginning of the 20th century most parts of the world had been already discovered and included in a system of economic relations but, most of these parts were very loosely connected with the main economic centers. Globalization meant the significant increase in the intensity of these economic relations at a global scale.

The question is what happens when all parts of the globe are integrated to a high intensity level of consumption of available energy. From the point of view of a physicist the answer is simple: the system either stops, because all energy is bound, and free energy becomes unavailable, or, the system expands even further, that is outside this planet. One may think this is pure science fiction. But it is not, and anyone can check the existence of such plans for the past 30 years with the main economic and scientific players like United States, Russia, Germany, Japan or China.

This theoretical approach can be converted to the real situation. The economic system cannot continue like that. If it was not for the financial crisis, it would have been the global climate change to stop the process. Or the fact is that new countries started to consume as much as the developed ones. And humankind became, once more, aware that, at a given technological level, it is simply unsustainable to have the same consumption for all human beings on the surface of the Earth.[3]

Conclusion is that the existing paradigm led to a growing instability in the economic system and that led to a crisis. The answer to the crisis is represented by a new technological paradigm which, in turn, requires new organizations and new processes. Such an answer is currently looked for by OECD under the scope of the project "The Bioeconomy to 2030: Designing a policy agenda".[4]

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[3] Donella H. MEADOWS, Jorgen RANDERS, Dennis L. MEADOWS, *Limits to Growth: The 30-Year Update*, Chelsea Green, 2004.

[4] OECD International Futures Programme, *The Bioeconomy to 2030: Designing a policy agenda*, Paris, 2006

Dealing with the current crisis

In the process of dealing with this crisis there could be some danger of carrying out this analysis in the wrong frame of mind:

- The first risk is that the analysis is done from a partial point of view, not a systemic one. The main idea is that this is not just a financial crisis, or just energy and raw materials crisis or just a climate change crisis. It comprises all of them and more. The point here is to consider the crisis as a complex and systemic one.
- The second risk is to oversee the paradigm crisis. It is not about how we produce and how we consume, but why we do it in the first place. In order to design a more sustainable paradigm we have to re-think what is good, what is fashionable, what is the mark of success in society. Such changes are difficult and on a long term, maybe comparable with the changes brought about in the Western world by the Enlightment.
- A third risk is to look only for immediate problems and therefore for immediate answers. If all we do is to save a bank, or the automobile industry or the jobs in one industry or the other, or if we just want to preserve the status-quo of the world balance of power then we do not see the real problem. And we shall think about answers to other questions than the real one. **And the real question is how to redesign the world economy in such a way that economic globalization is matched by global institutions and mechanisms that are able to make global decisions that solve global problems.**

The complexity of the current crisis and the long term implications of any possible solutions require unprecedented communication and coordination among many transnational actors.

While various debates already took place on various issues (like trade in World Trade Organization or climate in IPCC – Intergovernmental Panel on Climate Change of the United Nations) or Summits were organized on global issues (like G – 8 or more recently G – 20 or World Economic Forum) this crisis requires a true global governance in the sense of permanent collective efforts to identify, understand and address global issues that go beyond the capacity of individual states or actors to solve.

Global governance – the need to better manage global issues

Global governance can be defined in a common sense format as "the political interaction of transnational actors aimed at solving problems that affect more than one state or region when there is no power of enforcing compliance".[5] In the past decades, globalization itself required more and more such interactions and raised issues which could not be settled within the nation state centered government system. In the past United Nations Organization has acted on a global level on various issues, among its significant actions being the design and implementation of the Millennium Development Goals Programmes which obtained nowadays a new impulse. But UN has been often forgotten by the large corporations or even by governments, despite the fact that it was a sort of blueprint of the future ways of solving global problems.

[5] www.wikipedia.org

Coming back to the realities of 2009 one can say that what is different now is the scale of the problems and their solutions. No single actor can solve this crisis because the solution requires a new paradigm which has to be widely accepted. No single summit of the 20 largest actors can solve the problem either.

Maybe for the first time ever the solution requires very large competing actors like United States, Russian Federation, China and India, or new comers at that global stage like Brazil to really decide together and accept a new reality.

The *G20 Leaders Summit on Financial Markets and the World Economy* which took place on *November 14–15*, 2008 in Washington, D.C. carried in itself a two parts message: United States is still an important actor on the global scale. But the world of today is more and more a multi-polar world. The G20 Summit in London on April 2 2009 further stressed this idea[6].

Maybe the significance of the G20 Leaders Summit on Financial Markets and the World Economy is that in the world economy of today is no longer significant who owns the car, but rather who has the steering wheel. Or who advises the one who has the steering wheel.

Anyway, this economic crisis is a significant catalyst for a serious consideration of better global governance and for its true operationalization that is for accepting it openly and creating a true operational mechanism for it.

The fact that global governance is a serious issue can be proved by the serious institutions dealing with it like:

- The Center for the Study of Global Governance at the London School of Economics[7] established in 1992;
- Global Governance Project established in 2001[8];
- Global Governance Watch[9];
- The Centre for International Governance Innovation (CIGI) established in 2002[10], to name only a few.

One of the most comprehensive approaches to global governance is to be found with the Global Governance Project which has a three tier approach[11]:

Firstly, global governance is characterized by the increasing participation of actors other than states, ranging from private actors such as multinational corporations and (networks of) scientists and environmentalists to intergovernmental organizations ('multi-actor governance').

Secondly, global governance is marked by new mechanisms of organization such as public-private and private-private partnerships, alongside the traditional system of legal treaties negotiated by states.

Thirdly, global governance is characterized by different layers and clusters of rule-making and rule-implementation, both vertically between supranational, international, national and sub national layers of authority ('multi-level governance') and horizontally

[6] Joe LYNAM, G20 make or break, *BBC News*
[7] http://www.lse.ac.uk/Depts/global/
[8] http://www.glogov.org/?pageid=2
[9] http://www.globalgovernancewatch.org/about/
[10] http://www.cigionline.org/
[11] Idem ref 6.

between different parallel rule-making systems.

In view of the above, we may conclude that the current crisis has generated a lot of dialogue and reflection and that global consultation among all relevant actors is a must, it is already happening and by mere repetition will lead to a certain form of institutionalization.

With reference to the subtitle of this section one can say that more consultations among all global stakeholders is a reality, therefore global governance is a reality and its quality is constantly improving in the past months.

Global economic crisis – a step closer towards global government?

Besides global governance, we may go even further with the analysis and ask ourselves if the magnitude of the current crisis may even lead to more favorable conditions for a global government.

We have to stress quite seriously that in our perception a global government is not to be seen in the near future. The strengthening of global governance is not a direct step towards global government because it happens exactly due to the lack of a global government.

What happens anyway due to the increase of the number and magnitude of issues that require consultations is the fact that sovereign actors took more and more part in decision making processes regarding global issues and thus transfer a part of their sovereignty into that interaction. The network of decision-makers has as result of the crisis more participants and the intensity and frequency of interactions has increased substantially. In the short run, due to pressures from general public and from industrialists it is even possible that politicians at the national level be more active, at least in large and developed countries.

In this process the resulting interaction is not imposed in any way by one entity but it is required by the state of fact, it is a necessity. The increased interaction is, in fact, the answer to a logical question: do the global economic relations and activities require global institutions to provide global reference frameworks and global regulations? Putting things this way the answer is yes for the simple reason that it is impossible to reach consensus among the nations of the Earth on major issues on a daily basis by a voting mechanism.

If we analyze the mechanism of *G20 Summit of April 2*, 2009 we can see that numerous trips on a global scale preceded the meeting and to the extent possible leaders of other countries that the G20 have been consulted. It is a time consuming mechanism and completely un-operational in case fast reaction is needed.

The idea of a global government as result of more and more intense consultations among states and other entities can be seen as more realistic if we look at development of summits on global issues.

These evolved like this:

- 1975: G6 (with the participation of France, Germany, Great Britain, Italy, Japan, United States);
- 1976: G7 (adding Canada);
- 1977: G7 plus invitation of European Commission President;
- 1996: G7 plus United Nations, World Bank, International Monetary Fund and the World Trade Organization
- 1997: G8 (adding Russia),
- 1999: G20 (adding Argentina, Australia, Brazil, China, India, Indonesia, Mexico, Russia, Saudi Arabia, South

Africa, South Korea, Turkey).

A side comment to the above may refer to the decreasing role of Europe in a global decision mechanism in which the share of the others is ever increasing[12].

The institutionalization of consultations among significant countries and organizations can be regarded as a gradual transition towards a different decision making mechanism that will raise integration to a new, global, level. Such a level may be a sort of one world government in the making which may delegate to a secondary tier continental or regional integration.

If such a case would be, then that can be a lesson that history does not move in a uniform way, with a uniform speed, but rather jumps from one level to another when circumstances so require.

Conclusions – Towards a new paradigm

The inner significance of this crisis is not its magnitude and/or implications but rather its fundamental character: it is a crisis determined by the existing development paradigm and also by the evolution of the "new economy", based on information, which gradually made obsolete the existing institutions and regulations[13].

The real challenge for the world leaders and for humankind as a whole is to define a paradigm that will allow increase of consumption, at a global scale, in a sustainable way.

Such a paradigm may appear and be accepted in stages and its birth may witness the pains of several successive crises if the approach is more centered on treating the effects rather than the causes.

Such a paradigm will involve a correlation of institutions, regulations and access to money with the information based economy and with the large scale participation of an ever greater number of people of the world to the economic processes. The mission now is not to design a perfect framework for global economic activities; it is just about designing a sustainable framework that will not leave anyone outside.

The solution to this crisis is not to be found with more or less state intervention in the economy, but rather with the acceptance and participation to what Schumpeter called "creative destruction."[14]

The answer is to be found, maybe more than ever before, in cooperation and not in confrontation as this is the only way on which the ones who have been less exposed to crisis will be of help to those that were more exposed[15].

At the same time, the key, the new development model is to be found in a holistic approach that will search not only for economic solutions, but also to answers for new challenges: global governance, climate change, the energy revolution, and the rise of a multi-polar order[16].

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[12] Leif PAGROTSKY, Europe must swallow its bitter economic medicine, *Europe's World,* Spring 2009
[13] Mary KALDOR, C*risis as a Prelude to a new Golden Age*, www.opendemocracy.net, 31.10.2008
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'DO AS I SAY NOT AS I DO': *EU*TOPIA, THE CEECS AND THE CREDIBILITY OF THE EU HUMAN RIGHTS REGIME

Ingi Iusmen*

Abstract.*This article examines EU's involvement in human rights from the perspective of a promoter of human rights norms. It is argued that a human rights EUtopia has emerged, i.e. that there is a gap between the real and normative EU -when it comes to human rights - which affects the credibility of the EU's human rights regime. The EU lacks a solid legal entrenchment of human rights and there are different degrees of human rights protection in the Member States which amount to different hierarchical concepts of human rights. There are legal shortcomings regarding EU's human rights promotion to third countries, while the Copenhagen human rights conditionality attached to EU accession was vaguely stated and was not underpinned by EU internal human rights templates. Furthermore, the screening process of the candidates- by the use of double standards - entailed EU's involvement in matters falling outside its own internal remits. Hence the credibility of the EU human rights regime is jeopardised by its attempt to export human rights externally– hence the normative and utopian claims – without having a real, substantial legal entrenchment of human rights internally.*

Keywords: *EU human rights, human rights protection, conditionality*

Introduction

This article scrutinizes the emerging EU human rights regime and asks whether the EU is credible as a human rights promoting actor on the international arena. Section one asks: what kind of actor - i.e. "what is the nature of the beast" (Puchala, 1972) - is the EU if viewed as a human rights champion? Is there a dualistic relationship between the ideal EU and the real EU, i.e. is there a real EU human rights model that is being promoted on the international arena or is it just an utopian makeshift to be exported to non-EU countries? Ultimately, is there a credible EU involvement with human rights both at internal and external levels? In short, to what extent is an EUtopia emerging in the developing of a EU human rights regime?

