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POLSCI PAPERS

Does the Trio matter? The case of the Slovenian EU Council Presidency¹

Boštjan Udovič, Marjan Svetličič²

ABSTRACT:

The article presents recent findings on the functioning of the Trio in managing the EU Council presidency with a special focus on Slovenia who chaired the EU Council in the first half of 2008. The analysis centres around three research questions: (i) does the Trio represent a substantial assistance mechanism for the new member states; (ii) does the role of the Trio change at different stages of the Presidency; and (iii) are there any asymmetries among the Trio members, and how can these asymmetries be overcome. The answers to these research questions are provided empirically, by using quantitative data obtained through a survey targeting major presidency actors (407 respondents), complemented by in-depth interviews with some key decision-makers and public officials. Despite being a case study, the article concludes that the Trio was more important during the preparation stages, while less important during the operational stage where the presiding state is “basically left on its own”.

KEY WORDS: *Trio presidency, Slovenia, European Commission, survey*

Introduction

The idea of establishing a Trio Presidency for the European Union Council (hereafter EU Council) aimed at replacing the national short-term oriented presidencies with a more stable and long-term oriented presidency, to assist the less experienced (new) member states in conducting their presidencies, and finally to promote Community interests. Within this context, the key questions are whether the Trio structure: (i) materializes Community interests better than in the case of a single country presidency; (ii) makes presidencies less short-term oriented; and (iii) enables better continuity of programs at EU level.

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Taking into consideration the above-mentioned characteristics of the Trio, our analysis, has four goals:

- (i) to evaluate the Trio's *modus operandi* characteristics;
- (ii) to clarify whether the Trio has been (and still is) *instrumental* in helping newcomers to conduct their presidencies;
- (iii) to determine to what extent experiences of the 'old' and large nations influence the decision-making processes of the new and small states;
- (iv) to provide some suggestions for improving the Trio form of presidency in the future based on the Slovenian presidency (in the first half of 2008), as perceived by its internal actors (i. e. decision-makers, politicians, diplomats and other civil servants).

We concentrate on five research questions:

1. Does the Trio form of presidency represent a substantial assistance mechanism for small new member states lacking human capital, knowledge and experiences? How far does a small state – by shouldering on EU institutions – compensate its limited pool of human resources and knowledge gaps?
2. Does the role of the Trio differ at different stages of the presidency (presidency preparation, execution, evaluation)?
3. Which were the most problematic issues for Slovenia within German-Portuguese-Slovene Trio? Was Slovenia able to cope with the challenges and opportunities offered by the Trio structure? Was Slovenia able to materialise a more efficient and a better-coordinated public administration? Which were the key internal problems harming Slovenia's presidency?
4. Was Slovenia, within the Trio, an "agenda-setter", "policy entrepreneur" or just an "honest broker"? Was Slovenia just following the Trio programme (*downloading*) or did public officials use this opportunity in order to influence the EU agenda (*uploading*)?
5. Do asymmetries in the Trio structure (different size of states, their membership age and experiences with presiding) substantially influence the conduct of the presidency and presidency policy-making?

The article is organized as follows. The introduction precedes the theoretical part which provides a conceptual framework about the Trio presidency. In the third part, the methodology of the survey, i. e. semi-structured interviewing and focus-group, is presented. This constitutes a framework for discussing the final results presented in the fourth part of the article. Finally, the article provides a conclusion and gives some suggestions for further research.

EU Council presidency, Trio and Trio member states: a theoretical overview

The team presidency concept was drafted at the Seville summit in 2002. The draft was elaborated at the meeting of Permanent Representatives (COREPER II) to the EU in March 2006, and approved by the General Affairs and External Relations Council (GAERC) in June 2006. It replaced the previous one-year operational programme and three-year strategic programme for the Union by an 18-month programme of three successive Presidencies. The idea was to overcome discontinuities between consecutive presidencies and the insufficiency of the six months presidencies to pursue more complex projects (Šlosarčík, 2008: 92).

