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1/2017

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**(LXII) 2017**  
**MARCH**  
**1**

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**PUBLISHED ONLINE: 2017-03-15**  
**PUBLISHED PRINT: 2017-03-30**  
**ISSUE DOI:10.24193/subbeuropaea.2017.1**

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**UNIVERSITATIS BABEȘ-BOLYAI**  
**STUDIA EUROPAEA**

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## DEMOCRATIC CONDITIONALITY IN THE EUROPEAN UNION

Rafał Riedel\*

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DOI:10.24193/subeuropaea.2017.1.01

Published Online: 2017-03-15

Published Print: 2017-03-30

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### Abstract:

*This paper aims at investigating the European Union's (EU) role in defending democracy both before and after the enlargement round. It connects the literature on Europeanisation and conditionality with the reconstruction of the contemporary EU's legal instruments at the disposal of democracy defence in the member states. The topic is highly valid from the point of view of the most recent developments in many Central Eastern European countries which are scrutinised by the supranational institutions by their illiberal democracy practices.*

**Keywords:** Conditionality, Europeanisation, European Union, democracy

### Introduction

The objective of the paper is to investigate the EU's role in defending liberal democracy standards in its member states and aspiring candidate countries. The European Union's transformative impact on its direct neighbourhood was obvious in the case of 2004, 2007 and 2013 waves of enlargement. Both the political as well as the economic reforms of Central and East European states were partly induced by the motivation stemming from the so called 'waiting room syndrome'. Whether the EU can effectively defend the liberal democracy standards after the enlargement, when the accession motivation diminishes is debatable.

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A highly controversial issue is the European Union's position concerning democracy. Many times the Union was certified to have a democratic deficit, which thus makes it impossible for it to promote and protect this form of government. Moreover, the 28 Member States might all be democratic, but still, from an institutional point of view, many different kinds of democracy exist: constitutional monarchies, republics, federal or centralized states etc. In addition, not just formally, but as well substantially, there are diverting perspectives on fundamental aspects like the parliamentary sovereignty or individual rights. The question arises, whether there is truly a common European understanding of democracy. Keeping in mind the ongoing critique about the Union's deficit and the variety between the Member States, the promotion of democracy gains a superficial character. It does not matter whether this is towards third states, within the framework of enlargement or even within the Union.

"Besides elections, there is the need for a system of checks and balances, i.e. the separation of powers, as well as a strong protection of fundamental rights."<sup>1</sup> The experience of the interwar period, where the unlimited rule of majority paved the way for dictatorships, forced western European decision-makers to strengthen institutions limiting the sovereignty of the people, for example with the introduction of a constitutional court. These democracies thus created the EU, which by far, especially in its economy-oriented beginning, had no democratic dimension. Nevertheless, parallel to this, other organizations were founded which did support a liberal character of democracy and were supported by the EU. The Council of Europe and the European Convention of Human Rights are fully recognized. Other developments like the Charter of Fundamental Rights of the European Union point towards a liberal understanding of state-citizen relationship.

### **Conditionality as an element of Europeanisation**

Both from empirical knowledge and from deliberative speculation, we can identify the differentiated influence of Europeanization. Its major instrument, conditionality, sometimes works more efficiently, sometimes less. It is usually determined by the domestic costs of rule adoption in the aspiring state and its alternatives, but also on the phenomena within the EU. It is

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<sup>1</sup> Jan-Werner Müller, *Wo Europa endet. Ungarn, Brüssel und das Schicksal der liberalen Demokratie*, Berlin, 2013, p. 39.

highly politicized process on both sides, therefore it is also unpredictable to a large extent. Also *post factum*, difficult to measure as the speculations on the EU impact are difficult to be proved in many cases (especially the political ones). There is always the path-dependency factor in the politics of domestic transitions that need to be calculated, rather than exclusively the conditionality emanating from the EU.

It is also important to remember that the term 'conditionality' does not refer exclusively to the phenomena taking place within the EU's gravitational pull but also, for example, in the case of states, international and supranational organizations which require respect for human rights and democracy from third countries in development aid and trade. The recipients, in order to sustain the inflowing assistance, must take into account the donors' preferences. They may also prefer tied transfers because they do not want to simply be treated as poor relations. They prefer transfers justified by some higher purpose – for example transition, innovation, adjustments to world standards, etc. It is rather rare that developed countries or their organizations give support without conditions, more often taking the form of negotiated aid. OECD's Development Aid Committee (DAC), also reflects on common criteria for the attribution of public funding for development. The European Community does not hesitate to take rapid measures in suspending aid to certain countries, in a manner similar to the World Bank and other international and supranational organizations.

Europeanization is not a new theory – it is rather a new way of organizing the European studies agenda, a phenomenon that needs to be explained and which orchestrates existing concepts rather than 're-inventing the wheel'. One might ask why it is so trendy nowadays, –as opposed to in the 1950's. Obviously this explosion of literature must be associated with the growing importance of the impact of the EU on different dimensions of domestic politics. Consequently Europeanization is required for a comprehensive understanding of the integration process<sup>2</sup>.

Europeanization is conventionally understood as a phenomenon of domestic adaptation to European integration. This functions domestically, in the member states, but also beyond the European Union's territory, sometimes going much further and embracing distant lands where the

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<sup>2</sup> Paulo Graziano, Marten Vink (eds.), *Europeanization. New Research Agendas*, Palgrave Macmillan: London, 2007, pp. 8-9.



political and economic gravity of the EU is strong enough. This suggests that the EU is gradually expanding its sphere of influence beyond the circle of member states. Consequently, academic attention highlights this phenomenon to describe, explain and interpret this 'regulatory intervention'. Being mainly a regulatory polity, the EU uses regulation as a tool to influence and, in a number of cases, even to authoritatively prescribe the desired behaviour of public and private actors<sup>3</sup>. Not surprisingly, scholarly attention has shifted from the emergence of supranational institutions, and accompanying topics, to the impact of European integration. However, it is vitally important to remember that although the EU has enormous potential influence, caution is needed in assuming the extent to which the EU has shaped governance, polities, policies, and politics overall. Originally the research on Europeanization was almost exclusively concerned with domestic change in EU member states. Additionally, if one would like to track the development trajectories of this research agenda, it is apparent that together with the 'big' enlargement (2004), conditionality as a concept became an important part of the scope of Europeanization<sup>4</sup>.

Within this scope, three different steering mechanisms of Europeanization have been identified by Michael W. Bauer, Christoph Knill and Diana Pitschel in their important contribution to this strand of academic discourse — compliance, competition and communication. 'Governance by compliance presupposes the existence of legally binding and common European rules that have to be implemented at the domestic level, conceding only marginal levels of discretion to national bureaucracies. Compliance-based regulations typically appear in policies of positive integration, i.e. they are aimed at establishing a sound environment for the participants of the European common market. They impose constraints on national actors in order to safeguard certain standards for the protection of workers, consumers and the environment, as well as cultural assets'<sup>5</sup>. This perspective assumes a far-reaching impact on the national institutional system, its organization

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<sup>3</sup> It is a process that impacts upon members of the European Union and those aspiring to join, and even wider neighbourhood.

<sup>4</sup> Before, it was also present in the public discourse, see for example: Accession Partnership 1997.

<sup>5</sup> Michael Bauer, Christoph Knill, Diane Pitschel, "Differential Europeanization in Eastern Europe: The Impact of Diverse EU Regulatory Governance Patterns", *Journal of European Integration*, Vol. 29, No 4, 2007, p. 408.

and its working practices. This is why new institutionalism<sup>6</sup> is so crucially important as a theoretical vehicle. When analyzing the potential impact of compliance-based policies on non-EU states, the obligatory nature of the respective policy is a decisive aspect. In order to ensure that regulatory policies have an effect, it is crucial that the EU has legislative authority in the respective country, for example it must be able to enforce its rules and should have tools at its disposal to sanction eventual non-compliance. With candidate countries this precondition is assured since the EU insists on the implementation of the *acquis communautaire*<sup>7</sup>, as a condition for EU membership<sup>8</sup>. In this context it is important to remember that within the phase of candidacy the responses of states to compliance measures may vary according to the phase of their application. At the very beginning of the application process, applicants normally make great efforts to demonstrate their maturity to become full members and adhere to even very restrictive EU measures. When the accession negotiations proceed and the fear of exclusion diminishes, national bureaucracies or negotiators may exhibit indications of fatigue or even resistance in reference to the implementation of EU-based rules, especially when the adjustment of EU norms is accompanied by high costs. This trend could be observed in Bulgaria and Romania shortly before the EU finally decided on their membership<sup>9</sup>.

The second mechanism applied in EU regulatory policy is competition between national administrative systems to achieve EU requirements. Competition-based regulations aim at ensuring the functioning of the common market by gradually abolishing distorting factors such as national regulatory barriers<sup>10</sup>. The rationale behind institutional change in the context of competitive measures differs fundamentally from the logic of compliance: not the self-preserving interests of bureaucracies, but rather market competition that

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<sup>6</sup> James March, Jochan Olsen, *The New Institutionalism: Organizational Factors in Political Life*, New York: Free Press, 1989.

<sup>7</sup> The compilation of about 80,000 pages of legislation

<sup>8</sup> Michael Bauer, Christoph Knill, Diane Pitschel, "Differential Europeanization in Eastern Europe: The Impact of Diverse EU Regulatory Governance Patterns", *Journal of European Integration*, Vol. 29, No 4, 2007, p. 409.

<sup>9</sup> Frank Schimmelfennig, Ulrich Sedelmeier, "Governance by conditionality: EU rule transfer to the candidate countries of Central and East Europe", *Journal of European Public Policy*, No 4 11 (4), 2004, p. 216.

<sup>10</sup> 'Negative integration' – amounting to deregulation (in contrast to positive integration, in which the EU performs a redistributive functions or builds its own policies)

constitutes the driving mechanism. Additionally another factor is considered to be of major importance: the interest of the non-member state in participating in the common market and the potential gains they expect from their participation. 'Candidate countries are (at least partly) involved in the common market long before they accede to the EU. On the one hand, they are subject to market-related conditionality. They have to ensure that their institutional structures fit the requirements of the market system of the EU and that they adopt the provisions set up for the Single European market'<sup>11</sup>.

The third mechanism – communication - refers to the communication between national regulatory agents grouped together in EU legal or institutional networks<sup>12</sup>. The authors of this classification, Bauer, Knill and Pitschel, suggest that '(...) applying the governance approach of communication, the EU stimulates information exchange and mutual learning between national policy makers. Furthermore, it aims to promote the development of innovative forms and models of problem solution that can be integrated in the member states' regulatory systems.

Communication-based measures abstain from setting legally binding rules. Instead they are designed to support national policy makers looking for regulatory models and concepts to tackle policy problems (Bauer, Knill, Pitschel, 2007: 414). Soft modes of governance may act as illustrative examples of governance by communication, for instance the open method of coordination (OMC), where integration pressure does not function through compliance logic and strength, but in accordance with interactions, acts as a community building factor. This mechanism is crucially important in all cases, usually beyond the first pillar, where supranational regulatory intervention cannot be effective due to the lack of binding legislation.

Taking into account that both candidate countries and other non-members are involved in network relationships with the EU, regulatory EU policy based on a communication approach is likely to have an impact on both groups of states. The method is usually that the Commission sets up benchmarks in particular policy areas and provides examples of best practice.

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<sup>11</sup> Bauer., Knill, Pitschel, *op. cit.*, pp. 413-416.

<sup>12</sup> Member states communicate with third states within the framework of numerous associations, partnership agreements and other platforms.

Other authors<sup>13</sup> suggest different set of mechanisms as far as Europeanization is concerned: institutional compliance, changing domestic opportunity structures, and framing domestic beliefs and expectations. The mechanism of Europeanization by institutional compliance is particularly, but not exclusively, pronounced in policies of so-called 'positive integration'. This strongly correlates with the previously mentioned logic, in which it is not market mechanisms but rather political actors that set up decision making structures in the supranational domain and make certain policies 'EU exclusive'. Examples of Europeanization by changing domestic opportunity structures can be found in particular in many market-making policies of the EU (negative integration). These policies basically exclude certain options from the range of national policy choices, rather than positively prescribing distinctive institutional models to be introduced at the national level. Europeanization by framing domestic beliefs and expectations is particularly likely when the EU decision-making context, above all the underlying conflicts of interests between the member states, only allows it to adopt policies which are vague and more or less symbolic<sup>14</sup>.

There is one basic assumption present in the studies of EU conditionality: that it exists and functions as there is a power asymmetry which enables the Commission to impose the adoption of the *acquis* on the CEECs as a precondition of their entry to the Union. Therefore conditionality is usually understood as a strategy of 'reinforcement by reward'<sup>15</sup>. Consequently, academic literature indicates that there are clear causal relationships in the use of conditionality to ensure policy or institutional outcomes. The majority of existing studies of conditionality are connected with enlargement conditionality, which also analyses its correlation with macro-level democratization and marketization<sup>16</sup>. The power asymmetry

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<sup>13</sup> Bauer, Knill, Pitschel, *op. cit.*

<sup>14</sup> Christoph Knill, Dirk Lehmkuhl, "The national impact of European Union regulatory politics: Three Europeanization mechanisms", *European Journal of Political Research*, No 41, 2002, pp. 255-259.

<sup>15</sup> Facilitated by material bargaining and low domestic political costs. The administration of a candidate state to which the conditionality policy is implemented, in the process of a permanent profit and loss calculation, decides if the costs of compliance are not too high compared with the expected benefits.

<sup>16</sup> James Hughes, Gwydelon Sasse, Claire Gordon., „Conditionality and Compliance in the EU's Eastward Enlargement: Regional Policy and the Reform of Sub-national Government", *Journal of Common Market Studies*, No 42 (3), 2004, p. 26.

was painfully obvious in the case of the last two phases of enlargement (2004, 2007). The absence of alternative ideological or systemic paradigms for the Central and East European candidate countries, other than EU membership, has tended to reinforce the widespread perception of a power asymmetry in favour of the EU during the enlargement process.

Among the mechanisms of conditionality identified by Heather Grabbe in her extensive study of the effects of Europeanization before the last waves of enlargement, she underlines the most important categories as follows:

- Gate-keeping: access to negotiations and further stages in the accession process,
- Benchmarking and monitoring,
- Models: provision of legislative and institutional templates,
- Money: aid and technical assistance,
- Advice and twinning.

The gate-keeping mechanism conditions access to negotiations and further stages in the accession process, accordingly to the advancement of fulfilling certain criteria.

After the 1997 and 1999 European Councils, the EU implemented the following accession process: privileged trade access and additional aid, signing and implementing an enhanced form of association agreement (Europe Agreements for the current candidates, Stabilization and Association Agreements for south-eastern European non-applicants), opening of negotiations (explicitly dependent on meeting the democracy and human rights conditions since 1997), opening and closing of the thirty-one chapters, signing of an accession treaty, ratification of the accession treaty by national parliaments and the European Parliament, and finally the entry as a full member<sup>17</sup> (Grabbe 2001: 1019). Benchmarking and monitoring is a more specific conditionality instrument that goes beyond gate-keeping. Due to the salience of EU accession in the political debates of Central European states, the EU could influence policy and institutional development through ranking the applicants' overall progress, benchmarking policy areas in particular, and providing examples of best practice that applicants seek to emulate.

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<sup>17</sup> Heather Grabbe, "How does Europeanization affect CEE governance?", *Conditionality, diffusion and diversity*, No 8 (6), 2001, p. 1019.

The EU establishes models, provision of legislative and institutional templates to guide, monitor and benchmark the aspiring parties on their way to the full membership. A key mechanism for this part of conditionality is the cycle of 'Accession Partnerships' and 'Regular Reports' published by the European Commission regularly (Grabbe 2001: 1022). Money obviously has a strong impact power: in applicant countries it is important in the sphere of aid and technical assistance. The EU is the largest external source of aid in the world and, in the case of Central Europe, it was also the case prior to enlargement. It provides funds administered by the European Commission and also bilateral programmes from individual member states. The last mechanism - advice and twinning - works through learning from member state experiences of framing the legislation and building the organizational capacity necessary to implement the *acquis*<sup>18</sup>.

Most studies of Europeanization and conditionality combine the above mentioned mechanisms and tend to focus on two cumulative levels of conditionality. Firstly, they attach great salience to the broad 'principled' conditionality established by the 'Copenhagen criteria' of 1993. Secondly, they highlight the 'technical' preconditions for the candidate countries to accelerate the adoption and adaptation to the *acquis communautaire* in order to fulfil all the responsibilities of membership. The Copenhagen Council of 1993 established four criteria for membership of an enlarged EU in the Presidency Conclusions: 'Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required. Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union (European Council 1993).

Therefore it is also possible to understand the particular EU (enlargement) conditionality as 'powerful tools to shape institutions in the CEECs which made policymakers 'choose EU models because of the incentives and constraints imposed by the EU accession process' (Grabbe

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<sup>18</sup> Again in bilateral and multilateral constellations.

2002: 262). However, doubts on the precise understanding of conditionality were clearly expressed by James Hughes, Gwendolyn Sasse and Claire Gordon in this manner: 'If it is accepted that conditionality is an implicitly coercive instrument wielded by the Commission to secure compliance with certain desired policy or institutional outcomes, then we must also accept that the features of EU conditionality, in particular its rule-based prescriptive essence, are not well defined. Ambivalence and ambiguity are evident at both levels of conditionality identified above. In the case of the Copenhagen criteria it is obvious that the political conditionality for membership was highly politicized and operationalized in a selective manner. By the time enlargement negotiations accelerated from 1997, it is doubtful that the political conditionality as laid down in the Copenhagen criteria was a significant factor in the process, as the democratization of the CEECs was generally accepted as a reality and a starting-point for the other three Copenhagen conditions.'<sup>19</sup>.

Following these authors, the logic of EU conditionality is that it is not a uniformly hard rule-based instrument, but rather it is highly differentiated, its nature shifting and transforming depending on the content of the *acquis*, policy area, country concerned, and political context to which it is applied. Particularly in the case of 2004 and 2007 enlargements, the performance tasks set by the Commission were not easily devised, evaluated or benchmarked. This ambivalence and vagueness across policy areas significantly weakened their impact. The argument supports Olsen's observation that the EU's effectiveness in institution-building and policy change, even within the Union, has varied across institutional spheres such as competition policy, monetary affairs, external and internal security, culture, etc. Apart from this, clear causal relationships between the EU and domestic levels are difficult to trace since causation operates in both directions. Such processes are best studied as 'an ecology of mutual adaptation'<sup>20</sup>. Unfortunately, this kind of flexible method of case study (with all its imperfections) is assumed to be the most appropriate method for analyzing the application of EU conditionality during enlargement.

Moreover, it very often distinguishes between the two main categories of conditionality. Formal conditionality covers the publicly stated preconditions as set out in the broad principles of the Copenhagen criteria and the legal

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<sup>19</sup> Hughes, Sasse, Gordon, *op. cit.*, p. 525.

<sup>20</sup> Hughes, Sasse, Gordon., *op. cit.*, p. 526.

framework of the *acquis*, whereas informal conditionality relates to the operational pressures and recommendations applied by actors within the Commission and other EU institutions to achieve particular outcomes during interactions with their CEEC counterparts in the course of enlargement. This is not to say that both types of conditionality are always clearly distinguishable, as they often operate in conjunction.

Generally, EU policy towards the Central European candidate states was widely regarded as predominantly being a policy of conditionality.

However, the mere use of conditionality by the EU does not necessarily tell us much about the underlying mode of governance and the conditions under which EU rules are transferred to third countries. EU conditionality might be all encompassing, but it might not be effective in achieving rule transfer in certain areas or countries. Furthermore, there is not necessarily a causal link between the presence of EU conditionality and successful rule transfer in particular areas. Thus, it is recommended by many authors to distinguish (analytically) between the use of 'conditionality' as a political strategy and its causal impact on domestic politics<sup>21</sup>. It is impossible to hypothesize about the past and we cannot answer the question of if conditionality-driven change was the vehicle of transition, consolidation and the transformation of economy. This doubt underpins the main logic of EU conditionality understood as a bargaining strategy of reinforcement by reward, under which the EU provides external incentives for a target government to comply with its conditions<sup>22</sup>. It is also possible to claim that these dominant features of conditionality might have been superseded by other mechanisms that could also lead to rule transfer.

For example, in the process of the systemic political and economic transformation that the Central European states were undergoing, they might have considered EU rules as effective solutions to domestic policy challenges and thus adopted these rules independent of EU conditionality and their desire to join. Additionally, while the EU might provide incentives for the adoption of its rules, the mechanism through which the Central

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<sup>21</sup> See for example: Andrew Massey, „Modernisation as Europeanization. The impact of the European Union on public Administration”, *Policy Studies*, vol. 25, No 1, 2004.

<sup>22</sup> It is argued that among the applicants, only Poland has the luxury of being able to bargain hard, for Polish negotiators assumed that factors like the country's size and geo-political importance would prevent the EU from excluding the country from the first group of accessions (Grabbe 2001, *op. cit.*, p. 1015).



European governments adopt them might relate to processes of persuasion and learning in which EU actors socialize Central European actors rather than coerce them<sup>23</sup>. A number of attempts have been made to combine the two strands of academic debate, with Europeanization on one side and transformation in the post-communist world on the other. These have a lot of potential but, however, still seem to be unexplored.

### **Which democracy?**

Looking into the treaties of the EU, democracy seems to play an important role. It is a key word concerning the European Union's basic values, declared in the preamble, the Union's functioning itself and the character of the external actions and relations with third states.<sup>24</sup> The EU existed nearly 30 years until the Single European Act for the first time mentioned the promotion of democracy. But from that point on, the crucial position of democracy in its own development and enlargement was no longer neglected. In fact, there does not exist any official definition by the European Union to clarify what is meant by that term. This is a fundamental problem: the EU proclaims democracy as a key element of its structures and demands it as a precondition for becoming a Member State and as a basic aim in its external activities. But in the end, the question still prevails, which conditions have to be met to fulfill the Union's expectations on that concept. This raised a discussion with the EU, if there is a need to define basic aspects of a European understanding of democracy. At the request of the European Parliament (EP), the Office for the Promotion of Parliamentary Democracy (OPPD)<sup>25</sup> identified different definitions of international and regional organizations to underline their common key elements of democracy. Due to the danger of perceiving a EU-definition of democracy as an "unilateral imposition", the paper argues that the EU should not adopt an own definition.<sup>26</sup> Instead, the EU should "rely on an existing, comprehensive definition of democracy

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<sup>23</sup> Schimmelfennig, Sedelmeier, *op. cit.* p. 626.

<sup>24</sup> European Union, *Consolidated Version of the Treaty on the European Union and the Treaty on the Functioning of the European Union*, 2010.

<sup>25</sup> European Parliament, *Supporting newly developed democracies*, 2010, [access: 14.08.15].

<sup>26</sup> Office for Promotion of Parliamentary Democracy, *Democracy revisited. Which Notion of Democracy for the EU's External Relations?*, Brussels, 2009, [access: 13.04.17], p. 5.

adopted by the largest possible group of countries, notably the UN General Assembly”.<sup>27</sup> Following “essential elements” of democracy are emphasized:<sup>28</sup>

- *“Respect for human rights and fundamental freedoms, inter alia, freedom of association and peaceful assembly, freedom of expression and freedom of opinion*
- *The right to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at a genuine periodic free elections by universal and equal suffrage and by secret ballot guaranteeing the free expression of the will of the people*
- *A pluralistic system of political parties and organisations*
- *Respect for the rule of law*
- *The separation of powers and the independence of the judiciary*
- *Transparency and accountability in public administration*
- *Free, independent and pluralistic media”*<sup>29</sup>

The definition is a normative one. There are no institutional or process-oriented components mentioned. This is logical, because the democratic systems within the EU are diverse, but are still considered to belong to one form of government. “This suggests, that it is not the formal nature of the democracy but its practice that determines its characteristics.”<sup>30</sup>

*„Our European Union is more than a big common market. It is also a Union of shared values, which are spelled out in the Treaties and in the Charter of Fundamental Rights. Citizens expect their governments to provide justice, protection and fairness with full respect for fundamental rights and the rule of law. This also requires joint European action, based on our shared values.”*<sup>31</sup>

*- Jean-Claude Juncker, President of the European Commission*

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<sup>27</sup> *Ibidem.*

<sup>28</sup> Office for Promotion of Parliamentary Democracy, *Democracy revisited. Which Notion of Democracy for the EU's External Relations?*, Brussels, 2009, [access: 13.04.17], p 6.

<sup>29</sup> *Ibidem.*

<sup>30</sup> Office for Promotion of Parliamentary Democracy, *Democracy revisited. Which Notion of Democracy for the EU's External Relations?*, Brussels, 2009, [accessed 13.04.17], p 7.

<sup>31</sup> Jean-Claude Juncker, *A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change*, Brussels 2014, p. 8.

Each enlargements signifies for the Union the spread of peace and democracy on in Europe, by taking in new member states. Especially within the accession process, thresholds concerning democracy and fundamental rights are stipulated. Article 49 TEU names as a basic requirement for applying for membership the respect and the willingness to promote the democratic values of the EU.<sup>32</sup> Furthermore, the Copenhagen Criteria established in 1993 from the Council specify that possible candidates must provide stable institutions, which are able to guarantee democracy, rule of law, human rights and the respect for and protection of minorities.<sup>33</sup> Throughout the association process, the criteria is monitored and bound to a sharp conditionality. But as the quotation of J.C. Juncker says, these values are not only important during the enlargement process, but are the basis for the existence and acting of the Union and the single Member States. These shared values are anchored in Article 2 TEU and Article 6 TEU. They are the legal ground for a twofold responsibility of the Union towards its members. Article 2 TEU encompasses a larger scope of influence of values as it addresses areas falling outside EU competence.

Article 6 is the foundation for a narrower domain meaning the obligations imposed on and by the EU, so incidents affecting the EU law.<sup>34</sup>

Article 2 states 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. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”<sup>35</sup>*

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<sup>32</sup> European Union, *Consolidated Version of the Treaty on the European Union and the Treaty on the Functioning of the European Union*, 2010, [access: 30.08.15].

<sup>33</sup> European Commission, *Communication from the Commission to the European Parliament and the Council. A new EU Framework to strengthen the Rule of Law*, 2014, [access: 30.08.15].

<sup>34</sup> European Union Agency for Fundamental Rights, *The European Union as a Community of values: safeguarding fundamental rights in times of crisis*, 2013, p. 7.

<sup>35</sup> European Union, *Consolidated Version of the Treaty on the European Union and the Treaty on the Functioning of the European Union*, 2010, [access: 13.04.17].

These are the values referred to in Article 49 TEU, but implicates as well that Member States are obliged to stay compliant to these fundamentals.<sup>36</sup> Article 6 TEU names three different legal sources resulting in obligations for the Member States. The first one is the Charter of Fundamental Rights of the European Union, which is not part of the Lisbon treaty but does have the same legal value. The second mentioned source for guiding the Union's actions is the European Convention on Human Rights.

Finally, the common constitutional traditions of the Member States concerning fundamental rights shall be general principles of EU law.<sup>37</sup> It is outlined in the article that these provisions are not supposed to extend the competences of the Union. The EU clearly addresses its responsibility as a value community in cementing fundamental principles in the Union's primary law. They are the basis for taking action in cases of infringement.

Article 2 TEU demands compliance of the Member States when they act on behalf of the EU, but as well in any other, for example national, context. When the outlined values are concerned, there is no distinction between the European level and matters of national sovereignty. In contrast, Article 6 TEU is limited to incidents that fall within the scope of EU law.<sup>38</sup>

The expression 'value community' is not just a European self-perception or a well-promoted image. The Union dedicated itself legally to democratic values and their defense. Regarding the developments in Hungary since 2010, it becomes clear that an infringement of the European values and a transformation to an illiberal state is not acceptable within the European context. Therefore the instruments available to defend democracy and fundamental rights will be examined, as well as the so far taken steps of the EU to prevent Hungary's backsliding. This aims at assessing their success, while proposed mechanisms by scholars and institutions will be discussed. The mechanism directly established for the protection of fundamental values stated in Article 2 TEU is Article 7 TEU. It is frequently called the 'nuclear option' as it is the severest instrument in defending fundamental rights. The article provides the possibility for the Council to decide by qualified majority

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<sup>36</sup> European Union Agency for Fundamental Rights, *The European Union as a Community of values: safeguarding fundamental rights in times of crisis*, 2013, p. 7.

<sup>37</sup> European Union, *Consolidated Version of the Treaty on the European Union and the Treaty on the Functioning of the European Union*, 2010, [access: 13.04.17].

<sup>38</sup> European Union Agency for Fundamental Rights, *The European Union as a Community of values: safeguarding fundamental rights in times of crisis*, 2013, pp. 7-8.

to suspend certain treaty rights of the concerned Member State, including its voting rights. But before this option can be considered, two conditions have to be fulfilled before. The preventive mechanism in article 7 (1) TEU consists mainly of a warning of the Council towards a Member State, where “a clear risk of a serious breach” was determined.<sup>39</sup> Article 7 (2) TEU provides the prerequisite for the sanctioning mechanism in Article 7 (3) TEU, which demands the identification of “the existence of a serious and persistent breach by the Member State”.<sup>40</sup> Only if these two steps are made, political sanctions can follow. These common provisions are clearly disconnected from EU legislative competences, as Member States are as well liable under Article 2 TEU where they do not act under EU law.<sup>42</sup> The three modes of intervention are bound to very demanding majority requirements, which could be one reason why the article was never used so far. Until now, Article 7 TEU seemed “to be designed to threaten but not to actually apply”.<sup>43</sup>

Besides Article 7 TEU, there are three alternative instruments against democratic backsliding within the EU context:

- Use of the infringement procedure of the Articles 258 and 260 TFEU<sup>44</sup>;
- Exert social pressure on the concerned Member State;
- Use of issue linkage;<sup>45</sup>

In contrast to Article 7 TEU, the first instrument aims at the infringement of obligations under the Treaties. In the context of fundamental rights, Article 258 and 260 TFEU can be applied when a Member State is non-compliant with specific values of Article 2 TEU that are separately anchored within the Treaty or EU secondary law, for example the non-discrimination on the grounds of gender, age etc. The European Commission can launch

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<sup>39</sup> European Union, *Consolidated Version of the Treaty on the European Union and the Treaty on the Functioning of the European Union*, 2010, [accessed 13.04.17].

<sup>40</sup> European Union, *Consolidated Version of the Treaty on the European Union and the Treaty on the Functioning of the European Union*, 2010, [accessed 13.04.17].

<sup>41</sup> See the full text of Article 7 TEU.

<sup>42</sup> European Union Agency for Fundamental Rights, *The European Union as a Community of values: safeguarding fundamental rights in times of crisis*, 2013, p. 7, [accessed 13.04.17].

<sup>43</sup> European Union Agency for Fundamental Rights, *The European Union as a Community of values: safeguarding fundamental rights in times of crisis*, 2013, p. 8.

<sup>44</sup> See the full text of the Articles 258 and 260 TEU.

<sup>45</sup> Ulrich Sedelmeier, „Anchoring Democracy from Above? The European Union and Democratic Backsliding in Hungary and Romania after Accession”, *Journal of Common Market Studies*, vol. 52, 2014, p. 113.

such a procedure on its own, which can lead to a proceeding before the European Court of Justice (ECJ) possibly fining the concerned Member State for steady non-compliance. These two instruments are the only ones explicitly mentioned in the treaties to intervene in breaching liberal democratic principles. But another measure frequently used by international institutions is increasing social pressure on the country in question. This implies mainly to publicly criticize and shame the concerned government for its non-compliance. This instrument can be used through media or open letters to the government. As well the threat of opening an infringement procedure can cause a change in the Member State's actions. Social pressure includes less public statements, too, as for example an exchange between the EU institutions and the country to persuade the government of the "normative appropriateness of compliance".<sup>46</sup> Issue linkage describes the connection of demanding to obey democratic standards with a possible suspension of rewards in another area. This can be expressed explicitly or in an indirect way. This is mostly effective if the concerned Member State has strong preferences to get to an agreement in a certain domain, which requires high majority ratios. In contrast to the so far mentioned tools, issue linkage is a rather unofficial means to enforce compliance.

There are many suggestions of enlarging the toolkit to be more effective in stemming democratic backsliding. The Tavares Report calls for three other instruments in addition to the Article 7 TEU to cope with the situation in Hungary. Firstly, a Article 2 alarm agenda should be introduced, which demands from the European Commission to only address issues related to this Article until the Hungarian government complies with the critical points addressed in the report. This would suspend any other issues between the European Commission and Hungary. Secondly, a new monitoring committee for the Hungarian case should be created, consisting of members of the EP, the Council and the Commission. Thirdly, a Copenhagen Commission should be established consisting of independent experts, which mainly functions as a post-accession monitoring body. As a reference compliance with the Copenhagen Criteria would be used. This last tool should not act exclusively on the Hungarian case, but on the part of any member state.<sup>47</sup>

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<sup>46</sup> Sedelmeier, *op. cit.*, p. 113.

<sup>47</sup> Kim Lane Scheppele, *In the Praise of the Tavares Report: Europe finally says No to Viktor Orbán*, 2013, [access: 13.04.17].

This idea comes from the political scientist Jan-Werner Müller, who examines as well other possible instruments. A stronger role of national courts to protect fundamental rights is discussed, which mostly raises concerns of balancing out the relationship between the ECJ and national constitutional courts and primary legalistic responses to political challenges.<sup>48</sup> Another possibility raised by Müller is to extend Article 7 TEU with a provision making it possible to expel a Member State completely.<sup>49</sup>

This would be a strong form of deterrence, but considering that the European community is reluctant to even use the preventive mechanism of the Article, this proposal is not that close to reality. As Sedelmeier puts it, the main question concerning the effectiveness of all the actual and suggested instruments is, if the EU can anchor democracy from above. His comparative analysis of Hungary and Romania suggest a mixed success.

The “EU might still have some hope of reversing democratic backsliding when faced with a pro-EU leadership with illiberal tendencies, but conversely, the EU’s influence on Eurosceptic illiberal leaders might be especially limited.”<sup>50</sup>

## **Conclusions - Conditionality Limits and Risks**

There are several traps in which researchers of the Europeanization phenomena, and especially the conditionality mechanism, can fall into. The first is connected with the democratic deficit debate. If we agree on the profound impact of Europeanization beyond the EU’s territory, we need to identify the key difference between the internal and the external dimension of governance. This is that while the former is concerned primarily with the *creation* of rules, as well as their implementation in national political systems, the external dimension is exclusively about the transfer of given EU rules and their adoption by non-member states. One needs to see this phenomenon in the prism of ‘democratic deficit problem’ context since transferring the rules outside and the impact of governance beyond the EU borders equates to exporting the ‘deficit problem’ as well<sup>51</sup>.

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<sup>48</sup> Müller, *op. cit.*, pp. 146-147.

<sup>49</sup> Müller, *op.cit.*, p. 147.

<sup>50</sup> Sedelmeier, *op. cit.*, p. 120.

<sup>51</sup> Schimmelfennig, Sedelmeier, *op. cit.*, p. 661.

Secondly, even the famous Copenhagen conditions are imperfect for a number of reasons. They are too broad and what constitutes meeting them is open to interpretation, giving the EU considerable freedom in deciding what has to be done before compliance is achieved and membership (or even advancement in the application and accession procedure) granted. Certain functions or characteristics of governance are included in the third condition on the ability to take on the obligations of membership. This condition can be interpreted broadly by the EU. For example, the capacity to implement and enforce the *acquis* means that the EU is concerned with the entire judicial system. The necessity to administer EU regional aid means that the conditions include the creation of administrative units of subnational government equipped with a certain absorption capacity. On the other hand the 'club membership rules' were clearly settled not that long before for the Union itself. Reference to the principles of liberty, democracy and respect for human rights as the 'grounds' of the EU was not included within EU primary law until the Amsterdam Treaty. The very fact that Article 6 of the treaty confirmed the Copenhagen criteria, although with the exception of 'respect for and protection of minorities', it has been viewed as an attempt to reduce the sharp contrast between the rules for the existing members and the admission criteria for prospective newcomers<sup>52</sup>. This may eventually generate frustration on the applicants' side, especially, when confronted with the potential neglect of the access<sup>53</sup>. Additionally, the basic EU resource in external relations is its own credibility and this capital is at risk in this context<sup>54</sup>. Certainly not everybody who meets the criteria will be admitted, as the enlargement capacity of the EU is limited.

This leads any analysis to the determinacy of conditionality issue or, as termed by Frank Schimmelfennig and Ulrich Sedelmeier: 'The *determinacy of conditions* and of the rules from which it is derived enhance the likelihood of rule adoption. Determinacy refers both to the clarity and formality of a rule<sup>55</sup>.

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<sup>52</sup> Cesare Pinelli, „Conditionality and Enlargement in Light of EU Constitutional Developments”, *European Law Journal*, Vol. 10, No. 3, May, 2004, pp. 354–362.

<sup>53</sup> After 'consuming' the costs of adaptation, the potential lack of reward may create dissatisfaction both on the applicants' political elites as well as its citizens.

<sup>54</sup> The credibility of the EU's threat to withhold rewards in case of non-compliance and, conversely, its promise to deliver the reward in case of rule adoption. (Schimmelfennig, Sedelmeier 2004, p. 665).

<sup>55</sup> Schimmelfennig, Sedelmeier, *op. cit.*, p. 664.



However one needs to notice the uncertain linkage between fulfilling particular tasks and receiving particular future benefits.

The connection with rewards is much less clear than in other forms of international conditionality – for example, those used by the international financial institutions in investment decisions (International Monetary Fund or European Investment Bank) or development assistance (European Bank of Reconstruction and Development or World Bank) in the case of development agencies<sup>56</sup>. The timing of costs and benefits also diffuses the impact strength and influence. The ultimate reward of accession is far removed from the moment at which adaptation costs are incurred, so conditionality is a blunt instrument when it comes to persuading countries to change particular practices<sup>57</sup>. So not only the size but also the speed of the reward is an important determinant of conditionality. Additionally, the real alternatives of the aspiring candidate play an important role. As it is termed in the literature - cross-conditionality - must be absent or minor. EU conditionality would not be effective if the target government had other sources offering comparable benefits at lower adjustment costs.

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<sup>56</sup> Axel Dreher, Roland Vaubel, *The Causes and Consequences of IMF Conditionality*, „*Emerging Markets Finance and Trade*“, vol. 40, No. 3, May–June, 2004, pp. 26–54.

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## THEORETICAL PERSPECTIVES ON THINK TANKS IN THE EUROPEAN GOVERNANCE

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DOI:10.24193/subbeuropaea.2017.1.02

Published Online: 2017-03-15

Published Print: 2017-03-30

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### Abstract:

*The complex nature of the European Union has mainly been theorized through the governance process. In a global perspective, the concept of governance refers to an interdependence between state and non-state actors.<sup>3</sup> The aim of this article is to investigate theoretical perspectives about actions of think tanks in a governance process. It shall be focused on think tanks, analyzed as knowledge organizations. Therefore this article shall investigate the strategies developed by think tanks in order to create a power dependency in the European governance.*

**Keywords:** Think tanks, European governance, policy networks, power dependence, knowledge

### Introduction

Far from being “catch-all” concept, *governance* refers to a mode of decision-making process, partly including non-state actors. In the first instance, researches on governance focus mainly on the “new” place and

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<sup>3</sup> Roderick A. W. Rhodes, *Understanding governance. Policy Networks, Governance, Reflexivity and Accountability*, Buckingham Philadelphia: Open University Press, 1997.

role of the state in the decision-making process.<sup>4</sup> Rhodes<sup>5</sup> underlines the change in the traditional meaning of government, referring to a new “government process”, condition of ordered rules, or new methods by which society is governed.

In the same perspective, Rhodes specifies that the concept of governance refers mainly to the interdependence between all ((non-)state) actors involved in the governance process. Nowadays a large range of non-state actors is indeed active in governance, or new decision-making process. The state is involved in an unequal system of governance wherein state should face various private actors within the process.

In this perspective, the European Union constitutes one of the biggest application of governance. Considered as a unique governance mix<sup>6</sup>, the European Union involves various non-state actors, such as think tanks (considered in the present article as a type of knowledge organizations<sup>7</sup>). According to the transparency register of the European Commission and European Parliament<sup>8</sup>, 413 think tanks are present in the European Union (EU). This represents 5.1% of all groups represented in the EU. Despite their low number, various scholars<sup>9,10</sup> have recognized their active role within the European decision-making process. Think tanks acting at the European level are indeed active in various policy areas subject to EU competences.

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<sup>4</sup> David Levi-Faur, *The Oxford Handbook of Governance*, Oxford: Oxford University Press, 2012.

<sup>5</sup> Roderick A. W. Rhodes, *Understanding governance. Policy Networks, Governance, Reflexivity and Accountability*, Buckingham Philadelphia: Open University Press, 1997.

<sup>6</sup> Tanja A. Börzel, “The European Union – A Unique Governance Mix”, in David Levi-Faur, *The Oxford Handbook of Governance*, Oxford: Oxford University Press, 2012, pp. 613-627.

<sup>7</sup> Diane Stone, “Agents of knowledge”, in David Levi-Faur, *The Oxford Handbook of Governance*, Oxford: Oxford University Press, 2012, pp. 339-352.

<sup>8</sup> In the interest of transparency of the European decision-making process, the European Commission created (in 2008) a register which takes a census of all “groups and organizations with which they [European Commission and European Parliament] interact”.

<sup>9</sup> Philippa Sherrington, “Shaping the policy agenda: think tank activity in the European Union”, in *Global Society* no 14-2, 2000, pp. 173-189.

<sup>10</sup> Heidi Ullrich, “European Union think tanks: generating ideas, analysis and debate”, in Diane Stone and Andrew Denham (eds.), *Think tank traditions. Policy research and the politics of ideas*, Manchester: Manchester University Press, 2004, pp. 51-70.

Therefore this paper addresses think tanks as knowledge organizations on European governance from a theoretical perspective. As knowledge organizations, think tanks seek to establish a power dependence. This establishment of such phenomenon is possible in a governance framework, which include various non-state actors such as think tanks.

Therefore this paper will first refers to the concept of governance, by underlying the involvement of non-state actors in decision-making structures, and the resource-dependence developed by those actors. Then the focus will be stressed on the European governance, defined by Börzel as a unique governance mix and underlying the network aspect of this European governance. The last part of the present paper will go further on think tanks – as knowledge organizations –, and on their strategies to create or maintain resources dependency.