Section two looks at the reasons for the EU's lack of solid legal entrenchment of human rights at an internal level, while section three examines the different degrees of human rights protection in the Member States. Section four examines the controversies underpinning the legality of EU's human rights credentials, while in section five it is argued that the vagueness of the Copenhagen human rights conditionality impacted on EU's credibility. In the final section it is contended that the screening process of the Central and East European countries (CEECs) with regard to human rights

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amounts to a double standards approach on the part of the Union – it is claimed that this has significant implications for the credibility of the EU as a "normative power" in the area of human rights protection.

I. A human rights EUtopia?

First of all, what kind of power is the EU? The European Community (EC) has been presented as a "civilian power" (Duchene, 1972) in international relations, although some authors totally reject the idea that the EC/EU can be deemed to be an "actor" at all in world politics (Bull, 1982). Perhaps most usefully in the context of this article, Manners (2002) has described the EU as a *normative power* arguing that the EU institutions and policy-making process rest on a normative basis, i.e. a set of fundamental norms, which make the EU a *sui generis* international actor. Furthermore, the normative Europe is congruous with the normative and ideational impact of the EU on world politics via its role of setting *world standards* in normative terms (Rosecrance, 1998:22). Simply put, the EU is first and foremost about norms[1] – either core norms, such as liberty, democracy or human rights, or minor norms, for instance social solidarity (Manners, 2002: 242) - and these norms are being projected in EU's external relations. Hence, the EU is envisaged as a normative actor or a promoter of norms on the international political arena and this is consistent with the perception of the EU as a human rights promoter.

The question thus arises: how are these norms promoted? According to some authors (Manners and Whitman, 1998, Manners, 2002) various modes of norm diffusion exist: (i) *contagion* – results from unintentional diffusion from the EU – (ii) *informational* diffusion results from strategic communication by EU actors, or (iii) *procedural* diffusion, which involves "the institutionalisation of a relationship between the EU and a third party, such as an inter-regional cooperation agreement "(Manners, 2002) and which was, for example, applied to candidate countries. Yet, it should be noted that all these modes of norm diffusion are underpinned by EU's *narratives of projection*[2], i.e. how the EU describes itself via the norms that are being projected by it.

Narratives of projection rest on the presumption of superiority and they "always assert some form of control over the rest of the world: *normative power* is the ultimate form of soft power" (Nicolaidis and Howse, 2002: 770). Thus, the EU projects its normative framework – in this case: its human rights model – in its external relations in an attempt to justify the "creation of 'others' in its own image". This mirrors the case of CEECs' relation to the EU: the end of Cold War constituted a significant opportunity for the EC/EU to project its European model to the former communist countries[3].

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[1] I employ the broad meaning of norms as "standards of behaviour defined in terms of rights and obligations" (Krasner, 1983: 2) accepted by the world community.

[2] The phrase coined by Nicolaidis and Howse (2002) refers to the EU's exportability of its own institutions and norms resting on presumptions of antecedence or simultaneity, differences or similarity, superiority or equality (Nicolaidis and Howse, 2002: 770).

[3] The end of the Cold War and the break-up pf the Soviet Union opened up new horizons of international cooperation, and propelled the Union into a key role of promoting change and stability across Europe"(Agenda 2000 "For a Stronger and Wider Union" E.C. Bull Supp 5/1997).

However, a problematic situation arises if what is being projected – such as human rights norms - via narratives of projection does not correspond to reality: in other words, there is a significant gap between the real EU and the projected EU, i.e. a *normative EUtopia*[4]. Transposed to human rights norms, if there is a radical rift between the real EU involvement with human rights and its external projection, i.e. if there is a human rights EUtopia, what is the impact of this on EU's credibility as a supporter of human rights?

Credibility rests on the consistency between what is being projected externally and what is being practiced at the internal level when it comes to human rights, which is consistent with the theological urge that the EU should "do onto others as it does onto itself". Credibility amounts to consistency and coherence: the EU human rights policies – externally and internally – should be cut from a single cloth (Weiler, 1999) Yet, if there is an ideal rather than a real EU human rights model that is being projected – in its external relations – then the issue of credibility comes to the fore. Hence, a paradoxical situation emerges (Alston and Weiler in Alston, 1999:9) or the so-called policy of bifurcation - between the EU's internal and external approaches to human rights - arises (Williams, 2000, 2004). One of the main arguments of this article is the projection of a human rights model via the politics of enlargement to CEECs. Thus, it is contended that the EU seized the opportunity to promote a human rights EUtopia via the human rights conditionality - contained in the Copenhagen accession criteria – with the Commission playing the role of a human rights promoting actor.

II. Lack of an internal solid legal entrenchment of human rights

There are several reasons for which it can be claimed that the EU lacks a firm human rights legal basis. First, the founding Treaties did not state that the protection of human rights was one of the objectives of European integration mainly because the whole European project was perceived as being intrinsically economic, whereas human rights issues related more to the political, hence sensitive, aspects of the European integration. However, a vague reference was made in the Preamble of the Treaty of Rome to the constant improvement of the living and working conditions of the people of the Member States.

Secondly, although European integration was implicitly driven by the universal principles of liberty and democracy, respect for the rule of law, human rights and fundamental freedoms ever since the Treaty of Rome, it was not until 1993 that some of these principles were formally and explicitly included in the Treaty with the entry into force of the Treaty on European Union.

Article F (2) of the Treaty on European Union mentions for the first time the respect for fundamental rights as general principles of Community law:

The Union shall respect fundamental rights, as guaranteed by the European

Convention for the Protection of Human Rights and Fundamental Freedoms signed in

Rome on 4 November 1950 and as they result from the constitutional

[4] The term "EUtopia" was originally coined by Nicolaidis and Howse (2002).

traditions

common to the Member States, as general principles of Community law.

Article 6 (1) in Treaty of Amsterdam – which came into force in 1999 - is the key provision as far as human rights are concerned. This article provides that:

The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to the Member States.

Hence, Article 6(1) states unequivocally that respect for human rights constitutes one of the founding principles of the Union. Yet, it should be noted here that according to the provisions in the European Constitution – and of the newly negotiated Treaty of Lisbon - human rights are one of the EU's values and not principles[5].

Thirdly, there is ambiguity regarding the definition and meaning of human rights in Article 6 of the Treaty of Amsterdam. Hence, what is the meaning of the term "human rights and fundamental freedoms" in Article 6 (1)? As a minimum, it includes all rights and freedoms guaranteed by the European Convention on Human Rights (ECHR), which is explicitly referred to in Article 6(2) to which all Member States of the Union are parties - although some of them have not ratified some of its protocols -and the ratification of which is today a precondition to membership of the Council of Europe. Nevertheless, are economic, social and cultural rights included in the term "human rights and fundamental freedoms" as this second generation of human rights is not inserted into the Member States' constitutions, it is difficult to assert that the respect for these rights "results from the constitutional traditions common to the Member States" (Nowak in Alston, 1999). Another ambiguity related to this Article is whether collective rights of the so-called third generation fall within the definition of Article 6(1).

However, the general feeling is that "human rights and fundamental freedoms" must include all human rights presently recognised by the Member States in the context of the United Nations, the OSCE and the Council of Europe. This fact is consistent with the Vienna Declaration and Programme of Action of 1993- adopted by the UN - in which Member States confirmed the indivisibility and interdependence of all human rights.

Fourthly, in international human rights law there is the traditional distinction between three types of human rights obligations (Bartels, 2005: 145): the obligation to *respect* human rights, the obligation to protect human rights – which includes the prevention of violations by private actors – and the obligation to *fulfil* human rights, which involves concerted positive action on the part of the state. Hence, in the light of this differentiation, it was argued that an obligation merely to respect human rights would not imply either any obligation to ensure the prevention of private violations, or any obligation to take positive action to ensure that human rights are respected (Bartels, 2005: 146). The conundrum is between "respect for" and "protection of" human rights.

[5] Although the status of the Treaty of Lisbon is not clear at the time of writing, it is worth mentioning that Article 1a of the Treaty of Lisbon provides that: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities".

Fifthly, the European Court of Justice (ECJ) had a significant role in the development of the principles governing Community law, such as supremacy and direct effect, and in the protection of human rights as a restraint upon the powers of the Community institutions rather than as a restraint upon Member States. Yet, the jurisdiction of the ECJ covers only the first pillar[6]. The ECJ assesses the compatibility of Member States' laws with fundamental rights in two contexts: firstly, when considering the compatibility of national laws with provisions of Community law which reflect certain fundamental rights or principles; and, secondly, where the States are implementing a Community law or scheme, and in some sense acting as agents on the Community's behalf (Lang cited in Craig and de Burca, 2003: 341). Hence, if viewed as acting in a strategic context (Wincott, 2000) the ECJ's jurisdiction on human rights can be summarised as follows: the Court has jurisdiction to determine the compatibility with human rights in general - as general principles of Community law - of measures of the Community institutions and of national measures implementing Community law or falling within the scope of Community law (Neuwahl in Neuwahl and Rosas, 1995: 1-22).

Last but not least, it has been claimed that the Court's judicial activism in the field of human rights led to the discovery of an unwritten Bill of Rights against which to check the legality of Community measures (Weiler, 1999: 108). Nevertheless, it should be noted that the EU has no overarching human rights policy applicable within the EU and the Charter of Fundamental Rights of the European Union is not binding at the EU level[7]. The Charter - stemming from the EU Treaty, European Court of Justice case-law, the European Union Member States' constitutional traditions and the ECHR - brings together into a single, simple text all the personal, civic, political, economic and social rights enjoyed by the citizens and residents of the European Union. However, even when the Charter becomes legally binding, it will apply to Member States only when they are implementing EU law[8] and the Charter does not extend EU's competences in the field of human rights[9].

III. Different degrees of human rights protection in Member States amount to different hierarchical conceptions of human rights

The lack of an overarching EU human rights policy is rooted, to a certain extent, in the different degrees of protection for human rights in the Member States (Craig and de Burca, 2003: 330). Even if all the Member States were to agree on which specific rights should be recognised, they would still differ on how those rights should be protected. Subsequently, although all the Member States - as

[6] This might change when the Treaty of Lisbon enters into force.

[7] At the time of writing, the future status of the Treaty of Lisbon – according to which the Charter of Fundamental Rights becomes legally binding – is unclear.

[8] Article 51 of the Charter provides that: "The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law".

[9] Article 6 of the Treaty of Lisbon provides that: "the Charter shall not extend in any way the competences of the Union as defined in the Treaties".

signatories to the ECHR - respect and protect human rights, they have different degrees of protection for different rights[10] which ultimately amounts to different hierarchical conceptions of human rights.