The background of the process of establishing a Trio presidency was the idea that different cultural and economic traditions are rooted in the EU member states. This implied that in order to overcome possible tensions between various categories of members ('old' vs. 'new', 'big' vs. 'small', 'Eastern' vs. 'Western'), a common denominator should be found (Agh, 2008: 23). Secondly, the Trio establishment was supported by the reasoning that such framework would 'force' presiding member states to prioritise the common (communitarian) interests (see Lovec and Erjavec, 2012a, 2012b) over their own, national interests. However, the idea of establishing Trio presidencies consisted of more than just "mitigating" among different national interests (Bunse, Rittelmeyer and Van Hecke, 2011) and as a polygon for balancing individual presidencies (and its actors). It was based on the presumption that tensions among member states can be overcome by aligning countries coming from different social and political backgrounds. One criterion for achieving this was to align countries on the basis of their "size", while

the next criterion, which strongly influenced the Trio structure, was the length of EU membership of a certain member. Next to these two “official criteria” one additional, “unofficial” was taken into consideration, i. e. the geographical (and consequently also the cultural) dispersion of countries within a single Trio³. This last criterion is quite an important one because it denies the possibility to create a regional (or culturally similar) block, hindering the processes within the EU (*cf.* also Mazzucelli and Dragomaca, 2009).

Changes introduced by the Lisbon Treaty (2009)⁴, have shifted some powers within the key EU institutions. Changes such as (i) the establishment of two new functions (i. e. the President of the European Council and the High Representative of the Union for Foreign Affairs and Security Policy; *hereafter* High Representative) (*cf.* Cazenave, 2008; Newman, 2009; Barber, 2010; Kajnič, Guggenbühl and Lavadoux, 2011); (ii) the split of GAERC into General Affairs Council (GAC) and Foreign Affairs Council (FAC); (iii) the empowerment of the European Parliament and the Commission have created some imbalances within the institutional triangle by giving more power to the most operational/competent stake-holder (*cf.* Bojinović Fenko, 2012). From the symbolic point of view, the biggest shift occurred with the formation of FAC, now chaired by the High Representative, which is at the same time a member (by function) of the EU Council and the European Commission. Nevertheless, before all these changes have occurred, enough room for manoeuvring (and performing its own activities) has been left for presidency holders, which have been frequently exploited (*cf.* Tallberg, 2003: 6–8; Broman, 2005: 20). These changes affected and, to a great extent, re-structured the role of the rotating Presidency. Therefore, we can no longer talk of a “traditional rotating Presidency”. The rotating Presidency’s role remains; its influence, however, is shifted more towards the EU’s internal level in terms of its important role of consensus-builder (see more also in Bunse, Rittelmeyer and Van Hecke, 2011; Van Hecke and Bursens, 2011).

³ 1st Trio: Germany-Portugal-Slovenia, 2nd Trio: France, Czech R. Sweden, 3rd Trio: Spain, Belgium, Hungary, 4th Trio: Poland, Denmark, Cyprus, 5th Trio: Ireland, Lithuania, Greece, 6th Trio: Italy, Latvia, Luxemburg.

⁴ According to Bunse (2009: 215) the adoption of the Lisbon Treaty “includes the most far reaching Presidency reforms to date presenting both opportunity and risks”.

In comparison to its previous role, it became obvious that it decreased particularly in the Foreign and Security arena. But “it seems that the role of the Presidency depends not only on competences and Treaty provisions, but also on other features such as member states’ attitude and flexibility as well as internal and external uncertainty” (Szabó, 2011: 4 and 5). In addition, “the Presidency’s ‘changing roles’ have not yet fully developed in the post-Lisbon system. Lastly, the role of the chair depends also on how the Presidency is understood and what competencies, capacities and expertise the presiding state is able to engage in during its time at the helm. Provided the expertise and competencies, the role of the rotating Presidency can still be influential even in the EU’s external relations as this field includes also issues belonging to exclusive and shared competences” (see Szabó, 2011: 31).