## **I. Governance**

Since the beginning of the European integration process, the project that has been set in place has ceaselessly raised the question of the relationship between the member-States and its institutions. Such a project has always been based on a major political principle which has never been fundamentally questioned, the principle according to which the European integration cannot be realized or progress without the impulsion of the member-States. All along its history, the European integration has witnessed various debates such as the powers of its institutions, the decision making process (more specifically the decisions to be taken with a majority or with the unanimity of the member-States) or, more generally, the governance of the European Union. However, if evolutions have been noticed in the missions as well as in the running of the European institutions, the State was most often seen, though from a superficial perspective, as an intangible and stable unit on which is based the European construction. Nevertheless, State actor shall also be subject to evolutions.

Essentially after the second world war, the evolution of the State under the influence of various factors gradually lead to the increase of its burden and the sclerosis of its bureaucracy. Such phenomenon happened while new issues occurred on domestic as well as on the international scene (such as globalization). These issues induce the State to be overwhelmed by

challenges that are beyond its capacity to control or to intervene alone in its three functions of social cohesion, macroeconomic balances and security.<sup>11</sup> The State then gradually faces a phase of transformation crisis. Some are referring to it in terms of “end of the State, of “erosion of the State”, of “obsolete State” ...<sup>1213</sup>

Since the beginning of the 90's, in particular because of the phenomenon of multiple globalization, we are witnessing a shift from the concept of “government” toward “governance”.<sup>14</sup> The World Bank, the international organization which revived this concept fallen into obsolescence since the 18th century, provides the following definition: “a way in which power is exercised in the management of a country's economic and social resources for development” (World Bank, 1992, 1). Governance is then presented as likely to provide solutions to legitimacy and efficiency problems faced by democracies in this context of transformation crisis of the State. As early as the end of the 80's, governance was seen as a possible answer to what was defined by Renate Mayntz as a “crisis of governmentality”.<sup>15</sup>

As specified by the World Bank, the conception of governance is not without implication as it carries a number of principles which confers to it a strong prescriptive value: transparency, accountability, struggle against corruption<sup>16</sup>, respect of the rule of law and of human rights, decentralization and balanced budget thanks to the reduction of public spending...<sup>17</sup> Furthermore, since the early 90's, two ideas were spread on a global scale by two political initiatives: the “Washington Consensus” on the one hand, and the “Washington Security Agenda” on the other hand.

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<sup>11</sup> Thomas Fleiner-Gerster, *Théorie générale de l'Etat*, Paris: Presses Universitaires de France, 1986.

<sup>12</sup> Susan Strange Susan: *The retreat of the State: the Diffusion of Power in the World Economy*, Cambridge, Cambridge University Press, 1996.

<sup>13</sup> Kenichi Ohmae, *The End of the Nation State: the Rise of Regional Economies*, London: Harper Collins, 1996.

<sup>14</sup> Pierre Vercauteren, “Globalisations, Etat et Gouvernance”, in *Studia Diplomatica* no 57-1, 2004, pp. 55-82.

<sup>15</sup> Renate Mayntz, “Governing Failures and the Problem of Governability: Some Comments on a Theoretical Paradigm”, in Jan Kooiman (ed.), *Modern Governance: New Government-Society Interactions*, London, Sage, 1993, pp. 9-20.

<sup>16</sup> Joan Corkery (ed.), *Gouvernance: concepts et applications*, Institut International des Sciences Administratives, 1999, pp. 9-10.

<sup>17</sup> Ali Kazancigil, “La gouvernance: itinéraires d'un concept” in Javier Santiso, *A la recherche de la démocratie: mélanges offerts à Guy Hermet*, Paris: Karthala, 2002, pp. 121-131.

“Together, they promulgate the view that a positive role for government is to be fundamentally distrusted in core areas of socioeconomic life – from market regulation to disaster planning – and that the sustained application of inter-nationally adjudicated policy and regulation threatens freedom, limits growth, impedes development and restrains the good”<sup>18</sup>. More specifically, the Washington Consensus was aiming at enhancing economic liberalization and to adapt the public domain – local, national and global – to market-leading institutions and processes. In this perspective, the main principles of governance have been formulated by David Osborne and Ted Gaebler in ten points<sup>19</sup> :

- 1) The government should steer rather than get involved in rowing;
- 2) The government should empower communities to serve themselves rather than itself get involved in community service activities (e.g. in health and welfare related services);
- 3) The government should set out to create competition in public service delivery so that customers get the best value for money;
- 4) The government should be transformed from being rules-driven to being mission-driven;
- 5) The government should be result-oriented, and fund outcomes rather than inputs (even if it means liberalizing the budgeting rules and regulations);
- 6) The government should be customer-driven, meeting the needs of the citizen-customer rather than mainly the needs and requirement of the bureaucracy;
- 7) The government should become business-like, and try and earn what it spends on its various activities;
- 8) The government should concentrate on prevention rather than cure, and learn to anticipate problems;
- 9) The government should decentralize its operations and learn to get its work done through participative management and team work rather than hierarchically through the orders of the bosses;

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<sup>18</sup> Held David, “Reframing global governance: Apocalypse soon or reform”, in *New Political Economy* no 11-2, 2006, p. 161.

<sup>19</sup> David Osborne & Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector from Schoolhouse to State House, City House Hall to Pentagon*, Reading, MA: Addison-Wesley, 1992.



- 10) The government should harness incentives and markets rather than controls and regulations to bring about desired changes.

In such a context, the state will find itself somehow formatted under the constraint of the markers laid down by international institutions such as the IMF and the World Bank, which will embody this approach to governance on the global level. In other terms, the principal bodies of world governance have constituted the main vectors of external pressures on the state in favour of the withdrawal of this latter and consequently the arrival of the phenomenon of the shift of "government" towards "governance". Such an approach will be recommended not only in the developing countries but also in the Northern hemisphere, the countries of this latter having been encouraged in this direction not only by international bodies but also by leaders of the main industrialized countries benefiting from a preponderance in the formal bodies of global governance.

In this regard, Ali Kazancigil observes that : *"Governance (for the countries of the North) seemed to be able to give satisfying results in situations where the hierarchical dimension is weak and the heterarchical dimension strong with multiple partners with different statuses : public and private, or belonging to different jurisdictions and countries"*.<sup>20</sup> By its logic, governance has therefore been the bearer and has stimulated a movement of deregulation and even regulation. The formal processes have thus suffered a movement of withdrawal in favour of informal arrangements. It is this that Yannis Papadopoulos notes when he underlines: *"Governance often brings a de-formalisation of decision-making structures..."*.<sup>21</sup>

It should be noted that such an approach to governance which was dominant during the 90's was faced with criticism (Held, 2006, Ikenberry 2010) due not only to its limits but also because of the inadequacies of the results achieved in its implementation. However, despite these objections, a few of its principles are still leaving their mark on the European governance, particularly in relation to the role of the State, the way public actor is to act and the involvement of non-State actors. In this perspective, the 2008 European "White Paper on Governance", defines five principles combined to form the basis of what the EU thinks of good governance:

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<sup>20</sup> Ali Kazancigil, *op cit.*, 2002, p. 8.

<sup>21</sup> Yannis Papadopoulos, "Démocratie, gouvernance et "management de l'interdépendance": des rapports complexes", in Javier Santiso (ed.), *A la recherche de la démocratie. Mélanges offerts à Guy Hermet*, Paris: Karthala, 2002, p. 135.

- *openness*: the European institutions should attach more importance to transparency and communication in their decision-making;
- *participation*: citizens must be more systematically involved in the drafting and implementation of policies;
- *accountability*: the role of each party in the decision-making process needs to be clarified. Each actor involved should then assume responsibility for the role given to them;
- *effectiveness*: decisions need to be taken at the appropriate level and time, and deliver what is needed;
- *coherence*: the EU conducts extremely diverse policies which need to be pursued coherently.

## II. European governance

In the context previously presented, it is worth notice that the study of the European Union has been mainly dominated by international relations approaches. Until 1960s, various scholars<sup>2223</sup> mobilized the neofunctionalist approach in order to explain the European integration.

By initiating the European integration process, states are “losing control in an increasing complex web of interdependence, a web that involved supranational, subnational, and non-state actors”<sup>24</sup>. However, from mid-1960s, realist approaches took precedence. Intergovernmentalist scholars<sup>25</sup> underlined a slowdown of the European integration by strengthening the national authority on European issues. From mid-1960s to mid-1980s, arguments developed by intergovernmentalist scholars have prevailed.

Then first theorizations of the European Union as political system appeared in 1986 with a renewed European integration: the Single European Act. “This initiative led to an expansion in EU competences and revised decision-making procedures, most notably to eliminate the national veto in

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<sup>22</sup> Ernest Haas, *The Uniting of Europe: Political, Social and Economic Forces 1950-57*, London: Library of World Affairs, 1958.

<sup>23</sup> Leon Lindberg, *The Political Dynamics of European Economic Integration*, Stanford: Stanford University Press, 1963.

<sup>24</sup> Ian Bache, “Multi-level governance in the European Union”, in David Levi-Faur, *The Oxford Handbook of Governance*, Oxford: Oxford University Press, 2012, pp. 628-641.

<sup>25</sup> Stanley Hoffman, “The European process at Atlantic cross-purpose”, in *Journal of Common Market Studies* no 3, 1964, pp. 85-101.

a number of areas to facilitate faster integration”<sup>26</sup>. The Single European Act allows the emergence of a new wave of theory which counterview the intergovernmentalist / neofunctionalist approaches: the governance.

From 1990s on, scholars began the study and analysis of the nature of the European Union through governance process which seemed to best capture the nature of this latter. Through the governance, the European Union is described as “a unique set of multi-level, non-hierarchical and regulatory institutions, and a hybrid mix of state and non-state actors”<sup>27</sup> or network governance.<sup>28</sup>

In order to define the specific architecture of the European Union, Börzel<sup>29</sup> underlines that is “a unique supranational organization that could not be compared to any other form of political order we are familiar with at the national or international level”. Therefore she specifies that the European governance is mainly characterized by a “unique governance mix”, including three modes of governance (hierarchical, market and network).

According to Börzel<sup>30</sup>, network governance is a negotiation system wherein public and private actors are involved. Börzel<sup>31</sup> mobilizes the concept of “network governance” to refer to a public-private co-regulation. That is the reason why we aim to understand the nature of the European Union through policy networks. The literature on *policy network analysis* reveals three main trends: network as description, theory or prescription.

Given that our purpose – in this paper – is the understanding of the European Union, we will considered the network as a description (i.e. the understanding of the decision-making process).

The interest in the analysis of *policy networks* is essentially due to the development of major analytical concepts in the study of public policies. In a general understanding of *policy networks*, Muller and Surel<sup>32</sup> suggested an interpretation scheme, characterized as the “interpretation of state/society

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<sup>26</sup> Ian Bache, *op cit.*, 2012, p. 628.

<sup>27</sup> Simon Hix, “The study of the European Union II: The “new governance” agenda and its revival”, in *Journal of European Public Policy* no 5, 1998, p. 39.

<sup>28</sup> Beate Kohler-Koch, “Catching up with change: The transformation of governance in the European Union”, in *Journal of European Public Policy* no 3, 1996, pp. 359-380.

<sup>29</sup> Tanja A. Börzel, *op cit.*, 2012, p. 613.

<sup>30</sup> Tanja A. Börzel, *op cit.*, 2012.

<sup>31</sup> Tanja A. Börzel, *op cit.*, 2012, p. 616.

<sup>32</sup> Pierre Muller and Yves Surel, *Analyse des politiques publiques*, Paris Montchrestien, 1998, p. 91.

relations that emphasizes the horizontal and non-hierarchical nature of these relations, the relative informality of exchanges between the actors of the network, the lack of closure that allowed the proliferation of devices and the combination of technical resources (related to the expertise of actors) and political resources (related to the position of the actors in the political system)".

Within the scientific literature, various definitions are developed and proposed. From those different definitions, there is a general agreement on the idea according to which there is an interdependence between actors present in the construction of the public action. The *policy network* is thus in strong contradiction with the monolithic vision of the central state.

Then as previously specified, Rhodes<sup>33</sup> underlines three different ways to understand *policy networks*, networks as description, theory or prescription. While the last two are dedicated to the study of the network behavior or the reform of the public management, the study of networks as a description underlines three types of networks: as interest intermediation, as interorganizational analysis and as a specific form of governance. According to the first school of thought (networks as interest intermediation), *policy networks* are mobilized as a generic concept which allows the analysis of each relationships between public/private actors. The second school mainly underlines the relationships between political institutions, rather than the relationships between actors within those institutions. Finally, the governance (third) school mobilizes the *policy networks* as specific form of interaction between public and private actors. This interaction form – characterized by a non-hierarchical coordination – opposes the two other mode of governance, the hierarchical and market governance.

#### *New system of governance*

The first references of *policy network* as a theoretical approach could be found "in the literature on the EU as an emerging political system"<sup>34</sup>.

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<sup>33</sup> Roderick A. W. Rhodes, "Policy Network Analysis", in Michael Moran, Martin Rein and Robert E. Goodin, *The Oxford Handbook of Public Policy*, Oxford: Oxford University Press, 2006.

<sup>34</sup> Tanja A. Börzel, "What's so special about Policy networks? An Exploration of the Concept and Its Usefulness in Studying European Governance", in *European Integration online papers* no 1-16, 1997, p. 12.

Some scholars<sup>35363738</sup> question the dichotomous conceptualization of the European system of governance (international organization vs. supranational state). They reject these categories because of the state centric perspective. The permanent focus on the principle of territorial State sovereignty does not allow grasping the essence of the unique characteristic of the European Union as a new and unique emerging political system, summed up as “governance without government”<sup>39</sup>. So the European governance could not be summarized in a hierarchical coordination by a supranational actor (such as the European Commission) or by all the national government of the Member States (through the Council of Ministers). Rather, negotiations are central in the manner in which the European governance proceeds. Public and private actors – from different levels and dimensions of government – are linked in policy networks.

Many scholars agree on the idea according to which the new system of governance is founded on a non-hierarchical coordination in policy networks between all its “participants” (from various level of government and spheres of the society). However some scholars (such as Kohler-Kohl<sup>40</sup>) considers this new system of governance as a transformation of the State.

They affirm that a new form of the State is emerging. Other scholars – such as Christiansen & Jørgensen<sup>41</sup> – call completely into question the whole conception of the State. Christiansen and Jørgensen<sup>42</sup> state that governance could no longer be exclusively linked to the State if a governance through

<sup>35</sup> John G. Ruggie, “Territoriality and Beyond: Problematizing Modernity in International Relations”, in *International Organisation* no 47-1, 1993, pp. 139-174.

<sup>36</sup> Thomas Christiansen, “European Integration between Political Science and International Relations Theory: The End of Sovereignty”, in *EUI Working Paper RSC* no 94-4, Florence: European University Institute, 1994, pp. 1-16.

<sup>37</sup> Beate Kohler-Koch, “Interactive Governance: Regions in the Network of European Politics”, paper presented at the *ECISA Conference*, 1997.

<sup>38</sup> Gerry Stoker, “Governance as theory: five propositions”, in *ISSJ* no 155, 1998.

<sup>39</sup> Roderick A. W. Rhodes, “The European Union, Cohesion Policy and Sub-National Authorities in the United Kingdom”, paper prepared for the *Robert Schuman Centre*, Florence: European University Institute, 1995.

<sup>40</sup> Beate Kohler-Koch, *op cit.*, 1997.

<sup>41</sup> Thomas Christiansen and Knud E. Jørgensen, “Towards the ‘Third Category’ of Space: Conceptualizing the Changing Nature of Borders in Western Europe”, paper presented at the *second Pan-European Conference on International Relations*, Paris, 1995.

<sup>42</sup> Thomas Christiansen and Knud E. Jørgensen, *op cit.*, 1995.

negotiation is foreseeable. So “this opens up for a polycentric system of non-territorial based governance”<sup>43</sup>.

In both cases, policy network (as a theoretical tool) claims to provide some causal explanation of the processes of transformation, drawing from the *game theory*<sup>44</sup> or *resource dependency theory*<sup>45</sup>.

So, Börzel<sup>46</sup> argued that the European decision-making process takes place in a complex, diversified and dynamic environment. This European environment includes numerous national and European public actors who are increasingly dependent on the resources of private (from all territorial levels) and subnational actors.

Börzel<sup>47</sup> proceeds to assert that “policy networks provide a most efficient form of governance at the European as well as the national level”. She justified her assumption by claiming (1) the inefficiency of the hierarchical coordination, either through the European Commission or the set of national governments; and (2) the limited possibilities of privatization due to the problem of market failure.

#### *Policy Network – power dependence*

As previously specified, governance involved numerous non-state actors who have limited resources. Network governance is indeed made of ((non-)state)) actors with limited resources. Therefore no actors may have the leadership – in terms of resources.

In order to understand this resources dependence between actors involved in the governance process, the focus will be laid on the power dependence approach.

Following this conceptual approach, *policy networks* are defined as “sets of resources-dependent organizations”<sup>48</sup>. The main feature of those relationships (between organizations) is power dependence. Rhodes<sup>49</sup> underlines

<sup>43</sup> Tanja A. Börzel, *op cit.*, 1997, p. 12.

<sup>44</sup> Fritz W. Scharpf, *Games Real Actors Play: Actor-centered Institutionalism in Policy Research*, Boulder: Westview Press, 1993.

<sup>45</sup> Roderick A. W. Rhodes, *op cit.*, 1997.

<sup>46</sup> Tanja A. Börzel, *op cit.*, 1997.

<sup>47</sup> Tanja A. Börzel, *op cit.*, 1997, p. 12.

<sup>48</sup> Roderick A. W. Rhodes, *op cit.*, 2006, p. 431.

<sup>49</sup> *Ibidem*.

the inextricable relationship between organizations which is mainly due to the need of (additional) resources of organizations in order to reach their goal(s). There is a need – for each organization – to exchange their resources. From that moment on, each organization considers each relationship as a ‘game’ – with its own rules. Each organization (=player) deploy its own resources (of whatever type: legal, financial, informational...) in order to maximize its influence on outcomes whilst avoiding being dependent on others players. So according to Rhodes<sup>50</sup>, the *policy network* is like a game which is regulated by rules. Each rules have been negotiated and agreed by all players. Therefore there are various variations or differences between networks due to the specific distribution of resources in each network. Finally, Rhodes also specifies that “networks have a significant degree of autonomy from government”<sup>51</sup>.

*Power dependence – knowledge as resource*

As we explain below, this paper is focused on think tanks considered as knowledge producer. Therefore in this case, power dependence is based on knowledge as resource.

Knowledge, as such, does not exist. As precised by Callon and Latour<sup>52</sup>, scientific facts result from construction: “nature is not speaking on his behalf”. Those two sociologists underlined that science “could not be reduced to a mere record of results provided by experiments”. However even if knowledge constitutes a resource-dependence, this paper shall not get into a precise definition of what knowledge is, but what it is referring.

According to Diane Stone<sup>53</sup>, knowledge refers to “first, research and evaluation studies and other in-house expert products originating from within official or public domain; second, scholarly and scientific knowledge that is used, abused, or adapted for governance activities and deliberations; third, independent policy analysis and advice commissioned or given on the basis of recognized expertise of individuals or organizations”.

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<sup>50</sup> *Ibidem*.

<sup>51</sup> *Ibidem*.

<sup>52</sup> Michel Callon and Bruno Latour (eds), *La science telle qu'elle se fait. Anthologie de la sociologie des sciences de langue anglaise*, Paris : La Découverte, 1991, p. 8.

<sup>53</sup> Diane Stone, *op cit.*, 2012, p. 339.

Following Diane Stone<sup>54</sup>, knowledge has long had a particular “task”: inform and/or legitimize public policies. However, nowadays, knowledge agents are involved in a devolution of governance. Diane Stone<sup>55</sup> underlines that “knowledge agents have intrinsic governance capacities in their power to define problems, shape the climate of debate, or engage in standard-setting, rule-making, or other regulatory activity”.

### *Knowledge organizations*

Considered in the third Diane Stone’s<sup>56</sup> perspective, knowledge organization are non-public organizations which are undertaking policy researches. Weidenbaum<sup>57</sup> specifies that think tanks represent a form of knowledge organization which seek to influence (in)directly policy. Think tank often claims the “independence” of their researches and findings

With regards to think tanks, Stone<sup>58</sup> underlined that they often highlight and claim the “independence” of their findings; considered as more credible than government researches. Think tank claim indeed their freedom “to think the unthinkable and question policy orthodoxy”<sup>59</sup>.

## **III. Think tanks, agents of knowledge**

In the framework of this paper, the focus is stressed on think tanks, as specific knowledge organizations present in the European Union. As mentioned in the introduction, this paper addresses think tanks in the European governance. Therefore the purpose of this paper is to discuss the nature of a specific type of non-state actors generally involved in the governance process.

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<sup>54</sup> *Ibidem*.

<sup>55</sup> *Ibidem*.

<sup>56</sup> *Ibidem*.

<sup>57</sup> Murray Weidenbaum, *The Competition of Ideas: The World of Washington Think Tanks*, New Brunswick: Transaction, 2009.

<sup>58</sup> Diane Stone, “Garbage cans, recycling bins or think tanks? Three myths about policy institutes”, in *Public Administration* no 85, 2007, pp. 259-278.

<sup>59</sup> Diane Stone, *op cit.*, 2007, p. 344.



### *Definition of think tank*

Before going further on *knowledge networks*, it is relevant to define what a *think tank* is. There are almost as many definitions as researchers writing on think tanks. Generally speaking, think tanks “vary considerably in size, structure, policy ambit and significance”<sup>60</sup>. Those various differences between definitions reflect the various cultural comprehension and analysis of these organizations.

Considering that the first definitions of think tanks were expressed in the Anglo-American literature, a first development of those definitions will be provided before the development of a European definition.

In a general and global comprehension, James Mc Gaan<sup>61</sup> (University of Pennsylvania, US) defines think tanks as “organizations that generate policy-oriented research, analysis, and advice on domestic and international issues in an effort to enable policymakers and the public to make informed decisions about public policy issues”.

Donald Abelson<sup>62</sup> (Western University, Canada) remains more cautious about a complete and precise definition. However, Abelson and Carberry<sup>63</sup> give a first definition of a think tank that “may consist of a handful of people involved actively in studying a particular policy area who seek to inform and educate policy makers and the public through a variety of channels”.

Following Abelson and Carberry<sup>64</sup>, this definition may fit for the biggest majority of think tanks in Canada and the United States. Given the diversity of think tanks, those scholars do not provide any global definition; they underline some common features of think tanks. In general, think tanks are “nonprofit, nonpartisan organizations engaged in the study of public policy”.

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<sup>60</sup> Diane Stone and Andrew Denham (eds.), *Think tank traditions. Policy research and the politics of ideas*, Manchester: Manchester University Press, 2004, p. 2.

<sup>61</sup> James Mc Gaan, *Think tanks and policy advice in the United States. Academics, advisors and advocates*, Oxon: Routledge, 2007, p. 11.

<sup>62</sup> Donald Abelson, *Do Think Tanks Matter?*, Canada: McGill-Queen’s University Press, 2009 (2<sup>nd</sup> edition).

<sup>63</sup> Donald Abelson and Christine M. Carberry, “Following Suit or Falling behind? A Comparative Analysis of Think Tanks in Canada and the United States”, in *Canadian Journal of Political Science* no 31-3, 1998, p. 529.

<sup>64</sup> Donald Abelson and Christine M. Carberry, *op cit.*, 1998, pp. 525-555.

A British perspective is provided by Diane Stone (University of Warwick, UK) and Andrew Denham (University of Nottingham, UK)<sup>65</sup> who put the “North-American” definitions into perspective. They stressed that “adopting an Anglo-American definition of ‘think tank’ is problematic”; especially regarding the ‘free-thinking’ notion – supported by the North-American authors – which does not travel into other cultures (as in Europe).

Generally speaking, Stone<sup>66</sup> considers that the term of think tank is used to mean “independent [...] policy research institutes containing people involved in studying a particular policy area or a broad range of policy issues, actively seeking to educate or advice policy-makers and the public through a number of channels”. According to Stone<sup>67</sup>, think tank should not be classified as a (sub-)category of non-governmental organization (NGO). Even if we can consider think tank as a non-state actor; it is not a question – once again – of NGO. In some cases, think tanks are closely linked to government or universities, which creates dependence and connections, which is denied by NGOs.

On the basis of the various scientific perspectives, we can deduce some characteristics of “European think tanks”, i.e. think tanks active in the European arena. The first two features are common with north-American think tanks, there is a difference on the third feature.

Firstly, think tanks are “permanent organizations”, which differentiate them from social movements. Most think tanks are nowadays established as (international) association without lucrative purpose or non-governmental organizations. Hence, they take place outside the public sector. Therefore this allows them a significant autonomy from any corporate and any other interest.

Secondly, as non-state actor, think tanks have no formal decision-making power. They are organizations producing policy-oriented researches and/or analyses, with their own research team. As shown later, these analyses can take several different forms, according to the “type” or “category” of

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<sup>65</sup> Diane Stone and Andrew Denham (eds.), *op cit.*, 2004, p. 2.

<sup>66</sup> Diane Stone, “Think tank transnationalisation and non-profit analysis, advice and advocacy”, in *Global society* no 14-2, 2000, p. 154.

<sup>67</sup> Diane Stone, *op cit.*, 2000, p. 154.

think tanks. According to Denham and Garnett<sup>68</sup>, the primary objective of a think tank is the communication of their results to policy-makers (to inform public policy decisions), and public opinion in order to influence public opinion.

Finally, if we wish to define think tanks from a European perspective, think tanks are non-profit organizations, financed through public and/or private funds<sup>69</sup>, which represents a major difference compared to north-American think tanks. However a precise definition shall not be further developed in this section. Because, as William Wallace<sup>70</sup> stresses, “it therefore makes little sense to define a “think tank” too precisely. The functions which think tanks fulfil – research relevant to public policy, promotion of public debate, the questioning of the conventional wisdom, the formulation and dissemination of alternative concepts and policy agendas – can be fulfilled in many ways, under different constraints”.

Furthermore, as stated above, Stone, Denham and Garnett<sup>71</sup> take some distance from the notion of independence developed by Mc Gaan<sup>72</sup>.

In one of his studies, this latter makes a clear distinction between independent and affiliated think tanks. However Stone, Denham and Garnett<sup>73</sup> consider that “the notion according to which a *think tank* requires independence or autonomy vis-à-vis the State in order to enjoy a perfect 'freedom of thought' is a peculiarly Anglo-American notion that does not export well in other cultures”. This ‘free-thinking’ linked to think tanks is an Anglo-American norm which could not be translated into other different

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<sup>68</sup> Andrew Denham and Mark Garnett, *British Think Tanks and the Climate of Opinion*, London: UCL Press, 1998, pp. 16-17.

<sup>69</sup> Based on the report from the *Bureau of European Policy Advisers* (2012), we can argue that the big majority of “European” think tanks are funded by the European Union and various stakeholders.

<sup>70</sup> William Wallace, “Ideas and influence”, in Diane Stone, Andrew Denham and Mark Garnett, *Think tanks across nations. A comparative approach*, Manchester: Manchester University Press, 1998, p. 226.

<sup>71</sup> Diane Stone, Andrew Denham and Mark Garnett, *Think tanks across nations. A comparative approach*, Manchester: Manchester University Press, 1998.

<sup>72</sup> James Mc Gaan, *Think tanks and policy advice in the United States. Academics, advisors and advocates*, Oxon: Routledge, 2007.

<sup>73</sup> Diane Stone, Andrew Denham and Mark Garnett, *Think tanks across nations. A comparative approach*, Manchester: Manchester University Press, 1998, p. 3.

political cultures. Furthermore Stone<sup>74</sup> points out that this distinction – between independent and affiliated think tank – is not clear.

Prior to a better understanding of think tanks through their institutional development, it is necessary to analyze the notion of dependence to which think tanks are associated. Think tanks have indeed specific engagement or relationship with “government” in order to succeed in influencing policy. However, according to Stone and Ullrich<sup>75</sup>, “their desire to preserve intellectual autonomy means that most institutes try to strike a delicate balance between dependence on government and total isolation from it”. That is the reason why the notion of “(in)dependence” should be taken with care.

According to Stone and Ullrich<sup>76</sup>, “the degree of independence of these organizations varies across at least three dimensions”: a legal, financial and/or scholarly independence. Firstly, the *legal independence* means that we face a private organization located outside the formal / public apparatus. Considering that, various “types” of status can be observed, these organizations can be established as a commercial entity or as a non-profit organization. However even if some organizations are – by their status – considered as private organization, they are directly linked to government, political parties or corporation. Secondly, the *financial independence* “could be constructed as developing an endowment or having numerous sponsors and a diverse funding base”<sup>77</sup>. According to Stone<sup>78</sup>, the increase in the number of stakeholders and financial sources allows think tanks to tend to an intellectual integrity. Thirdly, the *scholarly independence* is analyzed through the research practices within an organization, such as the freedom of the research agenda definition, the peer review of the research, the critical analysis,...Overall, “cultural understandings of independence, the degree of research autonomy and the extent of interest in policy and political issues, varies [...] from one institute to another”<sup>79</sup>.

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<sup>74</sup> Diane Stone, *op cit.*, 2000.

<sup>75</sup> Diane Stone and Heidi Ullrich, “Policy Research Institutes and Think Tanks in Western: Development Trends and Perspectives”, in *Discussion Paper No. 24. Local Government and Public Service Reform Initiative*, Open Society Institute, Budapest: Hungary, 2003, p. 6.

<sup>76</sup> Diane Stone and Heidi Ullrich, *op cit.*, 2003, p. 6.

<sup>77</sup> Diane Stone and Heidi Ullrich, *op cit.*, 2003, p. 7.

<sup>78</sup> Diane Stone, *op cit.*, 2000.

<sup>79</sup> Diane Stone and Heidi Ullrich, *op cit.*, 2003, p. 7.

#### IV. Think tanks, actors included in network governance

As specified in a lot of analysis, numerous scholars<sup>8081</sup> have highlighted the blurring of borders between state and non-state actors; through the various relationships between states actors and think tanks.

Along the same lines, Marie-Laure Djelic and Krestin Sahlin<sup>82</sup> consider think tanks as “soft actors” which are “institutionally embedded”. By contracting out researches and consultations to public actors, think tanks are allowing the emergence of a co-constitutive governance.

If we have a look at the strategies developed by think tanks, we can highlight that the set of actions put in place lead to the emergence of networks, considered by Stone<sup>83</sup>, as “a mode of governance whereby the resources of public and private actors are mobilized toward common policy objectives in domains outside the hierarchical control of government”.

From their part, Stone and Ullrich<sup>84</sup> have developed “methods that [...] may lead think tank research to have increased policy relevance”. They have developed those ten methods on basis of think tanks in EU member states.

1. *Quality*: Stone and Ullrich<sup>85</sup> recommend think tanks not to favor the promotion of ideas at the expense of the quality of research. An inadequate, wrong, or botched research will have negative impact on the think tank’s reputation.
2. *Dissemination*: “one supply problem is the inadequate dissemination of research result”<sup>86</sup>. Researches and findings should be disseminated by other means ways than the academic way (which represents a small readership). The dissemination is an important method also underlined by Abelson<sup>87</sup> who seeks to measure a part of the think tank’s impact on public opinion in accordance with the number finding’s publications in media.

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<sup>80</sup> Diane Stone, *op cit.*, 2012, pp. 339-352.

<sup>81</sup> Roderick A. W. Rhodes, *op cit.*, 1997.

<sup>82</sup> Marie-Laure Djelic and Kerstin Sahlin, “Reordering the World: Transnational Regulatory Governance and its challenge”, in David Levi-Faur, *The Oxford Handbook of Governance*, Oxford: Oxford University Press, 2012, pp. 745-758.

<sup>83</sup> Diane Stone, *op cit.*, 2012, p. 346.

<sup>84</sup> Diane Stone and Heidi Ullrich, *op cit.*, 2003, p. 23.

<sup>85</sup> Diane Stone and Heidi Ullrich, *op cit.*, 2003.

<sup>86</sup> *Ibidem*, p. 23.

<sup>87</sup> Donald Abelson, *op cit.*, 2009.

3. *The 'Brief Case Test'*: this third method is based on the strategy used by the president of the Heritage Foundation (American think tank). He always required his staff to write 'policy brief' that he could cart in a brief-case to Capitol Hill. Those "policy brief" should not exceed ten pages, and should summarize the policy issue and lay out explicit recommendation in order to resolve the "problem". "Research is re-packaged to meet the specific needs of policy makers: executive summaries; simple and non-technical language; short and accessible for busy politicians or staffers to read in 15 minutes"<sup>88</sup>.
4. *Creative Communication*: generally speaking, researchers are poor communicator and have difficulties to "sell" their findings. Therefore think tanks hire 'policy entrepreneurs' who can simplify – through story lines – complicated research findings. "Usually an entrepreneur is an individual, but sometimes an organization such as a think tank or research network plays a similar role in marketing knowledge or synthesizing and popularizing research"<sup>89</sup>.
5. *Public Debate*: "research for policy is also research for the recipients of that policy"<sup>90</sup>. Popular support is an item that should be taken into consideration. A "good" policy could fail if it does not have the support of the public opinion. Therefore the presentation of research findings to a large audience allows the protection of the research integrity. Researcher are considered by public opinion as objective actors who can present findings without any distortion.
6. *Serving Policy Maker Demands*: policymakers are looking for policy researches. However they are in a 'pressure cooker' environment. So policy researches should be relevant, and above all action oriented. Policy makers demands may refer to two different purpose. Some decision-makers are asking for research findings in order to put into question a political status quo. Others are looking for a scientific credibility in order to legitimate their actions, decisions and policy orientations. The most important – for a think tank – is to know the decision-making process and the deadline or forced by decision-makers.

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<sup>88</sup> Diane Stone and Heidi Ullrich, *op cit.* 2003, p. 23.

<sup>89</sup> *Ibidem.*

<sup>90</sup> *Ibidem*, p. 24.

7. *Policy process awareness*: Stone and Ullrich<sup>91</sup> underlines that “one of the supply of research is flawed is due to the poor policy understanding of researchers about both the policy process and how research might be relevant to this process”. Researchers should have a good knowledge of the different stages of the policy process, and being aware of windows of opportunity within this policy process. Generally speaking, think tanks are more active at the ‘agenda setting’ and ‘policy evaluation’ stages. Furthermore, Stone and Ullrich<sup>92</sup> specifies that decision-makers are in an environment which exerts pressure in all directions. Therefore policy analyses and alternatives are increasingly needed by public actors.
8. *Target research to key audiences*: the principal challenge of think tanks is to determine who are the key actors within a policy community (both inside and outside the government) at each stage of the decision-making process.
9. *Networks*: “research results are given force and amplified by the collegial recognition of peers and the weight of scholarly opinion. Knowledge networking activities [...] help build a scientific consensus that decision-makers can only ignore at their own risk”<sup>93</sup>.
10. *Cooptation and cooperation*: think tanks should create a bridge between their research topics and “policy actors projects”. According Stone and Ullrich<sup>94</sup>, “researchers in close contact with policy makers develop a better understanding of their needs and the political constraints they face”. This cooperation with policy-makers could be done through the appointment to official committees. In this way, think tanks may provide updated feedbacks and recommendations on a specific policy.

## Conclusion

The theoretical perspectives on think tanks in the European Union provides opportunities and need for further empirical research. Indeed such a research remains an under investigated field in the study of the EU governance. This research is not, however without challenge.

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<sup>91</sup> Diane Stone and Heidi Ullrich, *op cit.* 2003, p. 24.

<sup>92</sup> *Ibidem.*

<sup>93</sup> Diane Stone and Heidi Ullrich, *op cit.* 2003, p. 25.

<sup>94</sup> *Ibidem*, p. 25.

Indeed, the scanning of theories about and around governance reveals its complexity as analytic tool. Commonly understood as buzzword, framing device or umbrella concept, *governance* constitutes itself, as David Levi-Faur<sup>95</sup> underlines, “an interdisciplinary research agenda on order and disorder, efficiency and legitimacy all in the context of the hybridization of modes of control that allow the production of fragmented and multidimensional order *within* the state, *by* the state, *without* the state, and *beyond* the state”. Governance refers – since the beginning of the 1990s - to all the changes related to the exercise of power within the State system.

This polysemous concept should not be reduced to a grid of analysis of the various changes affecting the State; its complex developments must also be taken into consideration.<sup>96</sup>

In an ideological dimension, governance can be viewed as “a process of coordination of public and private actors, social groups, institutions designed to achieve goals collectively discussed and defined in fragmented and uncertain environments”<sup>97</sup>. This definition of governance follows a logical horizontal relationship – rather than a vertical relationship between policy makers and civil society. This definition postulates that the various political bodies do not longer hold a monopoly on political decision-making.

One of the most notorious application of the concept of governance is the European Union. Scholars<sup>9899</sup> have indeed seek to understand and analyse the European integration with international relations approaches.

However, the years 1990s are synonymous of the emergence of the governance process in order to best capture the specific architecture of the European Union, considered by Börzel<sup>100</sup> as a unique governance-mix. In

<sup>95</sup> David Levi-Faur, *The Oxford Handbook of governance*, Oxford: Oxford University Press, 2012, p. 3.

<sup>96</sup> Jacques Chevallier, “La gouvernance, un nouveau paradigme étatique?”, in *Revue française d'administration publique* no 105-106-1, 2003, pp. 203-217.

<sup>97</sup> Guy Hermet, Ali Kazancigil, Jean-François Prud'homme, *La gouvernance. Un concept et ses applications*, Paris: Karthala, 2005, p. 138.

<sup>98</sup> Ernest Haas, *The Uniting of Europe: Political, Social and Economic Forces 1950-57*, London: Library of World Affairs, 1958.

<sup>99</sup> Leon Lindberg, *The Political Dynamics of European Economic Integration*, Stanford: Stanford University Press, 1963.

<sup>100</sup> Tanja A. Börzel, “The European Union – A Unique Governance Mix”, in David Levi-Faur, *The Oxford Handbook of Governance*, Oxford: Oxford University Press, 2012, pp. 613-627.



this perspective, the paper focused on the network governance which is founded on a non-hierarchical coordination between all ((non-)state) actors.

Each of these actors involved in the governance process are bounded by a resource-dependency. Rhodes<sup>101</sup> has indeed demonstrated the closed relationship – between actors – due to their need of some specific resources to achieve their goal.

Therefore this paper on think tanks reveals that those actors can be analysed as knowledge organizations or soft actors. Think tanks have for long been recognized as having an active role within the decision-making process. Even if think tanks in the EU have some specificities, their main resource (knowledge) is central in the governance process. Through their researches and strategies to promote themselves, they are establishing a resource- dependence to other (non-) state actors.

This paper also opened conceptual perspectives. Firstly, the concept of *knowledge* has been briefly developed because it is mobilized by think tanks in their power interdependency with public actors. Knowledge is indeed often mobilized by decision-makers in order to legitimize their policies. However as social construct, it is interesting to investigate the condition of production of this “knowledge” which is – at the end – one of the component of the justification of policy choices. Secondly, the paper also discuss the European governance. In the light of the crisis the European Union is facing (e.g. banking and financial crisis, migration crisis), it seems that the set of instruments of the European governance are not mobilized in order to solve those crises. Therefore we could argue about whether we are facing nowadays a crisis of the European governance or a potential evolution of this latter. Thirdly we could also discuss the power dependence based on knowledge as resource.

Finally, even if the influence of think tanks in the European governance is difficult to measure, further researches are needed to complete the theoretical approach with empirical outputs. Those further studies could underline the specific actions put in place by think tanks in a unique European governance.

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<sup>101</sup> Roderick A. W. Rhodes, *op cit.*, 1997.

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## CONTINUITY AND CHANGE IN EUROPEAN NEIGHBOURHOOD POLICY. THE BURDEN OF EXCESSIVE BUREAUCRATIZATION

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DOI:10.24193/subbeuropaea.2017.1.03

Published Online: 2017-03-15

Published Print: 2017-03-30

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### Abstract:

*The present article looks at the European Neighbourhood Policy (ENP) through the lenses of policy analysis in order to assess the processes through which its stated goal to 'support and foster stability, security and prosperity in the countries closest to its borders' are transposed into practice and produce an impact on its neighbours. It proceeds from the assumption that due to the embeddedness of this policy in the enlargement policy it overstrains the institutional framework set up for this policy and leads to mixed results in its evaluation. If the focus of the entire neighbourhood policy has been recalibrated several times from its inception, its modus operandi suffered only limited alterations. This paved the way to an excessive bureaucratization of the entire policy, which impacted directly on EU's capacity to attain its core objectives.*

**Keywords:** European Neighbourhood Policy, external governance, democratization, bureaucratization

The European Neighbourhood Policy was conceived in the context of the 2004 enlargement when the qualms about the 'absorption capacity' of the European Union started to fuel fears with regard to the proper functioning of the entire project and generated a sense of 'enlargement fatigue.' At the same time, through enlargement the contour of EU borders changed entirely and as such the configuration of its neighbourhood.

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Confronted with the need to ‘deepen’ the entire project after the historic ‘widening,’ the EU needed to call off or at least to slow considerably down the enlargement policy and find a different way to engage with its new neighbours. EU had to take into consideration on the one hand the need to assuage the anxieties of the new member states and on the other the acknowledgement of the fact that in the new international context after 9/11 it was better to bring stability to the neighbouring region in order not to run the risk of being destabilized by its instability. So it had to find ways to ‘support and foster stability, security and prosperity’ in countries at its new periphery with which it had had hitherto relative scarce official relations. As enlargement was not any longer a viable option, the goal in the relation with these countries became to ‘achieve the closest possible political association and the greatest possible degree of economic integration.’ By this ambiguous formulation its proponents tried to reproduce the accomplishments of the enlargement without making recourse to its main ingredient, namely, the accession perspective, while leaving member states enough room for interpretation and offering them means to accommodate the policy’s rationale with their own preferences. For some it was sufficiently vague to consider it as a *voie de garage* whereas for others it looked like an ‘antechamber to accession.’<sup>1</sup>

ENP was planned with the intention of forging closer ties with the nine states lying at EU’s southern periphery – Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia, and the six at its eastern border – Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. Summarizing its content briefly, we may characterize ENP briefly by being a bilateral policy between the EU and each partner country that was later complemented by regional, multilateral cooperation initiatives – the Eastern Partnership, the Union for the Mediterranean Partnership and the Black Sea Synergy. It employs instruments drawn from a number of policy areas as for instance foreign policy and security policy, development aid, justice and home affairs and justice.

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<sup>1</sup> David Cadier, ‘Is the European Union a substitute for enlargement?’ in London School of Economics IDEAS Reports, *The Crisis of EU Enlargement*, Special Report, November 2013, pp. 53-54.