Thus, there are significant gaps in terms of the ratification record of the old Member States of the protocols of the ECHR. For example[11]:

- Protocol No.4 of 1963, which prohibits imprisonment for breach of contract, guarantees freedom of movement and residence, and bans collective expulsion, has not been ratified by Spain and the UK and has not been signed by Greece.
- Protocol No.7 of 1984, dealing with rights of lawfully resident aliens, and rights arising in criminal proceedings, has yet to be ratified by Belgium, Germany, the Netherlands, Spain, and has not been signed by the UK.
- Protocol No. 12 of 2000 dealing with prohibition of discrimination, has not been signed by Denmark, France, Sweden and the UK and has yet to be ratified by most of the EU Member States, with the exceptions of Finland and the Netherlands.
- Protocol No.13 of 2002 on the abolition of death penalty has not been ratified by Italy and Spain.

The international agreements to which all Member States are party represent a lowest common denominator, and may not necessarily provide satisfactory standard for protection of rights which are particularly important to certain Member States. Consequently, it has been argued that the ECHR does not provide a suitable charter for the Community in protecting fundamental rights and general principles of law on the ground that it provides too low a standard of protection (Alston and Weiler, in Alston, 1999). However, the international human rights regime established by the ECHR was not implemented to benefit everybody equally. In 1953 when the ECHR came into force seeking to define and protect an explicit set of civil and political rights for all persons within the jurisdiction of its Member States, it was actually the newly established democracies that abided by its provisions (Moravcsik, 2000: 220). Hence the self-binding to ECHR had little support among the established democracies of the future European Community.

In the same vein, the interpretation of the meaning of and scope for human rights varies from State to State and subsequently, not all general principles and rights of Community law – as enshrined in Article 6(1) – will be shared by all States in the same way. For instance, EU Member States differ in the extent to which they will protect private property against governmental authority, which is consonant with the belief that the prevalence of particular fundamental rights is related to the prevalence of particular societal values (Weiler, 1999). Thus, apart from providing a set of core human rights, the ECHR leaves the degree of human rights protection underpinning human rights to its signatories.

Minority protection covered by the Council of Europe is not adhered to by

[10] For instance, Germany's Basic Law gives strong protection to economic rights and to the freedom to pursue a trade or profession, while the constitutions of other States may reflect different social priorities (Craig and de Burca, 2003: 330).

[11] According to the latest updates from the Council of Europe Treaty Series.

EU Member States equally. For instance, the European Charter for Regional or Minority Languages was adopted in 1992 by the Council of Europe and it aims to protect historical regional and minority languages in Europe. Yet, not all the EU Member States have yet signed and ratified the European Charter for Regional or Minority Languages: Belgium, Greece, Ireland, Italy, and Portugal still have to sign the Charter[12].

The Framework Convention for the Protection of National Minorities is the key instrument developed by the Council of Europe in the filed of the protection of national minorities. The Framework Convention is the first ever legally binding multilateral instrument devoted to the protection of national minorities in general and it makes clear that the protection of minorities is an integral part of the protection of human rights. However, there are still significant gaps in the signing and ratification of the Framework Convention by some of the old EU Member States, such as: France, Greece, or Luxembourg[13].

One final point needs to be clarified here. Although the status of the Treaty of Lisbon is not yet clear, Member States like Britain and Poland[14] managed to secure opt-outs of the human rights protection when the Charter of Fundamental Rights becomes legally binding[15]. This reinforces the different degrees of human rights protection in Member States, even if the EU will have its own biding Bill of Rights applicable within the EU.

IV. EU human rights legal controversies

There is a significant gap between the internal and external human rights dimensions of the EU: this paradoxical situation (Alston and Weiler in Alston, 1999) results in an EU which is very zealous in its insistence on the observance of human rights in its relations with third countries, while internally the EU is a human rights laggard. This situation is even more problematic when it comes to agreements – such as trade and cooperation, development, association, accession - concluded with third countries and which contain a human rights clause. In brief, the main contention is that the EU applies a double standards human rights approach, which can be paraphrased as "doing not unto itself as it would have others do unto them".

The EU's external human rights dimension is exemplified by the human rights clause included in the agreements concluded between the Community or the Union and third countries. However, there is increasing scepticism about EU's legal credentials in the field of human rights. There are several reasons for this claim.

First, the European Community is not party to any international human rights

[12] According to data from the Council of Europe web site.

[13] Supra note 12. s.

[14] According to Protocol No. 7 of the Treaty of Lisbon: "The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms".

[15] Article 6 of the Treaty of Lisbon provides that: "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of 7 December 2000, as adapted [at..., on... 2007], which shall have the same legal value as the Treaties".

treaty, yet it has always stressed the importance of accession to international human rights treaties[16] - of non-EU countries - in its agreements with third countries and the inclusion of a human rights clause in the agreements concluded with third countries. Hence, the absence of a legal mechanism to hold the EC responsible for human rights violations affects the credibility of its plea for universal ratification of international human rights treaties. The reason for this is twofold.

On the one hand, the Community is not party to any human rights treaty and the complete lack of any external mechanism to hold the Community responsible for human rights violations is in sharp contrast with the proclaimed importance of respect for human rights in the external relations of the EU. On the other hand, this state of affairs affects the credibility of the EU's policy to include human rights clauses in agreements as a means to strengthen respect for human rights both in the third countries concerned and the Union itself according to the agreement. The human rights clause has the result that a contracting party can be held accountable for human rights violations by the other contracting party, thus the crux of the problem is the following: how can the EC ask third countries to subject formal relations to respect for human rights, if the Community itself is not subject to external control of its human rights performance? Clapham (Clapham cited in Bulterman, 2001: 72) observes that: "as long as the Community remains unbound in law by human rights treaties, human rights clauses will retain an aura of lopsidedness. The Community demands respect for human rights, yet remains immune from legal challenges to its own human rights record".

Another crucial issue regards EU's legal personality: does the EU have a legal personality[17], i.e. the capacity to bear rights and duties under international law, particularly when it comes to concluding agreements - with a human rights clause attached - with third countries? First, the policy of human rights clauses included in the agreements concluded by the Union finds itself at the crossroads of the external relations of the EC and the Common Foreign and Security Policy because on the one hand, the human rights clause is a Community law instrument while on the other hand, the human rights clause is a foreign policy instrument which aims to further the respect for human rights in the third country concerned (Bulterman, 2001: 48).

Second, depending on the nature of the agreement, agreements containing human rights clauses can be either concluded by the EU and the Member States or by the EC alone. For instance, the Europe association agreements, the stabilisation and association agreements, or the partnership and cooperation agreements and the Cotonou agreement – to mention just a few- are *mixed agreements* concluded jointly by the EU and the Member States; the others are *pure agreements* concluded by the EC alone (Bartels, 2005: 33). Do the EU and EC have legal personalities?

The European Community has legal personality according to Article 281 EC Treaty which provides that: "The

[16] For instance, the EU candidate countries have to sign the ECHR and ratify all its protocols.

[17] According to the Treaty of Lisbon the EU will have legal personality: "The Union shall have legal personality" (Article 32).

Community shall have legal personality". This provision refers to the international legal personality of the Community since the EC Treaty contains a separate provision on the legal personality of the Community within the Member States (Article 282 EC Treaty). Furthermore, it should be noted that the external Community competence is based on the following Treaty Articles: Article 133 EC (trade), Article 181 and 179 EC (development cooperation), Article 310 EC (association agreements) and Article 308 EC (operation of the common market). Hence, when acting on the legal bases of these Articles, the EC has international legal personality, while the EU is not explicitly provided with legal personality.

Moreover, the EC has international legal personality, yet it is not party to any human rights treaty nor is it bound by any bill of rights. Nevertheless, like any other subject of international law, the EC is bound to respect international human rights obligations, yet it is highly controversial to pinpoint exactly which human rights obligations are imposed upon subjects of international law (Bulterman, 2001). Furthermore, if it cannot be determined what the formal human rights obligations of the EC under international law are, then it is even more difficult to examine what standards or international instruments are employed by the EC in its human rights clauses and ultimately, to what extent the EC can be held responsible for human rights violations.

To sum up, at the moment the EU does not have explicit and formal legal personality at the Treaty level. Additionally, given the EU's active external involvement with human rights and its lack of a similar commitment within the EU, it can be contended that the EU's human rights credibility has to suffer.

V. Copenhagen human rights conditionality: vague yet credible?

Conditionality with regard to EU membership involves human rights and it is formally enshrined in several Treaty provisions. Hence, human rights conditionality is intertwined at the Treaty level with the concern over democracy, as is the case with Article 6 (ex Article F) which cites democracy alongside human rights as principles of the Union. It should be pointed out that democracy has always been an underlying feature of the Community system and has never been unconnected to human rights concerns. The very wording of the accession agreements signed with CEECs- for instance the Europe Agreements - highlights these concerns on the part of the EU.

Moreover, the boost to democracy and human rights is further reinforced by the requirement for EU applicants to join the Council of Europe and ratify the European Convention on Human Rights and all its protocols. It should be mentioned that the statute of the Council of Europe also requires the applicants to respect democratic principles, human rights and fundamental freedoms. Nevertheless, neither the human rights concerns nor the requirement to be a democracy were explicitly part of the founding Treaties, yet the implicit contention was that only states aspiring to be democracies and which respected human rights could apply for the EU membership: the previous accession negotiations with Greece, Portugal, Spain or Turkey support this claim.

However, after the end of Cold

War the Community's norm-exporting approach entered a new era with the enlargement to the East. The process of exporting a European model to the former communist countries began in the early 1990s and this process was said to be rooted in "a common heritage and culture" underpinned by the rule of law, full respect for human rights, and the principles of the market economy[18]. In addition, for instance, on 16 December 1991, the EC Foreign Ministers issued a Declaration stating that formal recognition would be granted to the new states from Central and Eastern Europe provided that they respected the provisions of the UN Charter, Helsinki Final Act and the Charter of Paris "especially with regard to the rule of law, democracy and human rights" and guarantees for the rights of minorities (quote in Bartels, 2005: 51).

At the Treaty level, conditionality about EU membership is enshrined in Article 6(1) TEU as modified by the Amsterdam Treaty. This Article explicitly and formally states that the Union is founded on the principles[19] of democracy and human rights. Article 6 has to be conjoined with Article 49 – which complements Article 6(1) by providing that "only a European state which respects the principles set out in Article 6(1) may apply to become a Member of the Union". Article 49 was first applied in the context of the membership applications of the ten candidates, Bulgaria and Romania. It should be noted that before the entry into force of the Treaty of Amsterdam in 1999, human rights conditionality in relation to membership was not formally enshrined in the Treaties, although Article O of the TEU stated that in order to become Member, the applicant country had to be a European State, and this was reinforced by Article F, which made a short reference to the democratic nature of the Member States.

It was the Copenhagen accession criteria (1993), however, that included formal human rights conditionality and an explicit membership policy applied to EU candidate countries. These accession conditions expressed a political and unilateral act crafted by the Council based on some of the Commission's suggestions (Muller-Graff in Maresceau, 1997:32) and they included no contractual binding commitment on the part of the Union (Muller-Graff in Maresceau, 1997: 34).