Despite the fact that small states are sometimes seen as unimportant because of their size and population (and sometimes economic power), the European Union institutional set up and its *sui generis* specifics allows them to convert “size disadvantages” into “coalition advantages”. This can be achieved through different channels of formal and informal sources of power, linked to *structural power* (Strange, 1995), sometimes defined also as *soft power* (Nye, 2004; Rašković and Mörec, 2012). The soft power sources of a small state can be various; political preferences and capabilities to negotiate agreements, economic power, cultural particularities etc. (*cf.* also Udovič and Svetličič, 2009; Kunčič, 2011). The political strength of small states is not linked to the military power of a state, but rather to its diplomatic capabilities, prestige and cohesion. All three items can be achieved by a powerful and skilled national administration (*cf.* Thorhalsson, 2006: 19), which is able to govern the state, take an active part in bilateral, plurilateral and multilateral negotiations, and pursues national interests at maximum, whenever it is possible.

The idea of Trios is based on the notion that all Trio member states are equal and should be treated equally. However, the reality is quite different, since various Trio presidencies have proven that in some cases states are “more equal” than in others. The “equality” is not measured by the hard power of a

state, but more by different activities and statements that a state issued during the time of its Presidency. In the case of the first Trio Presidency (Germany – Portugal – Slovenia) the situation was even more interesting. Not only that the Trio was composed of three states of different size, but Slovenia combines two characteristics: being small and a new member state. In this case, smallness was understood as a panacea for the Trio functioning, because – deriving from theoretical presumptions – small states are: (a) flexible and capable to be selective in their priorities; (b) honest brokers (Baillie, 1998: 195–197; Šabič and Brglez, 2002; Zupančič, 2010); and (c) *per definitionem* less constrained by ideological factors (and more pragmatic) (Zupančič and Udovič, 2011). Simultaneously, the status of a newcomer presented an interesting experience, as it was expected that the newcomers would be more or less observers and would lean with the leading states decisions. In the case of Slovenia both expectations were confirmed. This can be attributed not only to its smallness and/or its newcomer status, but above all to its cultural links and common heritage with the leading state within the Trio, i. e. Germany⁵.

In evaluating the effectiveness and efficiency of Trios, the relationship between Trio member states and EU institutions has to be taken into consideration. The long-term progressive development of the last 50 years has caused the EU institutions to become more or less autonomous, meaning that nation states can exert less influence on them as was the case in the past. In spite of this, states constantly try to influence the decision-making of EU institutions; large states by exerting their “relational power” on decision-makers and decision-making processes etc. while small states use more structural approaches, such as establishing special (friendly) relations with (officials from) EU institutions (*cf.* Bunse, 2009; Thorhallson, 2000: 232, 237). Such differences between the strategies of large and small states are extremely important for the functioning of the Trio, because Trio member states can work on the principle of “good cop/bad cop” and together achieve more than it would achieve on their own.

⁵ A more detailed analysis of cultural and heritage links between Slovenia and Germany is provided by Žigon (2012).

Next to its complex phenomenon and advantages of helping newcomers to familiarize themselves with EU issues, Trio Presidency can also be disadvantageous. Namely, it established a framework where the big, “leading states” decide on key priorities, while middle and small states (or even newcomer, less experienced states) – which can be denoted as “following states” – follow the agreed priorities and apply them in practice. Even though such an approach does not confirm the theoretical presumption of “sovereign equality”, it remains true that the “following states” have the possibility to elaborate their interests within the communitarian framework. This forces them to prioritize between issues of large importance, while at the same time offers them free ride opportunities, flexibility on many issues, and greater room of manoeuvre for their officials (*cf.* also Thorhallson, 2000: 232, 237).

Slovenia preparing for the Presidency: a short overview

Presiding international organisations was not a new activity for Slovenia, which in its short history as a democratic and sovereign country has already chaired the UN Security Council (1998/99) and OSCE (2005)⁶. These presidencies offered Slovenia valuable experience and knowledge by helping its decision-makers to better formulate, articulate and support their positions and statements.

However, presiding the EU Council was different and very important for positioning Slovenia on the “map of the European Union”. From the foreign policy point of view, it was important that Slovenia chaired the EU Council as the first country among the newcomers. This increased the visibility of Slovenia and set the framework for further presidencies of new member states⁷. Additionally, the Slovene Presidency influenced the development and work of its public administration. Knowing that the Presidency offers opportunities that should not be missed and that it gives an opportunity to acquire/increase the reputation of a

⁶ After the EU Council Presidency, Slovenia in 2009 also chaired the Council of Europe.