From its inception, ENP was revised several times. In the beginning the idea was to establish regional stability by sustaining the transformation of these surrounding countries. ENP was meant to support their adjustment to European values and bringing their politics and policymaking in line with the customary European standards. In 2009 along with the entering into force of the Treaty of Lisbon, ENP was brought into the EU treaty framework and had to adapt to the new institutional setup. In Article 8(1), the Treaty specifically mentioned that the 'union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union.' The 2011 revision was from the beginning ill-fated as it was conducted shortly before the Arab Spring and the limits of EU capacity to act as a reliable actor in crisis situations in its own neighbourhood were exposed. However, this revision remains noteworthy for introducing the principle of differentiated cooperation with neighbouring countries.

The present research follows the structure of a policy analysis thus attempting to interpret the structures and bureaucratic procedures of the ENP from the perspective of the overall management of this policy and not only in terms of its internal consistency and efficiency.<sup>2</sup> It aims at offering an understanding of the organization, means and core values of ENP from its onset to the present day by scrutinizing it from the perspective of the processes and changes that took place, the power and resources of the main political actors, as well as the rules of the game, with the purpose of evaluating its stability and coherence.<sup>3</sup> In this way, the 'policy subjected to evaluation is to be seen in its complexity, allowing a display of its shortcomings and an appraisal of their potential impact on related fields of activity.'<sup>4</sup> Given the evolution of ENP from the previous enlargement policy, in evaluating its stability, we take into consideration also the path dependency understood in the sense that the option range for today's decisions depend on past knowledge and choices and is thus limited. In other words, 'history matters for current decision-making situations and

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<sup>2</sup> Peter Knoepfel, Corinne Larrue, Frédéric Varone, Michael Hill, *Public Policy Analysis*, Bristol, The Policy Press, 2007, p. xi.

<sup>3</sup> Bas Arts, Jan Van Tatenhove, 'Policy and power: A conceptual framework between the 'old' and 'new' policy idioms,' *Policy Sciences*, Vol. 37, 2004, pp. 341–342.

<sup>4</sup> Peter Knoepfel *et al*, *Public Policy Analysis*, p. 3.

has a strong influence on strategic planning.<sup>5</sup> It basically assumes that once the actors have adjusted their expectations and behaviour to a given policy or benefit from this, they start to defend it even with the risk of inhibiting the making of necessary decisions or turning it suboptimal.<sup>6</sup>

European Union is a *sui generis* system of governance. It is neither a state, nor an international organization. Hence, it is difficult to assess it by current standards. EU has a 'highly decentralized' political system 'based on the voluntary commitment of the member states and its citizens.'<sup>7</sup> It has a multilayered structure called multilevel governance with reference to the fact that inside the EU decision-making authority has been dispersed over several levels of government – supranational, national, subnational. The governments are not any longer dominant players. Other participants come to be involved with varying degrees in decisionmaking. Among these, European institutions stand out in particular ways – European Commission is a key political entrepreneur with a considerable influence on both enlargement and ENP due to its involvement in both setting conditions and assessing the compliance with them, the Council is a pivotal decisionmaker, whereas the Parliament has the power to either accept or reject the entire agreement via the assent procedure. In order to enhance synergies and EU credibility in international relations an External Action Service headed by a High Representative for Foreign Affairs and Security Policy was established by the Treaty of Lisbon. For many, EU is a 'unique, not to say strange, political actor', with 'divided and clashing institutions', 'blurred sovereignty', and a 'weak sense of common interests',<sup>8</sup> which stuns outsiders as it is not clear where exactly does the political power lie (national capitals, council, commission).

With regard to European Neighbourhood Policy the similarities with the enlargement policy are more than striking, which is to a certain extent challenging as 'EU's international actorness is far less developed and

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<sup>5</sup> FT lexicon, 'Definition of path dependence' in *Financial Times*, [<http://lexicon.ft.com/Term?term=path-dependence>] 15 March 2017.

<sup>6</sup> Alasdair R. Young, 'The European Policy Process in Comparative Perspective' in Helen Wallace, Mark A. Pollack, Alasdair Young (ed.), *Policy-Making in the European Union*, 6-th edition, New York: Oxford University Press, 2010, p. 65.

<sup>7</sup> Simon Hix, Bjørn Høyland, *The Political system of the European Union*, 3-rd edition, Basingstoke, Palgrave Macmillan, 2011, p. 15.

<sup>8</sup> Dov Lynch, 'Russia faces Europe' in *Chaillot Papers*, No. 60, 2003, p. 78.

remains controversial<sup>9</sup> and treating ENP as any other common policy is problematic because it assumes that by projecting values, norms and regulations on the others they will adhere to EU's own code of conduct.

European Commission which was at the centre of the process of conceiving both policies maintains further a dominant position that needs to be coordinated with the High Representative for of the Union for Foreign Affairs and Security Policy and the European External Action Service (EEAS). As its *modus operandi* is bureaucratic and technocratic, Commission attempted from the beginning to handle ENP as any other common policy, namely, by making extensive use of its normative power.

Equally conspicuous is the fact that most of those who worked on enlargement policy have come to deal with ENP, which explains the penchant for conditionality and socialization as the preferred tools for conducting ENP, the emphasis on values and the similarities in language terms employed in designing the policy.

Based on the mandate that it receives from the Council (drafted nevertheless on the Commission's own proposal), Commission negotiates with each neighbouring country a bilateral action plan which sets out a roadmap for jointly agreed short and medium-term priorities on political and economic reforms for the next three to five years that reflects the country's needs and capacities, as well as its and the EU's interests. The action plans build on existing legal agreements these countries have with the EU – partnership & cooperation agreements (PCAs), which resemble in many respects the Europe agreements negotiated previously with the countries of Central and Eastern European countries. Once the priorities are met, an association agreement (AA) is signed and the action plan is replaced by an association agenda. The newest AAs, as for instance those signed with Georgia, Moldova and Ukraine in 2014, include a Deep and Comprehensive Free Trade Area (DCFTA) and are aimed at furthering economic integration and political association. Implementation of reforms is both jointly monitored by the partners through various joint institutions set up under the PCA/AA (cooperation council, established as a forum of discussions between the Council of the European Union and the members of partner country's government, a cooperation committee with sub-committees

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<sup>9</sup> Nick Wright, 'The European Union: What Kind of International Actor?' in *Political Perspectives*, Vol. 5, No. 2, 2011, p. 28.

on various issues – economic, cross-border cooperation, energy, environment, education etc. – created in order to facilitate dialogue between experts from European Commission’s directorate generals (DGs) and those from partner country’s ministries) and unilaterally assessed by the European Commission in Progress Reports released each year.

As already mentioned, ENP came to rely in the same vein as enlargement policy on a ‘combination of conditionality incentives and socialization dynamics.’<sup>10</sup> However, in terms of conditionality, EU cannot go as far as offering ENP countries a membership perspective which proved to be the most powerful incentive for reforms in countries in East and Central Europe.<sup>11</sup> Still, EU does not go empty-handed in the relation with the ENP countries. Its offer has been captured by the ‘3 Ms’ that stand for Money, Markets and Mobility.

‘Money’ refers to the financial aid provided for the implementation of reforms. The European Commission assumes a key role in this regard due to the prerogatives the treaties rest upon it for the management of EU budget. According to the EU Financial Regulation and its Rules of Application in force since 2013, in exerting its prerogatives Commission has

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<sup>10</sup> David Cadier, ‘Is the European Union a substitute for enlargement?’, p. 55.

<sup>11</sup> The issue has been extensively researched in the academic literature. Without attempting of being exhaustive, see for instance Frank Schimmelfennig, Ulrich Sedelmeier, ‘Governance by conditionality: EU rules transfer to candidate countries of Central and Eastern Europe’ in *Journal of European Public Policy*, Vol. 11, No. 4, 2004, pp. 661-679; Antoaneta Dimitrova, Geoffrey Pridham, ‘International actors and democracy promotion in central and eastern Europe: the integration model and its limits’ in *Democratization*, Vol. 11, No. 5, 2004, pp. 91-112; Wojciech Sadurski, ‘Accession’s Democracy Dividend: The Impact of the EU Enlargement upon Democracy in the New Member States’ in *European Law Journal*, Vol. 10, No. 4, 2004, pp. 371-401; Frank Schimmelfennig, Ulrich Sedelmeier (ed.), *The Europeanization of Central and Eastern Europe*, Ithaca and London, Cornell University Press, 2005; James Hughes, Gwendolyn Sasse, Claire Gordon, *Europeanization and Regionalization in the EU’s Enlargement to Central and Eastern Europe. The Myth of Conditionality*, Basingstoke, Palgrave Macmillan, 2005; Geoffrey Pridham, *Designing Democracy: EU Enlargement and Regime Change in Post Communist Europe*, Basingstoke, Palgrave MacMillan, 2005; Heather Grabbe, *The EU’s Transformative Power: Europeanization through Conditionality in Central and Eastern Europe*, Basingstoke, Palgrave MacMillan, 2006; Frank Schimmelfennig, ‘European regional organizations, political conditionality, and democratic transformation in Eastern Europe’ in *East European Politics and Societies*, Vol. 21, No. 1, 2007, pp. 126-141; Tim Haughton, ‘When does the EU Make a Difference? Conditionality and the Accession Process in Central and Eastern Europe’ in *Political Science Review*, Vol. 5, No. 2, 2007, pp. 233-246.

to choose between a direct management, an indirect and a share management mode for spending €15.4 billion allocated via the European Neighbourhood Instrument (ENI) from 2014-2020. Two of the Commission's directorates general take up extensive prerogatives in this respect, namely, that for Neighbourhood and Enlargement Negotiations (DG NEAR) and that for International Cooperation and Development (DG DEVCO). For the purpose of strengthening coherence between external relations and development cooperation, European Commission needs to coordinate its efforts with the European External Action Service (EEAS).

Another important remark in this respect concerns the fact that the policy and expenditures related to development aid has to be endorsed by the European Parliament and the Council of the European Union (acting on Commission's proposals) and are subject to the scrutiny of the European Court of Auditors. This financial aid is further supplemented by the European Investment Bank (EIB) and European Bank for Reconstruction and Development (EBRD).

Moving to the next 'M', the one that stands for 'Market', this pertains to privileged access to certain shares of EU market, that can increase to full access to EU's internal market with the signing of DCFTA.

Nevertheless, this last step comes in exchange for extensive legislative and technical harmonization with EU *acquis communautaire*. As in matters regarding the internal market European Commission is assigned a central role, again this EU institution comes to dominate the agenda of policy planning, implementation and evaluation.

The last 'M', the one that refers to 'Mobility' is connected to adoption of incremental steps towards visa liberalization. In exchange for reforms in justice and security the neighbouring countries gradually gain access to free movement to and inside the Schengen area. The whole process starts with a Visa Facilitation Agreement, allowing for more affordable visas and simpler application, which paves the way to a visa free travel agreement to be signed on the condition that mobility can take place in a secure and well-managed environment and meant to allow for free travel to the Schengen area for holders of biometric passports. European Commission with its Directorate General for Migration and Home Affairs (DG HOME) and working in close cooperation with a number of EU agencies specialized in border management like the European Border and Coast Guard Agency

(Frontex), European Police Office (Europol), European Asylum Support Office (EASO) or Agency for large-scale IT systems (eu-LISA) assumes responsibility on handling these aspects.

At the same time, the EU undertakes to foster reforms by encouraging the socialization<sup>12</sup> of ENP countries. If in the beginning, the EU focused primarily on its relations with the governments of the neighbouring countries, it has gradually expanded the scope and turned its attention on other non-state actors. As with the Central and Eastern European countries, the process is built around the European values of good governance, democracy, rule of law and human rights and is directed towards civil society. EU support for civil society organizations is many-faceted and holds to the view that their existence needs a democratic setup that ensures civic freedoms and, at the same time, the functioning of democracy necessitates an active and dynamic civil society. By empowering state and non-state domestic actors, they turn demand and exert pressures in the direction of reforms. Further on, civil society networks assume monitoring activities in policy specific fields that allow for alternative evaluation and benchmarking governmental behaviour.<sup>13</sup> In order to support these grassroots organizations a number of initiatives and instruments have been setup at EU level, as for instance, European Endowment for Democracy (EED), Civil Society Facility (CSF), Non-state Actors and Local Authorities in Development (NSA-LA).

Overall, in dealing with the neighbouring countries, European Commission raised demanding preconditions and handled these relations by similar procedures to those employed for Central and Eastern countries during their preaccession. In the absence of a clear target or at least a long

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<sup>12</sup> See for instance Jeffrey T. Checkel, 'Why Comply? Social Learning and European Identity Change' in *International Organization*, Vol. 55, No. 3, 2001, pp. 553–588; Charlotte Epstein, 'Stop Telling us How to Behave: Socialization or Infantilization?' in *International Studies Perspectives*, Vol. 13, 2012, pp. 135–145; Ian Manners, 'Normative Power Europe: A Contradiction in Terms?' in *Journal of Common Market Studies*, Vol. 40, No. 2, pp. 2035–58; Frank Schimmelfennig, Stefan Engert, Heiko Knobel, *International Socialization in Europe: European Organizations, Political Conditionality and Democratic Change*, Palgrave Macmillan, Basingstoke, 2006.

<sup>13</sup> Aron Buzogany, 'Governance and governmentality of EU neighbourhood policy. Two perspectives on the role of civil society in external democracy promotion,' in Vera Axyonova, (ed.), *European Engagement Under Review. Exporting Values, Rules, and Practices to Post-Soviet Space*, Stuttgart, ibidem-Verlag, 2016, pp. 69-75.

term strategic vision, the ENP countries were hesitant to reform as long as benefits remained dim. Practically, EU support concerned primarily their efforts to harmonize their legal frameworks with the *acquis* and reform their institutions. Under these circumstances, against the background of its stated goal of bringing 'stability, security and prosperity' in the neighbouring regions, the results of ENP implementation up to now are at least mixed. The last evaluation of this policy offers a more detailed glimpse on what it did not work – a lack of ability to come up with quick and adequate responses to crisis situations as those in Ukraine, Syria or Egypt, an awkwardness in finding answers to politically sensitive issues such as cooperation with authoritarian regimes, the neighbouring countries' access to the EU labour market or the policing of the common border, a limited capacity to infuse the neighbouring countries with European values, difficulties in communicating on what does EU stand for in a number of situations, failure to tackle root causes of some of the most pressing problems affecting ENP countries – poverty, unemployment, lack of education. During the evaluation process kicked off in 2015, European Commission assumed responsibility for the way it handled ENP.

Aware of the disappointment with the overall ENP performance, the EU tried to come up with a response with perceptible shades of difference from its previous positions in the latest revision process. It was by then acknowledged that the causes of instability lie 'outside the security domain alone'<sup>14</sup> and stem still, despite EU's endeavours of the past more than 10 years, from the ill-functioning of the state, economic sluggishness and social unrest. As a consequence, the assumption that the EU could transform its neighbourhood has all but disappeared from the political discourse, whereas references to democracy, human rights and good governance, remain still prominent on the agenda. Without abandoning ENP values, the latest revision is more focused on cooperation in areas where there are 'genuinely shared common interests' with a special emphasis for regional stability, controlled

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<sup>14</sup> European Commission, High Representative of the Union for Foreign Affairs and Security Policy, *Review of the European Neighbourhood Policy*, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, JOIN(2015) 50 final, Brussels, 18 November 2015, [[http://eeas.europa.eu/archives/docs/enp/documents/2015/151118\\_joint-communication\\_review-of-the-enp\\_en.pdf](http://eeas.europa.eu/archives/docs/enp/documents/2015/151118_joint-communication_review-of-the-enp_en.pdf)], 15 March 2017.



migration, trade, investment and energy cooperation. Also, the principle of differentiated action (the principle 'more for more and less for less') has acquired more prominence in the relations with the neighbouring countries. In essence, the Commission's Joint Communication recognizes that 'not all partners aspire to comply with EU rules and standards.'<sup>15</sup> As a consequence Commission is determined now to abandon the one-size-fits-all approach and replace the annual package of country reports and come up with more tailor-made reports focusing specifically on 'meeting the goals agreed with partners.'<sup>16</sup>

In terms of policy analysis, the factors that favor the operation of changes in the way a certain policy works are the contestation of the policy by those whose interests are not any longer deserved, the change in circumstances, and the achieving of the objectives that made that policy necessary. A closer look to ENP through the lenses of the latest revision process set in motion by the European Commission and the High Representative for of the Union for Foreign Affairs and Security Policy with the Joint Communication on the ENP review offers indications for a pattern of path dependency in the way the ENP evaluation process was conducted and policy changes were put forward for future deliberation and decision.

This shows that the key driver for policy reform was the change in circumstances which led to adjustments of the main policy goals without major alterations to the way in which this policy works and practically no attempt aimed at its debureaucratization. As a result of extensive consultation in the process of drafting the revision proposals, we can witness a better recalibration of the focus of the entire ENP. Up to now, the ENP review proposals are rather indicative of a lack of interest in improving the way in which ENP works although it became obvious that excessive bureaucratization places EU in an awkward position when it needs to make decisions on politically sensitive issues. A number of recent interventions of the President of the European Commission on the necessity for the EU countries to step up and stop 'hiding behind' the union<sup>17</sup> might contribute to a reconsideration

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<sup>15</sup> *Ibidem*.

<sup>16</sup> *Ibidem*, p. 5.

<sup>17</sup> See for instance European Commission, *Speech by President Juncker at the Forum of the outermost regions*, Brussels, 31 March 2017, [[http://europa.eu/rapid/press-release\\_SPEECH-17-824\\_fr.htm](http://europa.eu/rapid/press-release_SPEECH-17-824_fr.htm)], 1 April 2017.

of the balance between member states and European institutions as well as in the case of ENP whose process of reform is now ongoing. In the 2015 proposal for ENP reform, the commission just mentioned that 'there will be a greater role for the Council and member states in identifying priorities and in supporting their implementation.'<sup>18</sup> In the new context this might be indicative of the fact that the European Commission intends to distance itself and let the national governments to make the necessary political decisions. For many ENP countries EU remains an significant standard of reference in terms of stability, welfare and security. Yet, the EU's unduly bureaucratic and normative approach to their transformation estranged them from this model. In order to preserve its clout in the relations with the ENP countries, EU needs not only to refocus the entire neighbouring policy, but also to make it more flexible, less bureaucratic and more sensitive to politically charged issues.

## Conclusions

ENP has its roots in the enlargement policy, which significantly contributed to the transformation of the countries in Central and Eastern Europe. Although the policy has been revised several times since its inception, its institutional framework apart from the changes introduced by the Treaty of Lisbon remained more or less the same. At the center of the policy was placed the European Commission, which dealt it in the same bureaucratic way as enlargement policy thus displaying noticeable signs of path dependency. It built it on the institutional set up created for the enlargement policy, it borrowed its staff, it employed its key principles, it made use of a similar terminology, although it had more ambiguous aims than its predecessor (stability, security, prosperity vs. accession) and was meant for a different set of countries (by all standards, a more eclectic group in comparison to that of the Central and Eastern European countries).

Rather than clearly explaining its strategic vision and what it stands for, the EU has offered the countries lying at its periphery just a collection of inconclusive goals in exchange for their thorough transformation by

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<sup>18</sup> European Commission, High Representative of the Union for Foreign Affairs and Security Policy, *Review of the European Neighbourhood Policy*, p. 5.

adopting European values and norms. As long as the costs were high and the benefits limited, the motivation on the side of ENP countries for undergoing this transformation was at most modest. The inability to offer solutions to entrenched economic and social problems marring the situation of these countries or the limited capacity to intervene in crisis situations, further deteriorated EU credibility to act as a reliable partner in the neighbouring region. In the end, EU failed to inspire.

On the occasion of the latest review of the ENP, the European Commission assumed responsibility for this situation. After successfully using enlargement as a foreign policy tool in order to enhance its influence on this policy area,<sup>19</sup> it became obvious that its attempt to replicate this situation with ENP is doomed to failure. The Commission is now compelled to accept a recast of its role and a more assertive implication of the Council in handling sensitive political issues. This raises however an interesting question regarding the future relation between these two institutions with regard to ENP and the way the Council as principal might decide to further delegate powers in this realm to the European Commission acting as an agent. Essentially, the delegation of powers to the European institutions occurs in two situations – on the one hand, for the purpose of ‘reducing decision-making costs’ which leads to concerns about diminishing ‘the ability of the agent to enact outcomes different from the policies preferred by those who originally delegated powers’ and, on the other, for the purpose of ‘enhancing the credibility of a long-term policy commitment’ and this leads to choosing an agent with a ‘well-defined agenda,’ whose ‘policy preferences differ from those of the delegating principal’ and whose success is evaluated by ‘the amount of the agenda’ it accomplishes.<sup>20</sup> It is obvious that in the case of enlargement policy Council was motivated primarily by the desire to reduce decision-making costs. In the case of ENP, the Council pondered principally the need to enhance the credibility of its long-term policy commitments to ‘support and foster stability, security and prosperity in the countries closest to its borders.’

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<sup>19</sup> Ulrich Sedelmeier, "Enlargement. From Rules for Accession to a Policy Towards Europe", in Helen Wallace, Mark A. Pollack, Alasdair Young (ed.), *Policy-Making in the European Union*, 6-th edition, New York: Oxford University Press, 2010, pp. 421-425.

<sup>20</sup> Giandomenico Majone, *Dilemmas of European integration. The ambiguities and pitfalls of integration by stealth*, New York, Oxford University Press, 2005, pp. 64-67.

However, the bureaucratic way in which the Commission handled the policy could not fulfill neither the aspirations of the neighbouring countries, nor the expectations of the member states. It remains under the current situation to be seen how the Council will decide to organize ENP in the future.

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CONSIDERAZIONI SULLA GESTIONE DEI DOCUMENTI E DEGLI  
ARCHIVI NELL'AMBITO DELL'ATTIVITÀ DELLE ISTITUZIONI  
DELL'UNIONE EUROPEA

CONSIDERATIONS REGARDING ARCHIVING AND RECORDS  
MANAGEMENT WITHIN ACTIVITIES OF EUROPEAN  
UNION'S INSTITUTIONS

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DOI:10.24193/subeuropaea.2017.1.04

Published Online: 2017-03-15

Published Print: 2017-03-30

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**Abstract:**

*This paper aims to highlight the importance of information in EU's activities, regardless of the medium on which they are made. During their lifecycle, since creation/receiving until disposal or permanent preservation, records are passing through successive appraisals, reaching at the end that those with historical importance to be transferred for permanent preservation as archives and the others, to be removed. This study describes all these successive stages in records life on the pursuit of becoming archives.*

**Keywords:** E-document, archival fonds, digitization, records lifecycle, European Union

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**Sommario:**

*Il presente studio si propone di rilevare l'importanza che le istituzioni dell'Unione Europea conferiscono alla gestione delle informazioni, indipendentemente dal supporto sul quale queste informazioni si trovano. Durante il ciclo di vita dei documenti, dalla loro creazione/ricezione e fino all'eliminazione o permanente conservazione, gli atti (records) attraversano una successione di fasi, tramite valutazioni successive, e alla fine del loro ciclo di vita, quelli d'importanza storica e documentaria sono trasferiti in vista della loro permanente conservazione, e quelli i cui termini di conservazione sono scaduti sono eliminati. L'articolo descrive, in base alle norme, agli standard e alle regole di specialità, tutte queste fasi successive della vita di un atto (record) che può diventare archivio, nell'attività delle istituzioni europee.*

**Parole chiave:** Documenti elettronici, fondi archivistici, digitalizzazione, ciclo di vita dei documenti, Unione Europea

**1. Il sistema delle istituzioni europee dalla prospettiva del flusso d'informazioni**

L'Unione Europea, attraverso le sue istituzioni, ha un ruolo travolgente nella gestione di tutti gli aspetti dell'Europa dei nostri giorni.

Le istituzioni europee, come quelle nazionali, nella loro attività, sono produttrici d'informazioni valutate come d'importanza diversa e molteplice.

La Commissione Europea è organismo principale che gestisce i flussi d'informazioni, specialmente quelli archivistici, emettendo attraverso gli organismi speciali e attuando i regolamenti, norme, strategie di gestione efficace dal punto di vista informazionale.

Tutte le istituzioni europee, salvo il Parlamento Europeo (il quale ha un meccanismo proprio di elaborazione, gestione e registrazione dei documenti/informazioni<sup>1</sup>), sia che si tratti d'istituzioni centrali, rappresentanze oppure agenzie esecutive, devono rispettare i regolamenti rilasciati dalla direzione competente presso la Commissione e le norme di gestione dei documenti stabilite dal Segretariato-Generale della Commissione.

Dalla prospettiva dei documenti permanenti – quelli che, all'occasione della valutazione, sono considerati come estremamente importanti per la posteriorità, questi tipi di documenti sono conservati in due posti in Europa, rispettivamente:

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<sup>1</sup> CARDOC con sede in Lussemburgo.

-I documenti permanenti della Commissione sono conservati nei depositi centralizzati di Bruxelles e la loro gestione è realizzata dai specialisti interni della Commissione (archivisti, documentaristi, editori, specialisti in IT ecc.)

-I documenti delle altre istituzioni dell'Unione Europea, salvo quelle del Parlamento, sono consegnate e conservate in condizioni adatte presso gli Archivi Centrali dell'Unione Europea di Firenze, istituzione protetta dall'Istituto Universitario Europeo. A causa dell'esistenza relativamente recente delle Agenzie Europee, dalla prospettiva dei fondi storici creati da loro, a Firenze sono conservati al momento solo i documenti permanenti del CEDEFOP<sup>2</sup>, i cui inventari sono disponibili per consultazione anche in formato digitale, sul sito ufficiale dell'istituzione.

Dal punto di vista delle tecniche archivistiche usate, la politica delle istituzioni europee è nella maggior parte di tipo "Paperless". Le reti di computer ed i sistemi elettronici avanzati che si trovano in dotazioni di questi organismi, permettono di sostenere delle basi di dati enormi a livello dell'Europa, in modo che la politica Paperless sia applicata in maniera corretta, uniforme ed efficiente al livello di tutte le strutture coinvolte. La corrispondenza interna e la corrispondenza tra le agenzie è fatta esclusivamente in maniera elettronica. In formato cartaceo si stampa solo una parte dei documenti ufficiali (quelli specifici ai dipartimenti Finanziario, Acquisti, Risorse Umane, esse rappresentando l'oggetto di certe azioni di controllo svolte dai rappresentanti della Corte dei Conti dell'Unione Europea<sup>3</sup>).

Una gran parte delle istituzioni europee usano dei sistemi elettronici di sharing dei documenti, come ad esempio Microsoft SharePoint, sistemi che permettono la creazione di documenti, la loro messa a disposizione su un server centrale con firme elettroniche e dati specifici di autenticazione, e gli utenti hanno dei conti, password di accesso alle informazioni e diritti di modifica delle proprietà dei documenti (non tutti gli utenti possono cancellare o modificare il contenuto dei documenti visualizzati).

Nell'istituzione dove ho svolto l'attività, nel periodo 20012-2013<sup>4</sup>, ho avuto il privilegio di assistere all'implementazione di un tale sistema.

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<sup>2</sup> Centro Europeo per lo Sviluppo della Formazione Professionale, fondato nel 1975 con sede in Salonico, Grecia

<sup>3</sup> European Court of Auditors, con sede in Lussemburgo.

<sup>4</sup> EIGE-Istituto Europeo per l'Uguaglianza di Genere, con sede in Vilnius, Lituania.

Come si sa già, i vantaggi sono enormi. Non c'è un termine di paragone tra quello che abbiamo o applichiamo nelle istituzioni del nostro paese e quello che succede al livello di queste istituzioni, qualificate come un'attività normale, si può dire, al moneto attuale. Anormale è quello che succede da noi!

Ovviamente, neanche al livello delle istituzioni europee, l'archivistica non è applicata integralmente, come dicono i regolamenti. A causa della mancanza di personale specializzato, che abbia esperienza in questo campo, oppure a causa dell'inesistenza della necessità di un'allocatione nel budget, in modo che si possano assumere delle persone con studi e conoscenze di specialità, molti elementi archivistici sono copiati, avvolte in maniera erronea, da altre agenzie con più esperienza e adattate alle necessità correnti dell'istituzione.

Personalmente, mi sono trovato in tali situazioni in cui delle pseudo-regole interne firmate in modo ufficiale dai capi delle amministrazioni o dai direttori, erano copiate da altre agenzie più vecchie, con una serie di errori (ad esempio: due delle Agenzie Esecutive dell'UE hanno copiato il Filing Plan dell'ECHA<sup>5</sup>, mantenendo l'organigramma di quella istituzione che non aveva niente a che fare con l'istituzione in cui doveva essere applicata l'organigramma). Ma questi errori sono stati notati e sono riuscito a rimediarli nell'ambito della mia attività. Questo fenomeno di "prestito" dalle istituzioni-madre o da agenzie più vecchie, è già spesse volte incontrato anche in altre categorie di attività (la procedura del dipartimento di acquisizioni, l'autorizzazione dei pagamenti, ecc.). Una serie di specialisti della Commissione Europea hanno realizzato inizialmente certi strumenti archivistici o documenti-quadro, ma il personale delle istituzioni subordinate, che nella più parte dei casi non aveva degli studi di specialità, li ha copiati più volte, senza prestare attenzione ai dettagli e alle trasformazioni nel senso della personalizzazione e adattamento delle condizioni, realtà, scopo o ambiente lavorativo dell'agenzia subordinata.

La Commissione Europea concede un'importanza speciale ad un buon management dei documenti in tutti i sensi di questa espressione. I documenti sono l'ambiente in cui l'informazione è depositata e trasmessa; inoltre, ha valore amministrativo, finanziario-fiscale o legale e costituisce la base per la memoria a breve, medio e lungo termine.

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<sup>5</sup> Agenzia Europea per le Sostanze Chimiche, con sede in Helsinki, Finlandia.

Dalla prospettiva delle istituzioni europee, il management dei documenti deve:

- creare, ricevere e stoccare i documenti
- identificare ciascun documento attraverso certi aspetti, in modo che siano ordinati, cercati e rilevati.
- conservare la memoria dell'istituzione, conservare la prova dell'attività svolta e l'adempimento degli obblighi di legge.
- permettere lo scambio facile d'informazioni.

## **2. Gestione della informazione all'interno delle istituzioni dell'Unione Europea**

Il primo passo nel management dei documenti delle istituzioni europee è costituito dalla loro registrazione. Questa attività consiste in due operazioni distinte che sono realizzate insieme in presenza del documento originale, salvando il metadata<sup>6</sup> sul documento insieme alla connessione del documento con il suo metadata.

1. Il salvataggio dei metadata di un documento avviene in maniera automatica in un sistema permettendo la sua descrizione in fini amministrativi, legali ed archivistici. IL metadata di un documento contiene le seguenti elementi descrittivi: la data del documento; la data di registrazione; il numero unico di registrazione; l'autore del documento e, nel caso di una persona fisica, il dipartimento o l'organo a cui appartiene; il destinatario del documento; il livello di sicurezza – ove applicabile; il titolo o il soggetto del documento; il tipo di documento contenuto; il titolo rilevante del piano di creazione dei fascicolo e, più specificamente, il titolo del fascicolo; il numero e una breve descrizione degli allegati, se possibile.
2. La permanente connessione dei metadata con il relativo documento. Un documento registrato non può essere cambiato, salvo la correzione di certi errori del documento stesso o dei metadata contenuti.

Il più usato software per registratura nelle istituzioni europee è ADONIS. Di solito, questo software è usato in inglese<sup>7</sup> ed usa i maiuscoli.

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<sup>6</sup> Rappresenta tutte quelle informazioni che permettono l'identificazione e l'attribuzione di un'identità unica ad un documento/unità archivistica.

<sup>7</sup> La lingua inglese essendo una delle 3 lingue le più usate nella comunicazione all'interno del sistema dell'UE, insieme al francese e tedesco.

Questo programma ha anche il ruolo di base di dati di tutti i documenti ufficiali, scansionati e conservati in connessione ai metadati allocati. L'altra funzione di questo software è quella di seguire permanentemente dove si trova un documento nel suo circuito, dall'entrata o creazione nell'istituzione e fino alla formulazione della risposta, nonché il suo trasferimento al richiedente. L'aspetto positivo notato in comparazione al sistema di registrazione usato da noi, è che i documenti non arriva più al capo dell'unità per la ripartizione ufficiale della corrispondenza, invece sono distribuite fin dall'inizio, insieme alla loro registrazione e scansione in ADONIS ma anche con l'attribuzione di metadati. In questo senso, di solito, il capo dell'unità è responsabile solo con l'autorizzazione dei documenti ufficiali quando questi documenti escono dall'istituzione, all'occasione della formulazione di una risposta ufficiale o di una comunicazione ad una certa entità.<sup>8</sup>

*La creazione dei fascicoli* è la successiva fase per quanto riguarda il ciclo di vita dei documenti delle istituzioni europee, avendo come scopo di completare l'integrazione dei documenti ricevuti o creati nelle risorse documentarie dell'istituzione, di organizzare questi documenti in conformità alla relazione originale con l'autore e le attività di cui sono collegati, riflettendo le circostanze in cui sono stati creati. Per gli elementi descritti in precedenza, i dipendenti delle istituzioni europee con attribuzioni nel campo della gestione dei documenti e degli archivi, sono richiesti di avere delle conoscenze nel campo della descrizione archivistica.<sup>9</sup>

Le risorse documentarie dell'istituzione sono presentate dal *Piano di creazione dei fascicoli* (Filing plan), previsto con molteplici livelli, come segue:

-i primi 3 livelli hanno una struttura arboricola e sono noti sotto il nome di "Nomenclatura comune" - definita dal Segretariato-Generale e contiene le principali Direzioni Generali/Servizi

-i seguenti livelli sono quelli subordinati ai primi 3.

Il Segretariato-Generale è responsabile della dotazione delle istituzioni con il software NOMCOM, il responsabile della realizzazione dei livelli arboricoli del Filing plan. L'applicazione è accompagnata dal Sistema di Management Elettronico dei Documenti (EDMS).

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<sup>8</sup> Questo sistema/pratica è nominato Authorisation Officer.

<sup>9</sup> Si usa dunque una serie di norme archivistiche e regolazioni come ad esempio: MoReq 2, ISAD (G), ISAAR (CPF), ISO 15489, MoReq2 ecc.

## Esempio di Filing plan:

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### MANAGEMENT DELL'ISTITUZIONE G01 FASCICOLI GENERALI

G01.1 Composizione e mandato dell'istituzione

(Contiene la base legale, lo schema di organizzazione ecc.)

G01.2 Procedure interne

(Collezione di regolamenti implementati: note d'istruzione, amministrative, guide, manuali)

G01.3 Reclami/cause legali/controllo

(Registro reclami /controllo)

### G10 RELAZIONE CON ALTRI ORGANISMI

Attività di determinazione di rapporti formali tra l'istituzione e altre agenzie, organizzazioni e ONG.

G10.1 Istituzioni europee & Servizi

G10.1.1. Commissione Europea

G10.1.2. Parlamento Europeo

G10.1.3. Consiglio Europeo

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I principi generali della creazione e management dei fascicoli hanno alla base il concetto di *Chef de file* che non è una persona, piuttosto un'unità della Commissione o istituzione e si riferisce alla responsabilità che collega l'unità con la funzione (un tipo di creatore o responsabile), che è obbligato a fornire i metadati necessari alla creazione dei fascicoli.

## 3. La preservazione delle informazioni nel sistema delle istituzioni dell'Unione Europea

I dipartimenti della Commissione e delle istituzioni subordinate devono garantire la protezione fisica dei documenti e dei fascicoli integrati nel sistema di risorse documentari dell'istituzione.

La protezione fisica include le tecniche e pratiche usate per la preservazione dei fascicoli, in modo che la loro integrità e legittimità nel tempo sia garantita al fine di poter accedere a questi fascicoli indipendentemente dall'ambiente.

La protezione fisica dei fascicoli include:

-la definizione dell'organizzazione e responsabilità della preservazione all'interno dei dipartimenti dell'istituzione.

-la protezione fisica nel tempo, in accordo con le disposizioni dell'elenco comune di ritenzione e, se necessario, con l'aiuto dell'Elenco specifico di ritenzione.

-protezione fisica in spazi di conservazione.

-archiviazione delle preservazioni, registrazione e messa in fascicoli dei metadati e di tutti i metadati rilevanti che accompagnano i fascicoli durante il ciclo di vita dei documenti.

-definizione di una procedura di eliminazione dei documenti, elemento che è oggetto di una procedura amministrativa dell'eliminazione, in conformità all'Elenco comune di ritenzione della Commissione, e, se applicabile, all'Elenco specifico di ritenzione a livello del Dipartimento o Direzione Generale.

#### *Elenco comune di ritenzione della Commissione<sup>10</sup>*

È il documento che offre il quadro di base della preservazione dei documenti delle istituzioni e direzioni subordinate. A livello analitico, ciascuna istituzione in parte può creare l'Elenco specifico di ritenzione adattato alle categorie di documenti creati e allo specifico della sua attività.

L'Elenco comune di ritenzione della Commissione Europea si propone di:

-identificare ciascun tipo di fascicolo creato dalla Direzione Generale o dall'istituzione creatrice (i relativi dipartimenti) per garantire il fatto che sono conservati in ottime condizioni.

-descrivere il periodo di conservazione per ciascun tipo di documento in parte, prendendo in considerazione l'utilità amministrativa per dipartimenti, gli obblighi statutari e di legge, ma anche il potenziale valore storico di questi documenti.

Il periodo di ritenzione per ciascun documento/fascicolo in parte è determinato da:

-il suo periodo di ritenzione amministrativa (ARP)

-l'azione che sarà iniziata alla fine del ARP (post-ARP<sup>11</sup> o la prima revisione/analisi)

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<sup>10</sup> Un tipo di Nomenclatura archivistica da noi a carattere generale.

-ove necessario, l'azione sarà realizzata dopo il trasferimento negli archivi storici<sup>12</sup>

#### *Schema dell'Archivio*

È un documento amministrativo che dev'essere creato e adottato dalla Direzione-Generale/Istituzione per determinare la procedura o le azioni che derivano internamente dalle regole d'implementazione della preservazione e dall'Elenco comune di ritenzione.

Questo strumento pratico definirà per ciascun dipartimento o servizio, le azioni che saranno prese, i partner coinvolti e le loro responsabilità in connessione alla preservazione dei documenti, in base allo schema di conservazione dei documenti, che è determinato dall'Elenco comune di ritenzione della Commissione, e se possibile in caso di necessità, dall'Elenco specifico di ritenzione del dipartimento in causa.

#### **Esempio di Elenco di ritenzione:**

TIPO FASCICOLO	CODICE FASCICOLO	DESCRIZIONE	PERIODO RITENZIONE AMMINISTRATIVA	DISPOSIZIONE TRASFERIMENTO/ELIMINAZIONE	LIVELLO DI CLASSIFICAZIONE/ACCESSO NOTE
<b>MANAGEMENT DELL'ISTITUZIONE</b>					
<b>FASCICOLI GENERALI</b>	<b>G01</b>				
01.1	Composizione e mandato dell'istituzione	G01.1	Contiene la base legale, lo schema di organizzazione	10 ANNI	PERMANENTE  PUBBLICO
01.2	Procedure interne	G01.2	Collezione di regolamenti implementati: note d'istruzione, amministrativi, guide, manuali	5 ANNI	1 FASCICOLO / ANNO  ELIMINAZIONE
01.3	Reclami/cause legali/controllo	G01.3	Registro reclami/controllo	20 ANNI	PERMANENTE  RISERVATO

<sup>11</sup> In caso di post-ARP, in conformità alle regolazioni dell'UE, abbiamo a che fare con 3 opzioni: 1. Eliminazione dall'archivio; 2. Trasferimento negli archivi storici e 3. Selezioni in base a campioni (a fini dimostrativi, si conserva un fascicolo di ciascuna categoria di documenti).

<sup>12</sup> In caso di post-trasferimento, sono possibili 2 azioni: 1. Conservazione permanente e 2. La 2° revisione.



*Periodo di ritenzione amministrativa*

Le istituzioni subordinate alla Commissione Europea e alle Direzioni-Generali sono consigliate di conservare i documenti creati (in formato cartaceo, elettronico o ibrido) per l'intero periodo di ritenzione amministrativa stabilita in base all'Elenco comune di ritenzione della Commissione. Durante questo periodo, i fascicoli non possono essere eliminati<sup>13</sup>

Il periodo di ritenzione amministrativa inizia dal momento della chiusura del fascicolo, che costituisce la data in cui il più recente documento è inserito nel contenuto del fascicolo. Il fascicolo è chiuso solo dal *Chef de file* (l'entità responsabile per la creazione dei fascicoli), quando il caso/oggetto del fascicolo è chiarito/chiuso e quando altri documenti aggiuntivi non si aggiungono più al fascicolo. Certi eventi sono quelli che possono impedire il dipartimento di realizzare la chiusura del fascicolo. Ad esempio: nel caso di un'indagine in cui si sospettano delle irregolarità o sono stabilite delle frodi nei confronti di un fascicolo aperto con implicazioni finanziarie, questo fascicolo può essere chiuso solo se si stabilisce o si chiarificano i problemi relativi alle irregolarità oppure si rettificano questi problemi.

La procedura amministrativa di eliminazione dei documenti che si trovano nel periodo di ritenzione amministrativa è applicata a certe categorie di documenti ben definiti e obbliga l'istituzione o la Direzione-Generale ad eliminare tali documenti o informazioni per certe ragioni fondate, insieme ai dati protetti (di solito, dati personali). Nell'Elenco di preservazione ci devono essere delle menzioni separate e speciali relative alla sua eliminazione durante il periodo amministrativo di conservazione.

Il processo di eliminazione dev'essere fatto in base a dei documenti giustificativi e bisogna che questi documenti siano permanentemente conservati, fino alla completa distruzione dei fascicoli dall'interno dei quali sono stati distrutti o eliminati degli elementi documentari.

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<sup>13</sup> Nel caso in cui il fascicolo esiste in formato cartaceo ed elettronico, l'eliminazione di uno dei esemplari non costituisce l'eliminazione del fascicolo. Se il dipartimento sceglie di eliminare il fascicolo cartaceo, è necessario prendere in considerazione le disposizioni della Commissione relative ai documenti elettronici e digitalizzati, poi non deve distruggere quei documenti che contengono le firme personali autografe (contratti, verbali delle riunioni dei dipartimenti, ecc.). Queste categorie di documenti devono essere conservate in formato cartaceo e la Direzione Generale/Istituzione deve poi avere in possesso i documenti in un formato ibrido (cartaceo o elettronico).