According to the Copenhagen accession criteria, human rights conditionality is part of the political criteria for accession as EU membership requires that the applicant country:

"achieved stability of institutions guaranteeing democracy, the rule of law, *human rights* and respect for and protection of minorities[20]" (emphasis added)

Compliance with the Copenhagen accession criteria was a prerequisite for the opening of the accession negotiations - as the European Council meeting in 1997 in Luxembourg[21] made clear - but as the Commission put it, compliance with the political criteria was a necessary, but not a sufficient requirement for opening accession negotiations. The conditions were crafted by the Commission and sent to the Council via a Communication in

[18] Special Meeting of the European Council, Dublin, April 28, 1990 E.C. Bull 4/1990.
[19] Renamed "values" in the Treaty of Lisbon.
[20] European Council meeting in Copenhagen, 21 and 22 June 1993, E.C Bull 6/1993.
[21] Conclusions of the European Council meeting in Luxembourg, December 1997, E.C Bull 12/1997.

which the Council was asked to confirm its commitment to EU membership of the associated countries, as was the case for the CEECs in 1993. The conditions crafted by the Commission included the followings: "each country's capacity to assume '*acquis communautaire*' and the competitive pressures of membership, its ability to guarantee democracy, *human rights*, respect for minorities and the rule of law, and the existence of a functional market economy, as well as the EC's own capacity to absorb new members "(emphasis added, quote in Williams, 2000: 606).

The crucial question is: what is the meaning of the Copenhagen human rights conditionality? As shown above, the very wording of the human rights conditionality contained in the criteria lacks any clarity in definition. Given the ambiguity and the broad spectrum of what the fulfilment of these criteria may amount to, it was contended that this broadness was deliberate and the large room for manoeuvre implied that any judgment on the part of the Community would be extremely subjective and political (Smith, 1999: 140).

At the same time, the Copenhagen accession conditions also established the procedures by which the meeting of these conditions would be scrutinised by the Commission. These were supposed to take the form of dialogue, rather than "investigation" with an emphasis on "meetings of an advisory nature" undertaken in parallel with the Europe Agreements which constituted the main legal framework of the relations between the Union and CEECs at that time (Williams, 2000: 607). Hence, in spite of the vague and general wording of the Copenhagen human rights conditions, it seemed that the Union was determined to spell out the meaning and scope of what it meant by human rights via the screening process prior to accession.

Furthermore, human rights conditionality applied to candidates is a *sui generis* process and a new experiment for the EU for other reasons too. Human rights conditionality applied to CEECs does not fit neatly in a rule adoption framework. According to Schimmelfennig's and Sedelmeier's (Schimmelfennig and Sedelmeier, 2005) research on the transformation of CEECs via the EU accession, the transformative role of the EU was accompanied by the EU membership external incentive , which was deemed to foster the compliance with the EU accession norms and rules – hence the definition of Europeanisation as rule adoption. Unlike the *acquis* conditionality, i.e. the capacity to assume the '*acquis communautaire*', human rights conditionality did not involve the adoption by the CEECs of some existing EU human rights rules and policies as the Union lacked a human rights policy applied within the EU. Hence, through the evaluation of the fulfilment of the human rights conditions by CEECs, the Union politically spelled out the meaning and scope of human rights.

Additionally, political conditionality is different from *acquis* conditionality for other reasons too. For instance, political conditionality *qua* human rights conditionality is not applicable within the EU: there is a significant diversity within the EU Member States with regard to what the stability of democratic institutions means and above all, Member States have different degrees of human rights protection. For instance, the French legal system does not recognise the protection of national minorities within its territory.

Along the same lines, when it comes

to human rights policies, the EU lacks specific tests of institutional change or compliance with its requirements (Grabbe, in Featherstone and Radaelli, 2003), which impacts on the credibility of its political criteria. Given the diversity of its Member States in the field of human rights protection and given EU's lack of human rights templates and standards, the Union lacked –in its assessment of the human rights situation in CEECs- specific tests of compliance with its human rights requirements. Subsequently, the role played by the Union – via the Commission – is to be envisaged in political rather than legal terms.

VI. Screening process: *do as I say not as I do*

The breadth of the human rights issues scrutinised by the Commission in the candidates and in which the Union sought to intervene was unprecedented in terms of the EU's external relations. However, the human rights issues assessed in CEECs were not matched by an equivalent EU involvement at an internal level, hence the contention of a double standards approach by the EU via the screening process: the CEECs were expected to do as the Union said and not as it did itself. Hence, the human rights conditions included the civil and political rights associated with democratic systems, but economic, social and cultural rights were also brought to the fore. One of the most salient areas of human rights scrutiny concerned the protection of minorities.

First, it should be mentioned that "the emphasis on minority rights is not anchored in any long-standing EC law tradition "(Brandtner and Rosas, 1998) and such rights have not held any significant position in the activities of the Union. However, the level of protection for minorities was an important human rights area evaluated by the Commission in its annual Reports.

According to the Copenhagen accession criteria, minority protection rights are not an element of "human rights", as the political condition refers to "human rights and the respect for and protection of minorities". Hence, human rights and protection of minorities form a separate political condition for membership. Nevertheless, in the practice of the Commission's Regular Reports protection of minorities is usually cited alongside or as part of human rights, as is the case with the discrimination against the Roma, which can be ranged under both headings of "human rights" and "minority rights".

However, it should be noted that minority rights are a special category in terms of EU law. While protection of and respect for minority rights is required under the Copenhagen criteria, it is not a formal condition of membership under Article 49 TEU because it is not included among the Union's founding principles listed in Article 6(1) TEU. This is the major difference between the Treaty provision on human rights and the Copenhagen criteria. Consequently, the EU seems to be involved in requiring the respect for minority rights externally, while it fails to enforce them internally. Furthermore, the absence of any corresponding practice of the EU institutions towards the present Member States shows that minority protection is a moot area. Thus, the EU does not impose minority protection standards on its own Member States, which have widely diverging laws in this field, as in the French case mentioned above.

Subsequently, the practice of the

Commission in its Reports and of the Council in the Accession Partnerships could be seen as evidence for the view that rights of the minorities are implied in the "principles common to the Member States" mentioned in Article 6(1) TEU, and hence a condition for membership under Article 49 TEU (De Witte and Toggenburg in Peers and Ward, 2004:68). In the light of this, protection of minorities can be deemed as part of human rights conditionality, although the Member States have different levels of minority protection, which amounts to various meanings and interpretations of the "principles common to the Member States". Additionally, it should be mentioned minority rights do not feature in the Charter of Fundamental Rights of the EU.

Given that minority issues are part of the political conditionality for EU accession, the Union has been severely criticised for its use of double standards: minority issues constitute an important criterion that had to be met by the candidates, while internally the Community still ignored the issue of minority protection within its own borders (Toggenburg, 2000: 10). Thus, concern for minorities seems to be "primarily an export article and not one for domestic consumption" (De Witte, 2000: 3). Along the same lines, as mentioned above, a number of EU Member States have yet to ratify the most important and regularly quoted minority rights legal text, the Framework Convention for the Protection of National Minorities.

Some examples need to be mentioned with regard to this double standards approach when it comes to minority rights in the candidate countries. For instance, in the case of Estonia, the "integration of non-citizens" was identified by the Commission as a matter which demands "measures to facilitate the naturalisation process" (Williams, 2000: 610) whereas in Germany, Greece or Belgium little was done on part of the Union institution in relation to similar problems of integration and discrimination. Likewise, the plight of the Roma, especially in countries like Bulgaria and Romania, triggered the attention of the Commission. The Commission requested in the Accession Partnerships of these countries that the "dialogue between the Government and the Roma community" be strengthened "with a view to elaborating and implementing a strategy to improve economic and social conditions of the Roma"[22]. These diverging approaches at the internal and external levels – given that there are no legally binding instruments for direct institutional intervention in the affairs of the Member States on such matters – amounts to a policy of interference in areas that lie outside the Union's internal scope.

Similar human rights areas that fall outside the scope and competence of the Union in its internal dealings include the prison conditions, the situation of the institutionalised children or the people with disabilities. All these human rights issues constituted matters of concern in the Commission's annual Reports and hence very detailed measures were demanded to be taken by the candidate country concerned.

Although the ratification by the candidates of the European Convention on Human Rights was seen as a useful

[22] Romanian Accession Partnership 1999 DG Enlargement Documents.

step towards their accession to the EU and although it seemed obvious that the ECHR rights would form the primary standard for assessment in the context of accession to the EU, the Commission - in its Regular Reports on Progress towards Accession - did not use compliance with the ECHR as the primary indicator of the applicant states' human rights performance. The Commission referred in its Reports to a variety of sources of human rights protection, including other Council of Europe conventions, e.g. the Framework Convention on National Minorities, and OSCE documents, while leaving open the relative importance it chose to give to these various documents in its assessment. Subsequently, the Commission conceived of its role in political rather than quasi-judicial terms (De Witte and Toggenburg, in Peers and Ward, 2004:66).

Given that the EU lacks any human rights templates, the political conditionality *qua* human rights conditionality required significant EU-level entrepreneurship and a creative role in spelling out the extent and degree of human rights protection. Simply put, the EU, via the Commission, created and eventually transposed into the candidate countries a European normative framework of what the meaning and protection of human rights ultimately amounted to. Thus, the Commission acted as a policy entrepreneur (Grabbe, 2005) especially with regard to political conditionality where ambiguity and vagueness prevailed. The *Comite des Sages* noted in their report on "A Human Rights Agenda for the European Union for the Year 2000" that "the Union currently lacks any systematic approach to the collection of information on human rights" within the Union (quote in Williams, 2000: 614). However, as far as the CEECs are concerned, the rights scrutiny and information collection employed by the Union developed into a sophisticated policy.

Accession preparation became more systematised and membership criteria have been applied more strictly than in previous enlargements also due to the Commission's crucial function as a "screening actor" (Everson and Krenzler in Hillion, 2004: 13).Unlike the previous accession procedures in which few Commission Opinions were given, the most recent accession involved extensive assessments, leading to Commission Reports being delivered on an annual basis. This strict and systematic evaluation made the conditions more entrenched for enlarging the Union and allegedly made them become a kind of "objective" standards (Hillion, 2004: 15).

Human rights protection becomes, however, problematic following the accession of the candidate countries to the EU. Thus, once these countries have joined, the pre-accession monitoring of their human rights record has to cease as they become subject to the same obligations and procedures as the other Member States. With regard to human rights, the legal regime as from the date of accession is that the new states – like the old states - will have a duty to respect fundamental rights when they act within the scope of EU law. Paradoxically, the accession may lead to a reduction of the European human rights standards for the candidate countries.

This paradoxical situation occurs particularly with regard to those matters which, although duly examined in the human rights pre-accession reports, are not within the scope of EU's internal competence, such as: the rights of

children, prison conditions and protection of minority rights. Additionally, these human rights issues do not fall within the remit of the European Union Agency for Fundamental Rights. Put briefly, "the EU institutions will suddenly have to cease being interested in minority protection in Latvia, children's rights in Romania and prison conditions in the Czech Republic, once these countries have joined the EU" (De Witte and Toggenburg in Peers and Ward, 2004:69).