⁷ Slovenia's Presidency framed the presidencies of other new member states (NMS) and therefore the following presidencies of NMS are assessed based on Slovenia's achievements (this observation was explained more times as a fact by a series of colleagues from EU think tanks).

new member state, this has enhanced the ability of the state administration to prepare extensively on topics relevant for the Slovene Presidency. The result was that public officials started to prepare for the Presidency well before it started, trying to identify major issues and coordinate positions on them. This process empowered cooperation among ministries, public agencies and state officials. When the Presidency started on January 1st, 2008, this already well-established way of inter-ministerial preparatory work was translated at the European level.

The idea on how the Presidency should be performed was based on the theory of how small states should behave when they chair international fora. Firstly, the premise of the Presidency theory approach arises from the lack of relational power of a small state (Strange, 1995), which can be compensated by a stronger cooperation with key institutions – in the Slovene case this was the European Commission. Slovene decision-makers tried to enhance personal and organizational ties with the Commission well before the start of their own Presidency. Secondly, small states also have a limited pool of qualified personnel, making their administrative structure more constant and flexible. Therefore, the Presidency is not taken just as an instrument of gaining political prestige by political parties/politicians lacking knowledge about EU institutions, EU Council working procedures, and European affairs in general. Hence, the Presidency has to rely heavier on top civil servant professionals. In the Slovenian case, this meant that the ‘future’ chairing and liaison officers were already working at the Slovene Permanent Mission in Brussels for at least a year (often two years or more) before the start of the EU Council Presidency. In this respect, Slovenia opted for “Brussels-based Presidency” (Brozina, 2009; Kraut, 2010), where a much larger share of top decisions is made at the member state's permanent representation in Brussels. Slovenian civil servants both officially and unofficially strongly cooperated with public officials and decision-makers of the forthcoming Trio (Germans and Portuguese), which offered Slovenian officials in Brussels and at home a deep insight into the routine and (informal) decision-making processes of the European institutions. The result of such an approach

was that at the very beginning of the Slovenian Presidency, Slovenian public officials in Brussels and Ljubljana already understood the “Brussels machinery” and were thus better prepared to debate, negotiate and mitigate between various interests at the EU level.

The German-Portuguese-Slovene Trio (January 2007–July 2008)

The rotating Presidency institution reflects the principle of equality between EU member states and enables each country to leave its mark at the EU level, to increase its formal weight for six months and at the same time, to use these six months to raise its informal sources of influence – which it can retain even after the Presidency term is gone. The EU Presidency places individual member state into the centre of EU politics, policy and diplomacy and also in the EU’s external activities. According to Kajnč Lange and Vysotskaya Guedes Vieira (2012: 11–12) the functions of the Trio presidencies can be classified into five correlated categories: (a) management (of the EU Council); (b) political initiative (focused on the deepening of the EU); (c) brokerage among different interests of member states (and finding a communitarian one); (d) representing the EU Council in front of other EU institutions; and (e) external representation (towards the third parties).

Looking at the 18-month programme of the German-Portuguese-Slovene Trio and the three individual programmes, one quickly notes the overlap between the former and the German Presidency programme. Some analysts rather critically concluded that the Trio programme has been largely dominated by the German administration (*cf.* Kietz and Perthes, 2007; Batory and Puetter, 2011). Bearing in mind that Germany was the first to begin the Trio Presidency, its leading role in preparing the programme is, according to the Realist school (*cf.* Morgenthau, 1948/1995), understandable and a consequence of its *founding* member state status with the widest interest spectrum. Moreover, Germany’s leading role can even be welcomed from the point of view of the responsibility it bears in the EU. Therefore, more than the result itself, it was the process that

mattered; especially for the newcomer (Slovenia) the programme preparation phase was instrumental as a learning exercise⁸.

Even though it seemed that the 1st Trio functioned well, there were some asymmetries in its functioning, comparing the pre-Presidency and Presidency period. According to Batory and Puetter (2011: 8), Portugal strongly cooperated with the other two presiding countries in the pre-Presidency phase. Later on, the Presidency centre moved towards the German-Slovene axis, while Portugal remained on the margins. The second issue (showing asymmetry) was the launch of the Lisbon Strategy 2nd cycle, done under the Portuguese Presidency, even though it was planned for the Spring European Council in 2008 (under the Slovenian Presidency). Slovenia was quite displeased with this “acceleration” and started lobbying that something should be done in the field of R&D during its Presidency. Lobbying proved successful and resulted in the start of the Ljubljana Process in April 2008 (Bučar and Udovič, 2010; Bučar, 2011).