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*Valutazione e trasferimento dei documenti creati agli Archivi Storici della Commissione Europea o dell'Unione Europea.*

Le Direzioni Generali/Istituzioni faranno una revisione dei loro archivi in conformità all'Elenco di ritenzione in vista della loro eliminazione o trasferimento agli archivi nazionali per permanente conservazione, alla fine del termine di ritenzione amministrativa.

I documenti che non sono oggetto dell'elenco di ritenzione seguiranno la stessa procedura di revisione per determinare il successivo passo, senza superare il periodo di 15 anni dalla loro creazione. Il Servizio degli Archivi Storici Europei può rifiutare il trasferimento dei documenti, e in questo caso, il dipartimento coinvolto sarà informato sui motivi del rifiuto.

Nell'ambito dell'Istituzione o dei dipartimenti adeguati, il responsabile del management dei documenti<sup>14</sup>, sotto l'autorità del direttore o del capo della struttura, ha il carico di effettuare la prima verifica/valutazione dei fascicoli ed è incarico con il trasferimento presso gli Archivi Storici. Loro possono rifiutare il trasferimento nel caso in cui le regole archivistiche non sono correttamente applicate ed i documenti non corrispondono alle norme.

I documenti ed i fascicoli che non sono stati identificati con un contenuto d'informazioni classificate o informazioni sensibili, possono essere aperte al pubblico entro e non oltre 30 anni dalla loro produzione.

*Regole di valutazione, prelevamento di campioni, selezione, trasferimento o eliminazione dei documenti creati*

La valutazione dei fascicoli consiste in una prima e poi in una seconda revisione. La prima è applicabile a tutti i fascicoli dopo la scadenza del periodo di conservazione amministrativa. Nel caso in cui anche la seconda revisione è prevista nell'Elenco di ritenzione, essa sarà fatta entro e non oltre 25 anni dopo che i fascicoli sono chiusi/creati.

*La prima revisione:* In base all'Elenco comune di ritenzione della Commissione oppure all'Elenco speciale di ritenzione, ciascun'istituzione è obbligata almeno una volta all'anno di fare una revisione dei documenti che hanno superato il termine di ritenzione amministrativa. Alla fine, questi documenti saranno portati per eliminazione o trasferimento agli Archivi Storici, e lì, se del caso, si prelevano dei campioni e si selezionano i documenti.

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<sup>14</sup> Chiamato Document Management Officer (DMO).

*La seconda revisione:* I fascicoli creati che superano la prima valutazione, trasferiti agli Archivi Storici, sono oggetto della permanente conservazione o di una seconda valutazione/revisione. Di solito, questa procedura è realizzata dal Servizio degli Archivi Storici in cooperazione con il dipartimento da dove provengono i documenti entro e non oltre 25 anni dalla chiusura dei fascicoli contenuti. Le decisioni che seguono a questa seconda revisione sono basate sul valore storico dei documenti contenuti e sono motivo di conservazione permanente o eliminazione, nel caso dei documenti che non sono oggetto della permanente conservazione.

La prelevazione di campioni e la selezione di documenti sono operazioni attraverso le quali una parte dei fascicoli è eletta per conservazione da un volume più grande di documenti e il resto è eliminato.

Di solito, sono eletti i più rappresentativi fascicoli per creare dei campioni di questi documenti.

Questa procedura dev'essere pienamente documentata, e la documentazione deve contenere i seguenti tipi d'informazioni:

a) Giustificazione e scopo della procedura di prelevazione di campioni e selezione di fascicoli.

b) Elenco dei fascicoli che saranno soggetti alla procedura includendo delle informazioni come: riferimenti alle categorie di documenti rilevanti dall'Elenco di ritenzione; indicazione dei fascicoli eletti per la futura conservazione; indicazione dei fascicoli rimasti che saranno eliminati.

Quando queste due procedure succedono alla prima valutazione, la documentazione che è alla base alla procedura sarà realizzata dal dipartimento creatore.

Nel caso della seconda valutazione, il Servizio degli Archivi Storici creerà la documentazione necessaria e gli elenchi dei fascicoli saranno inviati in coppia al Dipartimento da cui provengono questi fascicoli o al loro successorio.

Per quanto riguarda l'eliminazione dei documenti in seguito alle valutazioni, essa sarà fatta in conformità alle disposizioni di sicurezza vigenti e si riferiscono alla distruzione o eliminazione fisica o elettronica dei documenti elettronici che non sono utili. Inoltre, l'eliminazione sarà documentata includendo i seguenti documenti:

- a) giustificazione per l'eliminazione dei fascicoli
- b) elenco dei documenti eliminati includendo i loro metadati rilevanti
- c) dipartimento e personale responsabile per la decisione dell'eliminazione
- d) dipartimento e persona responsabile per l'eliminazione o distruzione, condizioni di eliminazione, metodi di distruzione, in rispetto di tutte le procedure legali.

Il Dipartimento che si occupa di questa operazione è obbligato a trasmettere una copia di questi documenti al Servizio Archivi Storici a cui appartengono.

Il trasferimento dei documenti considerati con termine permanente di conservazione avverrà insieme al modulo e ai metadati dei documenti che saranno inviati per una ricezione conforme e poi per un trattamento di questi documenti da parte del Servizio degli Archivi Storici. Il documento di trasferimento – la comunicazione ufficiale, dev'essere firmato dal responsabile per la gestione dei documenti sotto l'autorità del Direttore Generale o del capo del Dipartimento creatore e controfirmato dal Servizio degli Archivi Storici dove i fascicoli saranno consegnati.

Il Segretariato Generale della Commissione, attraverso il servizio archivistico interno è responsabile per la coordinazione della gestione dei documenti, per il monitoraggio e implementazione delle norme comuni da parte dei dipartimenti ed istituzioni creatrici di documenti per: la registrazione dei documenti; la creazione dei fascicoli e la loro gestione; la preservazione dei documenti; la valutazione e trasferimento dei documenti permanenti presso gli Archivi Storici di ciascuna Istituzione o Dipartimento competente a cui appartiene<sup>15</sup>

#### *Documenti elettronici e digitalizzati*

Sono tutti quei documenti ufficiali creati in formato elettronico e firmati con firma elettronica standardizzata e autenticata, rispettando certe norme. Nel caso di questi tipi di documenti è obbligatorio che siano accompagnati dai metadati che conferiscono autenticità e chiarezza. La

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<sup>15</sup> Gli Archivi Storici della Commissione di Bruxelles o gli Archivi Storici dell'Unione Europea di Firenze.

Direzione Generale per la Tecnologia delle Informazioni della Commissione Europea sosterrà tutti i dipartimenti e tutte le istituzioni subordinate per il buon utilizzo della firma elettronica e dei metadati nella creazione di documenti virtuali.

La politica di digitalizzazione dei documenti in formato cartaceo prevede la realizzazione di garanzie di permanenza, leggibilità, legittimità nel tempo e di facilitare l'accesso alle informazioni contenute da questi documenti. Senza danneggiare il contenuto dei documenti iniziali, la procedura di digitalizzazione impone il salvataggio dei documenti elettronici sotto 2 aspetti:

- a) PDF o PDF/A
- b) TIFF con una risoluzione minima di 300 DPI

Questi formati sono poi migliorati dal punto di vista qualitativo attraverso la procedura di riconoscimento ottico dei caratteri (OCR)<sup>16</sup>, lasciando l'immagine intatta e facilitando la ricerca nel testo integrale.

Quando i documenti originali sono in formato cartaceo e le firme sono una formalità sostanziale, questi documenti sono conservati e saranno trasferiti in conformità alle regole del management dei documenti. A richiesta degli organi di controllo o delle missioni di audit, questi documenti devono essere conservati in conformità alle regole dell'audit e di tutti i tipi di controllo. Tutte le richieste amministrative sono soddisfatte in precedenza attraverso la produzione di documenti digitali o digitalizzati.

Se si tratta di documenti in formato cartaceo le cui firme non sono oggetto di eventuali controlli, questi documenti possono essere eliminati alla fine del periodo, dopo il controllo di qualità e la validazione dei risultati della fase di digitalizzazione.

La Commissione Europea lavora con un centro di conservazione dei documenti elettronici e la sua architettura prende in considerazione il fatto che i requisiti per i documenti elettronici che sono conservati a breve e medio termine (documenti elettronici correnti e intermediari), non sono gli stessi come quelli per i documenti che devono essere conservati a lungo termine (documenti elettronici/archivi storici o definitivi). Per questo motivo, il deposito dei documenti elettronici è costituito da 2 moduli:

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<sup>16</sup>Optical Character Recognition.

1. Il deposito dei documenti elettronici per documenti correnti e intermediari

2. Il deposito dei documenti elettronici per archivi storici o permanenti.

Per l'eliminazione o cancellazione dei dati elettronici, la procedura è la stessa con quella usata nel caso dei documenti in formato cartaceo. La differenza è che dopo la prima valutazione, i dati rimasti nel caso in cui non è presa la decisione della loro eliminazione, sono trasferiti dal primo deposito in quello dei documenti elettronici che sono permanentemente conservati.

Le funzionalità dei documenti elettronici sono le seguenti:

-la registrazione dei documenti in accordo con le regole specifiche di registrazione

-la messa in fascicoli/la creazione di documenti digitali tenendo conto delle regole di costituzione dei fascicoli

-la preservazione dei documenti insieme ai metadati contenuti

-la migrazione dei dati nell'ambiente informazionale ad intervalli sufficienti in modo da garantire la leggibilità ed accessibilità dei documenti per quanto sarà necessario.

-la facilitazione del management di una lingua e delle versioni più vecchie all'interno dello stesso documento

-l'impronta con l'ora o la data che certifichi il documento ed i relativi metadati.

- la non-alterazione dei documenti previsti con firma digitale o con impronta digitale di sicurezza

-il management dell'accesso e controllo basato su diritti predefiniti degli utenti e dell'amministratore del sistema, ma anche il livello di accessibilità ai documenti digitali.

-la ricerca efficace delle informazioni necessarie.

#### **4. Conclusioni**

Il presente studio ha lo scopo di presentare e rilevare le principali caratteristiche del sistema di gestione delle informazioni e degli archivi che si trova all'interno delle istituzioni europee, in base alle esperienze e curiosità personali che ho avuto nei confronti di questo argomento.

Le istituzioni europee funzionano in maniera decentralizzata, essendo indipendenti nella creazione di politiche proprie di archiviazione e gestione delle informazioni in base a dei regolamenti e norme create dagli organismi centrali (specialmente il Segretariato-Generale della Commissione Europea di Bruxelles). Dalla prospettiva archivistica, le istituzioni europee utilizzano il modello archivistico sassone, mettendo l'accento su "Documenti elettronici - "Records"- tutti i documenti catturati/registrati nel proprio sistema di gestione dei documenti per tutto il periodo di conservazione amministrativa.

La differenza maggiore rispetto al modello archivistico rumeno è il fatto che alla fine del periodo di conservazione amministrativa, i documenti sono soggetti a più valutazioni per determinare il loro valore storico e documentale, e all'occasione di ciascuna valutazione sono create delle documentazioni e giustificazione che hanno il fine di rilevare l'importanza degli atti in causa.

Vista la tendenza internazionale di uniformizzazione archivistica (norme, pratiche, cooperazione transfrontaliera), ho la convinzione che, in futuro, anche nel nostro paese ci sarà un sistema archivistico simile a quello internazionale.

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## SUMMING UP THE EASTERN PARTNERSHIP

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DOI:10.24193/subbeuropaea.2017.1.05

Published Online: 2017-03-15

Published Print: 2017-03-30

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### **Abstract:**

*The paper offers an overview of the evolution of the Eastern-Partnership, viewed from the main conclusions of each Summit dedicated to the EaP. I tried to analyse separately each summit, and the evolution of political discourse is significant. If in 2009 they spoke in Prague about an ambitious project, which encouraged good governance and development of new economic partnerships, the last summit at Riga in 2015, drew a real alarm on the worrying developments around Romania. The Eastern Partnership was intended to provide within the EU a tangible support and comprehensive democratic transformation, and an oriented market.*

**Keywords:** Eastern Partnership, summit, Romania, EU

### **Introduction**

The Eastern Partnership (EaP) is a joint initiative involving the EU, its member states and 6 eastern European partners: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

The Russian-Georgian conflict in August 2008 showed the vulnerability of these countries and the lack of readiness of the international community to take a coherent position for similar situations.

Therefore, the EU policy had to be stronger, proactive and coherent. The Eastern Partnership was intended to provide within the EU a tangible support and comprehensive democratic transformation, and an oriented

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market. The base of the Eastern Partnership (EaP) is a Polish-Swedish proposal<sup>1</sup> that aimed to balance the position in the East, as the French counterpart to the development proposal on the Union for the Mediterranean.

On 7<sup>th</sup> May 2009 in Prague, the European Union summit was held which officially launched the Partnership Eastern in order to "deepen political cooperation and economic integration" without offering however, certain perspectives on the integration of these countries into the EU.<sup>2</sup>

The Prague Summit showed that EaP aimed to have an architecture with four thematic platforms on multilateral cooperation - democracy, good governance and stability; economic integration and Convergence with EU Policies; security energy; human contact - that are open to Member States concerned and for the six partner states. Also, this formula allowed flexible launch of six flagships under the Eastern Partnership: initiative for SMEs; initiative energy; initiative prevention, preparedness and response natural or caused by human factors.<sup>3</sup> This mechanism, once triggered, trained on the one hand, substantial expectations and negotiations related to EU from the partner countries (and Companies in these countries) who set ambitious targets on their relations with the European Union, but on the other hand, generated opposition from the Russian Federation, that considered that its interests were threatened in the region.

The third Eastern Partnership Summit, held in autumn 2013 in Vilnius<sup>4</sup>, Lithuania, has highlighted the extreme tension gained in the Eastern Europe and in some of the states in this region. The option, in fact the non-option, of the politicians in Kiev, on signing the Association Agreement with the European Union, was a result of the pressures from the Russian Federation. Rejecting the agreement and joining the Russian initiative, the Eurasiatic Union, triggered a spiral of clashes which has ended with a

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<sup>1</sup> *The Polish-Swedish proposal*, [<http://www.msz.gov.pl/Polish-Swedish.proposal.19911.html>], accessed on 20.03.2017.

<sup>2</sup> *Parteneriatul Estic: bilanț de etapă*, [<http://www.idr.ro/publicatii/Policy%20Paper%206.pdf>], accessed on 20.03.2017.

<sup>3</sup> *Eastern Partnership*, [[https://eeas.europa.eu/topics/eastern-partnership\\_en](https://eeas.europa.eu/topics/eastern-partnership_en)], accessed on 20.03.2017.

<sup>4</sup> *Joint Declaration of Eastern Partnership Summit*, Vilnius, 28-29 November 2013, Press Releases, [[http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/139765.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/139765.pdf)], accessed on 20.03.2017.

political catastrophe in Ukraine and a geo-political cataclysm at the European geopolitical scale.<sup>5</sup>

The Eastern Partnership made significant progress in 2014. The new Association Agreements signed with Georgia, Moldova and Ukraine were already being provisionally applied. For Georgia and Moldova, provisional application already included the Deep and Comprehensive Free Trade Area (DCFTA), while for Ukraine provisional application of this part of the agreement has been postponed until the end of 2015. The AA/DCFTAs involved ambitious political, economic and social reform agendas, drawing the eastern partner countries concerned closer to the EU.<sup>6</sup> Against the background of the Ukrainian political crisis, the EU launched an unprecedented programme of support to help Ukraine stabilise its economy, assist with transition, encourage political, judicial and economic reforms and support inclusive development. The EU has also offered various forms of support to Moldova and Georgia, to help these countries cope with the pressure that has been exerted on them following their decision to sign the Association Agreements. Further progress has been made towards visa liberalisation for short-term travel.<sup>7</sup> The aim was for citizens in Eastern partner countries to benefit from mobility within a secure, well-managed environment. Visa-free travel to the EU has been possible from Moldova since the end of April 2014, and Georgia and Ukraine were working to implement their Visa Liberalisation Action Plans.

Visa Facilitation and Readmission Agreements were being negotiated with Belarus. Over the past year, EU institutions, EU Member States, the Eastern partner countries and other parties involved have continued to work to increase the visibility of the Eastern Partnership and to make individuals, businesses and society as a whole more aware of the benefits it can bring. Eastern partner countries have been pursuing the agreed reforms in preparation

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<sup>5</sup> *Parteneriatul Estic al Uniunii Europene și limitele procesului de „europenizare” a Estului*, (Eastern Partnership of European Union and the limits of the Europeanization of the East) [[http://revistapolis.ro/documente/revista/2015/Numarul\\_4\(10\)2015/editorial/7.%20Gheorghe%20Ciascai.pdf](http://revistapolis.ro/documente/revista/2015/Numarul_4(10)2015/editorial/7.%20Gheorghe%20Ciascai.pdf)], accessed on 20.03.2017.

<sup>6</sup> *Implementation of the European Neighbourhood Policy Eastern Partnership Implementation Report* [[https://eeas.europa.eu/sites/eeas/files/enp-regional-report-eastern\\_partnership\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/enp-regional-report-eastern_partnership_en.pdf)], accessed on 20.03.2017.

<sup>7</sup> *Ibidem*.

for the 2015 EaP Summit in Riga, which reviewed the implementation of the countries' commitments and the progress they have achieved.<sup>8</sup>

### **The Summit in Prague, 2009**

The final document stated that the EU needs *a more ambitious partnership* between the European Union and the partner countries. The participants of the Prague Summit agreed that the Eastern Partnership will be based on commitments to the principles of international law and to fundamental values, including democracy, the rule of law and the respect for human rights and fundamental freedoms, as well as to, market economy, sustainable development and good governance. The Eastern Partnership was meant to be developed in parallel with the bilateral cooperation between the EU and third states. The main goal of the Eastern Partnership was to *create the necessary conditions to accelerate political association and further economic integration between the European Union and interested partner countries. The significant strengthening of EU policy with regard to the partner countries will be brought about through the development of a specific Eastern dimension of the European Neighbourhood Policy.* The idea was to have a more stable, secure and prosper Europe, securing the region that needed it the most. In this regard, The Eastern Partnership carried a clear political message, about the need *to maintain and bolster the course towards reforms.*

The final statement from Prague revealed the need for Association Agreements between the EU and the partner countries. Open markets and economic integration were essential to the sustainable economic development of the partner countries and to underpin political stabilisation.

Other main subjects that came up at the Summit were to support the mobility of citizens and visa liberalisation in a secure environment, and energy security.

Four thematic platforms currently organised by the European Commission were launched for target-oriented sessions and serve for open and free discussions, on the basis of the main areas of cooperation, namely Democracy, good governance and stability; Economic integration and

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<sup>8</sup> *Ibidem.*

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convergence with EU sectoral policies; Energy security; and Contacts between people.<sup>9</sup>

### **The Summit in Warsaw, 2011**

The participants renewed their commitment to the objectives from Prague. The agenda agreed in Prague contained the guiding principles of the Eastern Partnership, and the participants of the Warsaw Summit reaffirmed their commitment to implement them fully.

After two years, it was highlighted the particular role for the Eastern Partnership *to support those who seek an ever closer relationship with the EU*. The final statement included the subject of *political and economic reforms that have been implemented in partner countries and relations between the EU and its Eastern European partners have deepened significantly*. The trade and economic interaction between the EU and its Eastern European partners increased, and, in order to consolidate this trend, the EU and most of its partners were engaged in negotiations on Association Agreements which also lead to Deep and Comprehensive Free Trade Areas.

The EaP launched dialogues on visa-free regimes with Ukraine and the Republic of Moldova. Visa-facilitation and readmission agreements were being implemented with Georgia.

Due to the recent economic crisis, back in 2009, EU provided within EaP, the Macro-Financial Assistance to some partner countries. The EU macro-financial assistance instrument was meant to be mobilised in the future to assist partner countries to address short-term balance-of-payments difficulties when the pre-conditions were met and when the programmes were linked to a meaningful reform agenda.

EaP encouraged also the participation of partner countries in EU programmes and agencies. Therefore, it was highlighted at the Summit the *signature of a Memorandum of Understanding on the association of the Republic of Moldova to the 7th Framework Programme for Research and Technological Development*. Aslo, the participants of the Warsaw Summit welcomed the

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<sup>9</sup> *Joint Declaration of the Prague Eastern Partnership Summit*, Prague, 7 May 2009 [[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/er/107589.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/107589.pdf)], accessed on 22.03.2017.

entry into force of a protocol enabling the participation of the Republic of Moldova in EU programmes and the recent signature by Ukraine of a similar protocol.

Another important point on the agenda was to further strengthen long term energy security, including through cooperation on stable and secure energy supply and transit, nuclear safety, competitive energy markets, and through enhancement of physical infrastructure. The EU always tried to find new routes of supply of energy to the European market from the Caspian Sea, that's why they came up with the project of the Southern Corridor.

In the area of social environment, the EU underlined at the Warsaw Summit the important role of civil society in pursuing the goals of the Eastern Partnership, which promoted democracy, sustainable socio-economic development, good governance and the rule of law. The Eastern Partnership Civil Society Forum and its National Platforms were essential to promote democratic values on which the Eastern Partnership is based.

At the political level, the Summit in Warsaw emphasised *the EU's strengthened role in conflict resolution and confidence building efforts in the framework or in support of existing agreed formats and processes, including through field presence when appropriate*. The participants welcomed the appointment of the new EU Special Representative for the South Caucasus and the crisis in Georgia. They stressed the importance of the presence on the ground of the EU Monitoring Mission in Georgia. They also supported the decision to resume official negotiations in the "5+2" format aiming at a viable and comprehensive political settlement of the Transnistrian conflict.<sup>10</sup>

### **The Summit in Vilnius, 2013**

The Summit participants welcomed the steps taken since the Warsaw Summit to strengthen the Eastern Partnership with the objective of building a common area of shared democracy, prosperity, stability and increased interactions and exchanges. New steps were made, the EU-Republic of Moldova and EU-Georgia Association Agreements including DCFTAs have been initialled. On the other hand, the conflict in Ukraine grew stronger, also the pressure from Russia. That's why, at the Summit in

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<sup>10</sup> *Joint Declaration of the Eastern Partnership Summit, Warsaw, 29-30 September 2011*, [[http://europa.eu/rapid/press-release\\_PRES-11-341\\_en.htm](http://europa.eu/rapid/press-release_PRES-11-341_en.htm)], accessed on 22.03.2017.

Vilnius, the participants were officially informed of the decision by the Ukrainian Government to suspend temporarily the process of preparations for signature of the Association Agreement and Deep and Comprehensive Free Trade Area between the EU and Ukraine.

Seen this as a failure, progress was also made. The summit participants welcomed the launching of the informal Eastern Partnership dialogues and the three rounds successfully held to date (Chisinau, July 2012; Tbilisi, February 2013 and Yerevan, September 2013). *This format has promoted regular, informal exchanges between Foreign Ministers both on the Eastern Partnership agenda and foreign policy issues of common concern and has advanced Eastern Partnership cooperation in key sectors through the engagement of the Ministers concerned from partner countries.* The idea was to deepen the political association and increase political and security policy convergence and effectiveness in the field of foreign policy. In the field of energy, there were highlighted the key developments towards the opening of the Southern Gas Corridor, including the planned modernisation of the South Caucasus Pipeline (SCP), the Trans-Adriatic Pipeline (TAP) and the development of other gas transport infrastructures directly linking the Caspian Region with the EU.

It was noted *Azerbaijan's strategic role in diversifying Europe's energy supplies.* Also, the participants looked forward to continued EU support for the modernization of the Ukrainian Gas Transmission System as a key part of the European grid network, to continued efforts by Ukraine to undertake the further necessary reforms in the gas sector and to the finalization of the dialogue with the International Financial Institutions in order to disburse the first loan for the emergency gas transit project. They noted *the strong energy provisions of the DCFTAs, Ukraine and the Republic of Moldova's work to comply with their obligations under the Energy Community, the on-going work with Ukraine on ensuring bi-directional gas flows, the development of the "Adriatic Gas Corridor" connecting Croatia, Hungary and Ukraine, the steps towards the preparation of the Azerbaijan-Georgia-Romania interconnector (AGRI LNG) project, the progress in determining priority gas and electricity interconnection projects between the Republic of Moldova and the EU.* They also noted Georgia's application to become a member of the Energy Community and Armenia's active observership in the Energy Community.



Discussions have demonstrated that *there were real opportunities for Ukraine to position itself as an Eastern European gas hub after an effective long-term strategy for the use of its gas transmission and storage assets in line with Ukraine's Energy Community obligations.* As in Prague and Warsaw Summit, EU stressed the important role played by civil society, through the Civil Society Forum and its national platforms, in partners' reform processes in encouraging dialogue between civil society and partner countries' authorities on achieving the goals of the Eastern Partnership. They emphasized *the importance of continuing to make available adequate resources as appropriate to support the capacity development and further involvement of civil society in national reform processes.* The Summit also encouraged enhanced inter-parliamentary cooperation within the Euronest Parliamentary Assembly.

The participants invited EU institutions, EU Member States, Eastern European partners and other stakeholders to contribute to the Eastern Partnership visibility Strategy implementation by further informing society in partner countries and the EU of benefits derived from the Partnership, the implementation of the Agreements concluded in the framework of the Partnership for citizens, businesses and the society as a whole.<sup>11</sup>

### **The Summit in Riga, 2015**

The participants of the Riga summit reconfirmed the high importance they attach to the Eastern Partnership as a specific dimension of the European Neighbourhood Policy.

In the framework of the European Neighbourhood Policy and the Eastern Partnership, *the Summit participants reaffirmed the sovereign right of each partner freely to choose the level of ambition and the goals to which it aspires in its relations with the European Union. The acts against Ukraine and the events in Georgia since 2014 have shown that the fundamental principles of sovereignty and territorial integrity within internationally recognised borders cannot be taken for granted in the 21st century on the European continent. The EU remains committed in its support to the territorial integrity, independence and sovereignty of all its partners. Full adherence to all the principles and commitments enshrined in the 1975 Helsinki Final Act and 1990 Charter of Paris by all OSCE Participating*

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<sup>11</sup> *The third Eastern Partnership Summit in Vilnius*, [<http://www.eu2013.lt/en/vilnius-summit>], accessed on 22.03.2017.

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*States, as well as full respect for the principles and provisions of the UN Charter, is critical to our vision of a free, democratic, peaceful and undivided Europe. The participants of the Summit stressed that the Eastern Partnership aims at building a common area of shared democracy, prosperity, stability and increased cooperation and is not directed against anyone. As we can see, the final statement of this summit is very different from the first one. Here, the political level is raised, due to the conflict in Ukraine. The Summit participants talk about rebuilding trust and confidence on Europe, they strongly support all efforts aimed at de-escalation and a political solution based on respect for Ukraine's independence, sovereignty and territorial integrity, they call on all parties to swiftly and fully implement the Minsk Agreements of September 2014 and the package of measures for their implementation of February 2015 and they express their full support for the OSCE and its efforts through the Special Monitoring Mission and the Trilateral Contact Group. They will also continue to support all diplomatic efforts within the Normandy format and appreciate the contribution of Belarus in facilitating negotiations.*

The Summit participants called upon all parties to fully cooperate with the international investigations and criminal proceedings to hold to account those who were responsible for the downing of MH17. The EU reaffirmed its positions taken in the Joint Statement made at the EU-Ukraine Summit on 27 April, including on the illegal annexation of Crimea and Sevastopol. The Summit participants reaffirmed their positions in relation to "UN General Assembly Resolution 68/262 on the territorial integrity of Ukraine".

In the Republic of Moldova, they highlighted the importance of advancing the negotiations in the 5+2 format on a comprehensive political settlement of the Transnistrian conflict, also having in mind what happened in Ukraine and welcomed intensified Chisinau-Tiraspol dialogue in all formats.

They reiterated their full support to the mediation efforts by the co-chairs of the Minsk Group on the Nagorno-Karabakh conflict, including at the level of Presidents and their statements since 2009. Recalling the need to fully implement the 12 August 2008 Ceasefire Agreement, the Summit participants reiterated their commitment to conflict resolution efforts in Georgia, including through the co-chairmanship of the Geneva International Discussions by the EU Special Representative for the South Caucasus and

the crisis in Georgia and the full implementation of the mandate of the EU Monitoring Mission in Georgia. Participants stress the specific role of the OSCE, as an inclusive organisation, in conflict resolution in the region.

On a light manner, the participants of the Summit *reviewed and welcomed the significant achievements in the Eastern Partnership since the Vilnius Summit in 2013, notably the signing and provisional application of the Association Agreements (AA) with Georgia, the Republic of Moldova and Ukraine, which constitute a major step in accelerating these partners' political association and economic integration with the EU* and also underlined the important role that media plays in a democratic society and welcomed the outcome of the Media Conference held in Riga on 20 May and confirmed their continued support for media freedom.

Also, the fact that the visa free regime for citizens from the Republic of Moldova holding a biometric passport, in place since April 2014, has been operating effectively facilitating travel, business and people to people contacts, was seen as a progress. Progress was made also by Georgia and Ukraine in the implementation of their Visa Liberalisation Action Plans as described in the latest Progress Reports by the European Commission.

They also welcomed the launch in 2014 of the first call of Erasmus+ programme fully open to students, young people and universities from the Eastern European partners offering enhanced opportunities for cooperation and mobility. The Summit participants highlighted the accession of Belarus to the European Higher Education Area and looked forward to the report on its progress in implementing the road map of reforms to its higher education system necessary to meet the requirements of the Bologna Process.

As in the previous summits, the energy security was one of the main issues. It was underlined the contribution that energy efficiency and renewable energy can make to increased security of supply, and encouraged practical cooperation between the EU and Eastern European partners in this respect. Progress was made on major energy infrastructure projects and interconnectivity enhancements put in place since the last summit, *including opening natural gas reverse flow capacities to Ukraine from Hungary, Poland and Slovakia, the particular role played by Azerbaijan as well as the contribution by others, including Georgia, in the realisation of the Southern Gas Corridor and the ongoing work on the expansion of the South Caucasus Pipeline, and the Trans-Anatolian Pipeline and the Trans Adriatic Pipeline, the inauguration of the Iasi-*

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*Ungheni gas interconnector, and the preliminary work on Isaccea-Vulcanesti electricity interconnection between Romania and the Republic of Moldova.* Participants concerned reaffirmed their commitment to facilitate the development, in a result-oriented way, of strategic infrastructure, notably in relation to the Southern Gas Corridor. The Summit participants also encouraged and supported *the continuation of gas and electricity interconnections both inside the EU and between the EU and its Eastern European partners, including through standard Interconnection Agreements between Transmission System Operators. They look forward to continued EU support for the modernisation of the Ukrainian Gas Transmission System as a key part of the European grid network.*<sup>12</sup>

The next Eastern Partnership Summit will take place in Brussels in November 2017, according to a draft report prepared by EU member states. The draft paper says the next Eastern Partnership Summit “will review the results” since the last summit held in Riga in 2015 and “discuss the way forward in further strengthening cooperation between the partner countries and the EU as well as among the partners.”<sup>13</sup>

## **The Romanian approach**

After 12 years since joining the EU, Romania will take over from January 1, 2019, for six months, the presidency of one of the most important institutions - the Council of the European Union. Preparing and carrying out this mandate is a national priority. Romania will be therefore, in the centre of European decision, having an important role in facilitating the process of reflection on how to develop and strengthen the European project, the negotiation process for the development of the *acquis communautaire* and thus to strengthening the cooperation between the Member States. *Due to its strategic position to promote regional cooperation and policy support for Moldovan Republic throughout Europe, Romania is directly interested in creating a zone of stability and security in its neighbourhood. The EU Council Presidency 2019 is an*

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<sup>12</sup> *Eastern Partnership Summit, Riga, 21-22/05/2015*, [<http://www.consilium.europa.eu/en/meetings/international-summit/2015/05/21-22/>], accessed on 23.03.2017.

<sup>13</sup> *Report: Eastern Partnership Summit Scheduled for Brussels in November 2017*, [<http://www.rferl.org/a/eu-eastern-partnership-summit-november-2017/28110604.html>], accessed on 23.03.2017.

*opportunity that Romania must take, as a moment to promote a stable and dynamic foreign policy of the EU. Romania can play an active role promoting policies to reform the public administration to uphold the rule of law and protection of fundamental rights. Moreover, if Romania would take as a priority during the presidency, the stability and security of the EU borders, our country would have the interest to host the Eastern Partnership Summit 2019, thereby reinforcing EU geopolitical interests and may give new impetus to the European path for Moldova and Ukraine.*<sup>14</sup>

The recent history in supporting the EaP in Romania is strong. All the ministers of foreign affairs in our country, since 2009, supported this ambitious project.

In April 2015, the Minister of Foreign Affairs at that time, Bogdan Aurescu, spoke about the EaP within the event "*The contribution to the modernization of the European Neighborhood Policy and the Eastern Partnership the EU approach*" Dialogues@MAE. The Romanian official stated that *EaP was intended as a preventive European policy and commitment (to prevent developments leading to antagonism at the European level and to prevent the emergence of competitive models, which are mutually exclusive).*<sup>15</sup>

Its main element of orientation was preservation and going on with a construction based on the trend of convergence between the European and the neighbourhood, including the relation with Russia.

On the other hand, the crisis in Ukraine changed all that and the Summit in Riga confirmed the evolutions. That is why the Riga Summit was of particular significance, also for Romania. The expectations were associated with ensuring the continuity of one of the most important features of European Union policies. The stake was to maintain the level of ambition of the EaP in the current regional circumstances. The difference can be seen in the final statement of the Summit, which has the highest political position, compared with the previous statements of the past EaP summits.

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<sup>14</sup> *Parteneriatul Estic ca prioritate a Președinției Române a Consiliului UE din 2019*, [<http://www.europuls.ro/wp-content/uploads/2017/02/Policy-Brief-Parteneriatul-Estic-ca-Prioritate-a-Pre%C8%99edin%C8%9Biei-Rom%C3%A2ne-a-Consiliului-UE-din-2019.pdf>], accessed on 24.03.2017.

<sup>15</sup> *Discursul ministrului Bogdan Aurescu la cea de a doua sesiune a platformei de dezbatere "Dialoguri@MAE"*, [<http://www.mae.ro/node/31971>], accessed on 24.03.2017.

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One interesting point is the Romanian proposal on *Dialogue platforms for building trust - Security Trusts*. Romania has already tabled for debate at EU level discussions on ENP modernization, a new concept: the proposal of creating "security platforms for dialogue" in a broad sense, the so-called Security Trust. It is about genuine political dialogue platforms, which would be designed to address both security challenges and objectives that take into account each of the actors involved. These Security Trusts can generate an environment of trust and then will increase security conditions and development in an area that goes beyond the immediate vicinity of the Union. As I said, reality shows that it is necessary to build a "belt" of prosperity and security around us through neighbors and neighbors' neighbors. Why? For behold, the problems that led to weakening the security around Europe from "the" neighbors of our neighbors.<sup>16</sup>

The minister Bogdan Aurescu explained which are the main objectives of these Security Trusts. *The main goal is improving the security environment in areas where the objectives of the EU in terms of political proximity (connection) or economic (integration) are not easily achieved. In Romania's view, these dialogue platforms can focus both on the immediate neighbourhood of the European Union and the neighbors adjacent segments, and there is potential involvement of other global players interested in supporting solutions to crises in the vicinity.*<sup>17</sup>

Later on, the Romanian minister of foreign affairs explained that in our country vision, there were three platforms of dialogue that can be considered: one on the Black Sea and the Caucasus, a platform for dialogue on security issues for the Gulf and Middle East, namely one for Sub-Saharan Africa.

These platforms for dialogue on security issues were not meant to include a military dimension, but were considering a number of multidimensional dialogue formats with stakeholders from the region, the main objective being that of bringing to the same table all the stakeholders (regional and global) in a transparent manner to address the issues of divergence of the convergence and achieve a common denominator in terms of areas of common interest in the region.

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<sup>16</sup> *Discursul ministrului Bogdan Aurescu la cea de a doua sesiune a platformei de dezbateri, "Dialoguri@MAE"* [<http://www.mae.ro/node/31971>], accessed on 24.03.2017.

<sup>17</sup> *Ibidem.*

On May 14-15, 2015, the Minister of Foreign Affairs Bogdan Aurescu attended the meeting in Bratislava of the Visegrad Group, in V4-plus format, with the Eastern Partnership states. During the discussions, the Romanian Minister of Foreign Affairs spoke of the need to strengthen the EaP, given the proven usefulness of this instrument and the difficult regional security context. EaP also contributes to maintaining the partner states' commitment to the reform agenda and provides stability in the immediate vicinity. Consequently, after the Summit the focus should go to specifically achieving the EaP's main goal – creating a space of stability and prosperity, peace and stability – mainly by continuing the reform process in the partner states: either by implementing the Association and Free Trade Agreements, in the case of the three states that signed them, or by other tailor-made avenues adapted to the needs and specifics of the other three. Minister Bogdan Aurescu also said that after the Summit a reflection process should start concerning the EaP's evolution in the wider context of revising and updating the European Neighbourhood Policy (ENP).<sup>18</sup>

Supporting the EaP policy went on as a priority also in 2016. Then the Minister of Foreign Affairs, Lazăr Comănescu, has participated on May 2016, in the ministerial reunion of the Eastern Partnership (EaP/the 28 EU Member States, six partner countries: Republic of Moldova, Ukraine, Georgia, Armenia, Azerbaijan and Belarus). The progresses achieved in EU' relation with the EaP partner countries were welcomed, including those concerning the temporary application of the AA/DCFTA provisions in the signatory countries: Republic of Moldova, Ukraine and Georgia, as well as having advanced the negotiations for new cooperation frameworks with Armenia and Azerbaijan and an enhanced dialogue with Belarus.

It was also underscored the importance of the measures taken for increasing the partners' resilience, for enhancing connectivity (energy and transports) and the people-to-people contacts and mobility, focusing on the liberalization of the visa regime for the citizens of Georgia and Ukraine.<sup>19</sup>

Not least, the current minister of foreign affairs, Teodor Meleşcanu, pleads for the need to maintain the strategic policy objectives of the EaP.

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<sup>18</sup> *Minister Bogdan Aurescu attends Meeting of Visegrad Group in V4 + format with Eastern Partners*, [<http://www.mae.ro/en/node/32090>], accessed on 24.03.2017.

<sup>19</sup> *Minister of Foreign Affairs, Lazăr Comănescu, participates in the ministerial meeting of the Eastern Partnership*, [<http://www.mae.ro/en/node/37160>], accessed on 24.03.2017.

The minister Teodor Meleşcanu stressed many times that the relationship with the Republic of Moldova remains a priority of major importance to the foreign policy of Romania and confirmed the determination of Bucharest to continue to support the European course and the reform processes promoted by Chisinau under the Association Agreement and Agreement Deep and Comprehensive Free Trade Area between Moldova and the European Union, whose objective is to meet the aspirations of prosperity and security of all citizens of Moldova.<sup>20</sup>

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<sup>20</sup> *Întâlnire Meleşcanu – Galbur: Republica Moldova rămâne prioritatea politicii externe românești*, [<https://deschide.md/ro/stiri/politic/6424/%C3%8Ent%C3%A2lnire-Mele%C8%99canu-%E2%80%93-Galbur-Republica-Moldova-r%C4%83m%C3%A2ne-prioritatea-politicii-externe-rom%C3%A2ne%C8%99ti.htm>], accessed on 24.03.2017.



7. *Joint Declaration of the Prague Eastern Partnership Summit*, Prague, 7 May 2009 [[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/er/107589.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/107589.pdf)], accessed on 22.03.2017.
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## COMPLEXITIES AND CHALLENGES WITHIN THE EASTERN PARTNERSHIP: ETHNO-POLITICAL SECESSIONISM, FROZEN CONFLICTS, AND *DE FACTO* STATES IN SOUTH CAUCASUS

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DOI:10.24193/subbeuropaea.2017.1.06

Published Online: 2017-03-15

Published Print: 2017-03-30

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### Abstract:

*This article presents and analyzes several key concepts associated with the South Caucasus region, such as secessionism, frozen conflicts, and de facto states. The main goal is to emphasize complexities of this region in terms of ethno-political turmoil and main challenges with respect to the Eastern Partnership. The article is organized in two main parts. The first two sections will briefly overview EU's relations with countries within the South Caucasus (Georgia, Armenia, and Azerbaijan) and the theoretical approaches on ethnic conflicts. The methodological approach employed in this paper will focus on constructivist claims relating to ethno-political conflicts. The second part of the paper will analyze three case-studies (Abkhazia, South-Ossetia, and Nagorno-Karabakh) by focusing on ethno-political secessionism, frozen conflicts, and de facto statehood.*

**Keywords:** Eastern Partnership, South Caucasus, frozen conflicts, *de facto* states, secessionism

### The Eastern Partnership and South Caucasus

In 2004 the European Neighbourhood Policy was initiated. In 2003 the EU appointed a special representative for the South Caucasus in order to support processes of democratization and conflict resolution. The Eastern

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Partnership Initiative (EaP) was launched in 2009, at the Prague Summit, for Eastern Europe and the South Caucasus. Throughout the 1990s the EU had not played a decisive role in the South Caucasus, but in 1999, the loose Partnership and Cooperation Agreement (PCA) came into effect. On the one hand, the EU assumed an active role in promoting human rights and designed the Eastern Partnership, *inter alia*, as platform on democracy, good governance and stability. On the other hand, the European Union is often analyzed in terms of “normative power Europe.”<sup>1</sup> The latter role entails the EU capacity to set norms and then export them through the European Neighbourhood Policy (perceived as process of norms diffusion in the European ‘near abroad’) and especially through the Eastern Partnership. The EU established bilateral relations with countries within the Eastern Partnership (Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine) and one chief objective herein is human rights and stability promotion.

Both Georgia and the secessionist regions (Abkhazia and South Ossetia) were beneficiaries of EU assistance.<sup>2</sup> In 2006, the European Union and Georgia signed the Action Plan on cooperation. In June 2014, Georgia (together with Moldova and Ukraine) signed the Association Agreement with the European Union. Ever since the Maastricht Treaty, the European Union has set the goal of “preserving peace, preventing conflict and strengthening international security” (Art III-193 of draft Constitutional Treaty) and this objective was embedded in the EU-Georgia Action Plan, as Priority area 6 (*Promote peaceful resolution of internal conflicts*), in order to “contribute to the conflict settlement in Abkhazia, Georgia and Tskinali Region/South Ossetia, Georgia, based on respect of the sovereignty and territorial integrity of Georgia within its internationally recognised borders; [...]”<sup>3</sup>

As far as Armenia and Azerbaijan are concerned, they seemed to have embarked on a different path, by joining the Eurasian Economic Union (with Russia, Belarus, Kazakhstan and Kyrgyzstan), and neither of them signed the Association Agreement with the European Union. EU’s relations

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<sup>1</sup> Ian Manners, “Normative Power Europe: A Contradiction in Terms?”, *Journal of Common Market Studies*, vol. 40, 2, 2002.