Conclusion

This article looked at the EU's involvement with human rights from the perspective of the EU as a human rights promoting actor and a "normative power" on the international arena. It was argued that a human rights EUtopia has emerged, such that the projected European human rights model in EU's external relations is not matched by a comparable and enforceable internal counterpart. The gap between the real and normative EU -when it comes to human rights - affects the credibility of the EU's human rights regime. Secondly, it was contended that the EU lacks a solid legal entrenchment of human rights: it does not have an overarching human rights policy applicable within the EU and the Charter is not binding. Thirdly, we saw that there are different degrees of human rights protection in the Member States which amount to different hierarchical conceptions of human rights.

The legal shortcomings of EU's human rights credentials and its use of a human rights clause in agreements with third countries were highlighted and it was demonstrated that the Copenhagen human rights conditionality attached to EU accession was vaguely stated and was not underpinned by EU internal human rights templates. Finally, it was shown that the screening process of CEECs - by the use of double standards - entailed EU's involvement in matters falling outside its own internal scope. It can thus be concluded that the credibility of the EU human rights regime is jeopardised by its attempt to export human rights externally– hence the normative and utopian claims – without having a real, substantial legal entrenchment of human rights internally. Although this lack of credibility may have little impact on non-EU states' compliance with European norms, I contend that a non-credible EU in the field of human rights raises serious questions about the legitimacy of the actions of the EU in its role as a normative power in world politics.

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IMMIGRATION AND INTEGRATION POLICIES IN UK

Anca Voicu*

Abstract. *The number of immigrants received by the United Kingdom significantly increased during the past several years. Given the set of economic and social difficulties encountered, UK created for the first time a completely original system of Nationality Legislation and started to apply a severe policy of assimilation instead of integration. UK applied the Community Law concerning immigration, asylum and free movement of workers in its national interest, the whole European construction showing the "British specificities". Even today, there are a lot of measures to be taken in order to come to a real integration policy of immigrants.*

Keywords: *immigration, integration, Community Law, multiculturalism, discrimination, assimilation, asylum, racism*

Introduction

Britain, like France, is a former colonial power, whose immigration and citizenship policies reflect in a complex manner the legacy of colonialism. Historically, Britain has been a country of emigration, not immigration, its settlers laying the foundation for the US, Canada, Australia and New Zealand.

Within the dismantling of its empire, Britain has had to redefine itself as a nation-state and to create for the first time a national citizenship. The transition has been a difficult one. The absence of a strong identity as a nation-state and of a well-established national citizenship contributed to the confused and bitter politics of immigration and citizenship during the last quarter-century.

Immigration is the act of entering a country, other than one's native country, with the intention of living there permanently. *Integration* is the action or process of *integrating*, bringing into equal membership of a society groups or persons without regard to race or religion, the ending of racial segregation.

The originality of the British System was the lack of a national citizenship until 1981. Thus, Britain lacked a clear criterion for deciding whom to admit to its territory. In the early post-war years, inspired by a heady vision of itself as the centre of a vast multiracial Commonwealth of Nations, it continued the traditional practice of admitting all British subjects – a category also including citizens of the independent Commonwealth countries.

But controls were imposed on this latter group in 1962, after a significant immigration developed from Jamaica, India and Pakistan. This was inevitable, in view of the huge population disparity between the independent Commonwealth countries and Britain itself. The government later drew

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distinctions in immigration law between persons of UK and colonies; it created a special second-class citizenship status, without the right of immigration for residents of Hong Kong and others.

With all the afflux of persons, Britain had to change the immigration and integration policies, aiming to integrate and assimilate those immigrants who had settled and to begin closing doors to any further immigration, at least from outside Europe.

The concern was not only social, cultural and political, but also economic, as unemployment and other risks had started to emerge as a persistent problem for all the West European economies.

In this paper, we will analyze the strong connection existing between the policies of immigration and integration which cannot exist separately, in an inter-disciplinary approach that mainly includes an institutional-legislative dimension (I), a sociological and an economic-statistical dimension (II) and the specificities of a society which has always been 'isolated' from the rest of Europe, representing a model of the political resistance and obstinacy to all the European legal projects able to affect its sovereignty.

I. Precursor factors and following measures for the changing of immigration and integration policies in the UK

For historical reasons, UK has a very numerous immigrant population. Before the First World War and since the beginning of the 19th century, it counted an important immigrant population from Northern Ireland, especially because of the famine episodes from the middle century, but also from other European countries, because of persecutions (religious and political) against Jewish and Polish people and also, at the end of the century and the beginning of the 20th century, from the East European Countries.

Because of these factors of population growth, UK took a series of legal measures at national level, but also under the influence of the European Community Law, after having become an EC member, with the aim of protecting the British society and the national interests.

A. Immigration – a major cause of population growth

Especially because of its colonial past, the UK faced new waves of immigrants: in the 1950's, decolonization and the labour force need attracted in this country many inhabitants of the former British colonies and more recently, from the actual Commonwealth countries[1].

Among the recent immigrants, two big groups are predominant: immigrants from the Indian sub-continent (India,

[1] The Commonwealth of Nations is a voluntary association of 53 independent sovereign states, most of which are former British colonies, or dependencies of these colonies. The relationship among them is one of an international organization through which countries with diverse social, political, and economic backgrounds are regarded as equal in status, and co-operate within a framework of common values and goals. Current members are: Antigua and Barbuda, Australia, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Cameroon, Canada, Cyprus, Dominica, Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zeeland, Nigeria, Pakistan, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom, Vanuatu and Zambia.

Pakistan and Bangladesh) and those from the West Indies. More than 1 million persons came from India, Pakistan and Bangladesh and they settled mainly in London and the big cities from Midlands. The Caribbean and West Indies immigrants rise nowadays about more than 600,000 persons and they settled mainly in big towns, inner cities easily abandoned by middle classes.

Industry had an important social role in helping bring disadvantaged workers into the labour market, but this was undermined by the government's open door immigration policy. Immigrants from South Asia helped the 1950's economic boom. Many of these were recruited to the textiles industries of Britain's Northern towns that were trying to compete on the basis of low wages with textiles companies in Asia. Bangladeshi immigrants were working in the 'sweat-shops' of the East End of London and Australian immigrants were working in the wine-bars and pubs of West London.

The process of immigration of the black people begun in the 1950's and they also settled in London and Midlands, being able to find jobs mostly in the textile sector and the automotive industry, but also in public transports sector and hospitals.

The immigrants' rising number started to alarm British people at the end of the 1950's, with the first racial riots at Notting Hill (London, 1958) and Nottingham. In this context, different labour and conservative governments adopted laws in order to restrict and discourage immigration.

The main thrust of the legislation was to impose tighter controls of the immigration of UK passport-holders from East Africa, because the number of these immigrants shot up from 6000 in 1965 to 31600 in 1967.

B. Measures on the political scale – the national level

Immigration into the UK is subject to control under successive Immigration Acts, a control extended to all potential entrants, except for those to whom the legislation gives the right to abode in the UK (principally those holding British citizenship) and nationals of other member states of the EU.

The *British Nationality Act 1948* divided British citizenship into two categories – citizenship of independent countries of the Commonwealth and citizenship of the UK and Colonies. Citizens in both categories remained 'British subjects', but were also 'Commonwealth citizens'. The status as British subjects gave right of free entry to the UK.

Starting with the *Commonwealth Immigrants Act 1962*, a distinction is made between UK citizens and Commonwealth citizens. The principle that all citizens of Commonwealth countries, including citizens of the British colonies, had free and unrestricted entry is no more applied. Although it did not expressly discriminate on grounds of colour or race, its aim and effect were to limit the admission of coloured immigrants.

The most controversial of all the British Immigration Act was the *Second Immigration Act 1968*. This aimed at extending control and denying right of entry except to those who had substantial connection with the UK by birth or descent.

The *Immigration Act 1971* gave indefinite leave to stay to those not

entitled to the right of abode but who were lawfully settled in UK when it came into force. The automatic right to settle in UK is subject now to the delivery of a work permit.

British *Nationality Act 1981* completely revised the definition of British Nationality, introducing three classes of citizenship with the right to leave in Britain largely restricted to those with a British grandparent: British citizens, having the right to leave, citizens of British Dependent Territories and British Overseas citizens, which did not have this right.

Immigration Act 1988 limited the entry of families of immigrant workers in UK and the *Immigration and Asylum Act of 1996* limited the number of asylum seekers.

The following acts were in the same line: the *Immigration and Asylum Act 1999, the Nationality, Immigration and Asylum Act 2002 and the Asylum and Immigration Act 2004*.

The result of all these measures is that immigration has been restricted in such a manner that it became almost impossible nowadays.

Concerning the *asylum law*[2], UK tried to deter the number of those claiming asylum by tightening visa regimes and juxtaposing immigration controls, diminishing the rights of asylum seekers but trying, in the same time, not to break the European Convention of Human Rights. The Independent Asylum Commission[3] criticised the British asylum system, which provide an inhumane treatment for vulnerable persons and falling below acceptable standards of a civilized society[4].

The Asylum and Immigration Appeals Act 1993 provided for new rights of appeal for asylum applicants refused asylum; it restricted the appeal rights of persons seeking to enter the country as a visitor or a short-term or prospective student, or seeking to extend their duration of stay beyond the maximum period permitted.

The Asylum and Immigration Act 1996 introduced an extension of the accelerated appeals procedure to a wider range of refused asylum applications, the designation of selected countries of destination where there is generally no serious risk of persecution.

The Nationality, Immigration and Asylum Act 2002 concentrated on restricting the provision of social assistance for asylum seekers during the status determination process and limiting legal challenge to refusals on asylum.

Under the *Nationality, Immigration and Asylum Act 2003*, immigration officers were allowed to operate in European Economic Area ports, being able to refuse entry to the UK to asylum seekers before they arrive in the UK,

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[2] *Asylum* is a refuge granted to an individual whose extradition is sought by a foreign government or who is fleeing (fugitive) persecution in his native state. After the Second World War, shamed by the fact that Jews fleeing Germany had been denied protection and had been sent back to the Nazi regime, the victor nations established a system by which those facing persecution would be able to seek protection in safe countries. This was the basis of our modern asylum system – the 1951 Convention on Refugees. The *refugee* status is granted if a person, '... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country...'.

[3] Organism in UK having the task to analyze the asylum system.

[4] Border officials did not give enough consideration to factors such as post-traumatic stress in initial interviews.

diminishing the number of asylum claimants[5].

The *Nationality, Immigration and Asylum Act 2006* contains several provisions empowering the Home Secretary to deprive a person of British citizenship (or Right of Abode) if it is considered that such deprivation is "conducive to the public good".

Numbers of asylum seekers in Britain have fallen to around 23,000 a year, down from a peak of nearly 85,000 in 2002, when the high numbers forced the issue to the top of the political agenda. In 2007 figures reveal 23,430 asylum applications, the lowest for 14 years, and a quarter of the record set in 2002.

Concerning the *race relations legislation*, we can remember several acts, like *Race Relations Act* 1965, which set up the Race Relations Board to receive complaints of unlawful discrimination and to investigate them.

Race Relations Act 1968 enlarged the Race Relations Board and extended its scope. It also set up the Community Relations Commission to establish harmonious race relations.