We argue that the asymmetries between the Trio members occurred mainly because Slovenia was the first new member state taking over the EU Council Presidency. This caused some reservations and concerns about its capabilities to conduct the Presidency. Additionally, there were also some fears that a new member state might block the operation of the EU because of its inexperience in consensual decision-making process and understaffing (*cf.* Juncos and Pomorska, 2007; Economist, 2007).

In spite of low expectations, Slovenia has demonstrated an “encouraging record” during the preparation stage and during the Presidency itself (Bunse, 2009: 217). It proved to be able to balance, mediate and understand the need for compromises (Kietz and Perthes, 2007; Kajnič, 2008, 2009), suggesting that it adopted a *small state behaviour* typical in the EU (specialization on certain issues, while on others relying more on the Commission, adopting *low profile* and *honest broker* roles).

⁸ A strong and statistically relevant correlation between the cooperation within the Trio and training was demonstrated by our survey.

Research methodology and results of the survey

Our methodology was based on the triangulation of methods (Brannen, 1992), applying both quantitative and qualitative methods. As a core method to test our hypothesis, we used a quantitative survey (Neumann, 2003: 139). Following the method of triangulation, we decided to include two control variables/methodologies in order to test the results obtained from the survey. The two qualitative methods were focus group and semi-structured in-depth interviews (Aaker et al., 1998: 189–190) with key Presidency decision-makers, high-ranking officials from the Slovene Government and the focus group method done as a *World Café* workshop (Yin, 2003) after the survey⁹. This “control method” gave us the possibility to better understand some results and ‘correct’ them in accordance with the answers/reactions of individuals or the whole focus group.

The quantitative part of our methodology consisted of a survey focusing on state officials, involved in the Slovenian Presidency¹⁰. This survey was the core method used in answering our research questions. The anonymous survey was conducted via the Internet between July 9th and September 4th, 2008. The questionnaire consisted of 40 questions and was sent directly to the distribution list of the Presidency Human Resources Sub-Group, which includes those responsible for substantive dossiers (454 persons). Separately, the survey was distributed among diplomats and other public servants working on substantive issues at the Permanent Representation of Slovenia to the EU (PermRep) (169 persons), and to other diplomatic and consular representations of Slovenia (44 persons). In total, the survey was distributed to 667 addresses (N=667). We received 407 replies (n), among which 235 were complete, while in 172 cases

⁹ It was organized together with the Government Office of European Affairs (SVEZ) in November 2008 with the participation of 23 Presidency actors from 12 different governmental departments. Both control methods were used so as to provide more “food” for the interpretation of the survey results.

¹⁰ Some 2775 public servants were officially involved in the Slovene Presidency. An extra 300 were additionally hired for the Presidency itself, and the Government also relied on 245 students who were employed as interns. Out of these, 1151 worked on substantive policy matters, i. e. on dossiers and overall management of the Presidency. The Presidency’s sub-group on the human resources dissemination list included 454 public servants directly working on the dossiers. The Permanent Representation was staffed with 167 experts and diplomats (the number rose for the purposes of the Presidency from the previous 53 since the time of accession).

the respondents did not answer to at least one question. Thus, the response rate was quite high with 61 % of responses, among which 35 % responded to all questions. In the case of partial responses, the share of unanswered questions increased towards the end of the survey, which indicates that the lack of time partially influenced this result.

Among the 40 questions, five questions were related strictly to the characteristics of the Trio Presidency (questions 13 to 15; 24 and 25), while one question (20) addressed the agenda-setting process¹¹.

The results are representative with regard to the categories of stakeholders and their status in the administration, experience and field of expertise. All respondents were quite involved in EU matters; 39 % of them worked on EU matters for more than 20 hours per week, while 61 % worked on these issues more than 13 hours per week. Finally, 74.7 % of respondents had more than 4 years of experience working in the administration.