<sup>2</sup> Nathalie Tocci, *The EU and Conflict Resolution. Promoting peace in the backyard*, London and New York: Routledge, 2007.

<sup>3</sup> EU-Georgia Action Plan, available at

[[http://eeas.europa.eu/enp/pdf/pdf/action\\_plans/georgia\\_enp\\_ap\\_final\\_en.pdf](http://eeas.europa.eu/enp/pdf/pdf/action_plans/georgia_enp_ap_final_en.pdf)], accessed March 2017.

with Armenia are framed within the EU-Armenia Partnership and Cooperation Agreement, which had been signed in 1999 and “which provides for wide-ranging cooperation in the areas of political dialogue, trade, investment, economy, law-making and culture.”<sup>4</sup> Just like Georgia, Armenia benefits from EU assistance through the European Neighbourhood Instrument. EU relations with Azerbaijan are also developing under the Partnership and Cooperation Agreement. However, starting with 2016 the European Commission and the High Representative for Foreign Affairs and Security Policy received a mandate to negotiate a comprehensive agreement with the Republic of Azerbaijan. Since Azerbaijan is an energy partner for the EU, cooperation in the energy field is important. Such cooperation is based on the Memorandum of Understanding on a Strategic Partnership between the Republic of Azerbaijan and the European Union in the Field of Energy which had been signed in 2006. In areas such as human rights promotion, democratization and stability, EU-Azerbaijan relations have been strained, as “the EU continues to stress the importance of issues relating to defence of human rights, space for civil society and freedom of media, expression and assembly.”<sup>5</sup> However, “engagement with civil society is a prominent feature of EU cooperation in Azerbaijan, reflected by the fact that the EU is the largest foreign donor to civil society in Azerbaijan.”<sup>6</sup> The unresolved conflict in Nagorno-Karabakh represents a major hurdle in regional stability.

In what follows, this article will explore certain ethnic features of the South Caucasus region and will show how secessionism and *de facto* states affect EU-Georgia, EU-Armenia, and EU-Azerbaijan relations and complicate the Eastern Partnership objectives. The following part will focus on different theoretical approaches on ethnic conflicts and separatist movements. The last section of this article will tackle ethno-political conflicts in South Caucasus and will show how ethno-political turmoil led to breakaway regions and later to the emergence of *de facto* states of Abkhazia, South Ossetia, and Nagorno-Karabakh.

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<sup>4</sup> Armenia and the EU, [[https://eeas.europa.eu/delegations/armenia/896/armenia-and-eu\\_en](https://eeas.europa.eu/delegations/armenia/896/armenia-and-eu_en)], accessed March 2017.

<sup>5</sup> EU-Azerbaijan relations, European Union External Action, [[https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/4013/EU-Azerbaijan%20relations](https://eeas.europa.eu/headquarters/headquarters-homepage_en/4013/EU-Azerbaijan%20relations)], accessed March 2017.

<sup>6</sup> *Ibidem*.

### Theoretical approaches on ethnic conflicts

It has become a truism to say that ethnic rivalry, separatism and identity conflicts are salient issues and pose real threats to any integrative processes. Ethno-political conflicts are protracted and, sometimes, violent forms of rivalry in which group leaders use ethnic symbols and rely on ethnic group mobilization in order to achieve political goals.

The literature on this topic abounds and several schools of thought centred on ethnicity provide different arguments relating to group identity and ethno-political mobilization. The Primordial School holds that “ethnicity is so deeply ingrained in human history and experience that it cannot be denied that it exists, objectively and subjectively, and that it should therefore be considered a fact of life in the relations between individuals and groups who all have an ethnic identity.”<sup>7</sup> As such, ethnic identity is a “subjectively held sense of shared identity based on objective cultural criteria”<sup>8</sup> or a “biological given” or a “natural” phenomenon.<sup>9</sup> Anthony D. Smith referred to six “foundations” of ethnic identity: existence of group name, belief in common ancestry, historical memories (which are transmitted or diffused over generations), shared objective cultural attributes (law, customs and institutions, religion, language, crafts and architecture), attachment to a specific territory (group homeland), and feelings of common solidarity with other group members.<sup>10</sup> In contrast to this understanding, the Instrumentalist School argues that “ethnicity is by no means an indisputable historical fact.”<sup>11</sup> Rather, “ethnicity is [...] a resource in the hands of leaders to mobilize and organize followers in the pursuit of other interests, such as physical security, economic gain, or political power.”<sup>12</sup> Therefore, ethnic identity is exacerbated and gains political significance when “ethnic entrepreneurs invoke and manipulate selected ethnic symbols to create political movements in

<sup>7</sup> Stefan Wolff, *Ethnic Conflict. A Global Perspective*, Oxford: Oxford University Press, 2006, p. 33.

<sup>8</sup> Timothy M. Frye, “Ethnicity, Sovereignty, and Transitions from Non-democratic Rule”, *Journal of International Affairs*, vol. 45, no. 2, 1992, p. 602.

<sup>9</sup> Raymond C. Taras; Rajat Ganguly, *Understanding Ethnic Conflict. The International Dimension*, New York: Longman, 2008, p. 11.

<sup>10</sup> Anthony Smith, “The Ethnic Sources of Nationalism”, in Michael E. Brown (ed.), *Ethnic Conflict and International Security*, Princeton, New Jersey: Princeton University Press, 1993, pp. 50-51.

<sup>11</sup> Wolff, *op. cit.*, p. 33.

<sup>12</sup> *Ibidem*.

which collective ends are pursued.”<sup>13</sup> Group mobilization is thus triggered, and politicized ethnicity is created, because of “elites who draw upon, distort, and sometimes fabricate materials from the cultures of the group they wish to represent in order to protect their existence or to gain political or economic advantage for their group as well as for themselves.”<sup>14</sup>

The Constructivist School rejects both previously presented views and claims that ethnic identity is neither pre-given and natural, nor is it merely a tool which is “invoked and manipulated by ethnic entrepreneurs for individual or collective political ends.”<sup>15</sup> In other words, ethnic identity is socially constructed and is internalized by individuals (but the degree of internalization varies). In this article we will undertake the constructivist claims (based on the belief that they are the most convincing ones) and we will present South Caucasus ethno-political issues in the constructivist framework.

One main assumption pertaining to constructivist theorizing is that the social-construction of phenomena which comprise international politics plays a major role in understanding how threats, enemies and crises are construed, perceived and dealt with. Social-constructivist literature emphasizes the role of ideas (which are treated as complementary to material factors or to elements that belong to the so-called “hard politics”) and argues that meanings assigned to facts or associated with decisions represent key elements in decision-making processes. Social-constructivist scholars (such as Nicholas Onuf, Martha Finnemore, John Ruggie, Friedrich Kratochwil, Alexander Wendt and others) focus on ideational or social phenomena, on the issue of need (dis)satisfaction and the resulting emotions, and on the mechanisms and conditions under which norms play an influential role in world politics. For instance, Alexander Wendt emphasized the social construction of fear and anxiety and explained how people experience the emotion of satisfaction when needs are met, and how they experience anxiety, fear or frustration when such needs are not met.<sup>16</sup>

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<sup>13</sup> Ted Robert Gurr, *People versus States: Minorities at Risk in the New Century*, Washington, United States’ Institute for Peace Press, 2000, *apud*. Taras; Ganguly, *op. cit.*, p. 12.

<sup>14</sup> Paul R. Brass, *Ethnicity and Nationalism: Theory and Comparison*, Sage, 1991, p. 8.

<sup>15</sup> Taras; Ganguly, *op. cit.*, p. 12.

<sup>16</sup> Alexander Wendt, *Social Theory of International Politics*, Cambridge: Cambridge University Press, 1999, p. 132. Furthermore, Wendt listed five major “material needs”, *physical security, ontological security, sociation, self-esteem, and transcendence*, and he explains ontological security in terms of “human beings need [to have] relatively stable expectations about the natural and especially social world around them.” (pp. 131-132).

When problematizing ethnic conflict, constructivists reject the idea that ethnic identity is a pre-given or natural phenomenon and contend that “ethnic identities are enduring social constructions” and they are “products of human actions and choices” rather than biologically given.<sup>17</sup> According to Cristoph Zürcher, “ethnicity *per se* is never an explanation for conflict; rather, the way ethnicity is institutionalized and how this institutionalization becomes contested in periods of rapid social change explains conflict.”<sup>18</sup>

Valery Tishkov argued against oversimplified typologies and claimed that “the basic methodological weakness of such theories of conflict analysis lies in their vision of groups as collective bodies with needs and universal motivation – not as situations, feelings, or acts of speech.”<sup>19</sup> If we adopt such an approach, we then focus on single-factor understandings of the nature and dynamic of conflict. But, when we reject this reductionist typology (which is in fact quantitative), we focus on ethnic boundaries or ethnic divisions whose content, linguistic utterance and narrative are not immutable, but rather altered, interpreted and embedded in (political) speech acts. The convincing and coherent argument developed by Zürcher is that “ethnic boundaries, while not a *cause* of conflict *per se*, become reinforced or even reinvented *during* conflict. The salience of ethnicity can therefore be the result of the ‘ethnicization’ of conflict. Cultural difference becomes important in the course of conflicts, for it is the material from which the barriers between groups are built.”<sup>20</sup>

### **Ethno-political conflict and secessionism in South Caucasus**

In the case of post-Soviet wars, the argument supported here is that the collapse of the Soviet system increased the incentives and opportunities for nationalist elites. The Soviet map was based on the “territorialization of ethnicity”.<sup>21</sup> This means that administrative units with a defined titular nation were created and were embedded into the hierarchy of Soviet ethno-

<sup>17</sup> Taras; Ganguly, *op. cit.*, p. 12.

<sup>18</sup> Cristoph Zürcher, *The Post-Soviet Wars. Rebellion, Ethnic Conflict, and Nationhood in the Caucasus*, New York and London: New York University Press, 2007, p. 54.

<sup>19</sup> Valery Tishkov, “Ethnic Conflict in the Former USSR: The Use and Misuse of Typologies and Data”, *Journal of Peace Research*, 36(5), 1999, p. 572.

<sup>20</sup> Zürcher, *op. cit.*, p. 55.

<sup>21</sup> *Ibidem*, pp. 23.

federalism. The Soviet hierarchy was based on three tiers: 1) the Union Republics (Soviet Socialist Republics/SSRs); 2) the Autonomous Republics (Autonomous Soviet Socialist Republics/ASSRs), and 3) the Autonomous Regions/Oblasts (Autonomous Oblasts/AOs).<sup>22</sup> As far as our case studies are concerned, Georgia received the status of SSR and the Georgians comprised around 77% out of the total population (followed by the other non-titular groups, namely Armenians, Russians, Azerbaijani, Ossets). Abkhazia was given the status of ASSR and its ethnic demographic composition included a majority of Georgians (approximately 45%) while the Abkhaz represented only 18% of the total population living in the Autonomous Republic of Abkhazia. The Autonomous Oblast South Ossetia displayed a majority of Ossets (66%) and a minority of Georgians (29%).<sup>23</sup> The term *micronationalism* was coined by Ted Gurr in order to describe the independence movements of numerically small groups like the 96,000 Muslim Abkhaz in the north-western corner of Georgia and the 164,000 Ossets in northern Georgia who wanted to be united with the 402,000 Ossets living in the homonym autonomous region in southern Russia.<sup>24</sup> Armenia and Azerbaijan were both Soviet Socialist Republics (SSRs) while Nagorno-Karabakh was an Autonomous Region/Oblast. The territory of Nagorno-Karabakh comprises 4.400 km<sup>2</sup> and 77% of its population (totalling around 189,000 at the end of the 1980s) are Armenians while 22% are Azerbaijanis.<sup>25</sup> When the Bolsheviks conquered South Caucasus, back in 1920, the formerly independent republics of Armenia and Azerbaijan became SSRs and Nagorno-Karabakh was incorporated

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<sup>22</sup> Svante E. Cornell, *Small Nations and Great Powers. A Study of Ethnopolitical Conflict in the Caucasus*, London and New York: Routledge Curzon, 2005, pp. 136-138; Zürcher, *op. cit.*, pp. 23-32; Georgiy I. Mirsky, *On Ruins of Empire. Ethnicity and Nationalism in the Former Soviet Union*, Westport, Connecticut; London: Greenwood Press, 1997, pp. 1-10. On Soviet ethno-federalism, see also Jack Snyder, "Introduction. Reconstructing politics amidst the wreckage of empire" and Steven Solnick, "Will Russia Survive? Center and periphery in the Russian Federation", in Barnett R. Rubin; Jack Snyder (eds.), *Post-Soviet Political Order. Conflict and State Building*, London and New York: Routledge, 2005.

<sup>23</sup> See Zürcher, *op. cit.*, pp. 28-31 and Pascal Marchand, « Conflits dans l'espace post-soviétique : une géographie de la décomposition impériale », dans Franck Tétart (sous la direction de), *Géographie des conflits*, Paris : Editions Sedes/Cned, 2011, p. 323.

<sup>24</sup> Ted Robert Gurr; Barbara Harff, *Ethnic Conflict in World Politics*, second edition, Boulder: Westview Press, 2004, p. 24.

<sup>25</sup> Zürcher, *op. cit.*, p. 152.



into Azerbaijan, despite the overwhelmingly Armenian population of the region.<sup>26</sup>

Soviet ethno-federalism was meant to guarantee the control of the centre and foster counteraction strategies against aspirations of the various ethnic groups. But, it also proved to be a corrosive factor. Just like Zürcher showed, “the equipping of the union republics with the prerequisites of statehood and the anchoring of their status as sovereign states in the Soviet constitution paved the way for the process of ‘sovereignization’ that began in 1988.”<sup>27</sup> Alongside with this attribute, other specificities of Soviet nationalism, especially the “unusual alliance between Russian nationalism and other nationalisms of other peoples of the USSR”<sup>28</sup> or the phenomenon coined by Ian Bremmer as “matryoshka-nationalism”<sup>29</sup> (the existence of nations inside a larger nation) led to the following cumulative effect: the resurgence of Russian nationalism triggered the revitalization of other national movements and hence provided impetus for conflict. Referring to the Caucasus and to the analogy of the Russian painted doll *matryoshka*, René Does showed that “at the time the Soviet Union collapsed, the striving for greater sovereignty and even total independence was virulent in the autonomous formations lower in the federal hierarchy of the Soviet state as well.”<sup>30</sup> The ensuing situation was marked by a downward spiral of mistrust and rivalry. Christoph Zürcher explained this dynamic as follows:

“The autonomous republics and autonomous oblasts within the union republics viewed the latter’s sovereignization and nationalization with concern, since they feared that

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<sup>26</sup> Vincenc Kopecek; Tomas Hoch; Vladimir Baar, “Conflict Transformation and Civil Society: The Case of Nagorno-Karabakh”, *Europe-Asia Studies*, 68:3, 2016, p. 442; Michael Kambeck; Sargis Ghazaryan (eds.), *Europe’s Next Avoidable War Nagorno-Karabakh*, Palgrave Macmillan, 2013.

<sup>27</sup> Zürcher, *op. cit.*, p. 34.

<sup>28</sup> Taras; Ganguly (eds.), *op. cit.*, p. 119.

<sup>29</sup> Ian Bremmer, “Reasserting Soviet Nationalities Theory”, in Ian Bremmer; Ray Taras (ed.), *Nations, Politics in the Soviet Successor States*, Cambridge: Cambridge University Press, 1993, p. 22.

<sup>30</sup> René Does, “The Ethnic-Political Arrangement of the Peoples of the Caucasus”, in Françoise Companjen; László Marác; Lia Versteegh (eds.), *Exploring the Caucasus in the 21st Century. Essays on Culture, History and Politics in a Dynamic Context*, Amsterdam: Pallas Publication, 2010, p. 54.

the positive discrimination, which Soviet authorities had guaranteed the titular nations of the ASSRs, could be jeopardized.

Vice versa, the union republics viewed with mistrust the tendency of 'their' ASSRs to dispute subordination to them or even to make moves toward secession from the SSR. Thus, the weakening of the centre led to a competition between union republics (SSRs) and autonomous republics and regions (ASSRs and AOs), which in Nagorny-Karabakh, South Ossetia, and Abkhazia ended in organized violence."<sup>31</sup>

It was against this background that the Georgian state was challenged by the secessionist movements in Abkhazia and South Ossetia. The argument supported here is that there was no strict, cause-effect relation between national mobilization and organized violence. For a while, as Zürcher emphasized, national mobilization was present in "mass rallies [...], exaggerated public use of national symbols, in public discourse, and in the rewriting of national histories."<sup>32</sup> In fact, the inter-ethnic tension between Georgians-Ossets, Georgians-Abkhaz respectively, did not "naturally", inherently, or "automatically" turned into violent armed conflict. Any attempt to de-politicize ethnic conflicts and any reductionist emphasis on their "ethnic nature" lead to an oversimplification that loses its content pertaining to the escalatory dynamic of such ethno-political rivalry. In an extended analysis on the Caucasus, Svante Cornell has argued that the conflicts in South Caucasus cannot simply be described as "ethnic" or "religious" in nature, because "the conflicts are primarily political conflicts over territory and ownership" of such territories.<sup>33</sup> Symbolic politics, discourses that construct the "us *versus* them" dynamic, and the politicizing of territorial, identity, ethnic disputes pertain to the accurate description of conflicts in South Caucasus. Inter-ethnic rivalry and later ethnic violence were the result of (nationalist) political mobilization, not the inescapable triggering factors.

Social-psychological approaches on conflicts share certain assumptions with social-constructivism and delve into (mis)perception, fears and needs.

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<sup>31</sup> Zürcher, *op. cit.*, p. 35.

<sup>32</sup> *Ibidem*, p. 39.

<sup>33</sup> Cornell, *op. cit.*, p. 2.

For instance, one major claim formulated by Herbert Kelman is that “conflict is a process driven by collective needs and fears.”<sup>34</sup> Ethnic conflict, then, is triggered by non-fulfilment or the perceived threats to the non-fulfilment of basic needs. One chief common denominator in constructivist and social-psychological theorizing is the role of ideational factors which, instead of competing with, actually completes the role played by material factors. When discussing basic needs, Kelman accurately indicates that “needs include not only obvious material one, such as food, shelter, physical safety [...], but also, and very centrally, psychological ones, such as identity, security, recognition, autonomy, self-esteem, and a sense of justice.”<sup>35</sup> Based on the previous constructivist and social-psychological assumptions, we could see that the secessionist wars in Georgia did not follow a line of inherent inter-ethnic belligerence and a form of self-perpetuating endemic rivalry between Georgians-Ossets and Georgians-Abkhaz.

According to Christoph Zürcher, “it would be simplistic to claim that nations and nationalism caused the Caucasian turmoil at the end of the Soviet Union. Rather, it was the institutional legacy of the Soviet Union that shaped the ways in which the concepts of ‘nation’ and ‘state’ became contested.”<sup>36</sup> We contend that the perception of fears regarding not only material needs of Georgians, Ossets and Abkhaz, but also psychological and ideational ones such as identity, recognition and autonomy, coupled with the corrosive aggregated elements of the Soviet ethno-federal organization, unleashed ethnic mobilization. A gradual, yet precipitating, process of threat inducement and triggering of need dissatisfaction occurred concomitantly with the Soviet Union’s demise. Zürcher pinpointed to the fact that “Georgians, Abkhaz, and Ossets mobilized in reaction to the national project of the other groups, which was perceived as a threat to their own national project. Each of these three groups came to see the ethno-national claims of the other group as mutually exclusive, and they mobilized in reaction to the other group’s mobilization.”<sup>37</sup> A radicalization of the political agenda of Abkhaz

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<sup>34</sup> Herbert Kelman, “Social-Psychological Dimensions of International Conflict”, in William Zartman; J. Lewis Rasmussen (eds.), *Peacemaking in International Conflict. Methods & Conflicts*, Washington, D.C., 1997, pp. 191-223.

<sup>35</sup> *Ibidem*, p. 195.

<sup>36</sup> Zürcher, *op. cit.*, p. 40.

<sup>37</sup> *Ibidem*, p. 144.

and Ossets was also produced, turning them into what Ted Gurr coined as *ethnonationalists*.<sup>38</sup> When certain groups perceive the loss of power-sharing opportunity, autonomy as option tends to dissipate and other radicalized strategies are envisioned. Henceforth, autonomy is replaced by aspirations towards independence and secessionism is set into motion. Throughout this process, discursive practices and construction of *otherness* played a pivotal role in shaping group identity, menaces, and strategies.

Christoph Zürcher argued that wars in breakaway South Ossetia and Abkhazia were not “the direct result of mutually exclusive national projects”, but rather the inability of the new Georgian nationalist leadership to accommodate claims and to consolidate state power. The author showed that “neither the Abkhaz nor the Ossets had national independence high up on their agenda in 1988 or even 1990. Both entities actually opted to remain a part of the Soviet Union, with the status of a sovereign republic. [...] the national project of the Ossets and Abkhaz was not so much defined by what they wanted to become but, rather, by what they did not want to be: a minority group within a rapidly nationalizing Georgia” that did not intend to maintain the *status quo* enjoyed by the Ossets and Abkhaz within the Soviet Union.<sup>39</sup>

Both Karabakh Armenians and Armenia considered the assigning of Nagorno-Karabakh to the SSR of Azerbaijan an injustice and, after the death of Stalin, demands for a revisiting of the issue were expressed. Violent clashes occurred in Stepanakert (the capital city of Nagorno-Karabakh) in 1963, leading to the death of 18 Armenians; this development marked both the first publicly expressed discontent by a national group within the USSR and the repression of Armenian claims by the Soviet regime.<sup>40</sup> The Armenian discontent resurged during the reforms of Gorbachev and “the problem of Nagorno-Karabakh quickly ignited nationalist sentiments among the Armenian population” leading to “rising tensions [that] resulted in armed clashes between the two national communities during the last years of the Soviet Union—not only in Nagorno-Karabakh itself, but also in the Armenian SSR and the Azerbaijan SSR, which were home to substantial

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<sup>38</sup> Gurr, Harff, *op. cit.*, pp. 19-30.

<sup>39</sup> Zürcher, *op. cit.*, pp. 144-145.

<sup>40</sup> *Ibidem*, p. 154.

Azerbaijani and Armenian minorities respectively.”<sup>41</sup> According to Zürcher, “the conflict over Karabakh was the first large-scale ethnopolitical conflict that openly emerged in the Soviet Union, and the decaying Soviet Union failed to manage it on a grand scale.”<sup>42</sup>

The main argument supported here is that narratives and counter-narratives, symbolic politics, reiterations or reinterpretations of historic events conveyed through discourse, and nationalist political mobilization were elements that torpedoed post-Soviet developments in South Caucasus. Furthermore, we argue that ethno-political conflicts should be explained without reducing their cause to the mere ethnic nature of inter-group rivalry, thus de-politicising disputes, and that a social-constructivist account provides a coherent understanding of secessionist movements.

### **Frozen conflicts and *de facto* states**

Usually, the phrase “frozen conflicts”, when applied in the post-Soviet space, is meant to illustrate the cases of Abkhazia, South Ossetia, Nagorno-Karabakh, and Transnistria, even though recent literature tends to include the case of Crimea as well (because since 2014 it “has been under the *de facto* control and jurisdiction of Russia”<sup>43</sup>). Since the focus of this study revolves around South Caucasus, we will only present the three breakaway regions mentioned above. The term “frozen conflict” refers to a post-conflict situation where there is no longer violence, but, at the same time, there is also no settlement to it. Basically, areas of violence, usually spurred by secessionist movements, are marked by an end of hostilities, but the parties to the conflict have not managed to find a mutually agreeable solution. Hence the conflict is “frozen”, even though a local dynamic would rather indicate a dormant dispute which could re-escalate at a future time.

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<sup>41</sup> Vincenc Kopecek; Tomas Hoch; Vladimir Baar, *op. cit.*, p. 442.

<sup>42</sup> Zürcher, *op. cit.*, p. 154.

<sup>43</sup> Directorate-General for External Policies, Policy Department, *The frozen conflicts of the EU's Eastern Neighbourhood and their impact on the respect of human rights*, European Parliament, 2016, p. 5, [[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578001/EXPO\\_STU\(2016\)578001\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578001/EXPO_STU(2016)578001_EN.pdf)], accessed in March 2017.

According to Sebastian Relitz,

“the ‘frozen conflicts’ are in no way static – they are dynamic. Although large-scale hostilities of the past were ‘frozen’, they can always break out again as in Georgia 2008 and Nagorno-Karabakh 2016 since mutual solutions for ending the conflicts have not been brokered yet. This is due to internal and external dynamics. Therefore, ‘frozen’ does not refer to the developments in the respective conflict zones or to conflict dynamics, but rather to the process of conflict resolution and the positions of the parties involved in the conflict. The conflict remains unresolved and is usually continued on a level of low escalation and with political means without realistic perspective for settlement. The concept of ‘frozen conflicts’ is therefore misleading and reflects a limited understanding of conflict dynamics and a narrow focus in academic analysis and political debate regarding those regions. It makes more sense to refer to general secessionist conflicts than frozen conflicts.”<sup>44</sup>

Other approaches also stress the fact that terminologically, the term is both misleading and erroneous. For example, Filon Morar claims that “entities with ambiguous legal, regional and international status describe rather a protracted conflict with a high likelihood to be abruptly ‘de-frozen’ without effectively transcending the ‘grey zone’ condition.”<sup>45</sup>

Since 1991, when Georgia achieved its independence, Abkhazian and South Ossetian secessionists have referred to international law and to their right to self-determination, while their Georgian counterparts have highlighted international law provisions in order to stress their right to territorial integrity. As indicated, the Soviet form of federalism was curtailed by

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<sup>44</sup> Sebastian Relitz “De Facto States in the European Neighbourhood: between Russian Domination and European (Dis)Engagement. The Case of Abkhazia”, EURINT Proceedings 2016, p. 97, [[http://cse.uaic.ro/eurint/proceedings/index\\_htm\\_files/EURINT2016EURINT2016\\_REL.pdf](http://cse.uaic.ro/eurint/proceedings/index_htm_files/EURINT2016EURINT2016_REL.pdf)], accessed in March 2017.

<sup>45</sup> Filon Morar, “The Myth of ‘Frozen Conflicts. Transcending Illusive Dilemmas’”, *Per Concordiam. Journal of European Security and Defence Issues*, Volume 1, Number 2, June 2010, p. 11, [[http://www.marshallcenter.org/MCPUBLICWEB/mcdocs/files/College/F\\_Publications/perConcordiam/pC\\_V1N2\\_en.pdf](http://www.marshallcenter.org/MCPUBLICWEB/mcdocs/files/College/F_Publications/perConcordiam/pC_V1N2_en.pdf)], accessed in March 2017.

efforts of centralization conceived by the Communist Party. However, after 1991, when Georgia declared its independence from the Soviet Union, the historical legal autonomy of these entities fostered their capacity to engage in collective action and provided them with the reasons to ask for secession. The question raised in both Abkhazia and South Ossetia at the end of the 1980s, namely “if Georgia wants to be independent of Russia, why can’t we be independent of Georgia?”<sup>46</sup>, was seen as a legitimate response to Zviad Gamsakhurdia’s discriminatory slogan “Georgia for (ethnic) Georgians.”<sup>47</sup> However, as shown by Zürcher, “the national project of the Ossets and Abkhaz was not so much defined by what they wanted to become but, rather, by what they did not want to be: a minority group within a rapidly nationalizing Georgia that clearly did not intend to honor the status quo that the Soviet Union had guaranteed to Ossets and Abkhaz.”<sup>48</sup> After all, the Ossets and the Abkhaz are neither the only, nor the largest minority groups, since “8 percent of Georgia’s population was Armenian and 5.7 percent Azerbaijani”, and yet the latter groups did not ethnically mobilize and manifested no tendencies to break away from Georgia.<sup>49</sup>

The Abkhaz-Georgian conflict escalated in 1992, when “both sides engaged in full-blown civil war, fought with great intensity and brutality” and when most of the Georgian population was forced to leave the region.<sup>50</sup> Russia assumed the role of mediator, and the conflict officially ended in 1994, when “the Abkhazian and Georgian authorities agreed to the deployment of Russian peacekeepers between Abkhazia and the rest of Georgia.”<sup>51</sup>

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46 Ghia Nodia, “Political Turmoil in Georgia and the Ethnic Policies of Zviad Gamsakhurdia”, in Bruno Coppieters (ed.), *Contested Borders of the South Caucasus*, VUB University Press, 1996, available at [<http://poli.vub.ac.be/publi/ContBorders/eng/ch0201.htm>], last accessed August 14, 2014.

47 Laura Herța; Alexandra Sabou, “Frozen Conflicts in South Caucasus and their Impact on the Eastern Partnership. The case of Georgia and its Break-away Republics of Abkhazia and South Ossetia”, in Valentin Naumescu; Dan Dungaci (eds.), *The European Union’s Eastern Neighbourhood Today: Politics, Dynamics, Perspectives*, Newcastle upon Tyne: Cambridge Scholars Publishing, 2015, p. 127.

48 Zürcher, *op. cit.*, p. 144.

49 *Ibidem*, p. 133.

50 Relitz, *op. cit.*, p. 104.

51 Zürcher, *op. cit.*, p. 132.

However, there were other peaks of violence in 1997, 2001, 2006, but mostly after the 2008 Russian-Georgian war, triggered by the Georgian offensive in South Ossetia in an attempt to reincorporate the region.

In 1991, South Ossetia declared independence from Georgia, lacking international recognition, however. The Sochi Agreement, brokered between South Ossetia and Georgia, ended the violence and entailed a "Joint Control Commission, with peacekeeping forces comprised of around 500 Russians, Georgians and South Ossetians" [while] "the Organisation for Security and Cooperation in Europe (OSCE) was tasked with monitoring the situation."<sup>52</sup> The conflict re-escalated in 2004, after the Saakashvili government tried to "restore Georgia's territorial integrity", which also led to the "exodus from South Ossetia, with ethnic Georgians leaving for Georgia, while Ossetians made their way to Russian territory – particularly North Ossetia."<sup>53</sup>

In 1991, Azerbaijan and Armenia initiated secession procedures, declaring their independence from USSR. Concomitantly, the Nagorno-Karabakh Autonomous Oblast declared its independence from Azerbaijan, but, in legal terms, it remained subjected to the USSR.<sup>54</sup> A full-scale war broke out in 1992 along the Armenian-Azerbaijani border and within Nagorno-Karabakh proper. During the first phase, Azerbaijani forces launched an artillery attack on Stepanakert trying to avert Nagorno-Karabakh's secessionism, while in 1993 a second phase ensued, with Armenian and Karabakh Armenian forces resorting to a counter-attack and regaining control of the territory. A frail ceasefire agreement was reached, but it was very soon violated by Azerbaijan. From 1992 to 1994, ethnic violence against civilians was rampant, with around 800,000 ethnic Azerbaijanis being forcefully displaced from Armenia and Nagorno-Karabakh and some 230,000 ethnic Armenians leaving Azerbaijan.<sup>55</sup> Finally, in 1994, Russia brokered another ceasefire agreement, which formally ended the conflict. In fact, the conflict turned dormant or "frozen", because the roots of the conflict were never addressed and solved. In 2016, violence re-escalated in Nagorno-Karabakh and military clashes resulted in the

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<sup>52</sup> John Baylis; James J. Wirtz; Colin S. Gray (eds.), *Strategy in the Contemporary World*, Fourth Edition, Oxford: Oxford University, December 2012, case study: The South Ossetian War.

<sup>53</sup> *Ibidem*.

<sup>54</sup> Kambeck; Ghazaryan, *op. cit.*, p. 25.

<sup>55</sup> *Ibidem*, pp. 26-27; Zürcher, pp. 169-171; Relitz, *op. cit.*, p. 9.



death of around 60 people. The mediation was again undertaken by Russia, which seems to find it “difficult to determine which country to support in the conflict.”<sup>56</sup>

Until 2008, the situation in both Abkhazia and South Ossetia was often referred to as “frozen conflicts” and as *de facto* states, even though both were internationally isolated. According to Relitz, the situation of these *de facto* states fundamentally changed after the Georgian-Russian war of 2008, because of the “increasing Russian influence and patronage”.<sup>57</sup> According to this view, “although the recognition of only Russia and three other members of the international community (Nicaragua, Venezuela and Nauru) looks minor, it changed the Abkhaz situation considerably. Russian recognition demonstrated a strong commitment towards the entity of Abkhazia.”<sup>58</sup> On the other hand, the secessionist region Nagorno-Karabakh has also developed “empirical statehood in the course of about 20 years of *de facto* independence from Azerbaijan.”<sup>59</sup> As indicated by scholars, the main difference between the *de facto* states of Abkhazia and South Ossetia, on the one hand, and Nagorno-Karabakh, on the other hand, is that the former were recognized by Russia as independent states, while the latter “remains without partial recognition—with even its closest ally and kin state, Armenia, failing to recognize it”.<sup>60</sup> On a different regional level, the common denominator of these three case studies is constituted by Russian support and involvement. As emphasized by other views, “from the very beginning these were three-sided and not bilateral conflicts. Moscow has been a decisive actor that provided the secessionists with military, political, moral, economic, and financial support. It prevented greater international

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<sup>56</sup> Alexey Timofeychev, “Post-Soviet frozen conflicts: What is happening in Russia’s backyard?”, *Russia beyond the Headlines*, April 13, 2016 [https://rbth.com/international/2016/04/13/post-soviet-frozen-conflicts-what-is-happening-in-russias-backyard\_584475], accessed in March 2017.

<sup>57</sup> Relitz, *op. cit.*, p. 104.

<sup>58</sup> *Ibidem*.

<sup>59</sup> Franziska Smolnik, “Lessons Learned? The EU and the South Caucasus De Facto States”, *Caucasus Analytical Digest*, No. 35–36, 15 February 2012, p. 2, [http://www.css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/CAD-35-36-2-6.pdf], accessed in March 2017.

<sup>60</sup> *Ibidem*.

involvement and used its position in the negotiating mechanisms to protect the de facto states.”<sup>61</sup>

Conceptually, *de facto* statehood refers to an empirical reality and to controversial recognition at the international level. As defined by some scholars, “de facto states are a result of a strong secessionist bid, on the one hand, and the unwillingness of the international system to condone secession on the other. They are regions which carry out the normal functions of the state on their territory, and which are generally supported by significant proportions of their population.”<sup>62</sup> Referring to the legal status of *de facto* states within the South-Caucasus region, some notable distinctions are in place. Nagorno-Karabakh has not been recognized by any member state of the United Nations. The only entities that did recognize its independence are Abkhazia, South-Ossetia and Transnistria. In other words, as shown by analysts, “there is no recognized country that would question that [...] Karabakh *de jure* belongs to Azerbaijan.”<sup>63</sup> On the other hand, Abkhazia and South-Ossetia have been recognized by Russia and by some UN member states<sup>64</sup> and by some *de facto* states.<sup>65</sup>

Given all these developments, the European Union is confronted with a complex region. The EU’s strategies of “non-recognition and engagement” with respect to South-Ossetia and Abkhazia and of “no recognition, no engagement”<sup>66</sup> with respect to Nagorno-Karabakh are not simplifying the matter, but merely indicate a seemingly ambivalent and undecided position.

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<sup>61</sup> Theodor Tudoroiu, “The European Union, Russia, and the Future of the Transnistrian Frozen Conflict”, *East European Politics and Societies*, 26: 135, 2012, p. 137. In this view, the frozen conflict in Transnistria is also analyzed.

<sup>62</sup> Tozun Bahcheli; Barry Bartmann; Henry Srebrnik, (eds.), *De facto States. The quest for sovereignty*, London and New York: Routledge, 2005, p. x.

<sup>63</sup> Directorate-General for External Policies, Policy Department, *The frozen conflicts of the EU’s Eastern Neighbourhood and their impact on the respect of human rights*, European Parliament, 2016, p. 8, [[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578001/EXPO\\_STU\(2016\)578001\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578001/EXPO_STU(2016)578001_EN.pdf)], accessed in March 2017.

<sup>64</sup> *Ibidem*. As indicated by the authors of this study, “Nicaragua, Venezuela and Nauru still recognise these regions as independent, while two other countries, Tuvalu and Vanuatu have withdrawn their recognitions, both in favour of fostering diplomatic relations with Georgia”.

<sup>65</sup> Nagorno-Karabakh, Transnistria, Abkhazia and South-Ossetia, the latter recognizing each other’s independence.

<sup>66</sup> As formulated and analyzed by Franziska Smolnik, *op. cit.*, pp. 4-5.

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## THE EU “ENGAGEMENT WITHOUT RECOGNITION” POLICY IN ITS EASTERN NEIGHBORHOOD *DE FACTO* STATES. THE CASE OF ABKHAZIA AND SOUTH OSSETIA

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DOI:10.24193/subbeuropaea.2017.1.07

Published Online: 2017-03-15

Published Print: 2017-03-30

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### Abstract:

*This article aims to analyze the limits and the opportunities encountered in the implementation of the EU Non-Recognition and Engagement Policy with Abkhazia and South Ossetia (NREP), launched in December 2009. Part of the EaP toolkit to strengthen EU's relations with its new Eastern Neighborhood, the NREP contributed to numerous legislative and discursive changes towards Abkhazia and South Ossetia in the Georgian politics. However, because the NREP was almost merged with the legislation and approach of Georgia towards its two breakaway republics, Sukhum/i and Tskhinvali mistrusted any engagement actions coming from Brussels and Tbilisi. Their reactions following the adoption of the visa waiver for Georgia are an indication of the depth casted between belligerents that the NREP could not fill in. Therefore, we advocate that a clearer and much more coherent EU agenda towards its Eastern *de facto* states is very much needed in order to decrease the level of humanitarian isolation that affects the people living in such areas and to increase the EU leverage on conflict transformation and resolution in the EaP framework.*

**Keywords:** Engagement without recognition, *de facto* states, Abkhazia, South Ossetia, European Eastern Partnership

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Amongst the six members of the European Eastern Partnership (EaP) launched in May 2009 at the Prague Summit, five of them are now involved in frozen conflicts, namely Armenia, Azerbaijan, Georgia, Moldova and more recently, Ukraine.<sup>1</sup>

Taking into account the level of insecurity in the EaP countries that fear or fuel<sup>2</sup> new outbursts of violence in their “occupied territories”/ *de facto* states, the EaP umbrella policy should have been an opportunity for the EU to engage with patron and parent states on the one hand and *de facto* entities on the other one. However, since the EaP has been launched in a “shared neighborhood” with Russia, the process has inherently become extremely political. Russia perceived it as an intrusive competitor in its near abroad (ближнее зарубежье) and, from the very beginning, contributed to the division of the EaP members in two groups. While Georgia, Moldova and Ukraine tried to align with the new EU policies and fulfil the commitments towards a deeper partnership with the EU, Armenia, Azerbaijan and Belarus have made little progress in engaging with Brussels. While the European Commission and the European External Action Service (EEAS) focused on finding a more personalized approach to the relations with the second group, Brussels was lacking a coherent and cohesive Action Plan to guide EU’s relations with *de facto* entities in its neighborhood. Launched shortly after the five-day war between Georgia and South Ossetia/ Russia that occurred in August 2008, the turning point in the EU’s EaP policy was the annexation of Crimea (2014) and the ongoing war in Eastern Ukraine, in the Donbass region. Since the EaP seems framed by Russia’s ambitions’ to dissuade the EaP members from engaging with Brussels using the separatist toolbox, the strategic importance of *de facto* states has serious implications for the existence of the Eastern Partnership policy in itself. As Thomas de Wall argued

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<sup>1</sup> See “The European Integration Index 2014 for Eastern Partnership Countries”, [<http://www.eap-index.eu/sites/default/files/EaP%20Index%202014.pdf>], February 12, 2017. Belarus is the only country of the EaP that is not involved in any territorial dispute.

<sup>2</sup> The choice of the two verbs “fear”/ “fuel” is not random. For example, following the border skirmishes along the line of contact and the four-day war between Armenia and Azerbaijan that occurred in April 2016, the belligerents accused each other of fueling the violence and starting the war. At the same, the populations in both countries feared that the new outburst of violence will create instability and will re-open the conflict over Nagorno-Karabakh.

in a recent event held in Brussels by Carnegie Europe, *Engaging with Separatist Territories in Europe's East*, “Choosing the right kind of interaction with these *de facto* officials is difficult for international actors, but essential to resolve the protracted conflicts.”<sup>3</sup>

Since the 1990s until the beginning of the 2000s, the EU's leverage in conflict management in Abkhazia, South Ossetia, Nagorno-Karabakh and Transnistria has been limited due to various reasons that will be briefly exposed below. With the launch of the European Neighborhood Policy (ENP) in 2003, the EaP (May 2009) and the adoption of the EU Non-Recognition and Engagement Policy with Abkhazia and South Ossetia (NREP) (December 2009), EU strived to differentiate itself from the current conflict managers already active in the area (i.e. UN, OSCE, the Minsk Group, etc.). The NREP, the last element in the EU EaP toolbox advanced in 2009, was a nonpaper policy attempt that addressed specifically the existence of two *de facto* entities in the framework of the ENP and EaP policies, namely Abkhazia and South Ossetia.

In this paper, we aim to examine the possibilities offered by this new approach and inquire the challenges, opportunities and limits around this strategy. Since the strategy is twofold, we will briefly elaborate around each pillar and focus on the attractiveness of this strategy for *de facto* states that search for international recognition, as their physical and ontological security primordial goal. In this paper, we will refer particularly to Abkhazia and South Ossetia. Due to space constraints, we will not touch upon the post-2014 *de facto* states that have been formed after the annexation of Crimea and the parade of referendums for independence that took place in Lugansk and Donetsk. The events that occurred in Ukraine in 2014 marked a new watershed moment for the EU relations with its Eastern neighborhood and, implicitly, with the Russian Federation. However, since there was no update of the NREP or reference to a new policy initiative towards other *de facto* states, this article will tackle only the progress, limits and challenges registered by the NREP policy regarding Abkhazia and South Ossetia.

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<sup>3</sup> Thomas de Waal, “Engagement without recognition: the limits of diplomatic interaction with contested states”, Carnegie Europe, January 17, 2017, [<http://carnegieeurope.eu/2017/01/17/enhancing-eu-s-engagement-with-separatist-territories-pub-67694>], February 25, 2017.