Race Relations Act 1976 made discrimination unlawful in employment, training, education and in the provision of goods and services and made it an offence to stir up racial hatred. It extended discrimination to include indirect discrimination[6] and discrimination by way of victimization[7]. It replaced the Race Relations Board and the Community Relations Commission by the Commission for Racial Equality.

Despite these measures, globalization and the internationalization of markets generated new migration attitudes, an increased fluidity of the regional movements, in which temporary migration phenomena have got a special importance. Migration could no longer be considered an instantaneous, unpredictable phenomenon, as population movements have got multiple historical, behavioural, economic and social aspects.

Britain is a specific model in the EC history because of its constant refusals to take measures in the same time with the other Member States. Concerning the immigration and integration policies, the same rule of obstinacy applied.

C. The British model within the European Union framework. The influence of the EU legislation on the UK immigration policy

Concerning the British attitude, a European Commissioner, Roy Jenkins, recognized '*our national habit of never joining a European enterprise until it is too late to influence its shape*'[8].

The European Union has a very strong foundation as regards its immigration

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[5] Jean-Yves CARLIER and Philippe DE BRUYCKER, *'Immigration and Asylum Law of the EU: Current Debates'*, Bruylant Editions 2005, Bruxelles.

[6] Discrimination is treating a person less favourably than others on grounds unrelated to merit, usually because he or she belongs to a particular group or category.
Indirect discrimination is a form of prohibited discrimination on grounds of sex, race, sexual orientation or belief which occurs through a practice, a criterion, a provision applied to everyone, but with the result to put a group at a particular disadvantage. From December 2006, indirect discrimination on grounds of age is also prohibited.

[7] The situation in which someone experiences less favourable treatment because he has brought a complaint under the legislation or has assisted someone else to do so.

[8] Jean-François DREVET– *L'élargissement de l'Union Européenne, jusqu'où?*, Ed. L'Harmattan, 2001, p. 31.

policy: movement of persons is part of economic integration. For a long period of time, the right to enter and live on the territory of an EU Member State was governed by national laws drawn up by each Member State. One could enter and live on the territory of a state based on an entry visa and a residence visa, which were granted by each state.

The original EEC Treaty included, as one of the four fundamental freedoms, free movement of workers, in order to create an area without internal frontiers where persons, services, goods and capital can move freely.

Britain entered the European Community in 1973 and after the accession, the UK systematically opposed to all the projects that could affect its sovereignty and its national identity. Thus, starting with the Single European Act (1986)[9], the UK insisted upon a Declaration being appended, claiming that nothing within it affected Member States' rights to invoke the Luxembourg Accords, which is the equivalent of an every Member State veto[10].

The road to Maastricht (1991) was also largely opposed by Britain. The aim was the finalization of the internal market, the creation of a social dimension of the Community and the economic and monetary union. The British Government saw these goals as too interventionist and too centralising. Yet the UK was increasingly isolated on the last two objectives and did not accept the commitment of the abolition of its currencies.

The Community Charter of Fundamental Social Rights proposed by the Commission in May 1989 was adopted by all the Member States in December 1989, apart from Britain. Further, the Protocol on Social Policy[11] attached to the EC Treaty, was signed by all Member States, apart from the UK. The EU Treaty was ratified by the British Government only after the re-negotiation of this protocol (324 votes to 316).

The establishment of Union Citizenship also raised particular problems for the British, who saw this as a potential replacement and a threat to national citizenship and national identities.

The UK also opposed the eventul bringing of macroeconomic, defence, foreign policy under a single central authority, the EC supranational

[9] After the Luxembourg crisis, in 1966 an agreement was reached, stating that wherever one Member State raised 'very important interests' before a vote in the Council was taken, the matter would not be put to a vote. The veto, developed at the behest of France (the disagreement with the Commission concerning the own Community resources), was invoked equally freely by all the Member States. This contributed to a change in political culture which resulted in States being less tolerant of attempts by others to invoke the Luxembourg Accords.

[10] The principal achievements of the Single European Act (SEA) were fivefold: the development of the internal market, the institutional reform (introduction of the cooperative procedure, as a legislative procedure, increasing the powers of the European Parliament), the extension of express Community competence to other fields (health and safety at work, economic and social cohesion, research and development and environmental protection), the foundation of a greater economic and monetary integration, extended beyond the internal market and the cooperation in the Sphere of Foreign Policy.

[11] Social policy embraces socio-economic rights such as the free movement of persons, human rights, citizenship rights, general principles such as the principle of non-discrimination in relation to nationality, rights to education, vocational training, public health, consumer protection as well as general programmes relating to poverty, social exclusion and racism.

framework. Concerning the Justice and Home Affairs (JHA)[12] on issues as combating international crime, terrorism and third country national immigration, Britain, Ireland and Denmark considered that in this area the national veto should be maintained.

The Treaty of Amsterdam (1997) announced the establishment of an area of Freedom, Security and Justice. A Title on visas, immigration and other policies related to free movement of persons was included in the first pillar. A Protocol was attached to the EC Treaty on Asylum for Nationals of Members States of the European Union. Again, the UK (and Ireland[13]) refused to relinquish its border control. Two Protocols to the EC Treaty were therefore signed: the Protocol on the Application of Certain Aspects of Article 14 EC Treaty[14] to the United Kingdom and Northern Ireland[15] (stating that, notwithstanding other EC Treaty provisions, the UK can retain its rights to verify those entering its territory and to determine whether or not to grant permission for them to enter and, as a corollary, the other Member States are permitted to retain border controls vis-à-vis persons entering from the UK or Ireland). The second was the Protocol on the Position of the UK and Ireland, allowing them not to participate in the adoption of measures taken under this EC Title, nor to be bound by them.

The provisions establishing the area of freedom, security and justice must be read alongside the Protocol Integrating the *Schengen Acquis* into the framework of the European Union. The Schengen Acquis consists of two agreements, one signed in 1985, the other in 1990, and a number of implementing decisions taken under these agreements with the purpose to provide for gradual abolition of checks at common frontiers[16]. All Member States except Ireland[17] and the UK are now party to the *acquis*.

Thus, it was difficult for the EU to make a European migration policy, because the institutional framework didn't include communitarization yet. Immigration is still a matter that touches the very heart of state sovereignty and therefore it remains a Member State prerogative.

Concerning *temporary protection*[18], the UK has not transposed the EU

[12] The third pillar of the EU.

[13] The abandonment of Irish border controls on movement from other Member States, whilst remaining part of the common travel area with the UK would have enabled British border controls to be evaded simply through the expedient of entry via Ireland. [16] Article III-210 (1), projet de Traité constitutionnel de l'UE

[14] Free movement of persons, goods, services and capital.

[15] The UK made it very clear that it was unwilling to give up its border controls: Article 1 of the Protocol stated that 'The United Kingdom shall be entitled, notwithstanding Article 14 of the Treaty establishing the European Community (...) to exercise at its frontiers with other Member States such controls on persons seeking to enter the UK as it may consider necessary for the purpose of verifying the right to enter the UK of citizens of States parties to the European Economic Area Agreement or citizens of other States (...) and of determining whether or not to grant other persons permission to enter the UK (...)'.

[16] This involved improving cooperation and coordination between the police and the judicial authorities in order to safeguard internal security and in particular to tackle organized crime effectively.

[17] The British and Danish 'Opt-Outs'; the Protocols gave to a number of States a wide margin of discretion as to WHEN and IF they will opt-in or opt-out of integration of Schengen Acquis in the future.

[18] Directive 2001/22/EC. Temporary protection is an exceptional measure to provide displaced persons coming from third countries with immediate and temporary protection where there might be a risk that the standard asylum system will be unable to process this influx without severely damaging it.

directive yet. After the entry, the rights and conditions of individuals, as provided by the directive, are complex: entitlement to healthcare, social assistance, housing and the right to work depend on immigration status. Education is an exception, being compulsory for all children. The conclusion is that the UK has the power to make such provision exist and be exercised, but only if necessary. Until the transposition of the directive, the Home Office and the Home Secretary have discretionary power to admit and to permit individuals to remain.

UK also opted out from the EU *immigration and asylum law*[19] (measures on family reunion, long-term residents, migration for employment or self-employment, entry and residence of students and volunteers). UK opted in to all measures specifically related to irregular migration (mutual recognition of expulsion decisions, of carrier sanctions, transmission of passenger data, establishment of a common format for residence permits).

With the gradual enlargement of the Community, the Southern Europe countries gave their nationals the right of migration, especially for economic reasons. Freedom of movement of workers is accompanied by the principle of equal treatment between workers of the Member States in the fields of employment, remuneration and other conditions of work (Article 39 EC). Discrimination based on nationality (**direct discrimination**) or requirements which – as a rule – non-nationals have more trouble in meeting than nationals do (**indirect discrimination**) are not permitted under Community law. This freedom also implies mutual recognition of degrees and professional qualifications.

Concerning enlargement, British fears were similar to those of other member-states. UK worried about the impact on the EU's budget and about migration of CEE workers. The UK maintained visa controls on Bulgaria and Romania for several years after the rest of the EU removed them. However, the policy regarding workers began to change at the end of negotiations. In December 2002 (after the accession negotiations with ten countries) UK announced that it would not apply the transitional period on free movement of labour that the EU had negotiated with the CEE candidates (that means that the CEE citizens were able to work in Britain immediately after accession – 1 May 2004)[20].

The international experience in migration administration and monitoring demonstrates **the close relationship between the legislative-institutional dimension and the social-cultural one**. The elaboration and adoption of laws, the creation of institutions, the development of corresponding strategies and policies represent major components of this process, but their success cannot be separated from the manner in which the involved actors–governmental institutions, nongovernmental organizations, mass-media, communities, individuals – respond to the so-called 'behavioural challenges', related to participation, communication, mentalities and attitudes.

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[19] Article 63 EC regulates the admission of asylum seekers and refugees and family members

[20] Jacques RUPNIK, *'Les Européens face à l'élargissement. Perceptions, acteurs, enjeux'*, Presses de Sciences Po Editions, 2004.

II. Does immigration imply integration?

As we have talked about immigration, we have seen that England, and Britain in general, have long been a home to several ethnic and religious communities, each with rich cultural traditions overimposed to a long history. Hence, the term of *Integration* cannot be neglected since it appears to be a natural suite to this mass immigration we have dealt with previously in our article.

According to the *Oxford dictionary*, "Integration" is defined *as* "the process of bringing to equal membership of a common society those groups or persons previously discriminated against on racial or cultural grounds". Thus, integration tends to explain an end of racial segregation and a process of becoming an accepted member of a community.

However, since 1945, *immigration, integration* and *race* have been recurrent features of a social change and political debates in Britain.

Therefore we will try to see if it is so, to what extent England is a "multicultural" society, and also we will highlight the way in which these migration flows are perceived among the English society and how this integration is carried out, especially on a political scale.

A - England: the Multicultural[21] nature of British society

1. The migrants' profile

Different terms have been used to denote these groups for which integration has not been always an easy task leading to different perceptions of these groups' "place" within the society. In Britain, like in England, the terms usually used are "ethnic minorities"- in Germany is the "foreigners" or "aliens", and in France it is common referred to 'immigrants" or "population of a foreign country".

This mass immigration has divided the country into two "zones": in the countryside, life carries on as usual, but in the cities, multiculturalism is rapidly taking over.