Survey results

The general conclusion of our survey is that the Trio did not represent such a substantial assistance to the presiding state role as both the theory and policy-makers have predicted. Namely, only 14 % of respondents claimed that the Trio has been crucial for the introduction of the new member states to the functioning of the EU (table 1), while 56 % partly agreed with this statement. The conclusion that the importance of the Trio has been considered relatively low may reflect the fact that working groups dealt with specific, more operational issues, not really elaborated in details by the Trio programme that mainly dealt with strategic issues. However, high percentage of those not sharing the opinion that the Trio has been crucial (30 %) and those believing that the Trio has been indeed irrelevant for the Presidency (17 % agreed, 40 % partly agreed) makes us conclude that it was less important than intended at the time when it was introduced. The Trio was only partially important for the Presidency. Almost 60 % of those agreeing that a better way to have organized the Presidency would have

¹¹ The survey is biased in terms of representing the views of the actors directly involved in the activity that is being evaluated.

been to divide the tasks by areas and not by time (6 months), may call for changes in the Trio concept.

Table 1: How important was the Trio in selected functions (question no. 14)

	n=	I completely agree (%)	I partially agree (%)	I do not agree (%)
The Trio was crucial in familiarizing the new Member States with the activities and functions of the EU	227	13.7	56.4	30.0
Close cooperation with the General Secretariat of the Council was more important than the one with the Trio	223	63.2	30.5	6.3
The Trio was useful, but instead of temporal distribution of work it would be more appropriate to distribute work according to different sectors	221	13.6	45.7	40.7
The Trio was not important for the realization/implementation of the Presidency	223	17.0	40.4	42.6
The cooperation within the Trio depended on informal contacts between individuals	226	38.9	55.8	5.3

Source: Own analysis

The very high importance given to informal contacts indicates that the Trio framework facilitated such contacts which otherwise would not have been possible to the same extent. Such a conclusion is in line with the high importance given to informal networking in the general array of competences needed for the Presidency (*cf.* Kajnič and Svetličič, 2010). It also confirms Bunse's conclusion (2009: 202) that the "combination of formal and informal powers gives the office holder an important leadership tool in case of small evaluated countries (Finland, Belgium and Greece)".

A relative low importance of the Trio is also indicated by the assessment that the "cooperation with GSC¹² was more important" (63.2 % totally agreed with this and 30.5 % partly agreed), confirming the theoretical preposition that small states rely more on the Commission and the GSC as compared to larger states (Bunse, 2009). In addition, changes in the Presidency system seem to be desirable since as much as 59 % respondents believe that the Trio was useful. The high percentage of those partially agreeing with most of the offered statements reveals their insecurity as to the role of the Trio. It reaffirms the need

¹² General Secretariat of the Council.

for a new evaluation of this form of Presidency and its execution/implementation. However, given the relatively high number of those who remained undecided prevents any generalized conclusions about the role of the Trio.

Table 2: Rate the cooperation of the Trio on selected issues (1=unsatisfying; 5=excellent)

	n=	4+5	3	2	1
Facilitating the process of taking over of the Presidency	218	59.2	22.9	9.6	8.3
Taking advantage of the good relations with certain actors and/or burden-free positions on specific issues for help in negotiations	212	54.2	28.3	11.3	6.1
Chairing the Council working parties/groups	207	49.8	33.3	9.7	7.2
In making compromises on sensitive issues	217	46.1	33.6	13.4	6.9
The work distribution between the Trio members	224	45.1	35.7	12.5	6.7
Shaping the 18-months programme	218	40.3	28.9	8.3	4.6
Training and expert help	217	40.6	34.6	15.7	9.2
Cooperating on activities (websites, cooperation with media)	209	22.0	38.8	24.4	14.8

Source: Own analysis

Table 2 reveals that the Trio was nevertheless highly important in the Presidency's preparations (59 % agree on this). It was also highly functional as a basis of close personal relationships among Trio members (*cf.* this answer with Batory and Puetter, 2011) and as a helping hand in negotiations (54 %). The Trio was performing well as a coordinator and facilitator, while in operational functions, where one might have expected a more important role, the Trio was quite unsuccessful (*cf.* Batory and Puetter, 2011). The responses show that the Trio was by far the least successful in some practical matters, such as preparing Internet pages and cooperation with media, followed by training and offering support on substantive issues, making compromises on sensitive issues as well as organizing the division of labour among members. Surprisingly, the Trio was not as important as expected in facilitating compromises on the most sensitive issues. This finding erodes our presumption on the role of small states as "*honest broker*".