## The forgotten actors of the Eastern Partnership: what place for the *de facto* states in the EaP policy framework?

In 2007, with the accession of Romania and Bulgaria to the EU, the boundaries of the Union moved further and touched the borders of former Soviet republics: Moldova, Ukraine, Belarus, Georgia, Armenia and Azerbaijan. With the EU moving eastward, the limits of Eastern Europe touched the Caspian shores of Azerbaijan and overlapped with Russia's Near Abroad. In this newly-framed geopolitical area, the dissolution of the USSR seems an unfinished process, not only due to the unavoidable Soviet complex legacy persistent in the six countries and the inevitable Russian proximity, but also due to the fact that five out of the six countries part of the EaP are involved in several "unresolved"<sup>4</sup>/frozen conflicts<sup>5</sup>. Despite all odds, twenty-five years after the USSR breakdown, the map of the *new* Eastern Europe contains several separatist regions that did not resolve their territorial disputes with their parent states through negotiations and peaceful agreements. *De jure* part of one country, *de facto* independent and led by separatist leaders, these separatist actors receive important economic and political support from the Russian patronate. Very much forgotten by other international actors, politics and media, they are almost inexistent in terms of policy and engagement outside the relation with their major patron state (Russia).

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<sup>4</sup> In a discussion with Mr Lawrence Meredith, Director of Neighborhood East, European Commission, DG NEAR, EC, April 21st, 2016, Brussels, he highlighted the fact that the term "frozen conflicts" used in depicting the relation between Abkhazia, South Ossetia, Nagorno-Karabakh and Transnistria and their respective parent states is often misleading and distorts the situation on the ground. The uncertainty of the *no-peace - no-conflict* relation between DFSs and their parent states always creates new dynamics that are wrongly portrayed as frozen or stagnant in time. For these reasons, he expressed his preference for the term "unresolved" rather than "frozen" conflicts.

<sup>5</sup> In the *Joint Declaration of the Prague Eastern Partnership Summit* signed in Prague, on May 7, 2009, there was no reference to the conflicts affecting the stability of the EaP or the existence of the DFSs in the region. However, there was a subtle reference to the conflict settlement, "The Eastern Partnership should further promote stability and multilateral confidence building. Conflicts impede cooperation activities. Therefore the participants of the Prague summit emphasize the need for their earliest peaceful settlement on the basis of principles and norms of international law and the decisions and documents approved in this framework."

The Declaration is available online at

[[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/er/107589.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/107589.pdf)], February 27<sup>th</sup>, 2017.

Whereas their existence posed a major challenge to the EU in the region, with the creation of the EaP, there was a clear potential to end the policy of isolation maintained since the 1990s towards all *de facto* states and replace it, within the framework of international non-recognition principle, with a new policy known as “engagement without recognition”. Seven months after the EaP Summit Declaration in Prague (May 7, 2009)<sup>6</sup>, in December 2009, the EU launched a nonpaper called *Non-recognition and engagement policy (NREP) towards Abkhazia and South Ossetia*.<sup>7</sup> The new policy has never been published and was rarely mentioned in the public discourse. In this paper, we will try to decipher the ambiguity of the EU policy regarding DFSs and analyze its viability within the EaP framework.

### **Who are the pre-2014 *de facto* states in the EaP and why should EU engage with them?**

Since early 1990s, Abkhazia, South Ossetia, Nagorno-Karabakh and Transnistria engaged in wars of secession against their respective parent states, Georgia, Azerbaijan and Moldova. All DFSs received military, financial and political support from Moscow and succeeded in maintaining their *de facto* status for more than two decades now.

In the group of Eastern European *de facto* states, Abkhazia and South Ossetia constitute a different category after their independence was recognized by the Russian Federation and a few other UN member states.<sup>8</sup>

Both Abkhazia and South Ossetia belong *de jure* to Georgia, although the latter lost control over the two territories following the ethnic wars that occurred in early 1990s and in 2008, after the Russo-Georgian war.

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<sup>6</sup> See “Joint Declaration of the Prague Eastern Partnership Summit”, May 7, 2009, [[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/er/107589.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/107589.pdf)], February 22, 2017.

<sup>7</sup> Nino Kereselidze, “The Engagement policies of the European Union, Georgia and Russia towards Abkhazia”, *Caucasus Survey*, 2015, Vol.3/3, pp. 309-322, [<http://www.tandfonline.com/doi/abs/10.1080/23761199.2015.1102451?journalCode=rcau20>], February 22, 2017.

<sup>8</sup> The literature covering the emergence of all post-Soviet *de facto* states is very rich. For eg. Christoph Zürcher, *The Post-Soviet Wars. Rebellion, Ethnic Conflict, and Nationhood in the Caucasus*, New York and London: New York University Press, 2007; Svante E. Cornell, *Small Nations and Great Powers. A Study of Ethnopolitical Conflict in the Caucasus*, London and New York: Routledge Curzon, 2005 and many others.

Until 2008, the engagement of the EU in its now Eastern Neighborhood was limited, as it was reflected in the objectives of the Partnership and Cooperation Agreements (PCAs) signed in the 1990s.<sup>9</sup> Back then, Georgia, Armenia, Azerbaijan and Moldova were already engaged in protracted ethnic conflicts and civil wars that reinforced Russia's presence in the area at both a physical and an ontological level. Imagining the EU as a peacekeeper in the four frozen conflicts in Abkhazia, South Ossetia, Nagorno-Karabakh and Transnistria was neither a priority, nor a feasible opportunity for Brussels.

The political escalation of conflicts in South Ossetia and Abkhazia that occurred in summer 2008, forced the EU to come up with a new strategy towards its Eastern Neighbors within the ENP. Although the formulation of the EaP initiative was conceived in the wake of the Russo-Georgian war, the EU has never developed a comprehensive and holistic Eastern Neighborhood Conflict Prevention and Resolution strategy and has been reluctant in establishing a formal coherent policy towards all the DFSs in the region.<sup>10</sup>

A small step forward in setting up a working formula to engage with Abkhazia and South Ossetia occurred in December 2009 when the Political and Security Committee of the Council of the EU endorsed a nonpaper policy that aimed to open up "a political and legal space in which the EU can interact with the separatist regions without compromising its adherence to Georgia's territorial integrity".<sup>11</sup> The two main references to this policy belong to Sabine Fisher who wrote a report dedicated to NREP and published it with the EU Institute for Security Studies and Alexander Cooley, an associate professor of political science at Columbia University's Harriman Institute who wrote *Engagement without Recognition: A new Strategy toward Abkhazia and Eurasia's Unrecognized States*<sup>12</sup>.

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<sup>9</sup> Kereselidze, *op.cit.*

<sup>10</sup> Amanda Akçakoca, Thomas Vauhauwaert, Richard Whitman, Stefan Wolff, "After Georgia: conflict resolution in the EU's Eastern Neighbourhood", *EPC Issue Paper* No.57, April 2009, [[http://epc.eu/documents/uploads/961937412\\_EPC%20Issue%20Paper%2057%20-%20After%20Georgia.pdf](http://epc.eu/documents/uploads/961937412_EPC%20Issue%20Paper%2057%20-%20After%20Georgia.pdf)], February 28, 2017.

<sup>11</sup> Sabine Fischer, "The EU's Non-Recognition and Engagement Policy towards Abkhazia and South-Ossetia", *ISS Seminar Report*, Brussels, December 2010, p.1, [[http://www.iss.europa.eu/uploads/media/NREP\\_report.pdf](http://www.iss.europa.eu/uploads/media/NREP_report.pdf)], February 28, 2017.

<sup>12</sup> Alexander Cooley and Lincoln A. Mitchell, "Engagement without Recognition: A new Strategy toward Abkhazia and Eurasia's Unrecognized States", *Center for Strategic and International Studies, The Washington Quarterly*, 33:4 (2010), pp. 59-73.

The policy is built on two pillars: a legal one – the firm non-recognition standpoint of the international community towards Abkhazia and South Ossetia and a civic one - the engagement with them in the framework of non-recognition.

While the non-recognition part of the policy has been continuously reinforced in all EU-Georgia official documents where the EU reiterated “its firm support for the sovereignty and territorial integrity of Georgia within its internationally recognized borders.”<sup>13</sup>, the engagement aspect of the policy has been limited and lacked consistency and coherence due to various reasons.

In terms of domestic political constraints, Georgia’s United Movement Party (UNM) had a powerful discourse against EU’s engagement with Georgia’s *de facto* territories. They feared that more engagement will give those entities more legitimacy and will contribute to their institutional development and thus, to their international recognition.

Almost at the same period when the EU was expressing its new NREP policy, the Georgian government adopted a new *Law on Occupied Territories*<sup>14</sup> which called for the isolation of its “occupied territories” (October 2009). Due to the criticisms of the Venice Commission of the Council of Europe and the European Commission, Georgians had to revisit their policy and consider the engagement solution, as it was proposed by the EU. In January 2010, the Georgian government unveiled a new strategy on its occupied territories that was advocating for de-isolation of Abkhazia and South Ossetia and “recognized the negative repercussions of isolating the populations living there.”<sup>15</sup> The terminology used in referring to Abkhazia and South Ossetia is definitely crucial in bridging communities, building confidence and creating trust. The use of “occupied territories” terminology in the two above-mentioned laws, one aiming for more isolation and the other one proposing more engagement, was giving Russian a prominent role and somehow denied any potential engagement between the belligerents.

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<sup>13</sup> See “Georgia and the EU”, European External Action Service, published on April 11, 2016, [[https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/1237/Georgia%20and%20the%20EU](https://eeas.europa.eu/headquarters/headquarters-homepage_en/1237/Georgia%20and%20the%20EU)], March 2, 2017.

<sup>14</sup> See *Law on occupied territories*, published in October 2009, [<http://www.ilo.org/dyn/natlex/docs/SERIAL/81268/88220/F1630879580/GEO81268.pdf>], March 2, 2017.

<sup>15</sup> See *State Strategy on Occupied Territories: Engagement through Cooperation*, published in January 2010, [<http://www.civil.ge/files/files/SMR-Strategy-en.pdf>], March 2, 2017.

Although the EU backed the policy of non-recognition, it never referred to those *de facto* states as “occupied territories”, as it was the case after the annexation of Crimea in 2014 when several European institutions called for its de-occupation and reiterated the EU’s commitment to the sovereignty and the territorial integrity of Ukraine.

Abkhazian and South Ossetian authorities were reluctant in trusting both the Georgian Ministry of Reintegration established in January 2008<sup>16</sup> and the European actors that were visibly lacking cohesion in approaching the authorities in Sukhum/i and Tskhinvali.

In 2012, due to the fact that neither Abkhazians, nor South Ossetians were willing to cooperate in a project that was openly aiming towards their reintegration into Georgia and completely neglected their ontological objective, Georgia changed the name of the Ministry of Reintegration to the Ministry of Reconciliation and appointed former civil-society activist Paata Zakareishvili to run the Georgian policy towards its secessionist territories.

With the new Georgian Dream party winning the presidential elections in 2013 and distancing itself from Mikhail Saakashvili’s obvious integrationist approach, the NREP was given a renewed emphasis.

However, in all this time, the NREP was never published/ updated and it was rarely mentioned in the public discourse as the policy of the EU towards Abkhazia and South Ossetia. The ambiguity around this policy has created dichotomous effects. On the one hand, not having a clear policy that gives indications about how to engage with *de facto* states gave the EU the possibility to adapt and adjust its policy according to various needs and circumstances that occurred in both Georgia and its breakaway republics.

On the other hand, not having a clear policy, publicly assumed and openly exhibited in discourse and actions, has fueled mistrust amongst authorities in Sukhum/i and Tskhinvali and a lack of confidence in EU-dressed projects and initiatives.

As Sabina Fisher suggested in the only paper that summarizes the main points of the NREP, EU’s main objectives in setting up such a policy were: de-isolation, conflict transformation and bridging communities through joint projects. The EU partially succeeded in challenging the Georgian authorities

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<sup>16</sup> The Georgian Ministry of Reintegration replaced the Ministry of Conflict resolution issues in January 2008, prior to the Russo-Georgian five-day war that occurred in August the same year.

to give up on their pro-isolationist policy towards Abkhazia and South Ossetia and embrace a policy that favored engagement, cross-boundary interaction and people-to-people contact.

Nevertheless, in Abkhazia, this policy was received with skepticism and outmost doubts. Since the EU blended funds with other partners and other partners such as UN Development Program (UNDP) or the International Committee of the Red Cross (ICRC) carried out projects in the breakaway republics, the EU presence was slightly visible and noticeable<sup>17</sup>.

Due to the pervasive Russian support on all economic sectors in Abkhazia and South Ossetia, the lack of language barriers and the Russian passportisation policy, it is very difficult for the EU to counter the Russian influence. For Abkhazians, it is difficult to accept a policy that does not discuss their political terms of engagement and their expectations.

However, as Magdalena Grono, programme director for Europe and Central Asia at the International Crisis Group highlighted in her article “Isolation of Post-Soviet Conflict Regions Narrows the Road to Peace”, not only the political isolation is at stake when we discuss the situation of all post-Soviet *de facto* states, but also the humanitarian aspect of that political isolation.<sup>18</sup> The lack of education and the possibility to attend quality education, the lack of training for doctors and policemen, the lack of possibilities to travel and explore the world condemns the trapped populations of those white spots on the map to a humanitarian isolation.

In February 2017, the EU granted Georgia its long-sought visa-free regime.<sup>19</sup> There are several hopes that have been associated with the Visa Liberalization Action Plan (VLAP). One of them refers to making the Georgian passport more appealing to Abkhazians and South Ossetians. On the one

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<sup>17</sup> “Since 2008, in the framework of the NREP, the EU has provided almost 40 million EUR of funding for projects in Abkhazia or involving Abkhaz partners<sup>17</sup>”, in Thomas de Waal, “Engaging with Separatist Territories in Europe’s East”, *Carnegie Europe*, January 26, 2017, [<http://carnegieeurope.eu/2017/01/26/engaging-with-separatist-territories-in-europe-s-east-event-5484>], March 3, 2017.

<sup>18</sup> Magdalena Grono, “Isolation of Post-Soviet Conflict Regions Narrows the Road to Peace”, The International Crisis Group, November 23, 2016, [<https://www.crisisgroup.org/europe-central-asia/caucasus/isolation-post-soviet-conflict-regions-narrows-road-peace>], March 4, 2017.

<sup>19</sup> See the Council’s Press release following the adoption of the regulation on the visa liberalization for Georgia, published on February 27, 2017, [<http://www.consilium.europa.eu/en/press/press-releases/2017/02/27-visa-liberalisation-georgia/>], March 4, 2017.



hand, this approach might create a new connection between Tbilisi and Sukhum/i and Tskhinvali. However, on the other hand, as long as borders between the two *de facto* states and Georgia will continue to be militarized and the majority of those regions' inhabitants will lack resources to travel/study abroad, Europe will remain a wishful thinking destination. Additionally, there are also some demographic concerns.

Taking into account that the population of Abkhazia is around 240 000 people and the one South Ossetia is even smaller, the *de facto* states' authorities will try to refrain the population, particularly the youth, from any immigration attempts.

At the political level in Sukhum/i and Tskhinvali, the reactions following the EU visa-free waiver granted to Georgia, continue to follow the anti-EU/anti-Georgian trend that since 2008 has condemned or blocked any Georgian/European incentive aiming to reach out the citizens of Abkhazia and South Ossetia.

The fact that the EU NREP blended and merged with the Georgian legislation and policy towards Abkhazia and South Ossetia created confusion amongst the secessionist authorities that fear that any European attempt to engage with them backs up the integrationist ultimate goal of Georgia.

Following the statements made by the Georgian Minister of Foreign Affairs, Mikheil Janelidze, who wrote in his twitter post that "the visa free travel will also be important to Georgian citizens living in the occupied regions, giving them a chance to benefit from visa liberalization and close ties with the European Union."<sup>20</sup>, the Abkhaz MFA commented that: "If Georgian leaders are sincerely concerned about the freedom of movement of Abkhazia's citizens, then they should abandon the policy of international isolation of our citizens, who, owing to Tbilisi, are denied entry to the EU countries."<sup>21</sup>

The EU policy towards Russian passports holders residing in unrecognized territories denies them access to the EU. Therefore, taking into account the increasing mistrust towards EU actions, pervasive amongst both Abkhazians and South Ossetians, a solution that will show EU's willingness

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<sup>20</sup> "EU, Georgian Officials Take to Twitter to Celebrate European Parliament's Visa Free Vote", Civil.ge, February 3, 2017, [<http://www.civil.ge/eng/article.php?id=29830>], March 4, 2017.

<sup>21</sup> "Sokhumi, Tskhinvali Reject Tbilisi's EU Visa Liberalization Offer", Civil.ge, February 3, 2017, [<http://www.civil.ge/eng/article.php?id=29834>], March 4, 2017.

to engage with the citizens of those *de facto* states, without granting recognition to the *de facto* states issuing their passports, could follow the example of the US policy towards the citizens of the Turkish Republic of Northern Cyprus (TRNC). Although the US does not recognize the independence of TRNC, it allows Turkish Cypriots to use their TRNC passports for the purpose of travel and visa applications.<sup>22</sup> However, such a policy would be met with sharp disapproval from both Moscow and Tbilisi.

## Conclusions

The European engagement without recognition policy launched in 2009 in the wake of the Russo-Georgian war was part of the EU ENP toolbox that sought to incentivize Georgians, Abkhazians and South Ossetians to engage with each other through joint initiatives and projects, to decrease the level of *de facto* states communities' isolation and to contribute to peace building efforts carried in the region for more than two decades now.

The EU intentionally aimed to keep this policy at a low profile and has published neither its 2009 version, nor an updated version of it.

However, in its dialogue with mainly Georgia, Brussels challenged Tbilisi's integrationist approach and incentivized the transition from an isolationist policy to one favoring engagement with *de facto* Abkhazia and South Ossetia. However, despite Georgia's legislative changes and new discursive approaches, Sukum/i and Tskhinvali continued to mistrust not only Georgia, but also the EU, now perceived as a Trojan horse of the Georgian integrationist mission.

Despite the obvious limitations encountered by the EU in implementing its policy towards Abkhazia and South Ossetia, a potential success of the NREP might be the legal and discursive change it incentivized in Georgia. In addition to this, regardless of its results, NREP has been the first important attempt to engage with separatist states, while maintaining its non-recognition standpoint. However, a clear and less ambiguous EU agenda regarding the EaP *de facto* states remains a necessity without which the degree of isolation of the people caught in *de facto* states will increase and the opportunities for civic engagement will decrease.

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<sup>22</sup> See Alexander Cooley, “Georgia’s Territorial Integrity”, *The American Interest*, Vol.5/5, May, 2010, [<http://www.the-american-interest.com/2010/05/01/georgias-territorial-integrity/>], March 4, 2017.

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## THE CONDITIONAL IMPACT OF DEMOCRACY CONDITIONS. HOW THE EUROPEAN UNION INTERACTS WITH POLITICAL COMPETITION IN EASTERN PARTNERSHIP COUNTRIES

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DOI:10.24193/subbeuropaea.2017.1.08

Published Online: 2017-03-15

Published Print: 2017-03-30

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### Abstract:

*In the debate about the European Neighbourhood Policy, two positions may be distinguished: those who propose a stricter and more consistent use of democratic conditionality, prioritizing democracy over other EU objectives - and those who refuse to set compliance with democratic standards as a precondition for support, expecting democracy to emerge from closer linkages. The paper argues that both positions do not sufficiently recognize the selective effectiveness of EU conditionality. Democracy conditions can become effective if (1) dense societal, economic and cultural ties with the EU support their domestic acceptance and (2) ruling political elites are faced with a competitive opposition.*

*While the EU can not generate or reinforce domestic political competition in Eastern Partnership countries, its democracy conditions can become effective in competitive constellations by helping domestic political actors to agree on institutional constraints to executive authority or on mechanisms of executive accountability. The EU's democracy conditions remain ineffective in less competitive political systems, because their ruling political elites lack incentives to cooperate with the opposition.*

**Keywords:** Europeanization, democratic conditionality, European neighbourhood, Eastern Partnership

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## Introduction

The European Union has offered privileged relations to the three western and the three Caucasian successor states of the former Soviet Union - Belarus, Moldova, Ukraine, and Armenia, Azerbaijan, Georgia - in the framework of its so-called Eastern Partnership. This Partnership was initiated by the EU at a meeting with the heads of government and state from these states in May 2009. The European Commission views the Eastern Partnership as a dimension of the European Neighborhood Policy (ENP), complementing the Mediterranean Union that was launched already in 2007. Since 2003, the ENP exists as a political framework to shape the relations with the eastern and southern neighbor states of the EU.<sup>1</sup>

The concept of neighborhood underlying this policy does not only contain the intuitive meaning of geographical proximity, but is also conceived as a political status assignment: "neighbors" are those states that currently do not have a prospect of accession, but are envisaged for a "special relationship" which the EU is to develop according to article 8 of the EU treaty. The EU's neighborhood policy includes an association and elements from the accession process, such as action plans or monitoring reports published by the Commission. Association Agreements were signed with Ukraine, Georgia and Moldova on 21 March and 27 June 2014.

The Agreements with Georgia and Moldova entered into force on 1 July 2016.

Following the upheavals and democracy movements in several Arab countries, support for democratization became a more important concern for the EU. In May 2011, the European Commission and the EU's High Representative for Foreign Affairs and Security Policy defined a "deep democracy" in their review of the ENP. According to their joint communication, this kind of democracy "lasts because the right to vote is accompanied by rights to exercise free speech, form competing political parties, receive impartial justice from independent judges, security from accountable police and army forces, access to a competent and non-corrupt

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<sup>1</sup> Cf., for example: Sieglinde Gstöhl (ed.) *The European Neighbourhood Policy in a Comparative Perspective: Models, Challenges, Lessons*, London, New York: Routledge, 2016; Valentin Naumescu (ed.) *The European Union's Eastern Neighbourhood Today. Politics, Dynamics, Perspectives*, Newcastle upon Tyne: Cambridge Scholars Publ., 2015.

civil service — and other civil and human rights that many Europeans take for granted, such as the freedom of thought, conscience and religion."<sup>2</sup>

If neighboring states took efforts to establish such a "deep democracy", the EU committed itself to provide more financial support, to grant access to its market and to facilitate the mobility of their citizens. This democratic conditionality, the associated greater differentiation of EU assistance and rewards to, and the "mutual accountability" between the neighboring state and the EU represented core elements of the renewed ENP.

Whether the EU would consistently apply this democratic conditionality in practice, has been doubted in the political debate about this reorientation. For example, some authors called upon the EU to "reconditionalize" its neighborhood policy, that is, to apply its democratic conditionality more consistently in all related policy areas and programs.<sup>3</sup>

In contrast, other authors criticized what they considered a futile and counterproductive attempt of making democracy a precondition rather than a goal of cooperation with transition countries.<sup>4</sup>

The state of democracy in the six Eastern Partnership (EaP) states may be assessed using composite indicators such as the "voice and accountability" indicator of Kaufmann et al. (Figure 1) or the Freedom House rating on political rights and civil liberties.<sup>5</sup> These measures show that the quality of democracy has improved in Georgia, Moldova and Ukraine between since the beginning of ENP in 2004. In contrast, developments in Armenia, Azerbaijan and Belarus indicate a deterioration or stagnation with regard to elections, political freedoms and civil rights.

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<sup>2</sup> European Commission, *A New Response to a Changing Neighborhood*, Brussels: European Commission, High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication COM(2011) 303, 2011, p. 2.

<sup>3</sup> Kai-Olaf Lang and Barbara Lippert, *The EU and its Neighbours. A Second Chance to Marry Democratisation and Stability* Berlin: SWP, Comments 2, 2012.

<sup>4</sup> Expertengruppe Östliche Partnerschaft, *Deutsche Außenpolitik und Östliche Partnerschaft*, Berlin: DGAP, Standpunkt 1, 2012.

<sup>5</sup> Freedom House, *Freedom in the World 2012. The Annual Survey of Political Rights and Civil Liberties*, Lanham: Rowman & Littlefield, 2012; Daniel Kaufmann, Aart Kraay, and Massimo Mastruzzi, *Governance Matters VIII: Aggregate and Individual Governance Indicators 1996-2008*, Washington: World Bank, Policy Research Working Paper 4978, 2009 [[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1424591](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1424591)], 17 May 2017.



Whereas the prospect of “returning to Europe” provided a powerful normative orientation for domestic political actors in East-Central Europe and the Baltic states during the process of EU accession, the EU appears to have been less influential in EaP countries.

Scholars have sought to explain the limited impact of the EU by arguing that the absence of an accession prospect does not provide sufficiently attractive incentives for domestic democratic reforms.<sup>6</sup> According to this view, breakthroughs in democratization, such as the reforms in Slovakia or Turkey in the late 1990-ies, would have been unlikely from the outset. Moreover, scholars have argued that by subordinating compliance with democratic conditions to stability and security concerns, the EU has undermined the credibility of its democratic conditionality.<sup>7</sup>

However, these arguments are difficult to reconcile with the unintended and unexpected effect of the EU association policy in Ukraine 2013/14, that is, for the so-called Euromaidan protests triggering the ouster of President Yanukovich. The government’s refusal to sign an Association Agreement with the EU in 2013 sparked a series of mass demonstrations, mobilizing several hundred thousands of citizens. Many protesters wanted to stop the corruption and cronyism of the ruling elites, associating European integration with better governance and prosperity. Many Ukrainians also viewed Ukraine as a future member of the EU.

The present contribution tries to solve this empirical puzzle of weak incentives and apparently coincidental path-changing effects in EaP countries, asking whether and when the renewed neighborhood policy was able to effectively support democratization processes in the six states. It is argued that the use of democratic conditionality may only be selectively effective, namely if (1) there are intense and dense relations between the partner state and the EU and (2) robust political competition exists in the partner country.

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<sup>6</sup>Sandra Lavenex; Frank Schimmelfennig, "EU Democracy Promotion in the Neighborhood: From Leverage to Governance?", in *Democratization*, no. 4, 18, 2011, pp. 885-909.

<sup>7</sup>Richard Youngs, "Introduction. Idealism at Bay", in Richard Youngs(ed.), *The European Union and Democracy Promotion*, Baltimore: Johns Hopkins University Press, 2010, pp. 1-15.

**Figure 1: Voice and accountability in Eastern Partnership states**

Percentile rankings of countries.

Source: Worldwide Governance Indicators.<sup>8</sup> Y-axis: higher values indicate a better quality of governance<sup>9</sup>

Following Levitsky and Way,<sup>10</sup> the article contends that the impact of democratic conditionality depends on whether, firstly, dense societal, economic and cultural relations support the domestic acceptance of EU conditions and,

<sup>8</sup> [<http://info.worldbank.org/governance/wgi/#home>], 14 May 2017.

<sup>9</sup> According to Kaufmann *et al*, the “Voice and Accountability” indicator captures “perceptions of the extent to which a country’s citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media.” Kaufmann, Kraay, and Mastruzzi., p. 2.

<sup>10</sup> Steven Levitsky; Lucan A. Way, *Competitive Authoritarianism. Hybrid Regimes after the Cold War*, Cambridge: Cambridge University Press, 2010.

secondly, whether ruling political elites are unable to dominate over opposition parties, the state apparatus and civil society.<sup>11</sup>

Since the impact of conditionality is mediated by these conditions, neither the tightening, nor the loosening of conditionality constitutes an appropriate strategy to support democracy in Europe's neighborhood. This argument is developed in two steps. Firstly, it is shown that the erosion of democratic conditionality noted by critics of the ENP does not denote a deficit of strategic policymaking that might be remedied by formulating and implementing a better strategy. Secondly, the density of relations between the EU and the six Eastern partner countries as well as the political competition in these countries are compared.

## 1. Fault lines in the design of the European Neighborhood Policy

The neighborhood policy of the EU in several respects constitutes a "composite policy" that represents different interests, aims at incongruent objectives and reflects different cause-effect logics.<sup>12</sup>

Firstly, the policy objectives linked to the Eastern Partnership are incongruent and may thus suggest different priorities.<sup>13</sup> Through its neighborhood policy the EU inter alia intended to create a "ring of friends" surrounding its territory, stabilize the newly independent states in the post-Soviet region, support their economic development, diversify the EU energy supplies, protect the EU's external border more effectively, control immigration and reduce transnational environmental risks. These legitimate and important objectives tend to compete with the new focus on democratic conditionality.<sup>14</sup>

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<sup>11</sup> For a similar argument, see: Gwendolyn Sasse, "Linkages and the Promotion of Democracy: The EU's Eastern Neighbourhood", in *Democratization*, no. 4, 20, 2013, pp. 553-91.

<sup>12</sup> Dimitar Bechev; Kalypto Nicolaidis, "From Policy to Polity: Can the EU's Special Relations with Its 'Neighbourhood' Be Decentred?", in *Journal of Common Market Studies*, no. 3, 48, 2010, pp. 475-500; Gstöhl 2016 *op. cit.*

<sup>13</sup> Geoffrey Edwards, "The Construction of Ambiguity and the Limits of Attraction: Europe and its Neighbourhood Policy", in *Journal of European Integration*, no. 1, 30, 2008, pp. 45-62; Andrea Gawrich; Inna Melnykovska; Rainer Schweickert, "Neighbourhood Europeanization through ENP: The Case of Ukraine", in *Journal of Common Market Studies*, no. 5, 48, 2010, pp. 1209-35; Gstöhl 2016, *op. cit.*

<sup>14</sup> Richard Youngs, "Democracy Promotion as External Governance?", in *Journal of European Public Policy*, no. 6, 16, 2009, pp. 895-915, p. 897.

Problems and progress in individual policy areas may occur independently of each other and irrespective of an existing political conditionality relationship. Blockades in policy areas with strong sectoral interest groups may jeopardize the implementation of strategic political goals. The Ukrainian crisis has increased the incongruence among policy objectives and underlying interests of member states which is, for example, manifested in the disagreements over the continuation and extent of economic sanctions.<sup>15</sup>

Secondly, homogenizing assignments of a “partner”, “neighbor” or “association” status do not take into consideration the different ambitions of EaP states.<sup>16</sup> While Georgia, Moldova and Ukraine seek accession to the EU, political elites in the other three states do not pursue this aim or do not consider it a priority.

Thirdly, a conflictual relationship exists between the bilateral and multilateral dimension of the Eastern Partnership. The principle of differentiation is primarily tailored to the bilateral relations between the EU and individual states, and its application will lead to a greater divergence between the six partner states. The multilateral projects and institutions, however, require including all partner states. This applies to the four so-called “thematic platforms”: democracy, good governance and stability; economic integration and convergence with EU policies; energy security; contacts between peoples.<sup>17</sup> Moreover, the envisaged “flagship initiatives”, inter alia on a regional electricity market, depend on the inclusion of partner states, even if a state has fallen back in the bilateral dimension.

Fourthly, coupling expanded financial aid to the creation of deep democracy exacerbates the tension between conditionality and the desired domestic “ownership” of reforms. It is doubtful whether the ideas of non-hierarchical governance proposed by the European Commission, such as “joint ownership” and “mutual accountability” will induce the governments of Eastern partner states to adopt the goals of reforms advocated by the EU.

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<sup>15</sup> Serena Giusti, “The EU’s Transformative Power Challenged in Ukraine”, in *European Foreign Affairs Review*, no. 2, 21, 2016, pp. 165-84.

<sup>16</sup> Elena A. Korosteleva, *Eastern Partnership. A New Opportunity for the Neighbours?*, London [u.a.]: Routledge, 2012.

<sup>17</sup> Laure Delcour, *The Institutional Functioning of the Eastern Partnership: An Early Assessment*, Tallinn: Estonian Center of Eastern Partnership, Eastern Partnership Review 1, 2011.

Reforms of the ENP did not fully resolve the trade-offs and ambiguities resulting from these tensions. Rather, it will cause their re-balancing at best, but may also partially increase contradictions. The effectiveness of democratic conditionality is therefore likely to be limited.

## **2. Density of relations**

This effectiveness, however, will not only be determined by the structural conditions and conflicts of the EU system. It is also necessary to investigate in more detail the extent to which the Eastern partner countries have already been “Europeanized”, that is, have developed societal, cultural and economic links to EU member states. The closer and the more intense these linkages, the more likely will domestic actors accept the conditions of the EU as guiding norms for themselves and articulate an interest in closer political cooperation.

The most important indicator of economic integration is the volume of trade with the EU. A comparison of trade with the EU as a share of each state’s total foreign trade shows that EU exports and imports account for more than 70 percent of Azerbaijan’s foreign trade which is due to its large oil and gas exports. Moldova ranks second, followed by Ukraine and Georgia. Ukraine’s trade with the EU reached about 30 bn Euros in 2016, approximately three times as high as Azerbaijan’s trade. The share of Belarusian trade with the EU is relatively low although the country is much closer to the EU than the Caucasian states, mainly because the Belarusian economy continues to be closely linked with Russia.

Moldova is most closely linked with the EU if indicators of linkages between societies are considered, such as the estimated number of migrant workers in the EU compared to its total population. Remittances from migrant workers also constitute a significant share of Moldova’s gross domestic product. These indicators show an intermediate level of integration for Ukraine, Georgia and Armenia, with Ukraine exceeding all other EaP countries in absolute terms. Azerbaijan appears to be the society that is most weakly linked to the EU. In 2015, Moldova already benefitted from the EU’s decision to exempt Moldovan nationals from visa requirements. In October 2016 the EU approved visa-free travel for Georgia, and in May 2017 Ukrainian citizens were granted visa-free access to the EU.

The relative strength of these societal and economic linkages may be summarized by assigning ranks to the individual states. If these ranks are aggregated, Moldova emerges as the EaP country with the strongest linkages to the EU, followed by Ukraine, Belarus and Georgia.

**Table 1: Socioeconomic relations**

		ARM	AZE	BLR	GEO	MDA	UKR
EU share in total commodity trade (mean)	2014-16	21	73	18	27	61	43
Estimated remittances from EU (% of GDP)	2014	1.3	0.1	0.2	1.5	7.2	1.0
Estimated migrant stock in EU (% of population)	2013	2.2	0.4	3.3	2.8	7.9	2.4
Schengen visas issued in % of population	2015	1.7	0.7	7.9	2.3		2.6
<b>RANK</b>		<b>5</b>	<b>6</b>	<b>3.5</b>	<b>4</b>	<b>1</b>	<b>3</b>

Sources: World Development Indicators; European Commission; World Bank Remittances data base.<sup>18</sup> Aggregate ranks are the medians of a country's ranks for individual indicators.

To assess the intensity of cultural linkages, scholars have studied foreign language skills, mutual attention and perceptions in the mass media, shared trends in popular culture or shared value orientations.<sup>19</sup> Opinion surveys provide an accessible basis of empirical data to study perceptions and attitudes held by people in EaP countries. One of these surveys, the EU Neighbourhood Barometer in 2014 asked citizens in Georgia, Moldova and Ukraine whether they perceived cultural affinities with Russian or European culture.<sup>20</sup> Among the Ukrainian respondents 46 percent declared an affinity

<sup>18</sup> Schengen visa data are from: <https://www.schengenvisainfo.com>, 17 May 2017

<sup>19</sup> Jeffrey T. Checkel; Peter J. Katzenstein (eds.), *European Identity*, Cambridge: Cambridge University Press, 2009; David D. Laitin, "Culture and National Identity: 'The East' and European Integration", in Peter Mair; Jan Zielonka(eds.), *The Enlarged European Union. Diversity and Adaptation*, London: Frank Cass, 2002, 55-80; Stefanie Sifft *et al.*, "Segmented Europeanization: Exploring the Legitimacy of the European Union from a Public Discourse Perspective", in *Journal of Common Market Studies*, no. 1, 45, 2008, pp. 127-55.

<sup>20</sup> TNS Opinion, *European Neighbourhood Barometer Eastern Partnership*, Brussels: TNS Opinion, 2014.

with European culture, whereas the shares of Euro-affine respondents were 34 and 26 percent in Moldova and Georgia, respectively. However, the share of citizens stating an affinity with Russian culture was higher in Moldova (68%) than in Ukraine (61%) and Georgia (38%). Thus, the survey shows that the perceived links with Russian culture were stronger than the European cultural links in all three countries.

Admittedly, the survey did not attempt to further explore to what extent respondents considered Russian culture as a part of or opposed to European culture.

What cultural affinity with Europe means can be interpreted and operationalized with data from the European Values Study. This survey for the first time provides comparable data to study subjective value orientations in the EU and Eastern Partnership countries.<sup>21</sup> Drawing on a cross-national comparison of political culture in the EU,<sup>22</sup> the table below lists several questions that refer to key values of the EU: equal rights of women and men; a market economy not controlled by the state; economic competition; the separation of religion and politics.

The table shows the extent to which the survey results for individual Eastern partner states deviate from the median of the EU member states. The first two questions try to measure whether respondents are ready to assign a prerogative for paid employment to men or to assess paid employment as a key feature of women's personal independence. In other words, the questions seek to assess the prevalence of traditional versus modern understandings of gender roles. Attitudes in Azerbaijan deviate most strongly from the EU median and are also located outside the range defined by the 27 EU member states, while attitudes in Belarus and Ukraine approximate the EU median.

Among the attitudes regarding economic culture, the mean scores for Moldova correspond to the EU median most closely, whereas the Azerbaijani scores differ most widely. Azerbaijani respondents favor free entrepreneurship and economic competition more strongly. Whereas the

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<sup>21</sup> EVS, *European Values Study 2008. 4th Wave. Integrated Dataset*, Cologne: GESIS Data Archive, ZA4800 Data File Version 2.0.0 (2010-11-30), 2010 doi:10.4232/1.10188, 17 May 2017.

<sup>22</sup> Jürgen Gerhards; Michael Hölscher (cooperation), *Kulturelle Unterschiede in der Europäischen Union. Ein Vergleich zwischen Mitgliedsländern, Beitrittskandidaten und der Türkei*, Wiesbaden: VS Verlag für Sozialwissenschaften, 2006.

Georgian and Belarusian scores deviate more towards a liberal market economy with more entrepreneurial freedoms, the Armenian and Ukrainian scores lean towards a regulated market economy with more state control over firms. All scores on the economic items are within the range of attitudes observable in EU member states.

Asked whether religious belief constitutes a criterion for holding public office, the three Caucasian states differ most clearly from the EU median, favoring a notion of politics that conceives religiosity as an important criterion of political qualification. The percentage shares for all three countries are outside the EU range.

If these observable attitudes on religion and politics, gender relations and economic culture are viewed together, Belarus appears to be the country where attitude patterns most closely match the EU median. Armenia, Georgia, Moldova and Ukraine lie mostly within the range of attitudes observable in EU member states. Azerbaijan, in contrast, appears to be the country with the most dissimilar attitudes on the five, necessarily exemplary questions selected here.

**Table 2: Cultural similarities**

Distance from EU-27 median in scores or percentage points	ARM	AZE	BLR	GEO	MDA	UKR	EU-27
When jobs are scarce, men have more right to a job than women (% agree)	+34	<b>+62</b>	+7	+22	+22	+12	18
Having a job is the best way for a woman to be an independent person (% agree)	-9	<b>-34</b>	+3	+5	+1	+0	82
Politicians who do not believe in God are unfit for public office (% agree)	+38	+47	+14	<b>+65</b>	+28	+24	16
The state should control firms more effectively (1-10=max)	+0.8	<b>-1.9</b>	-1.0	-1.1	+0.3	+1.4	5.5
Competition is good (10-1=max)	+0.3	<b>+2.2</b>	-0.2	-0.8	-0.2	+0.7	4.1
<b>RANK</b>	<b>3</b>	<b>4</b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>2</b>	

Source: European Values Study.<sup>23</sup> Bold values represent the largest deviation from the EU median. Aggregate ranks are the medians of a country's ranks for individual indicators.

<sup>23</sup> European Values Study, *op. cit.*



### 3. Political competition

The previous section can be summarized by stating that the differences in economic, societal and cultural linkages with the EU correspond relatively well to the higher quality of democracy in Moldova on the one hand, the lower democracy scores and the downward trend in Azerbaijan on the other. However, the observable densities of linkages contradict the low democracy scores of Belarus (Figure 1) and do not well account for the difference between Armenia and Georgia or for the high democracy scores of Ukraine. Thus, it appears necessary to investigate how the Eastern partner states differ with respect to the intensity of political competition.

Studies on East-Central European countries have shown that a robust party competition provides an effective public accountability of ruling political elites and prevents them from capturing the state through rent seeking and patronage.<sup>24</sup> Governing political parties that reckon on their de-selection have incentives to agree with the opposition on institutions limiting executive authority because after a change of government such institutions are likely to prevent the new government from exploiting the state and to protect the new opposition from repression. Faced with a credible threat of replacement, governing political elites will thus be more ready to accept and advocate EU conditions that support public accountability and the rule of law. In addition, by incorporating criticism from the EU and promoting it during electoral campaigns, opposition parties generate expectations they will have to accommodate after a change of government.

To compare the competitiveness of the political systems, the analysis in this section will be limited to election results and changes of government. Presidential elections in Armenia (2013) Georgia (2013), Moldova (2016) Ukraine (2014) have been characterized by relatively narrow majorities of votes. Moldova reintroduced direct presidential elections in 2016, leading to a tight race between the two most popular candidates, Igor Dodon and Maia Sandu. In contrast, incumbent presidents in Belarus and Azerbaijan

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<sup>24</sup> Anna Grzymała-Buse, *Rebuilding Leviathan. Party Competition and State Exploitation in Post-Communist Democracies*, Cambridge: Cambridge University Press, 2007; Conor O'Dwyer, *Runaway State-Building. Patronage Politics and Democratic Development*, Baltimore: Johns Hopkins University Press, 2006.

regularly achieved high shares of votes through manipulated elections designed to confirm their tenure.

Comparing the mandate shares of pro-presidential parties in legislatures, it may be noted that Ukraine has been characterized by a particularly weak and unstable parliamentary basis of the presidents prior and after the “Orange Revolution” of 2004 and the “Euromaidan” revolution in 2014. In 2004 and 2010, incumbent presidents had to resign after lost elections, and the Prime Minister was exchanged several times until 2010. Between 2010 and 2014, President Yanukovich relied on a relative majority of deputies belonging to the Party of Regions that was supported by affiliated independent deputies. Since 2014 a coalition led by the Bloc Petro Poroshenko has ensured legislative majorities for President Poroshenko. In Moldova, three opposition parties were able to overcome the dominance of communists in 2009 and to form a government. Narrow political majorities have persisted since then.