At a conference in 2005, London[22] was presented as the most cosmopolitan city of the world: 300 languages, 50 distinguished communities with populations of 10.000 or more, with quasi every "race", nation and culture. Almost a third (30%) of the city's inhabitants were born outside the UK with thousands or more who are a second or third generation immigrants. However ethnic minorities are not restricted to London.

Considering migration as a social phenomenon that directly affects a great part of the population and involves complex implications on the entire society, it is relevant to know and note the migrant's profile such as "refugee" "asylum seeker", "immigrants for labour", "study or business purposes".

Nevertheless the common element of all these countries that had received a large numbers of immigrants as a result of past recruitment policies, is the concern with communities which are both economically disadvantaged and which display a distinct "ethnicity" based on a culture, race, religion, language or

[21] "Multicultural society" is a society with a cultural, ethnic and religious diversity. A society or a person subject to the influences of more than one culture. An advocate of cultural diversity; a society which promotes equal tolerance of all cultures within a society.

[22] A Guardian-sponsored conference in 2005 showed the cultural diversities among England.

national identity with roots elsewhere.

Concerning the ethnicity, although the need to take into account the various groups of migrants and their particular needs and issues, the word used in England for immigrants is "Toleration", meaning that no regular and explicit policy was developed to support or encourage cultural difference at national level.

2. Aspects regarding the integration within the "host" society

In general terms, for an immigrant, integration consists in the knowledge of the language spoken in the "host "country that is to say reading and writing skills, the access to the educational system and to the labour market of the country, the chance of improving professional mobility by attending to a higher level of education or professional qualifications and impartiality in front of the law.

At the same time, the host country has to show tolerance and openness. The consent of welcoming the immigrants, the understanding of the advantages and challenges of a multicultural society, providing, with no restrictions, the access to information related to the "pros" of integration and tolerance but also the advantages of a intercultural communication that would help in respecting their rights and understanding the traditions and cultures of the different communities of immigrants.

In Britain, the policy has sometimes been described as "multicultural" because of the opportunities allowed to minorities, given them a certain cultural autonomy but also because a number of local authorities have adopted a more multicultural line than has central Government- particularly in the field of Education –e.g.: the "1988 Education Reform Act" which requires a "mainly or broadly Christian content in religious education and school worship". However, Britain has never adopted an explicitly multicultural policy, tending to favour a more "hands- off" approach to cultural matters.

Although all levels of Government should do more to welcome and integrate new migrants and to enable settled and new residents to mingle or, adjust one another, the term "Integration" has, for the last two generations, been basically a taboo term. It has to be said that these immigrants once on the British grounds were not required any knowledge of the English culture and they would have a simple linguistic test supervised by the local police.

The development of multiculturalism as a policy was to some extend a failure caused by the policies of the 1950's and 60's with the aim, said to be "integration", was actually "assimilation". The risk of integration process has been to avoid falling into an assimilation policy, as integration is not "about assimilation[23] or absorbing but only to bring together and "harmonise"[24].

Nonetheless this multiculturalism within some ethnic minorities has become discredited and if the integration

[23] "Assimilation" is the absorption of minority migrant communities into the majority community with no noticeable effect on the culture and way of life of the majority while expecting that the culture and way of minorities brought with them would disappear (definition given by the CRE: Commission for Racial Equality).

[24] *Review of Migrant Integration Policy in the UK* (2008; Department for Communities and Local Government: London.)

process did not turn into an assimilation one, it is seen as a way of systematically dividing, separating and "marginalising" ethnic minorities by excluding them from places where it really matters.

B - The "Multiracial" Society Instabilities

1. Political weakness: a lack of anti-discriminatory act policies

In the 21st century Britain, ethnic, cultural and religious diversity is a fact and that is why we can say that Britain is a multicultural society.

Nevertheless, when Great Britain decided to set immigration policies, it was not was not followed by any well-defined integration policies. Everything had to be done in terms of Education, of specific formation or in lodging immigrants.

However in 1965 and 1968, Race Relations Acts were passed proscribing discrimination, but this act only protected those facing a direct discrimination therefore English Government decided in 1976 to establish "the Commission for Racial Equality[25]". This Commission will deal with all types of discrimination (direct or indirect- at work, in lodging distribution or in public services). The indirect discrimination from then on would be considered as a crime to be declared to the authorities if it has to happen and would judged in a special court that will defend the victims.

When this mass migration started, the British Government did not think, as they did for the immigration, of any measures to frame or organise the process of integration. And to explain this weakness on a political scale we must, first, point out the fact that some migrants, when they first arrived faced a series of barriers to integration including: lack of practical knowledge about living in the UK; their rights and responsibilities; lack of language or employment skills; difficulties accessing ESOL[26]; lack of opportunity to meet local people and some hostility and ignorance.

In the 1980's, the European Commission's report on integration stressed "the need for greater security of stay for migrants and their offspring, the need for action in the areas of employment and business, education and housing."[27]

In Britain, the majority of migrants that came after the war entered the country as British subjects with full citizenship rights. In contrast to France, it was "*race*" rather than "*culture*" which emerged as the most fundamental problem, and this led to a series of Race Relations Acts -listed previously- which put in place a framework of legislation to protect ethnic minorities from direct and indirect

[25] "Commission for Racial Equality" is "the statutory body charged with tackling racial discrimination" Our aim has been to foster a wide debate, and, partly because the CRE has raised these questions, they are now discussed daily in the mainstream media. The debate has sometimes been heated, and at least some of the heat may have arisen from misunderstandings and misrepresentations. http://www.irishtimes.com/newspaper/ireland/2008/1117/1226700658961.html

[26] ESOL : Cambridge ESOL is the leading provider of English language qualifications in the UK, and has developed the new assessments to meet the needs of employers, and to support migrant and settled workers who are in work or intending to work in England, Wales or Northern Ireland.

[27] Sarah COLLINSON – *Beyond Borders: West European Migration Policy towards the 21st Century*, Royal Institute of International Affairs, 1993.

discrimination in all areas of the public life. These racial tensions among the English society have been created also by a policy of "segregation" that started since the 1950's.

When these citizens started to settle in the UK, they landed in a society mostly peopled by a white population which made them gather in working-class areas where they would find cheap accommodations and unskilled-man jobs. And this is when the social gap between the different social categories in the UK has really started to widen.

2. Why does integration present complexities in its achievement?

• Cultural clashes caused by ethnic diversity

By the end of the 1960's, when the control over the migration fluctuations came out to be a disaster, a racism craze sprung and was being openly expressed especially when limitation of immigration laws was adopted.

An MP at the time, named E. Powell, wanted to close definitely the frontiers and send back some immigrants that had already settled in England or in the UK. His propositions were not really supported by the public and his speech implying racist connotations led him to the end of his political carrier as he got fired from the British Government. This event shows that racist behaviour or attitude would not be tolerated among the Government, but among the police, some readjustment needed to be done.

The reasons of these racial clashes are numerous but not really obsolete. Some minorities have been on a daily basis experiencing very bad living conditions, for some of them living in slums; they are cut from the rest of the population and they had been given places that white people did not consider decent enough anymore and there is not much of minorities living in the countryside (3%).

Segregation never helped in integrating a new class of citizens and this geographical segregation is the major factor that has caused, because of a lack of intercultural exchanges and the difficulties to integrate, a bad knowledge of the language. Children of minorities appear for many of them, not to speak English either hardly or at all. This is a major aspect that slows down their integration, despite the consideration of the difference between Asian immigrants that are successful in many respects and Caribbeans and Bangladeshis being at the opposite end.

• Racial riots and a discriminatory attitude from the police

The aftermaths of the 1960's unsuccessful immigration policies pulled in a decade later. The National traditions, the cultural diversity, xenophobia, minorities' demands not always heard are all, sources generating this problem of ethnics' diversity.

In the 1970's the so-called "Paki-bashing" phenomenon took place, with groups of skin heads, and Pakistanis clashed. It was largely sparked by racist attacks against the Pakistani community, "Paki" in "paki-bashing" implying expressively a racist connotation.

In 1981,-and later in 1985- extremely violent racial riots[28] broke out in Brixton, seen as the "spiritual home of Britain's afro-Caribbean community" situated in South of London. These riots were generated by a police operation called "*Operation Swamp 81*"[29] resulted in a significant number of black youths being stopped and searched. This intensified the resentment of a group who had already often protested against police actions on the street. Other riots broke out in England, such as in Liverpool, Leeds and the North East and West of England went through this.

The Police facing these racial segregations had not been always impartial to minorities. The only reasons that led to these discriminatory judgements from the police and which fed the racial riots, are the fact that the ethnic minorities live in *ghettos*[30] being the first targets of unemployment and poverty and often those accused of anti social behaviour or crimes.

As a result to this the Royal Commission pointed out in a report called the "Scarman report" the main causes that were and still are, from one hand, poverty, feeling been put on the edges of the society and on the other hand, the discriminatory behaviour of the police and their lack of impartiality. This report advised British Government to have a follow – up of the police behaviour towards minorities and to launch social actions measures.

However, these reforms were seen inadequate and insufficient, with these ethnic minorities suffering of bad living conditions that did not improve anyhow, riots in 1985 broke out again.

C - Governmental actions and local authorities and agencies facing the issues of minorities

- Does the government have an integration policy for migrants today?

The minorities are not often offered a large pane of jobs opportunities since their lack of qualifications and weakness in terms of language and so are centred in unskilled-manual jobs; very few work in "white collar jobs". Therefore they are the first to be hit by unemployment, especially within the black community were youngsters are highly affected. Only Indians and Pakistanis present an exception as they often are their own employer.

Despite this negative side of the integration on a professional scale, they are number of relevant policies, functions and provisions in place across government, particularly in relation to refugees and those applying for settlement/citizenship. The relevant policy includes, among many other

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[28] http://www.met.police.uk/history/brixton_riots.htm: "299 policemen were injured and at least 65 civilians. 61 police cars were damaged or destroyed. 28 premises were burned and another 117 damaged and looted. 82 arrests were made. Molotov cocktails were thrown for the fist time on mainland Britain. There had been no such event in England in living memory.

[29] *The "Operation Swamp 81"* consisted in stopping and searching black youngsters suspected of being involved in the serious increase in street robbery.

[30] OED definition of « ghetto » transf. and fig. A quarter in a city, esp. a thickly populated slum area, inhabited by a minority group or groups, usu. as a result of economic or social pressures; an area, etc., occupied by an isolated group; an isolated or segregated group, community, or area.

plans:

-> Development of the Refugee Integration and Employment Services (REIS) for all those granted refugee status.

-> £ 50m Community Cohesion investment over three years

-> Investment in affordable housing, and rough sleeping support

And a number of reviews are currently underway across government which will look at how these might be improved:

-> Private rented sector review

-> Review of access to healthcare by foreign citizens

-> Review of access to benefits for EEA migrants

- **The remaining gaps and how to fill them**

There is a problem of communication between the ethnic minorities and the Government. Minorities claim for more recognition; they want to be seen as "communities", they want to see their cultural and religious diversities respected more and their status of citizen allowing them to be supported by politics for their demands through a fair representation of minorities in the higher authorities.