Respondents also noted the "poor functioning of the Trio", especially when the coordination process of issues between Trio members was taken into consideration (table 3). This confirms the theoretical predictions that various

differences among Trio members (e.g. ‘old’ vs. ‘new’, ‘north’ vs. ‘south’, ‘small’ vs. ‘large’ member state) may be a barrier in finding a common ground when certain issues are tackled.

Table 3: The most problematic functioning aspects

	n=13	%
The cooperation process in organizing the Trio-Presidency was too weak	128	31.4
The cooperation of the Trio was not possible due to different national interests	104	25.6
The cooperation of the Trio was limited to the working-level officials	101	24.8
The cooperation of the Trio was founded on good relations between political elites	83	20.4
Bigger and more experienced states in the Trio tried to dominate with their positions	68	16.7
There was no appropriate cooperation between the Presidencies because of broken personal contacts (following changes in team members' positions after the Presidency of the respective Trio-partner)	35	8.6

Source: Own analysis

Due to the fact that chairing EU institutions was a novelty for the Slovene public administration and that public officials needed some insights and help in performing it, we were interested on how frequent were the interactions among chairs of the Slovene Presidency and other actors (within and outside the EU). It was presumed that according to a pre-Presidency practice, Slovene representatives in Brussels would rely strongly on their counterparts in the EU institutions and therefore would claim for frequent contacts (table 4).

Table 4: Frequency of informal contacts with:

	n=	Frequent and very frequent (%)	Very rare and Rare (%)
Representatives of other Member States	226	84.5	15.5
Civil servants/diplomats of Slovenia	227	77.9	22.0
Officials at the General Secretariat of the Council	224	73.2	26.8
Officials at the Commission	226	71.7	28.3
Interest groups, non-governmental organizations	224	26.8	73.2
Officials and parliamentarians of the European Parliament	221	18.1	81.9

Source: Own analysis

Our expectations were confirmed. The higher frequency of informal contacts with representatives of other governments is understandable since there are 26 other member states “which are interested in contacts with the

Presidency". The Presidency is therefore a target of other states with regard to lobbying and information-gathering. Thus, it is normal that contacts, formal and informal, with the presiding government increase substantially, irrespective of the activities of the Presidency and may be more a result of the proactive attitude of other member states. Similarly, the high positioning of contacts with GSC and the Commission is in accordance with the presumptions that states with limited resources and knowledge are able to overcome their deficiencies by relying on official EU institutions¹³.

The high quantity of informal contacts depicts nothing about the quality of these contacts which is also confirmed by Kajnč and Svetličič (2010: 84) by arguing that one of the major issues of the Slovene Presidency were "problems on intra- and inter-ministerial coordination, hierarchic culture, and poor flow of information between civil servants" (Kajnč and Svetličič, 2010: 84). Such an observation is not unexpected, given the strong hierarchic and competitive culture that permeates the Slovene public administration, where information is understood as an *intangible* asset giving a comparative advantage and vanishing at the moment, when it is distributed to other stake-holders.

While the results in Table 4 mostly cover *intra-EU* activities, the *World Café* workshop participants emphasised that Slovenia, at the time of its own Presidency (on its own initiative), enjoyed intensive and frequent international contacts. Two explanations can be found for this. Firstly, the intensive international activity of the Slovene Presidency was an instrument for establishing contacts worldwide for information-gathering and coalition-building. Secondly, services of the Slovene diplomatic and consular representations and of other public servants were not sufficiently involved in the Presidency as such, and were therefore able to operate with a higher intensity in the international community (cf. Kajnč and Svetličič, 2010: 101). In some in-depth interviews, we found that both justifications are relevant. On one hand, some officials were not included into the Presidency and had the possibility to conduct their activities

¹³ However, this cannot be firmly confirmed. Our research shows that the correlation coefficients are positive (but weak) only in the case of cooperation with the GSC (CC=0,108, it is not statistically significant).

freely, while on the other hand, especially diplomatic and consular representation offices abroad worked hard to provide the necessary information on topical issues and to ensure possible coalitions.