Governing parties in Armenia and Georgia expanded their parliamentary basis to more than three fourths of the seats in 2007 and 2008. Georgia’s president resigned in 2004 after public protests against the manipulated legislative elections, ceding the presidential office and the government to the opposition movement. In contrast, Armenia’s president was able to install his protégé as his successor in 2008. Protests against electoral fraud remained without success. In Armenia the Republican Party has continued to dominate the legislature and successive governments, winning 44 and 49 percent of the votes in the 2012 and 2017 parliamentary elections. In Georgia, the United National Movement lost the 2012 parliamentary election against the Georgian Dream electoral alliance. Georgian Dream won 55 and 49 percent of the votes in 2012 and 2016. In Azerbaijan and Belarus, opposition parties and de-facto independent deputies are not or only marginally represented in parliaments.<sup>25</sup>

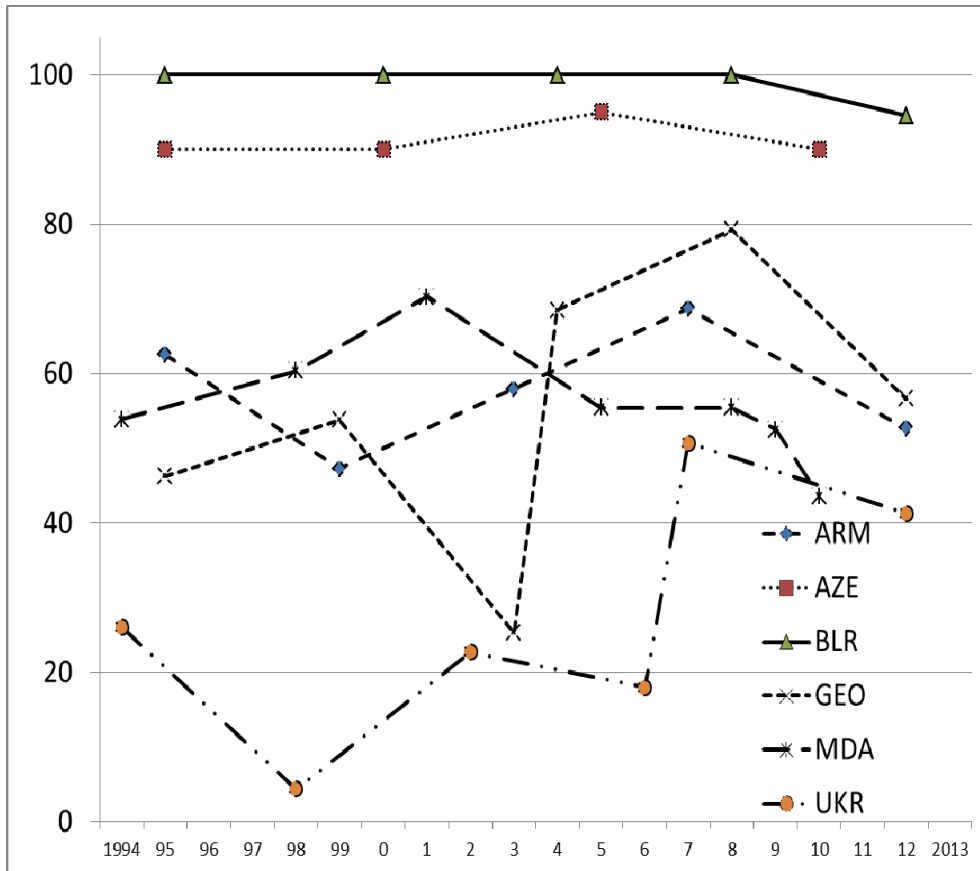
Taken together, it may be noted that differences in political competitiveness levels and trends largely correspond to different levels and trends in the quality of democracy (Figure 1). The political system of Ukraine has experienced the most intense political competition. Political competition among rival parties and presidential candidates has also increased in Georgia and Moldova. In Armenia, the constellation of political parties is less

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<sup>25</sup> Michael Emerson; Richard Youngs, *Democracy’s Plight in the European Neighbourhood: Struggling Transitions and Proliferating Dynasties*, Brussels: Centre for European Policy Studies [u.a.], 2009.

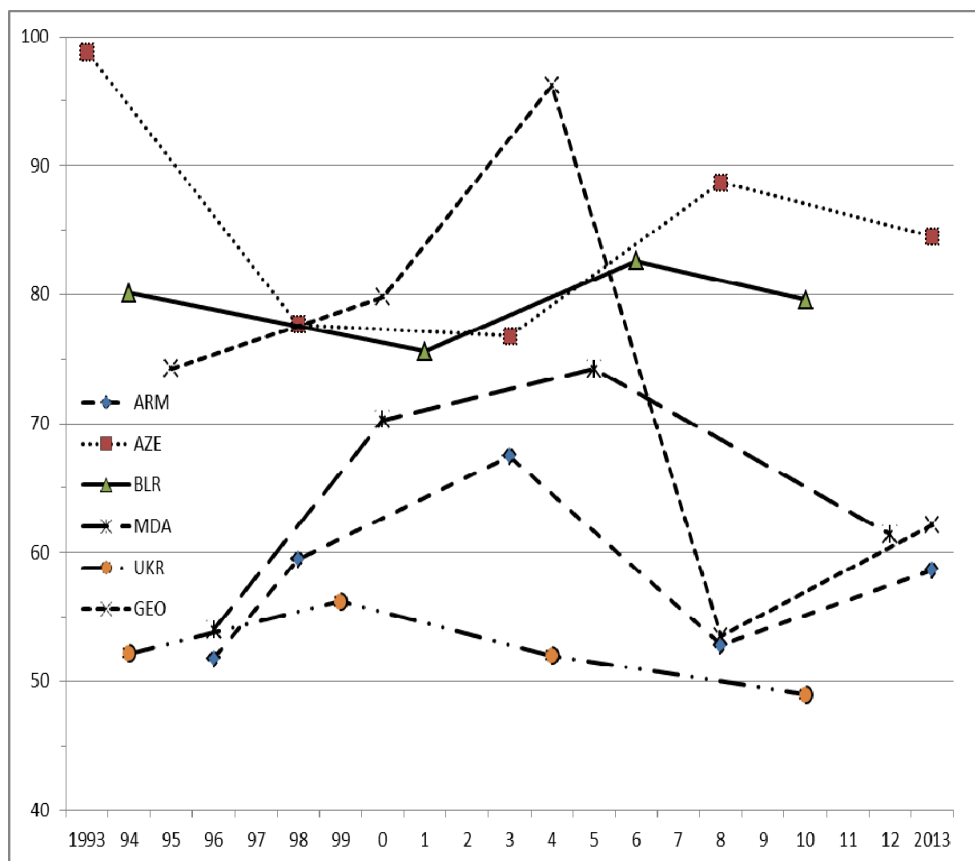
competitive. While Armenia and Georgia have experienced periods of hegemonic party rule, Georgia can be considered much more competitive due to its changes of government in 2004 and 2012. Azerbaijan and Belarus lack competitive elections and can be described as closed authoritarian regimes, although both have enabled opposition parties to gain a few seats in the legislature.

**Figure 2: Legislative elections: vote shares of pro-presidential parties**



Source: OSCE, P. Stykow.<sup>26</sup>

<sup>26</sup> Petra Stykow, "Wahlen in Autoritären Regimen: Die Postsowjetischen Länder Im Vergleich", in *Politische Vierteljahresschrift* no. Sonderheft, 47, 2013, pp. 237-71.

**Figure 3: Presidential elections: vote shares of winning candidates**

Source: OSCE, P. Stykow.<sup>27</sup>

## Conclusion

The three most competitive political regimes are situated in Georgia, Moldova and Ukraine - those states whose political elites aspire to accede to the EU and where particularly the challengers of the old elites have committed themselves to the aim of accession. This correlation is neither coincidental, nor likely to originate from EU interventions. Rather, it is

<sup>27</sup> *Ibidem*.

political competition that generates incentives to constrain executive authority, for example by an independent judiciary. A comparative assessment of judicial independence in the six Eastern partner states has found that professional, depoliticized appointment, promotion and dismissal procedures of judges, the institutional independence, powers, accountability and transparency of judicial systems are most developed in the three most competitive states.<sup>28</sup>

Political competition has also led challenger party elites to appeal to positive expectations and associations linked with "Europe" in the electorate. Party elites have explored and effectively used references to Europe as means to portray themselves and their policies as an alternative to the Soviet Union and state socialism that are framed as the dominance of Moscow / the Kremlin and the economic hardship of the past.

These constellations of robust political competition provided opportunities for EU norms of democracy to become orientations for domestic political struggles. Domestic actors began to refer to these norms in order to justify their positions and criticize opponents. The EU can make a genuine contribution to this process. Moreover, one could argue that its true strength as an external democracy promoter may be in the consensual creation of public accountability mechanisms and procedures. In competitive constellations, the EU may perform the functions of an external stability anchor or a point of normative reference, particularly if dense linkages support a broad popular acceptance of the EU in the partner state. EU-standards and expectations can help domestic political actors to agree on institutional constraints to executive authority or on mechanisms of executive accountability.

In closed autocracies like Azerbaijan or Belarus, however, the ruling elites lack sufficient incentives to fulfill the democracy conditions posed by the EU. While Azerbaijan's political elites strongly rely on revenues from exports of natural resources to stabilize their rule, the monopoly of political rule in Belarus is mainly based on the state-owned sector of the economy that is subsidized by Russia. In the three Caucasian states, hegemonial political elites legitimate their claim to rule with defending national interests in the region's ethno-political conflicts. The EU is not able to constrain these political authority resources effectively. Given the composite nature of its neighborhood policy, it

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<sup>28</sup> International Renaissance Foundation, *European Integration Index for Eastern Partnership Countries*, Kiev: K.I.S. Publishing, 2012.

has only limited capacities to intervene in non-competitive regimes, identify domestic opposition actors and back them in their mobilization efforts against authoritarian rulers.

As long as ruling elites repress political competition effectively, the EU may support a liberalization primarily indirectly by intensifying its economic, societal and cultural relations with these states. Denser relations foster the domestic acceptance of EU norms in the hybrid regimes and defective democracies among the Eastern partner states, facilitating the formation of pro-European advocacy coalitions. Since multiple linkages appear to be the only instrument of democracy promotion in closed authoritarian regimes that is likely to have a mid- or longterm impact, linkage-building should be established as a separate strategic policy objective.

The EU has taken a step into this direction with its 2015 Review of the European Neighbourhood Policy and its 2016 Foreign Policy Strategy.<sup>29</sup> Both documents place more emphasis on the “stabilisation” and “resilience” of states and societies. However, these broad aims also represent labels under which different ambitions and priorities can be grouped and reshuffled over time. While democratic governance figures as one of the objectives in the revised ENP, the strategy documents try to balance and reconcile different objectives. It remains to be seen whether the EU will be able to use future opportunities given by democratic openings in EaP countries to tip the balance in favour of pro-democratic political actors and to facilitate agreements on institutional constraints.

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<sup>29</sup> European Commission, *Review of the European Neighbourhood Policy*, Brussels: European Commission, High Representative of the European Union for Foreign Affairs and Security Policy, Communication JOIN(2015) 50, 2015; European Union, *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy*, Brussels: European Union, 2016.

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RÉFORMES ÉLECTORALES EN CROATIE ET MINORITÉ  
NATIONALE SERBE (1990-2002)\*

CROATIAN ELECTORAL REFORMS AND THE SERBIAN  
ETHNIC MINORITY (1990-2002)

Luigi Gatti\*\*

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DOI:10.24193/subbeuropaea.2017.1.09

Published Online: 2017-03-15

Published Print: 2017-03-30

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**Abstract:**

*This paper intends to put forward an analytical frame able to explain the complexity of the process leading to electoral reforms in Croatia. The croatian situation, especially from 1990 to 2002, presents specific features regarding the link between electoral reforms and the Serbian ethnic minority. We will first analyze the electoral reforms through the classical rational choice approach. We will then study them using the modern approach wich acknowledges the variety of political actors and interests, and takes into account the historical and geopolitical context.*

**Keywords:** Electoral reforms – Theories – Ethnic minorities – Croatia – Serbs

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\* Article revue suite à une communication présentée au Congrès de l'Association Française de Science Politique (AFSP), Aix-en-Provence, 2015, Section thématique n°6 «Les réformes électorales: un nouvel angle d'approche des systèmes électoraux?», sous la direction de Ilvo Diamanti et Thomas Ehrhard.

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## Résumé:

*Cet article se propose de définir un cadre analytique performant afin de saisir la complexité des processus qui mènent aux réformes électorales en Croatie. La situation croate est envisagée précisément dans l'interaction existante entre les réformes électorales et la minorité nationale serbe durant la période 1990-2002. Les réformes électorales seront d'abord étudiées à travers le prisme de l'acteur et de l'intérêt unique selon l'analyse rationnelle classique; ensuite, selon la lecture moderne des réformes électorales impliquant la multiplicité des acteurs et des intérêts ainsi que le contexte historique et géopolitique.*

**Mots-clés:** Réformes électorales – Théories – Minorités nationale – Croatie – Serbes

## Introduction

«Dans une communauté multiethnique qui n'est pas une communauté de tous les citoyens, la Démocratie est impossible»<sup>2</sup>. Travailler sur les minorités nationales et les réformes électorales en Croatie donne l'occasion de méditer cette affirmation.

Le droit croate définit les minorités nationales dans une loi constitutionnelle de 2002 : « Groupe de citoyens croates dont les membres sont traditionnellement installés sur le territoire de la République de Croatie, qui possèdent des caractéristiques ethniques, linguistiques, culturelles et/ou religieuses différentes des autres citoyens et qui souhaitent préserver ces caractéristiques »<sup>3</sup>. La notion de réforme électorale peut s'entendre de différentes manières. D'abord restrictivement, comme Lijphart<sup>4</sup>. Il ne considère que les changements significatifs de la formule électorale et de la taille des circonscriptions, les modifications de seuil ou de la taille de l'assemblée. Ensuite extensivement, ainsi que le font Jacobs et Leyenaar qui ne donnent

<sup>2</sup> Snježana Mrđen, « L'illusion immobile: élections en Yougoslavie (1920-1990) », *Espaces Temps* 49-50, 1992, p. 76.

<sup>3</sup> Article 5 de la loi constitutionnelle sur les droits des minorités nationales du 19 décembre 2002 [[http://www.axl.cefan.ulaval.ca/europe/croatie-loi\\_const-2002.htm](http://www.axl.cefan.ulaval.ca/europe/croatie-loi_const-2002.htm)], 14 mai 2015.

<sup>4</sup> Arend Lijphart, *Electoral systems and party systems: a study of twenty-seven democracies, 1945-1990*, Oxford: Oxford University Press, 1994, 209 p. (Comparative European politics).

pas de liste exhaustive des composantes des réformes électorales. Cette dernière approche, plus englobante, présente le mérite de n'omettre aucune des mesures légales modifiant la représentation politique des électeurs : du système de «traduction de voix en sièges»<sup>5</sup> aux mesures d'obtention de la nationalité pour les minorités.

La période 1990-2002 présente un intérêt remarquable pour l'étude des interactions entre minorités nationales et réformes électorales en Croatie. Celle-ci s'ouvre avec la Constitution du 22 décembre 1990, premier texte légal de la Croatie bientôt indépendante à traiter de la représentation politique des minorités. Cette période se referme avec la loi constitutionnelle sur les minorités nationales du 19 décembre 2002 mettant la Croatie en concordance avec les critères internationaux. Une vingtaine de minorités cohabitent en Croatie. Parmi elles, les enjeux et les tensions des réformes électorales se cristallisent autour de la minorité serbe, quantitativement la plus importante dans le pays<sup>6</sup>. Le cas croate permet de tester les théories relatives aux réformes électorales alors qu'il existe un rapport conflictuel entre la majorité et une importante minorité dans un contexte riche et évolutif. Ce dernier se caractérise, dans un premier temps, par une situation autoritaire et de conflit armé puis, dans un second temps, par une situation post-autoritaire, de consolidation de la paix et d'intégration progressive à l'Union Européenne.

Richard Katz fait du système électoral un élément fondamental de l'architecture d'un pays<sup>7</sup>. Selon lui, celui-ci représente les valeurs défendues par le législateur et son modèle de démocratie. Donc, la définition d'un nouveau système en Croatie, et sa réforme, offre un terrain propice à l'analyse. De plus, l'étude du contexte – transition politique, conflit en partie ethnique et intégration sur la scène internationale – permettra de comprendre pourquoi un pouvoir en place réforme le système qui lui a permis de gagner<sup>8</sup>. Enfin, l'Europe de l'Est reste un terrain en exploration dans ce domaine de la

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<sup>5</sup> Jean-Benoît Pilet, « Les nouveaux souffles de l'analyse des systèmes électoraux », *Revue française de Science politique* n°1, Vol. 58, février 2008, pp.141-147; citation p. 141.

<sup>6</sup> Elle représente 12,3% de la population de la République de Croatie selon le recensement de 1991 [<http://www.axl.cefan.ulaval.ca/europe/croatieinfos.htm>], 15 mai 2015.

<sup>7</sup> Richard S. Katz, *Democracy and elections*, Oxford : Oxford University Press, 1997, 344 p.

<sup>8</sup> Monique Leyenaar, Reuven Hazan, "Reconceptualising Electoral Reform", *West European Politics* 34:3, 2011, pp. 437-455.

Science politique<sup>9</sup>. Cette étude participe de la vérification de l'applicabilité, dans les Balkans, des théories concernant les vieilles démocraties.

Ces quelques éléments mènent à l'interrogation suivante : les réformes électorales, relatives aux Serbes de Croatie entre 1990 et 2002, coïncident-elle avec la vision classique<sup>10</sup> des modifications du système électoral ?

Le rôle des partis politiques et leur intérêt rationnel fournissent une explication cohérente à l'évolution du système électoral croate concernant la minorité serbe (I). Compléter cette première approche par l'analyse des acteurs extérieurs et l'étude du contexte a pour conséquence d'offrir un cadre explicatif plus complet et détaillé (II).

## **I – Les théories classiques: une explication cohérente de l'évolution du système électoral croate concernant la minorité serbe**

Les théories de l'acteur unique, le parti politique (A), et de l'intérêt unique, celui du parti (B), apportent un premier niveau d'explication des réformes électorales en lien avec la minorité serbe en Croatie.

### *A – Le parti au pouvoir : un acteur autoritaire à l'origine des réformes électorales*

Durant un temps, la majorité des études sur les réformes électorales s'entendaient autour d'une idée : le Parlement est la source commune des réformes. Dès 1964, Lipson affirme que les partis politiques influencent le système électoral et non l'inverse. Alan Renwick<sup>11</sup> soutient un propos similaire. La plupart du temps, la majorité au Parlement impose les réformes et les partis politiques constituent les « joueurs clés »<sup>12</sup>. Tsebelis explique cela par l'essence redistributive<sup>13</sup> des institutions électorales : les sièges attribués à un parti

<sup>9</sup> Csaba Niolenyi, "When Electoral Reform Fails: The Stability of Proportional Representation in Post-Communist Democracies", *West European Politics* 34:3, 2011, pp. 607-625.

Jean-Benoît Pilet, Jean-Michel De Waele, "Electoral Reform in Romania. Toward a Majoritarian Electoral System", *European Electoral Studies*, Vol. 2 #1, 2007, pp. 63-79.

<sup>10</sup> La vision classique recouvre les théories de l'acteur unique et de l'intérêt unique.

<sup>11</sup> Alan Renwick, "Electoral Reform in Europe since 1945", *West European Politics* 34:3, 2011, pp. 456-477.

<sup>12</sup> Alan Renwick, *The politics of electoral reform: changing the rules of democracy*, Cambridge: Cambridge University Press, 2010, 312 p.

<sup>13</sup> George Tsebelis, *Nested games: rational choice in comparative politics*, Berkeley: University of California Press, 1990, 274 p.; citation p. 104.

sont nécessairement perdu par un autre. En conséquence, les partis politiques sont les acteurs les plus concernés par les réformes électorales et veulent y tenir le premier rôle. Enfin, Kenneth Benoit<sup>14</sup> démontre que les partis mesurent les effets psychologiques induits par les systèmes électoraux sur les électeurs, selon les lois de Duverger<sup>15</sup>, et tentent de les adapter en leur faveur.

A l'instar d'autres études classiques sur l'Europe de l'Est<sup>16</sup>, le cas croate va, a priori, dans le sens de ces affirmations théoriques. Les caractéristiques du régime croate entre 1990 et 1999 incitent à soutenir l'idée de la prédominance des partis politiques dans les réformes électorales. Selon l'analyse de Dragutin Lalović<sup>17</sup> une tendance autoritaire<sup>18</sup> se développe sous la direction du leader Franjo Tuđman. Le parti du Président Tuđman, la HDZ<sup>19</sup>, en position de force au Sabor<sup>20</sup>, se

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<sup>14</sup> Kenneth Benoit, "Electoral Law as Political Consequences: Explaining the Origins and Change of Electoral Institutions", in *Annual Review of Political Science* 10:363, 2007, pp. 363-390.

<sup>15</sup> En 1951, Maurice Duverger décrit la façon dont un système électoral construit le système de parti via une double influence. La première, mécanique, veut que le système électoral détermine le nombre de partis et le nombre de sièges que chacun d'entre ces derniers peut envisager obtenir. La seconde, psychologique, influence la stratégie des partis et des électeurs en fonction des conséquences prévisibles de l'influence mécanique. Maurice Duverger, *Les partis politiques*, Paris: Armand Colin, 1951, 476 p. (Sciences politiques).

<sup>16</sup> Jon Elster, Claus Offe, Ulrich K. Preuss, *Institutional design in post-communist societies : rebuilding the ship at sea*, Cambridge: Cambridge University Press, 1998, 350 p. (Theories of institutional design).

Barbara Geddes, "Initiation of New Democratic Institutions in Eastern Europe and Latin America", in Arend Lijphart, Carlos H. Waisman (eds.), *Institutional Design in New Democracies: Eastern Europe and Latin America*, Oxford : Westview Press, 1996, pp. 14-52.

Arend Lijphart, "Democratization and constitutional choices in Czecho-Slovakia, Hungary and Poland 1989-1991", *Journal of Theoretical Politics* 4 (2), 1992, pp. 207-223.

<sup>17</sup> Dragutin Lalović, "Crisis of the Croatian *Second Republic* (1990-1999): Transition to Totalitarianism or to Democracy?", *Politička misao* n°5, Vol. XXXVII, 2000, pp. 47-60.

<sup>18</sup> «Système politique au pluralisme limité, politiquement non responsable, sans idéologie élaborée et directrice mais pourvu de mentalités spécifiques, sans mobilisation politique extensive ou intensive – excepté à certaines étapes de leur développement – et dans lequel un leader ou, occasionnellement, un petit groupe exerce le pouvoir à l'intérieur de limites mal définies mais, en fait, plutôt prévisibles». Juan Jose Linz, *Régimes totalitaires et autoritaires*, Paris: Armand Colin, 2006 (1966), 406 p.; citation p. 157.

<sup>19</sup> *Hrvatska demokratska zajednica* – Communauté démocratique croate.

<sup>20</sup> Le Parlement de la République de Croatie.

rapproche d'un parti hégémonique.<sup>21</sup> A partir de ces éléments, il apparaît cohérent que seule la HDZ prenne les décisions en tant qu'acteur central du jeu politique.

Le comportement du pouvoir lors de la préparation des premières élections après l'indépendance, en 1992 et 1993, est symbolique de l'influence primordiale du parti sur le processus électoral. La HDZ déclare que la préparation des lois relève toute entière du parti au pouvoir et ne nécessite pas de consensus au Parlement, ni même de débat. S'adossant à ce principe, la HDZ détermine seule les règles électorales pour l'élection de la chambre basse du parlement en juillet-août 1992. Suite à ce scrutin, le parti renforce encore sa présence dans la nouvelle assemblée<sup>22</sup>. Cette position de supériorité totale permet à celui-ci, malgré les protestations de l'opposition, de modifier discrétionnairement le système électoral en vue du vote de 1993 pour la chambre haute. La HDZ agit quelques semaines avant l'échéance pour contrer les chances du SDP<sup>23</sup> de profiter du système précédent qui lui était potentiellement favorable et l'empêcher de se réorganiser<sup>24</sup>. En 1995, la HDZ réitère lors d'élections anticipées. Un mois avant le scrutin, celle-ci amende la loi afin de s'assurer une victoire écrasante.

Ainsi, la majorité s'impose comme l'unique auteur des réformes électorales ; a fortiori dans une « démocratie autoritaire ». Les réactions de l'opposition démontrent également que les partis politiques se considèrent

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<sup>21</sup> D'après la définition donnée par Giovanni Sartori: « Les autres partis peuvent exister comme autant de seconds rôles, n'étant pas autorisés à lutter avec le parti hégémonique sur des bases antagonistes égalitaires. Non seulement, l'alternance ne peut pas se produire, mais elle ne saurait exister du fait de l'absence de toute modification de l'équilibre des pouvoirs. En outre, un tel parti reste au pouvoir, qu'il soit aimé ou non, et ne risque aucune sanction en cas de responsabilité, ne pouvant jamais être clairement défié ». Giovanni Sartori, *Parties and party systems : a framework for analysis*, Cambridge : Cambridge University Press 1976, 370 p.; citation p. 230.

<sup>22</sup> La HDZ bénéficie de 61% des sièges [[http://www.ipu.org/parline-f/reports/arc/1077\\_92.htm](http://www.ipu.org/parline-f/reports/arc/1077_92.htm)], 15 mai 2015.

<sup>23</sup> *Socijaldemokratska partija* – Parti social-démocrate, héritier du Parti communiste de Croatie.

<sup>24</sup> Une autre contribution analyse la position de la HDZ, entre 1990 et 1993, en présentant la façon dont le pouvoir est protégé par les règles électorales et comment le parti au gouvernement s'insinue dans l'ingénierie politique. Srđan Vrčan, « Izbori 90-93 između demokratizacije i tehnologije vladanja » (The 90, 92 and 93 Elections in Croatia Amidst Tension between Democratization and Power Technology), in Srđan Vrčan et al. (eds.) *Pohod na glasace* (Hunt on Voters), Split: Pul, 1995, pp. 139-202.

comme les « joueurs clés » du système électoral. Le SDP s'offusque des pratiques de la HDZ, demande à ce que son avis soit considéré – en tant que deuxième parti le plus important – mais n'envisage pas que des acteurs extérieurs au Sabor interviennent.

*B – L'idéologie du parti au pouvoir : justification rationnelle des réformes électorales*

Selon la théorie du choix rationnel, les réformes résultent des calculs stratégiques des acteurs politiques. Carles Boix<sup>25</sup> écrit que ces derniers choisissent les règles pour maximiser leurs gains. Le pouvoir ainsi recherché se concrétise sous différentes formes : le nombre de sièges dont un parti peut s'emparer<sup>26</sup>, son influence sur les décisions politiques, la possibilité d'atteindre le pouvoir<sup>27</sup>. Des raisons idéologiques motivent également l'action des partis : faire correspondre le système électoral à leur modèle de démocratie<sup>28</sup> ou aux valeurs qu'ils défendent<sup>29</sup>. Afin de justifier leur action, les partis invoquent l'intérêt général : meilleure représentation des citoyens, meilleure gouvernabilité<sup>30</sup>, paix sociale<sup>31</sup>. Conscients de l'effet psychologique positif sur les citoyens et d'un possible vote en leur faveur, l'action des partis sur le système électoral est d'abord motivée par leur intérêt politique.

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<sup>25</sup> "The ruling political parties, anticipating the (varying) effects of different electoral regimes, choose the regime that maximizes their chances of staying in power"; Carles Boix, "Setting the Rules of the Game: The choice of Electoral Systems in Advance Democracies", *American Political Science Review*, n°3, Vol. 93, 1999, pp. 609-624 ; citation p. 611.

Mais voir aussi: Jon Elster, Claus Offe, Ulrich K. Preuss, 1998, *op. cit.*; Barbara Geddes, 1996, *art. cit.*; Arend Lijphart, 1992, *art. cit.*; Sarah Birch, Francis Millard, Marina Popescu, Kieran Williams, *Embodying democracy: electoral system design in post-Communist Europe*, Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2002, 241 p. (One Europe or several?).

<sup>26</sup> Kenneth Benoit, "Models of Electoral System Change", *Electoral Studies* 23, 2004, pp. 363-389.

<sup>27</sup> Kathleen Bawn, "The Logic of Institutional Preferences: German Electoral Law as a Social Choice Outcome", *American Journal of Political Science* n°4, Vol. 37, pp. 965-989.

<sup>28</sup> Richard S. Katz, 1997, *op. cit.*

<sup>29</sup> Shaun Bowler, Todd Donovan, Jeffrey Karp, "Why Politicians Like Electoral Institutions: Self-interest, Values or Ideology?", *Journal of Politics* n°2, Vol. 68, 2006, pp. 434-446.

<sup>30</sup> Patrick Dunleavy, Helen Margetts, "Understanding the Dynamics of Electoral Reform", *International Political Science Review* 16 (1), 1995, pp. 9-29.

<sup>31</sup> Donald L. Horowitz, *Ethnic groups in conflict*, Berkeley, Los Angeles, London : University of California Press, 1985, 697 p.



En Croatie, la pratique de la HDZ permet de vérifier les hypothèses classiques suivantes : l'intérêt du parti au pouvoir motive les réformes électorales; la place faite aux minorités corrobore la théorie du choix rationnel ; l'importance du facteur idéologique est considérée par les partis politiques. Deux éléments participent à cette démonstration. D'abord, la HDZ tente d'obtenir le plus de sièges possible dans les assemblées. Ensuite, le degré d'inclusion de la minorité serbe dans le système électoral correspond aux valeurs politiques et aux objectifs électoraux du parti.

Dans les années 90, la HDZ adopte un raisonnement nationaliste. Tuđman s'adresse au peuple croate entendu ethniquement. Son objectif consiste en la mobilisation de « son peuple »<sup>32</sup> autour du thème de la renaissance de l'Etat croate. Dès lors, les Serbes de Croatie jouissent d'une considération moindre<sup>33</sup>.

Les premières mesures concernant spécifiquement les minorités sont formulées par la Charte des droits des Serbes et des autres minorités nationales du 25 juin 1991. Le Parlement adopte cette dernière en même temps que la Déclaration sur la souveraineté et l'indépendance de la Croatie. Dans ce contexte de dislocation de la Fédération yougoslave et de perte des droits associés à cette dernière, la Charte a pour objectif de rassurer les minorités. Le nouvel Etat croate s'engage à considérer politiquement ces dernières. La Charte garantit notamment la représentation locale des Serbes. Une loi constitutionnelle de décembre 1991 ainsi qu'un amendement voté en mai 1992 complètent cette première protection légale. Toutefois, ces garanties ne sont suivies d'aucun effet juridique au profit de la communauté serbe. Au moment de l'adoption de ces mesures, la Croatie a déjà perdu le contrôle du territoire où réside la majorité des Serbes. Suite à la reconquête de 1995, les garanties de représentation locale des Serbes ne se concrétisent toujours pas. Le gouvernement suspend la Loi constitutionnelle relative au statut des minorités en invoquant des raisons démographiques et matérielles : la grande majorité des Serbes a fui la région à l'arrivée des troupes croates et la zone, quasiment complètement détruite, nécessite un déminage minutieux.

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<sup>32</sup> Le Monde, 2 octobre 1990; Danas, 5 juin 1990.

<sup>33</sup> Nenad Zakošek, "Political Parties and the Party System in Croatia", in Ivan Šiber (éd.), *Founding Elections in Eastern Europe. The 1990 and 1992/93 Sabor Elections in Croatia. Analyses, Documents and Data*, Berlin : Edition Sigma, 1997, pp. 34-49.

En résumé, le parti au pouvoir statue en faveur des minorités mais n'applique pas les décisions concernant les Serbes de Croatie.

Une autre mesure qui semble vouloir exclure les Serbes de l'espace légal croate prend effet. La loi sur la nationalité introduite en 1991 modifie la règle d'attribution des droits civiques. A l'époque communiste, les droits du citoyen sont attachés à la citoyenneté de la Fédération yougoslave. En conséquence, un Serbe ethnique résidant en Croatie, qu'il soit citoyen ou non de la République socialiste de Croatie, bénéficie des mêmes droits qu'un Croate ethnique de Croatie. A partir de 1991, seule la citoyenneté de la République de Croatie permet l'accès aux droits civiques. Or, la loi de 1991 accorde restrictivement cette citoyenneté. Le principe d'attribution repose dorénavant sur l'ethnicité. Les Serbes ethniques sont exclus par ce premier critère. Un second critère prévoit que ceux qui ne répondent pas au principe de l'ethnicité doivent justifier de cinq années de résidence ininterrompue en Croatie avant la demande. La guerre, les destructions qu'elle engendre et les déplacements de populations rendent souvent impossible l'apport de la preuve pour les Serbes de Croatie. La situation s'avère encore plus complexe pour les réfugiés serbes qui fuient en Bosnie-Herzégovine ou en Serbie et qui souhaitent revenir après le conflit. De nombreux serbes ethniques, résidants croates depuis des années, se voient exclus de la citoyenneté croate et par conséquent du droit de vote<sup>34</sup>. Selon le recensement de 1991, les Serbes représentent 12,3% de la population en Croatie. Ils forment un électorat qui s'oppose à la rhétorique nationaliste de la HDZ. En restreignant le droit d'accès à la citoyenneté, le parti au pouvoir juggle une partie de son opposition.

Les détails du système électoral fournissent une preuve supplémentaire que la majorité politique module les règles en fonction de ses intérêts. Pour les élections de juillet-août 1992, plusieurs textes garantissent une représentation serbe au Sabor. La loi du 25 avril 1992 sur l'élection des représentants au Sabor, dans son article 10 paragraphe 2, dispose que les minorités rassemblant plus de 8% de la population du pays (uniquement les Serbes de facto) bénéficient d'une représentation proportionnelle à leur poids démographique. Conséquemment, les Serbes doivent disposer de treize députés. Un amendement à la loi constitutionnelle de 1991, voté en mai 1992, prévoit un district autonome

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<sup>34</sup> Entre 1995 et 1997, la Croatie aurait empêché environ 300 000 Serbes d'obtenir la citoyenneté, voir Dragutin Lalović, 2000, art. cit.

serbe afin d'assurer l'élection de députés serbes. Malgré ces obligations légales, la HDZ organise les élections en prenant des mesures qui réduisent énormément les chances des Serbes d'être représentés au Sabor. Le système choisit est dit «système mixte équilibré». Il associe un système majoritaire uninominal par circonscriptions locales et une représentation proportionnelle dans une circonscription nationale unique. La HDZ définit les circonscriptions locales de telle sorte que les Serbes y soient toujours en minorité face aux Croates, dans l'irrespect de l'amendement de mai 1992.

Pour la circonscription nationale, le parti impose un seuil minimum d'accès au Sabor de 3%. Or, les Serbes ne représentent que 12,3% de la population totale. La majorité d'entre eux vivent dans la Krajina où l'élection ne peut se tenir à cause de la guerre. Donc, les candidats serbes ne peuvent s'appuyer que sur une proportion infime de l'électorat totale. Dans ces conditions, le droit d'entrée au Sabor est beaucoup plus élevé pour les candidats serbes que pour les candidats croates. Par conséquent, avec les élections, les Serbes n'obtiennent pas leur quota de députés. Pour respecter l'obligation formulée dans la loi du 25 avril, le pouvoir nomme d'office certains candidats<sup>35</sup>. Ce palliatif ne fait que remettre en cause la légitimité de ces derniers à se présenter en tant qu'élus du peuple en Croatie et cela accroît les tensions ethniques.

D'autres groupes minoritaires en Croatie jouissent de procédés favorables à leur représentation dont les Serbes sont exclus. Ceux-ci votent dans une circonscription déterritorialisée. Certaines minorités disposent de l'assurance d'élire un député chacune, jusqu'à un total de cinq élus pour l'ensemble des groupes minoritaires ne représentant pas 8% de la population. Finalement, les Serbes n'obtiennent aucun élu issu des urnes alors que des groupes infiniment plus restreint qu'eux bénéficient d'une représentation démocratique. Les réformes électorales, appréhendées au sens large, concernant la minorité serbe, résultent de l'intérêt du parti au pouvoir, corroborant l'hypothèse du choix rationnel.

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Cette première argumentation paraît convaincante. A priori, dans un régime autoritaire, le parti est l'acteur déterminant des réformes électorales. Logiquement, son intérêt l'emporte dans la rédaction de ces dernières. Dans

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<sup>35</sup> Article 26, paragraphe 1 de la loi du 25 avril 1992.

un premier temps, la théorie de l'acteur unique et du choix rationnel se vérifie en Croatie.

Dans un second temps, une approche qui intègre d'autres acteurs que les partis politiques ainsi qu'une pluralité d'explications affinent les conclusions tirées de l'analyse traditionnelle des réformes électorales.

## **II – Les théories modernes: un cadre explicatif complet et détaillé des réformes électorales relatives aux Serbes de Croatie**

A partir de la fin des années 2000, les travaux sur les réformes électorales envisagent d'utiliser simultanément plusieurs approches afin de créer un cadre d'analyse plus précis. L'étude du cas croate démontre leur utilité. La multiplicité d'acteurs et d'intérêts explique l'évolution des réformes électorales concernant les Serbes de Croatie (A). De plus, l'origine des réformes s'avère plus complexe que selon la théorie du choix rationnel.

L'étude du contexte historique et géopolitique enrichit l'analyse et permet une meilleure compréhension du système électoral croate dans son rapport à la minorité serbe (B).

### *A – Les acteurs extérieurs : contrepoids à l'idéologie du pouvoir croate*

Des acteurs étrangers interviennent dans les réformes électorales en lien avec les minorités nationales dès la déclaration d'indépendance de la Croatie en 1991. La Commission Badinter reconnaît les minorités nationales des nouveaux Etats issus de la Yougoslavie. En conséquence, elle commande que ces dernières bénéficient d'une autonomie politique, culturelle et territoriale. En parallèle, la Communauté européenne conditionne sa reconnaissance de la Croatie au vote d'une loi constitutionnelle afin de préciser et de consolider juridiquement les droits octroyés aux minorités dans la Charte de 1991. Sous la pression, le gouvernement rédige une loi constitutionnelle sur les droits des minorités nationales en décembre 1991. Ce texte assure à ces dernières une représentation politique. Les Douze de la Communauté européenne ne reconnaissent la Croatie que le 15 janvier 1992, après l'adoption de cette loi par le Sabor. L'analyse précédente sur l'idéologie du parti au pouvoir a montré les limites de ces mesures pour les Serbes de Croatie. Néanmoins, la présence des acteurs européens explique le vote de ce cadre juridique contradictoire avec les prétentions de la HDZ dans les années 1990.

L'influence de l'Europe se poursuit après la première décennie d'indépendance marquée par le régime de Franjo Tuđman. Au début des années 2000, le pays intègre le processus de stabilisation et d'association pour l'Europe du Sud-Est, antichambre de l'UE. Encore une fois, l'adoption de mesures protectrices et intégratrices des minorités participe des conditions à l'accord. Le Parlement européen veille particulièrement à la représentation politique de la minorité serbe en Croatie. Dans ses rapports, celui-ci émet des recommandations qu'il souhaite voir commuées en mesures légales au sein du système juridique croate. L'Union Européenne utilise la volonté d'adhésion des gouvernements croates pour obliger ces derniers à se conformer aux valeurs européennes dans le domaine de la protection des minorités. Le chapitre 23 des négociations d'adhésions, «Droits fondamentaux et justice», pose des exigences auquel le candidat se soumet lorsqu'il adopte en 2002 la nouvelle loi constitutionnelle relative au statut des minorités.

Il est toujours question du pouvoir des partis politiques ici. La reconnaissance de l'indépendance et l'adhésion à l'UE confèrent un grand prestige à l'action politique de la HDZ et du SDP auprès de la population.

La quête de sièges participe de l'explication des réformes électorales mais considérer les acteurs extérieurs offre une analyse plus complète du raisonnement politique à l'origine de celles-ci et met à jour les contraintes qui s'exercent sur les partis politiques.

Le principal acteur extérieur du système électoral croate est le Conseil de l'Europe, souvent par l'intermédiaire de la Commission de Venise, son organe pour la démocratie par le droit. Il agit sur les réformes concernant les minorités par l'émission de critiques du travail législatif croate, de conseils et par un suivi strict des engagements de la Croatie. De surcroît, la Commission de Venise participe directement à la rédaction des textes nationaux.

La Croatie devient membre du Conseil de l'Europe en 1996. A partir de ce moment, elle soumet ses lois et projets de lois à des évaluations fondées sur les standards internationaux<sup>36</sup>. Chaque année, l'Assemblée parlementaire du Conseil publie un rapport sur le respect des obligations et engagements de la Croatie. Le poids de cette instance se fait particulièrement sentir entre

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<sup>36</sup> Charte de l'ONU, Déclaration universelle des droits de l'homme, Acte final de l'OSCE, Convention du Conseil de l'Europe sur la protection des droits de l'homme et des libertés fondamentales...

1999 et 2002. En effet, le rapport de 1999 regrette le peu de progrès observés<sup>37</sup>. Il critique vivement les mesures prises par le gouvernement à la veille des élections de 1995. Sans débat en séance plénière au Sabor, ce dernier vote une augmentation importante du nombre de sièges réservés à la diaspora, en même temps que la restriction du nombre de représentants accordés à la minorité serbe. Or, les Croates de l'étranger votent à 90% au profit de la majorité en place alors que les Serbes de Croatie soutiennent l'opposition. Le Conseil de l'Europe constate « une situation tout à fait exorbitante de la pratique usuelle »<sup>38</sup> et juge très négativement cette manœuvre politique. En réaction, celui-ci demande l'adoption d'une réforme électorale et une révision de la loi constitutionnelle de 1991. Ce travail devra être effectué en coopération avec les minorités et sous la surveillance d'experts internationaux. Sous l'influence du Conseil, et dans le respect des volontés de l'acteur extérieur, la Croatie s'exécute: elle amende le vote de la diaspora dans les six mois et adopte une nouvelle loi constitutionnelle, relative au statut des minorités nationales, rédigée en partie lors de travaux communs avec la Commission de Venise<sup>39</sup>.

Ces différentes observations recourent les analyses et théories de nombreux chercheurs. Elles remettent en cause l'unicité des acteurs et des intérêts à l'occasion des réformes électorales concernant la minorité serbe en Croatie.