Despite the considerable progress being made, many migrants coming to the UK could be making an even greater contribution to the economy. Better information about living in the UK could ensure that migrants make more appropriate use of services (such as healthcare), and do not inadvertently break the law (for example, driving offences and antisocial behaviour). Greater transparency around service provision, and more sensible media handling would also help to reduce tensions between communities and therefore reduce the probability of community conflict.

The Government and local authorities could set up a better identification, recognition and use of skill set that migrants hold, and potentially, training to members of new migrant groups to become interpreters and mediators and also showing consideration of the need for a single, coherent, cross-government "Strategy for Integration" of migrants.

Conclusion: The Outcomes of the Immigration and Integration Policies in the UK

The very high rates of immigration in recent years are creating areas in which children with two UK born parents are in a minority. This poses serious difficulties for effective integration as there will increasingly be no core culture with which to integrate.

In some communities, particularly of Bangladeshi and Pakistani origin, this situation is exacerbated by the very high incidence of arranged marriages with partners overseas. A much slower rate of foreign immigration and tighter rules to discourage intercontinental marriages are essential if there is to be a reasonable prospect of achieving the degree of integration needed to maintain social harmony in Britain.

These communities are constantly being refreshed by new arrivals from the Sub-Continent, so most Pakistani and Bangladeshi children will have a mother born abroad. This is leading to the rapid expansion of ghettos[31].

[31] For example, the Bangladeshi population of Tower Hamlets increased by 77% between 1991 and 2001

Furthermore, the process of integration for these communities is constantly being shifted back by a generation; this is much less the case for communities of Indian and other origins.

Migrants are now expected to demonstrate English language ability and knowledge of life in the UK before being granted settlement. This can be done either by completing an ESOL course and demonstrating progression from one level to the next, or taking the 'Life in the UK' test, aimed at ESOL 3 and above. The current 'Life in the UK' publication for citizenship tests includes a wide range of information around everyday needs, employment, law and signposting for sources of further help and information. It is expected that the vast majority of workers to speak English, and there is also a proposal for pre-entry English requirement for spouses.

However, positive points need to be highlighted. In the last decades more black people are seen on TV broadcast and radio, as presenters, various programs for the minorities are launched on TV and radio also, more and more black people are hired in the police who facilitate the dialogue between the police force and the black teenage communities.

On a religious scale, there are specific worship centres for Muslim, Sheikh and Hindu but still, we witness that the minorities are not fairly represented among the Government: there are only around 10 MPs representing ethnic minorities in Parliament.

Fifty years after the start of mass immigration to the UK, questions are still being asked about whether or not the UK can become a multi-ethnic society with itself or whether there is still a long road to be travelled.

In a 21st century Britain, the ethnic, cultural and religious diversity is a welcome social fact: it is undeniably true that Britain is a multicultural society. While there remain big differences between metropolitan and non-metropolitan Britain, and differences of opinion over the question of immigration, the fact of diversity is now accepted as a positive state of affairs by the overwhelming majority of people living in Britain.

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THE IMPLICATION OF THE EU MEMBERSHIP ON IMMIGRATION TRENDS AND IMMIGRANT INTEGRATION POLICIES FOR THE BULGARIAN LABOR MARKET*

Book review by **Ivanka Petkova**

Bulgaria has a long history of migration, which has dramatically changed in the last half century. From the beginning of the transition period, Bulgaria had faced the problem of emigration, of the rising „brain drain", as educated and skilled Bulgarians found opportunities to move and work abroad. After the EU membership Bulgaria is on the way of becoming a country of net immigration due to the flows of Bulgarian origin people from Southeast Europe and due to the Middle East and North Africa emigrants.

A publication of the ***Economic Policy Institute***, Sofia, the book presents the outcomes of a series of contributions discussing the implication of immigration on the Bulgarian labour market. The international project is organized by the ***Economic Policy Institute***, Sofia, in cooperation with the ***Council on Social Work Education***, Alexandria, VA, ***Katherine A. Kendall Institute*** and the ***Institute for World Economics*** of the Hungarian Academy of Sciences, Budapest, with the kind support of the ***German Marshall Fund*** of the United States. This project is also concerned with the integration of documented immigrants to the host country, while also discussing the issue in a comparative context in Europe and the USA.

The book contains detailed descriptions of best practices in integrating immigrants into the labour market in France, Germany, the Netherlands, Spain and the United Kingdom, which can be considered as the hot spots of migration inflows in the last two decades. The main trends are outlined by presenting a typology of integration strategies and policies, focusing on the scope and the nature of the programs while the book also suggests recommendations. Main immigration and immigrant policies of the USA are highlighted, focusing on health policies and programs, education and social welfare policies. The book discusses major immigration trends to Hungary with special regard to labour migration and illegal foreign employment. The contributors point out, that the migrants to Hungary are mostly ethnic Hungarians, and their integration does not pose a challenge to the migration policy. Comparing to the distribution of all employees the, workers coming from Romania to Hungary are over-represented in the economic sectors where illegal employment is typically concentrated, most of them being employed in low paid jobs. The role of foreign labour force seems to fill in certain labour market niches or shortages than to compete with the domestic labour force in Hungary. At the same time complicated bureaucratic procedures and too restrictive rules seem

* *The Implication of the EU membership on Immigration Trends and Immigrant Integration Policies for the Bulgarian Labor Market* is the result of an international project (2007-2008) organised by the Economic Policy Institute, Sofia, 2008, ISBN: 978-954-9359-35-0

to make legal employment difficult and fuel the illegal foreign work.

The immigration issue in the EU is discussed in the framework of the decision of the EU15 to introduce a 7-year transitional period for the complete opening of the enlarged market for one of the four freedoms of the single market (free circulation of labour.) Some of the new member countries have already started to experience the negative side of migration. On the one hand, several sectors are facing serious labour shortage, such as agriculture, retail trade, personal and social service activities, and the construction sector. Another adverse effect is that labour shortage has become rapidly accompanied by higher wages, since wage increases used to have a so called „demonstration effect".

Thus authors seek ways to improve the active policy responses towards emigration of skilled persons because of the negative implications for the local labour market. It is argued that the loss of such workers can reach the level of a critical mass that is a key precondition of a sustainable modernization. The origin country loses part or totality of its long term investment in human resource building. Here the age of the returnees is an important element which cannot be separated from the given economic and socio-political environment. The higher the unpredictability and the lack of transparency of the latter, the lower the level of business activities expected to be taken by returnees.

One of the substantial negative impacts of immigrants' remittances is the creation of the transfer dependency, similar to the experience of EU farmers enjoying direct payments. As a result, such a situation leads to a rent seeking mentality of a growing hare of the population with clear negative consequences for the labour market in general, and domestic labour mobility in particular. On the other hand, remittances directed to investments may be given special incentives. Migration has generally different impacts on selected regions of the given country and can generate intra-country migration flows from surplus labour towards regions suffering labour shortage due to migration.

Decision makers in Bulgaria are facing the challenge of the fact that Bulgaria is becoming more and more attractive both as a target country and as a transit country for the immigrants (a kind of a gateway to Europe). Bulgaria's green card system giving the right to foreigners to live and work in the country expected to be introduced in 2008, is only a part of the policy responds.

The book discusses the national migration and integration strategy of Bulgaria, including the admission foreigners to the domestic labour market, their integration into the society, mechanisms for returning migrants efficient control of the external borders, combating illegal immigration and trafficking, regulation of the migration process.

The analysis of the Bulgarian state asylum policy, on refugees and the national program for the integration of refugees shows that the program is aimed at providing the refugees with the opportunity to learn Bulgarian language, to acquire a profession, to get acquainted with the structure of the state, the state institutions in order for them to find realization in the society, financial independence and a self-reliant life. The book argues that active labour market measures have to be applied to improve the refugees' integration into the society.

The coordination of the government institutions in connection with granting a specific protection of aliens on the territory of Bulgaria is considered of crucial importance.

A contextual analysis of the legal dimensions of immigrant access to employment in Bulgaria is among the contributions. The rights that immigrants, refugees, and asylum seekers currently enjoy in the country are discussed. It is recommended, that the detention of immigrants needs to be reconsidered or substantially regulated. Detention costs present an economic drain and the social and economic potential of detainees (if regularized) is considerable, if temporary. Support for and the utilization of the private sector, independent assistance organizations, and Bulgarian and immigrant community input are absolutely fundamental to the success of immigration policy in Bulgaria.

In the part on immigration in the context of gender and labour four types of labour migration, the issue of feminization and the issue why Bulgaria is chosen are pointed out.

The contribution on the EU Common Basic Principles for Integration of Middle East Immigrants in Bulgaria brings to discussion some policy-relevant conclusions: An immigrant community, which does not create a self sufficiency problem, should not be automatically excluded from the policy for the immigrants. A differentiated approach to the various migrant communities with specific attention to their needs would increase the effectiveness of policies applied.

Immigration in Bulgaria began later and it is smaller by size than immigration in the EU15 countries. Immigrants are coming from different geographic regions and countries: Russia, the Ukraine, the Arab World, China, neighbouring countries etc. The immigration pressure intensifies gradually and smoothly. It has visibly increased since the beginning of 2007 when Bulgaria became EU member as the immigrants are moving in from low developed countries. There was no tension between the local people and the immigrants on the labour market. The increasing importance of this issue for the country, as it is an external border of the EU, demands that Bulgaria should not wait until the immigrant flows could create tensions at the local labour market and thus it must create an immigration policy.

The book also presents the outcomes of field trips in Bulgaria during the course of the four day international workshop.

The Implication of the EU membership on Immigration Trends and Immigrant Integration Policies for the Bulgarian Labor Market will appeal to a wide audience including researchers and scholars of labour economics, sociology and political science. Policymakers within ministries and other public organizations and NGO's dealing with labour market issues and partners, will also find much to engage them within the book.

Contributors include: Yasen Georgiev, Kalin Marinov, Plamena Spasova, Hristo Simeonov, Ivelina Novakova, Neli Filipova, Diana Daskalova, Themba Lewis, Anna Krasteva, Tihomira Trifonova, Rositsa Rangelova, András Inotai, Klára Fóti, Ándrás Majoros, Julia A. Watkins, Uma A. Segal.

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Romanian Journal of European Affairs is a publication that deals with a wide range of topics pertaining to the realm of European Affairs. Its articles focus on issues of significance in the EU today (institutional building, economic policies, energy, migration etc.), the effects of the European integration process on the new member states (with a particular focus on Romania), as well as the EU's relations with other global actors.

Issued on a quarterly basis by the **European Institute of Romania**, the journal has been largely distributed both in Romania and in prestigious universities and research centers across Europe. Since 2007, the Journal has been scientifically evaluated by the National University Research Council (RO – CNCSIS) as „**B+**" category and its articles have been included in various academic electronic databases, such as Social Science Research Network.

We warmly welcome submission of articles or book reviews. Each article received for publication enters a thorough selection procedure before being accepted or rejected. All articles under analysis are made anonymous and handed over to two referees whose reports shall be synthesized by the editorial team and provide the basis for acceptance or rejection. Even when an article is accepted, the editorial board reserves the right to ask for changes, both in form and scope. Within the evaluation procedure, there are several factors, both quantitative and qualitative, that are taken into consideration. The main selection criteria are: scientific excellence, originality, novelty and potential interest for the journal's audience.

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 RJEA".

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