Dans un ouvrage collectif, Birch, Millard, Popescu et Williams<sup>40</sup> étudient les politiques de réformes électorales dans les PECO en 1989 et 1990. Ils conviennent de l'importance de l'influence étrangère, notamment à travers

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<sup>37</sup> Voir le point 11 : la Croatie s'était engagée en 1996 à « se conformer, bien avant les prochaines élections, aux recommandations faites par les observateurs du Conseil de l'Europe et d'autres organisations internationales aux dernières élections, en ce qui concerne en particulier la fixation d'un nombre de sièges pour la diaspora, la représentation des minorités [...] et de procéder à un recensement de la population le plus tôt possible ». Conseil de l'Europe, *Respect des obligations et engagements de la Croatie*, 23 mars 1999 [<http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=8687&lang=fr>], 24 mars 2016.

<sup>38</sup> Commission de Venise, CDL(99)41, p. 5, in Pierre Garrone (ed.), « Le patrimoine électoral européen. Une décennie d'expérience de la Commission de Venise dans le domaine électoral », *Revue Droit public* n°5, 2001, pp. 1417-1545 ; citation p. 1441.

<sup>39</sup> *Loi constitutionnelle sur les droits des minorités nationales du 19 décembre 2002* [[http://www.axl.cefan.ulaval.ca/europe/croatie-loi\\_const-2002.htm](http://www.axl.cefan.ulaval.ca/europe/croatie-loi_const-2002.htm)], 14 mai 2015.

<sup>40</sup> Sarah Birch, Francis Millard, Marina Popescu, Kieran Williams, 2002, *op. cit.*

l'avis des experts. Une autre étude, sur la Lituanie, décrit la pression des organisations internationales sur le législateur<sup>41</sup>. Gideon Rahat note également que les réformes s'imposent souvent aux élites est-européennes dans les années 1990<sup>42</sup>. Alan Renwick précise que les pays en transition et les nouvelles démocraties forment un terrain favorable au développement des interventions d'acteurs extérieurs<sup>43</sup>. Leyenaar et Hazan expliquent ces constatations à l'occasion d'une interrogation sur les acteurs («*who*») et leurs motivations («*why*»)<sup>44</sup>. Les deux auteurs démontrent que, si les premiers varient en fonction des réformes, les organisations internationales en font communément parties. Incidemment, les intérêts à l'origine des réformes se multiplient et ces dernières sont donc le fruit de volontés plurielles et de négociations. Finalement, pour une analyse plus précise des nombreuses réformes modifiant les systèmes électoraux, il faut accepter deux considérations: les partis politiques sont des acteurs parmi d'autres ; les acteurs extérieurs sont capables d'imposer leurs volontés aux partis politiques.

*B – Le contexte historique et géopolitique: facteur déterminant dans les réformes électorales croates*

Le contexte historique et géopolitique a pour avantage d'offrir un cadre d'analyse beaucoup plus large que la simple prise en compte des partis politiques et de leur intérêt. Ce critère permet d'expliquer la position des partis dans la société croate ainsi que l'origine de leur intérêt politique.

Le contexte historique (ruptures et continuités avec le régime précédent) et géopolitique (les guerres dans l'espace yougoslave) permet d'expliquer, d'une part, le pouvoir de la HDZ et de son leader et, d'autre part, pourquoi, dans les années 1990, le pouvoir croate n'applique pas aux Serbes les protections légales votées sous le contrôle de la communauté internationale mais prend des mesures contraires aux recommandations européennes.

L'histoire de la Yougoslavie communiste fournit une explication à la domination de la HDZ. Après la mort de Tito en 1980, les blocages institutionnels, hérités de l'organisation politique promue par la dernière

<sup>41</sup> Nida Gelazis, *Lithuanian Elections to the Seimas*, unpublished paper, 1995, in Kenneth Benoit, 2004, *art. cit.*

<sup>42</sup> Gideon Rahat, "The Politics of Electoral Reform: The State of Research", *Journal of Elections, Public Opinion & Parties* 21:4, 2011, pp. 523-543.

<sup>43</sup> Alan Renwick, 2011, *art. cit.*

<sup>44</sup> Monique Leyenaar, Reuven Hazan, 2011, *art. cit.*

constitution communiste<sup>45</sup>, aggravent les conséquences de la crise économique et des bouleversements dans les relations internationales. De plus, le pouvoir échoit aux Ligues des communistes dans les républiques.

Or, l'opposition entre les entités sur des aspects fondamentaux pour l'avenir de l'Etat commun est de plus en plus marquée. Le niveau fédéral connaît des difficultés grandissantes pour gouverner le pays. A la fin de la décennie, l'Etat central ne fonctionne plus et la réalité économique s'éloigne dramatiquement de la promesse sociale faite par le régime. En réaction, en Croatie, un mouvement favorable au développement d'un pouvoir fort dans une Croatie indépendante se développe. Franjo Tuđman l'entretient à l'aide d'une idéologie renouvelée, nationaliste et autoritaire, qui semble répondre aux nouveaux enjeux imposés à la société. Dans les réformes électorales, cela se traduit par l'adoption d'un système majoritaire uninominal en 1989 et de deux systèmes mixtes en 1992 et 1995, qui assurent au parti au pouvoir de gouverner seul.

Les tendances autoritaires de Tuđman s'expliquent quant à elles par sa formation politique au sein du régime communiste de Tito dont il devient général. Sa dissidence ne remet pas en cause la culture politique qui l'imprègne, celle du monopartisme et du pouvoir imposé par le haut.

Une partie du peuple croate, habituée à la domination d'un homme omnipotent durant trente-cinq ans, s'accommode d'un discours offrant de nouvelles solutions et lui assurant un avenir meilleur.

L'histoire et la géopolitique de l'aire yougoslave éclairent également la relation entre la Croatie et les Serbes de Croatie. Dans les années 1980, une rhétorique nationaliste et xénophobe se répand sur la scène politique en tant qu'alternative aux défaillances de la Fédération communiste face aux différentes crises. Tuđman participe de cette évolution. Son discours accuse la Serbie et les Serbes de vouloir dominer la Yougoslavie aux dépens des autres peuples, économiquement et politiquement. Face à lui, Slobodan Milošević<sup>46</sup> défend un discours aux mêmes accents nationalistes et xénophobes. Il accuse la

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<sup>45</sup> Constitution de la République socialiste fédérative de Yougoslavie promue le 21 février 1974.

<sup>46</sup> Président du Comité central de la Ligue des communistes de Serbie (LCS) en 1987, secrétaire de la LCS en 1988 et président de la République socialiste de Serbie à partir de 1989.



Yougoslavie de brimer le peuple serbe et laisse entendre qu'il est prêt à rassembler tous les Serbes dans une même entité.

Lors de l'éclatement de l'Etat commun, une partie des Serbes de Croatie s'emparent du quart du territoire croate mue par la peur de se retrouver en minorité dans le nouvel Etat croate ainsi que par la volonté grand-serbe des dirigeants de Belgrade. Ce climat se répercute sur les réformes électorales croates. Suivant la logique nationaliste, et se justifiant par le contexte de guerre, la HDZ s'oppose à l'inclusion de la minorité serbe dans le jeu politique croate. Tuđman la présente comme un danger, une cinquième colonne au service de Milošević. En conséquence, la HDZ propose une définition ethnique de la citoyenneté.

Le contexte historique et géopolitique provoque en Croatie l'inverse de ce qu'observent Pilet et de Waele en Roumanie. Dans ce dernier pays, les dirigeants instaurent un système proportionnel et inclusif pour qu'un parti ne se retrouve pas en position de domination et que les différents groupes de la société pluriethnique se sentent intégrés<sup>47</sup>. Les seuls facteurs classiques, les partis politiques et leur intérêt, ne suffisent donc pas à expliquer la pluralité de situations.

D'autres recherches confirment le caractère opératoire de l'étude du contexte. Selon Kitschelt, les lois électorales post-communistes résultent du contexte politique et dépendent de l'histoire du pays, plus précisément, du type de régime communiste dont l'État s'éloigne<sup>48</sup>. Engelbrekt<sup>49</sup> le vérifie dans le cas bulgare, après une période autoritaire. Elster<sup>50</sup> l'avait précédemment fait dans les sociétés post-communistes en général. La société affecte également les lois électorales d'après Rokkan<sup>51</sup> et Horowitz<sup>52</sup>.

Ces derniers démontrent que les religions et l'existence de minorités conditionnent la définition du système électoral. Pilet et de Waele utilisent

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<sup>47</sup> Jean-Benoît Pilet, Jean-Michel De Waele, 2007, *art. cit.*

<sup>48</sup> Herbert Kitschelt, Zdenka Mansfeldova, Radoslaw Markowski, Gabor Toka, *Post-communist party systems: competition, representation, and interparty cooperation*, Cambridge: Cambridge University Press, 1999, 457 p.

<sup>49</sup> Kjell Engelbrekt, "The Grand National Assembly to Adopt a New Constitution", in *RFE/RL Report on Eastern Europe*, 19 avril 1991, pp. 5-8.

<sup>50</sup> Jon Elster, Claus Offe, Ulrich K. Preuss, 1998, *op. cit.*

<sup>51</sup> Stein Rokkan, *Citizens, elections, parties: approaches to the comparative study of the processes of development*, Oslo: Univesitetsforlaget, 1970, 470 p.

<sup>52</sup> Donald L. Horowitz, 1985, *op. cit.*

la notion de contexte pour englober ces différents facteurs (l'histoire politique, la structure de la société, la présence de minorités et les influences extérieures)<sup>53</sup>. Dans une analyse systématique des réformes électorales, Gideon Rahat propose une approche historique-comparative qui sied bien au cas Croate. Celui-ci cherche à comprendre les réformes sur le temps long, comme un processus complexe, dans lequel interviennent plusieurs acteurs<sup>54</sup>.

*In fine*, ces points de vue théoriques, corroborés par l'analyse des réformes en Croatie, complètent la lecture classique. L'intérêt seul des partis politiques n'explique pas toute la complexité d'un système et des réformes électorales. L'histoire, les caractéristiques sociales ainsi que le contexte géopolitique affinent la démarche explicative.

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Le comportement du parti au pouvoir en Croatie et les tendances autoritaires du régime dans ses premières années laissent penser que le parti politique demeure l'acteur clé des réformes électorales. De plus, les mesures légales concernant les Serbes semblent résulter de l'idéologie du parti majoritaire et d'une volonté de ce dernier de limiter l'opposition au Sabor. Les réformes électorales au sens large, concernant les minorités, paraissent être le fruit d'un choix rationnel du parti dans son intérêt.

Toutefois, les partis politiques n'agissent pas indépendamment sur le système électoral. En période de transition démocratique, les acteurs extérieurs sont particulièrement influents. La législation croate porte la marque de l'Union européenne et du Conseil de l'Europe. De même, pour expliquer les réformes électorales il faut dépasser l'argument de l'idéologie des partis politiques. La prise en considération du contexte historique et géopolitique permet d'obtenir une image plus précise de la réalité.

Théoriquement, la combinaison d'approches offre un avantage certain. L'approche historique-comparative comme cadre d'analyse global, auquel s'ajoute le choix rationnel en tant qu'instrument d'étude, se prêle mieux que la vision classique seule à une analyse complète des réformes électorales<sup>55</sup>. Les théories classiques utilisées pour étudier les démocraties occidentales servent à l'étude de l'Europe de l'Est à condition d'y intégrer la pluralité d'acteurs et la complexité du contexte.

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<sup>53</sup> Jean-Benoît Pillet, Jean-Michel De Waele, 2007, *art. cit.*

<sup>54</sup> Gideon Rahat, 2011, *art. cit.*

<sup>55</sup> *Ibidem.*

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**QUO VADIS LE KOSOVO? ENJEUX ET PERSPECTIVES DU  
PROCESSUS DE CONSTRUCTION DE L'ÉTAT  
DANS UN PAYS SANS « STATUT »**

**QUO VADIS LE KOSOVO? CHALLENGES AND PERSPECTIVES  
OF THE STATEBUILDING IN A COUNTRY WITHOUT "STATUS"**

**András Báló\***

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DOI:10.24193/subbeuropaea.2017.1.10

Published Online: 2017-03-15

Published Print: 2017-03-30

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**Abstract:**

*The "old continent's" youngest state, Kosovo is facing huge challenges in recent times. Lack of recognition and the slowness of the state-building process are important obstacles to the country's economic development. What is the current stage of these state-building efforts, and what are the challenges and perspectives of this process? Important questions that we are trying to find the answers for in this paper.*

**Keywords:** diaspora, minority, recognition, reconstruction, statebuilding

**Resumé:**

*Kosovo, le pays le plus jeune du «Vieux Continent» fait face à des défis énormes de nos jours. Le manque de reconnaissance et la lenteur du processus de construction de l'État sont des obstacles importants à l'émergence économique du pays. Quelle est la phase actuelle des efforts de ce processus de construction de l'État et quels sont ses défis et ses perspectives ? - Questions importantes auxquelles on essaie de répondre dans ce travail.*

**Mots clé:** diaspora, minorité, reconnaissance, reconstruction, processus de construction de l'État

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## Introduction

Dix-huit ans après les accords de Kumanovo (9 juin 1999), qui marquèrent la fin des 78 jours de bombardement aériens de l'OTAN contre la Yougoslavie de l'époque (c'est-à-dire la Serbie et le Monténégro), et plus de 9 ans après la déclaration d'indépendance du Kosovo (17 février 2008) l'avenir du pays européen le plus jeune reste incertain. Les autorités du Kosovo furent encouragées à franchir ce pas par l'Union européenne (conseil des chefs d'État et de gouvernement du 14 décembre 2007) qui promit d'aider le pays à jeter les bases d'un État de droit et de justice.

Même si depuis le printemps 1999, un système de tutelle internationale, incluant de nombreuses organisations – Union européenne, Mission d'administration intérimaire des Nations unies (MINUK), OSCE, etc. – a été instauré, les résultats restent médiocres.

Sur la scène internationale, le Kosovo a provoqué un clivage entre les pays qui l'ont reconnu (111 États sur les 194 membres de l'ONU en juin 2015) et ceux qui le refusent – parmi eux cinq États membres de l'UE: le Chypre, l'Espagne, la Grèce, la Roumanie et la Slovaquie. En fait, la déclaration universelle d'indépendance va totalement à l'encontre de deux principes fondamentaux du droit international: l'intégrité des territoires et l'intangibilité des frontières étatiques. De cette manière, la déclaration d'indépendance du pays ne peut relever que du «droit des peuples à disposer d'eux-mêmes», droit qui – selon les autorités kosovares – n'a pas été épuisé par la décolonisation en Afrique. L'avenir du pays dépend alors de l'Union européenne, de l'ONU et de la Russie. Comme il n'y a pas d'accord au Conseil de sécurité sur le statut du pays, la résolution 1244 demeure toujours en vigueur. Par contre, ce Kosovo sans «statut» a régulièrement connu des problèmes financiers : pas de financements de la Banque mondiale, ni du FMI et très peu d'investissements privés. Les aides de l'UE et d'autres pays restent insuffisantes pour combler les lacunes des services publics et en matière d'infrastructure.

Nous examinerons dans un premier temps quels sont les enjeux et les perspectives militaire, sécuritaire et économique du pays pour ensuite voir l'état et les défis du processus de construction de l'État au Kosovo dans un deuxième temps, tout en nous posant la question: Quel avenir du processus de construction de l'État dans un pays sans « statut »?

### **Quels enjeux et quelles perspectives pour un pays sans « statut »?**

Le Kosovo – tout comme d'autres pays des Balkans occidentaux – est l'un des pays qui, à long terme envisagent d'adhérer à l'Union européenne. Cependant, le pays représente à la fois des enjeux militaires, sécuritaires et économiques entravant ses possibilités d'intégration à l'Union européenne. Quels sont ces enjeux tant difficiles à gérer?

Les enjeux militaires que représente le Kosovo découlent principalement de la présence d'un fort contingent de soldats de l'OTAN (la KFOR), et surtout de l'installation du camp Bondsteel de l'armée américaine dans le sud du pays. Vu sa proximité aussi bien des régions sous tension au Caucase ou au Proche Orient, que des tracés des pipelines visant à fournir des hydrocarbures de l'Asie mineure, ce camp, en mesure d'accueillir 8 000 soldats était d'une importance stratégique majeure.

Pourtant, Bondsteel ne dispose d'aucun aéroport et a vu ses troupes se réduire à moins de mille hommes. Aujourd'hui, il nous semble que le camp n'ait été construit que pour des besoins temporaires de l'armée américaine et non pour jouer un rôle important à long terme dans le dispositif militaire de la Maison-Blanche. De cette manière, on peut alors affirmer que bien que le Kosovo soit dénué d'atouts militaires pouvant soutenir une action de grande envergure, il dispose de certains matériels qui pourraient servir de points d'appui pour les troupes onusiennes.

De même, le Kosovo actuel présente d'importants enjeux sécuritaires. L'exercice de façon ostentatoire d'activités criminelles internationales dans le pays, représente un danger sécuritaire non négligeable pour les pays européens. Des lacunes dans l'application des dispositifs répressifs, la prégnance des phénomènes de corruption rendent difficile la lutte contre le crime organisé. Par contre, bien que la corruption soit extrêmement répandue et l'économie informelle représente 20 % du PIB, cela ne conduit que peu d'entrepreneurs à renoncer à un investissement. En fait, par comparaison à d'autres pays de la région, les écarts relevés sont modestes, souvent même en faveur de la République du Kosovo. Cela signifie qu'en fait le pays ne se distingue pas fondamentalement des autres pays de la région et que l'Union européenne n'a que peu de motifs de se soucier plus du Kosovo que de certains autres pays des Balkans occidentaux.

Constituant un enjeu militaire et sécuritaire, le pays des kosovars pose également beaucoup de questions économiques. Disposant d'importantes ressources minières – des gisements de lignite avant tout, avec des réserves de 10 à 15 milliards de tonnes (plaçant le pays le troisième en Europe) – des minerais rares – comme 5 millions de tonnes de plomb et zinc dans les sites de Trepca et Mitrovica au Nord du pays – et d'autres minerais peu courants – comme l'indium, le germanium, etc. – le Kosovo pourrait bénéficier d'une certaine indépendance énergétique qui lui fait défaut pour le moment, ainsi que des recettes d'exportation très importantes sur le marché mondial. Or, en l'absence de statut reconnu, les investisseurs internationaux ne se précipitent pas sur les privatisations et les concessions d'exploitation du sous-sol, et de cette façon les richesses restent inexploitées. Pour exporter il faudrait d'ailleurs des réseaux de forte capacité, interconnectés avec les voisins qui manquent toujours aujourd'hui. En plus des atouts miniers présentés, la géographie du pays est aussi favorable à l'agriculture. Tandis que la plupart des pays des Balkans sont montagneux, les plaines du Kosovo sont beaucoup plus propices à ces activités. Néanmoins, il faut aussi ajouter qu'en même temps c'est aussi exactement cette partie, c'est-à-dire la plaine centrale du pays, qui est la plus riche en gisements de lignite. En fin de compte, on peut dire que le domaine agricole du Kosovo, bien qu'il reste encore à exploiter, n'offre que des opportunités relativement modestes à l'échelle régionale.

Cela signifie donc que ni les ressources minières, ni les activités agricoles ne paraissent constituer le point de départ du développement économique du pays.

En revanche, le Kosovo pourrait bien servir de carrefour entre la côte adriatique d'une part et la mer Égée d'autre part. Une fois transformées en voies à grande circulation, les routes sud-nord du Kosovo pourraient concurrencer celles de la Macédoine et l'axe traditionnel Vardar-Morava (Thessalonique-Skopje-Niš-Belgrade). Quelles perspectives économiques pourrait alors avoir ce pays sans « statut » n'ayant aucun potentiel assez fort en ressources naturelles ni des enjeux géopolitiques susceptibles de justifier un soutien international accru ?

Aujourd'hui la situation paraît défavorable. Dûe à l'obsolescence des structures économiques héritées de l'époque yougoslave et la faiblesse des capacités productives, la balance commerciale du Kosovo est extrêmement

déséquilibrée, tandis que le niveau de vie est l'un des plus bas du continent avec un taux de chômage fortement élevé, surtout parmi les plus jeunes. Bien que d'autres pays de la région montrent beaucoup de similitudes avec le Kosovo, le pays concentre de forts déséquilibres structurels entravant son développement économique.

Néanmoins, l'une des richesses du Kosovo qui pourrait servir de point de départ pour le développement est sa jeunesse. Comme 44 % de la population a moins de 25 ans, on peut dire que le Kosovo est un pays jeune.

Cette jeunesse fait toujours preuve de modernité et montre une envie d'entreprendre. Les récentes générations poursuivent leurs études jusqu'au niveau de la fin du cycle secondaire. En 2009, parmi les 20-24 ans 74 % des garçons et 61 % des filles avaient un niveau d'éducation scolaire de niveau de fin de lycée. Bien que l'accès aux universités soit en progrès (en 2009, 15,4 % des garçons et 11,3 % des filles avaient un diplôme universitaire), les formations offertes ne sont pas toujours de bonne qualité. En fait, c'est aussi de la faute de la communauté internationale qui n'a pas donné une plus grande priorité à la formation et à la coopération universitaire.

La diaspora constitue une autre richesse non négligeable du pays. Les quelques 800 000 personnes qui en font partie vivent surtout dans des pays développés d'Europe occidentale, comme en Suisse, en Allemagne, en Autriche, en Suède mais aussi dans d'autres pays, comme en Italie et aux États-Unis. Grâce à sa diaspora si nombreuse, le Kosovo bénéficie de transferts financiers très significatifs (605 M€ en 2012, soit 12,5 % du PIB).

Aujourd'hui, la diaspora kosovare est le premier pourvoyeur d'investissements directs dans le pays. De nos jours, dans le contexte de la crise migratoire, on voit clairement que le Kosovo ne peut que rester une source de forte immigration à long terme. C'est pour cette raison que l'accueil des jeunes kosovars devrait être favorisé partout en Europe occidentale, partie du monde en fort déclin démographique. La jeunesse du Kosovo représente en effet un atout pour le développement économique du pays et du continent entier à la fois. L'allocation des ressources financières dans l'augmentation du niveau des formations universitaires devrait davantage être une priorité des autorités étatiques. En fait, au lendemain de la guerre et de l'indépendance, les investissements se sont tournés vers le logement, le commerce, et les services. En conséquence, une offre trop élevée est apparue dans certains secteurs de l'économie (hôtels, restaurants,

stations-services). Aujourd'hui, le vrai défi n'est plus d'attirer des capitaux de la diaspora mais de les diriger vers d'autres branches de l'économie créant de la valeur, c'est-à-dire des emplois. En plus, bien qu'on ne puisse pas compter sur l'arrivée en masse des capitaux internationaux, la densité de sa population et la proximité relative des marchés européens font du Kosovo un pays attractif pour certaines activités industrielles, aussi bien que pour des services délocalisés. Cependant, l'interdépendance des marchés des pays de la région exige aujourd'hui la maîtrise de la lingua franca d'ex Yougoslavie dans la vie économique.

En même temps, il faut toutefois ajouter qu'aussi bien la jeunesse comme la diaspora représentent des atouts qui ne peuvent pas être gérés de manière bureaucratique ni par une action gouvernementale centralisée.

Le rôle des autorités en la matière doit alors se limiter à l'élaboration des cadres nécessaires (structures d'accueil adaptées, zones artisanales, Ministère de la diaspora) et au soutien des deux domaines clés – les investissements d'avenir et l'éducation – par une gestion parcimonieuse des ressources budgétaires. Malheureusement, les dépenses d'éducation restent aujourd'hui assez modestes: 13,7 % des dépenses budgétaires en 2012.

Enfin, les autorités doivent aussi essayer d'améliorer l'image du pays comme leur propre image souvent dégradée par des scandales de corruption.

### **Aux marges du processus de construction de l'État dans un pays sans « statut »**

Néanmoins, aucun développement économique n'est imaginable sans avancées suffisantes sur le plan politique et social. Toutefois, le concept du processus de construction de l'État par la communauté internationale est une idée assez récente. Il a trouvé sa première application dans les cas de l'Allemagne et du Japon d'après-guerre. Pourtant, l'implication de l'Union européenne dans différents projets et missions du processus international de construction de l'État est un nouveau phénomène.

Le processus de construction de l'État par la communauté internationale est une procédure assez longue qui peut prendre des années ou même des décennies. Il exige beaucoup d'énergie et de ressources humaines et financières. Comme il diffère d'un pays à l'autre, il est extrêmement difficile voire impossible d'identifier les différentes étapes de cette procédure. En

plus, tandis que certaines phases (comme la reconstruction immédiate) sont très courtes, d'autres (comme l'apaisement des tensions entre les communautés) s'étendent sur toute la procédure.

Généralement parlant, on distingue deux phases du processus international de construction de l'État: la reconstruction immédiate d'après-guerre, le rétablissement de la sécurité et la réconciliation des intérêts des communautés dans un premier temps et l'établissement d'institutions dans un second. Quant au rétablissement de la sécurité au sein de la police, de l'armée et des unités paramilitaires, Brinkerhoff identifie trois mesures à prendre: reconstruction, réforme et dissolution dont une application mélangée soit nécessaire. S'agissant des anciens combattants cela implique le désarmement, la démobilisation et la réintégration. En ce qui concerne la reconstruction immédiate d'après-guerre, il est question d'une assistance immédiate comme la reconstruction des maisons ou d'autres types d'assistance similaire de la part de la communauté internationale.

Troisièmement, la réconciliation des intérêts des communautés peut se dérouler selon deux stratégies différentes: selon celle de la démocratie consociationnelle, concept élaboré par Arend Lijphart et celle de la partition des communautés décrite par Donald Horowitz. La première est caractérisée par le partage des pouvoirs, c'est-à-dire la participation des représentants de toutes les groupes importants à la prise de décision, surtout au niveau d'exécution et par l'autonomie des groupes, c'est-à-dire la capacité des groupes à décider de leurs affaires intérieures, en particulier dans le domaine de l'éducation et de la culture. Par contre, la partition des communautés – stratégie recommandée dans le cas des tensions antagonistiques entre des populations territorialement concentrées – signifie une séparation beaucoup plus importante entre les groupes.

L'établissement d'institutions – deuxième phase du processus de construction de l'État – exige une procédure de démocratisation, c'est-à-dire des élections libres et transparentes, une économie de marché libre, une société civile et une culture civique. Cette dernière signifie une satisfaction personnelle et politique, une confiance interpersonnelle et un soutien de l'ordre social existant. Regardons maintenant quel bilan peut-on tirer pour le processus de construction de l'État sur le plans politique et social au Kosovo.

Après 78 jours de bombardement aériens de l'OTAN contre la Yougoslavie de l'époque (c'est-à-dire la Serbie et le Monténégro), le gouvernement yougoslave accepta le projet de paix élaboré par la communauté internationale. Grâce à l'accord – légitimé par la Résolution 1244 du Conseil de la sécurité de l'ONU – la violation des droits de l'homme fut stoppée, les forces militaires, policières et paramilitaires ont été rappelées, une nouvelle mission de l'ONU – la mission MINUK – s'est établie et des forces de l'OTAN – le KFOR – sont entrées sur le territoire du pays. Les objectifs du KFOR et de l'OTAN étaient d'établir et de maintenir la sécurité, y compris l'ordre et la sécurité publique, d'observer, de vérifier et si nécessaire de contraindre au respect de l'accord et de fournir assistance à la mission de l'ONU. En fait, nous pouvons affirmer que la MINUK et le KFOR par l'application adéquate des mesures de désarmement, de démobilisation et de réintégration ont bien réussi à rétablir la sécurité au Kosovo.

D'une part, les acteurs internationaux et les dirigeants de l'Armée pour la libération du Kosovo se sont mis d'accord sur la transformation de l'Armée en un nouvel organe appelée Corps de protection de Kosovo.

Quelques-uns des dirigeants se sont tournés vers la politique, au fur et à mesure que le corps s'est désarmé, s'est démobilisé jusqu'à ce que les anciens soldats se soient vus réintégrés dans la vie sociale du pays. D'autre part, suivant les accords, lors de l'entrée des forces de l'OTAN, la police et les troupes serbes ont été rappelées. Concernant la reconstruction immédiate, les activités de la communauté internationale ont également eu du succès. Grâce à l'aide des acteurs internationaux – surtout celle de l'Union européenne – quelques 100 000 bâtiments publics, écoles, infrastructures, mais aussi des maisons privées ont été construites.

S'agissant de la réconciliation des intérêts des communautés, on peut voir que le Kosovo – par la création des municipalités pour la minorité serbes dans quelques parties du pays par exemple – a plutôt suivi le modèle de la partition des communautés, c'est-à-dire le concept de Horowitz.

En outre, en ce qui concerne la deuxième phase du processus de construction de l'État – des élections libres et transparentes, une économie de marché libre, une société civile et une culture civique – on voit aussi beaucoup d'avancées. En fait, les élections ont servi d'outil principal pour établir de nouvelles institutions de gouvernance. Les élections étaient considérées libres et transparentes et par la suite le pouvoir a commencé à se transférer de la MINUK

aux nouvelles institutions du pays. De plus, la communauté internationale a fourni de l'expertise et de la formation continue au personnel de ces nouveaux organes. De même, les institutions de l'économie de marché – le système bancaire, la Douane du Kosovo, l'Autorité fiscale centrale et le Ministère de la finance et de l'économie – ont été fondées et de nouvelles règles et lois ont été élaborées dans ce domaine.

En ce qui concerne la société civile d'une part, l'objectif principal des acteurs internationaux était d'établir des ONG. Par conséquent, de nombreuses ONG ont été créées mais in fine, le niveau de leurs projets était souvent très bas voire insuffisant. Pourtant cela n'a pas du tout empêché la communauté internationale de soutenir ces derniers. D'autre part, on voit également la culture civique se développer. Toutefois ce qui fait défaut même encore aujourd'hui, est la participation des citoyens à la vie politique et sociale, phénomène qui peut s'expliquer peut-être par le manque de traditions politiques démocratiques.

La complexité de la gouvernance et la faiblesse des institutions ont rendu la situation encore plus difficile. Le renforcement des mécanismes informels comme les relations sociales, familiales et amicales, la faiblesse de l'État de droit, la méfiance envers les institutions de sécurité et le retour du patronage familial ont été constatés. Cette situation est aussi dûe au trauma d'après-guerre, à la disparition des sources de subsistance et à la démoralisation de la société. De cette façon, le rétablissement de la confiance et de la compréhension mutuelle entre les individus par la facilitation du dialogue est une condition sine qua non du développement.

En outre, la réduction des antagonismes nationaux, le rétablissement de la cohésion sociale et la réintégration ethnique sont aussi des facteurs non négligeables pour l'avancée économique du pays. Même si cette tâche n'est pas du tout facile et les groupes extrêmement divisées, il est possible de créer des éléments d'une culture civique ou plutôt d'une culture de paix commune. Cela se fera non pas par la création d'une culture hybride mais par un consensus sur quelques règles de base de cohabitation, et par une conception de la coexistence comme une valeur positive, tout en mettant l'accent sur les éléments positifs de cette culture commune. Les habitants de Mitrovica peuvent par exemple bien collaborer dans des domaines illicites, comme la contrebande ou le vol des voitures, tandis qu'il reste un tabou de travailler ensemble sur le plan politique et social. Par contre, la population



reste divisée en ce qui concerne les médias et l'éducation. Bien que les médias puissent stimuler l'engagement civil et la participation politique et sociale des citoyens, leur effet dépend fortement de la confiance dont ils disposent parmi les gens. C'est sur ce niveau-là que les albanais et les serbes du Kosovo demeurent divisés. Tandis que les médias bénéficient d'une confiance majeure parmi les jeunes albanais (trois tiers des albanais du Kosovo ont considéré les médias crédibles ou crédibles jusqu'à un certain point selon le Rapport sur le développement humain de 2006), les serbes du Kosovo étaient beaucoup plus réticents (seulement un tiers des serbes en faveur). Cette différence peut s'expliquer par la surreprésentation des sujets albanais dans la presse qui fait que même si les deux groupes sont d'accord sur le rôle des médias comme moteur de la cohésion inter-ethnique, on ne trouve pas de voie de communication commune. En ce qui concerne l'éducation, la situation semble analogue. Comme l'enseignement est offert dans cinq langues, même les minorités peuvent étudier dans la langue de leur région. L'origine du problème dans ce domaine se trouve dans le fait que la communauté serbe conserve une sorte de système d'éducation parallèle avec des contenus contredisant souvent ceux de la majorité albanaise.

## Conclusion

Faisons alors un petit bilan de ce qu'il avait question dans notre travail. Après avoir commencé l'étude des enjeux militaires, sécuritaires et économiques du pays, on est rapidement arrivé aux deux phases du processus international de construction de l'État: la reconstruction immédiate d'après-guerre, le rétablissement de la sécurité, la réconciliation des intérêts des communautés et l'établissement d'institutions. Nous avons affirmé que le Kosovo ne dispose d'aucun potentiel assez fort en ressources naturelles ni des enjeux géopolitiques susceptibles de justifier un soutien international accru. De surcroît, après avoir examiné la notion et le déroulement du processus de construction de l'État on a constaté que même si les avancées sont apparemment nombreuses, il reste encore beaucoup de choses à faire. Pour cela, une approche régionale, la redéfinition des priorités économiques, l'amélioration du niveau de l'éducation et de la formation, la facilitation de la liberté de circulation par la suppression des régimes de visas pour les citoyens kosovars, l'élaboration des politiques européennes d'envergure régionale, une

meilleure coordination conjointe des initiatives européennes et celles des Américains, ainsi que l'établissement des relations plus apaisées avec la Serbie seraient nécessaire.

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BOOK REVIEW

M.E. McMillan, *From the First World War to the Arab Spring: What's Really Going on in the Middle East?*, Palgrave Macmillan, 2016, 279 p.

Monica Meruțiu\*

The most recent book authored by M. E. McMillan, *From the First World War to the Arab Spring: What's Really Going On in the Middle East?*, endeavours to provide a comprehensive analysis of the Middle East by approaching difficult and controverted chapters in the history of the area, such as the circumstances following the First World War treaties to the conflicts of the Arab Spring.

In the Introduction, *Lost in the Labyrinth: What's Really Going On in the Middle East?*, the author closely scrutinizes the recent course of events in the region, with all its contradictions and inconsistencies, offering a guide into the labyrinth of the post-Arab Spring Middle East.

The escalation of the civil war in Syria is taken as a first example: the rise of the Islamic State of Iraq and the Levant, the involvement of the Kurds into the *vortex of violence*, the drama of the Syrians trying to escape the massacres, the horrors of the refugee camps, all marks of a *seemingly endless war*.

Part I, *The Tangled Web: Why the Great Powers of Europe Became Involved in the Middle East*, surveys in its first chapter, *Sarajevo: Sunday, June 28, 1914*, the problematic circumstances that led to the assassination of Franz Ferdinand in Sarajevo and the beginning of the catastrophic conflagration that soon followed. Within weeks five of Europe's great empires were at

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war, the tentacles of violence reaching beyond the European continent to areas as far as the Arab world. The Middle East, under strong influence from France and Britain ever since the nineteenth century would come to be roughly impacted by the brutality of the First World War.

The author dedicates the next chapter, *The British Empire and the Arab World: Ambition, Austerity, and a Class Apart*, to the case of Egypt, a key region to the British Empire and its maritime and colonial kingdom, with a central role in securing the sea power.

The third chapter of the first part, *The French Empire and the Arab World: From the Crusades to the Civilizing Mission*, presents the long presence and entanglement of France in the Arab world. One such example is Algeria where the French involvement culminated with a traumatic war whose implications would prove to be terrible for both countries. Other areas affected by the French domination were Lebanon and Tunisia facing different levels of hostility and interference from the European power. Morocco would soon become a new step on the path France took for dominance in the North- African region. Though under Spanish sphere of influence at the time, Morocco's faith would be settled in 1906 when the dispute between France and Spain would be regulated and the former allowed to take the bulk of Morocco while the latter kept its ports in the north.

The Russian Empire's influence in the Arab World is explored in the fourth chapter, *The Russian Empire and the Arab World: Religion, Royalty, and the New Rome*, emphasizing the religious pillar and the essential role it played in a time when religion and royalty were *inseparable*. In Russia, *the tsar was much more than a defender of the faith, he was almost divine*; ever since 1453 and the fall of Constantinople under the rule of the Ottoman Sultan Mehmed, the Russian royalty assumed the mission of becoming *the last line of defense for Orthodox Christianity against the seemingly unstoppable Muslim advance* (p. 41). The author also analyses the impact Russia had on the Arab part of the Ottoman Empire, an influence that was embraced by the Orthodox community: "Russian royalty built churches for the faithful in the birthplace of the faith, Jerusalem. Tsars maintained close links with the famous Orthodox monastery St. Catherine's in the Sinai, said to be built on the very place where Moses received the Ten Commandments. And in Orthodox homes across Syria, the tsar's picture could be seen hanging on the wall alongside religious icons" (p. 43). It is a connection that McMillan emphasizes as being still present while scrutinizing the conflict in Syria and its implications.

One must not overlook that the greatest influence Russia had on the Arab world relates to the large Jewish community of nineteenth-century Russia, facing persecution and consequently fleeing to other regions in what has become known as one of the largest migrations of Jews in history: "Most set sail for a new life in the New World. The more adventurous, the more religious, and the more desperate set sail for the old one. The Jewish Return to Palestine had begun" (p. 44). One specific dimension of the immigration process needs to be explored in this context, that is the burst of nationalism and its consequences for the region.

Chapter five, *The German Empire and the Arab World: Family Feuds and Eastern Ambitions*, analyses the connections of the German Empire to the Arab world, the journey taken by the young German nation, its destiny shaped by Kaiser Wilhelm and the influence of the personal on the political, the economic and military successes in parallel with the steps to be taken in international relations in a struggle to keep up with the great powers Britain, France, and Russia.

The last chapter of the first part, *The Ottoman Empire: How the Arab World Was Won and Lost*, is centered on the old Ottoman power, its struggle and competition with the European powers, on one hand, the German-Ottoman alliance, on the other, the tensioned context prior to the beginning of the First World War.

Part II, *Too Many Straight Lines on the Map: Where, When, and Why It Started to Go Wrong*, structured in five chapters, focuses its attention on the seminal contexts in the history of the twentieth century that shaped the future of the Middle East and consequently the relations of the Western World with this region.

The Sykes-Picot Agreement signed in 1916 is such a context, agreement which became "the blueprint for the postwar Middle East, and it is their names that have become synonymous with Western imperialism in the Arab world" (p. 73). McMillan reminds the readers that nearly a century after this moment, Abu Bakr al-Baghdadi, the leader of al-Qaida in Iraq, referred to it by urging his followers to overturn "the borders implemented by the Sykes-Picot [Agreement]" and bring back "the Islamic state, the state that does not recognize artificial boundaries and does not believe in any nationality other than Islam" (p. 73).

The consequences of the Sykes-Picot Agreement echoed a few years later in the Treaty of Sèvres, the process France and Britain secured their objectives in the region, the 'new reality' instituted, the challenge of nation-states in the region, are explored in great detail by the author. There are questions left unanswered lingering from those contexts and challenges still to be faced; a *poisoned legacy*: "If, nowadays, there is a barrier of mistrust between East and West, much of it goes back to what went on during this period" (p. 103). McMillan makes the case that all these were *avoidable*: "The Arab provinces of the Ottoman Empire had very strong regional and tribal identities. In the long run, those regional and tribal loyalties would have provided a better basis for the boundaries of the new nation-states of the Middle East than the imperial ambitions of London or Paris. And it would have been a better idea to leave it to the citizens of these new states to work out what role religion should have in the public space for themselves rather than create countries with sectarianism at their core" (p. 104).

Part III, *All or Nothing: Why All Roads Lead to Jerusalem*, comprising three chapters, introduces the reader to one conflict that stands out for its longevity and no less for its controversial nature: the war between the Israelis and the Palestinians. The seminal role of Jerusalem, the interactions between Jews and Christians, the influence of emperor Constantine on the future of Christianity, the Council of Nicaea, important episodes related to the Crusades and the Inquisition, the relations between Jews, Christians and Muslims, the Dreyfus condemnation, the Balfour Declaration, Hitler's ascension, the horrors of Shoah, the Jewish community in Palestine, creation of the State of Israel, and the turmoil years that followed, are all examined and analyzed by the author.

The four chapters of part IV, *Kings, Colonels, and Coups: Why There Is a Democratic Deficit in the Arab World*, gravitate around a central question: why "all the Arab states in the postcolonial Middle East, with the exception of Lebanon, had one thing in common" - *they did not become democratic*? The reader is presented a synthesized historical panorama with emphasis on the politics of power, the cult of personality, the fight for independence. It surveys the area, underlining the common points as well as differences and particularities, from Egypt to Irak, Lybia, Marocco and Tunisia, or Syria and the exception to the military-monarchy monopoly of power represented by Lebanon. McMillan also evidentiates how "the military states took a different

route to legitimize their authority. Where the monarchies emphasized tradition and religion, the military republics emphasized revolution and the nation" (p. 163).

Part V, *The Sacred Versus the Secular: Who Speaks for Islam?*, comprising four chapters, begins with a presentation of the Kingdom of Saudi Arabia and the great influence exerted by the Wahhabi teachings. Extremist terrorist groups such as al-Qaida and ISIS are the most recent and radical examples of such an influence.

The exception represented by Iran which in 1979 took a different path than the rest of the Arab world, where power was split between the military and the monarchies, by becoming an Islamic Republic, is yet another context approached by the author.

McMillan gives large spaces to the transformations taking place with the beginning of the third millennium, to the new wave of power taking place with in the Arab world, whose first main characteristic was the transformation of presidency, and *presidents began acting like kings*. The pioneer was Syria with the actions of President al-Asad who made sure that his son, Bashar, succeeded him: "Syria, once one of the most radical states in the Middle East, had become a *jamlaka*. Not a republic (*jumhuriyya*) or a kingdom (*mamlaka*), a whole new word had to be invented to describe a republic that acted like royalty and a president who ruled like a king. In this new system, the people were—yet again—shut out of power and the gap between the ruler and the ruled remained as wide as ever" (p. 186).

To explain the phenomenon McMillan introduces the argument elaborated by Harvard Professor Roger Owen in his work *The Rise and Fall of Arab Presidents for Life*, that of the "demonstration effect": "Because Arab heads of state meet on such a regular basis at summit conferences of organizations like the League of Arab States (and, to a lesser extent, the Gulf Cooperation Council) and issue joint communiqués stating a common position on many issues, a certain "clubbiness" has developed amongst them, regardless of whether their countries are conservative kingdoms or a military republics" (p. 188).

The Epilogue, *Untangling the Web: What Now?*, concludes on the settlement that followed the First World War and the causes leading to the conflicts associated with the Arab Spring.



The instability in the region remains one of the major problems of our world today and raises further questions and concerns.

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