The most interesting part within the framework of informal contacts were the statistical correlations among answers on “informal contacts” and on “defending own/national interests/positions”. Respondents argued that informal contacts and defending one’s own positions were interconnected. In the case of GSC, the correlation coefficient (CC) is 0.241 and the EC presents a CC=0.249 (sig. 0.05 level). We can find also a higher positive correlation among respondents, which were conducting informal contacts with GSC and EC. In the first case the CC=0.433, while in the second case CC=0.464 (both sig. 0.01). Such findings confirm the theoretical presumptions that “goals can be achieved most effectively by keeping consensual relations with the other decision-makers (...)” (Bunse, 2009: 211). However, good relations with other decision-makers do not influence only the adoption of a decision.

Different formal and informal channels also have an important role in the agenda-setting process, giving the presiding state a lot of procedural control. The agenda-setting is one of the major sources of power, whose main characteristics are its “indirectness”, “negligible role” and “sensitivity over vulnerable issues” (*cf.* Keohane and Nye, 1989: 11–12). As such, the chairing country defines the topics of meetings on the basis of its “own decisions”, “issues vicinity and difficultness”, and other states’ interests. Table 5 shows that the agenda-setting during the Slovene Presidency was mostly based on the Presidency program and according to its own judgements.

Table 5: Agreeing with the following statements about agenda-setting

	n=	Yes	No
I determined the agenda according to the programme of the Presidency	152	77.6	22.4
I determined the agenda according to my own judgement	152	62.5	37.5
I determined the agenda as a combination of priorities arising from the programme of the Presidency and Slovene national priorities	148	58.1	41.9
The agenda was determined by external events	148	31.8	68.2
The agenda was influenced mostly by the General Secretariat of the Council	148	23.6	76.4

I did not have a role which included the possibility to shape the agenda	144	16.2	84.0
The agenda was influenced mostly by the Commission	147	13.6	86.4
The agenda was determined by the Trio	147	8.2	91.3
The agenda was influenced mostly by the European Parliament	145	2.1	97.9

Source: Own analysis

Theoretically, the agenda-setting issue is considered to be the most important instrument for attaining national interests. In two out of three times, the Slovene chairpersons decided by themselves how and when the issue would be treated. This is in accordance with theoretical claims that agenda-setting was one of the most important Presidency state powers. The least important influence on the agenda-setting process of the working groups, or, better said, no influence, was exerted in the case of the: TRIO (35 respondents out of total 62), GSC (31 respondents out of 63) and External events (23 respondents out of 63).

The low importance ascribed to external events placed some doubts regarding Bunse's (2009: 9) hypothesis that "variance in Presidency influence can arise from factors that are outside the Presidency's control (circumstantial)¹⁴ and from those that are influenced by other office holders". More respondents claimed that external events were not so influential in setting the agenda (68 % found external events unimportant; see Table 5). A possible explanation for such a modest impact by the external environment can be explained by "less dramatic" external effects in the case of the Slovene Presidency as compared to some other presidencies.

Finally, it was interesting to find out that the (other two) Trio member states were not considered so relevant in the agenda-setting process. Even though the theoretical observations preclude that a newcomer (and a state with limited human and financial resources) would strongly rely on the more experienced Trio members and official EU institutions, Slovenia opted for a substantive and not just procedural Presidency. However, this was not true for all dossiers, but it depended more on the capabilities and boldness of public officials. An important substantive matter, which occurred at the time of the

¹⁴ It refers to unpredictable internal and external political and economic development and institutional obstacles the Presidency country faces in pursuit of its priorities (Bunse, 2009: 9).

Slovene Presidency, was the recognition and the development of the EU preventive diplomacy in Kosovo (Zupančič and Udovič, 2011). This issue was really difficult for Slovenia, because it was forced to mitigate between national and communitarian interests.

Conclusion

The aim of the article was to test whether the selected expectations on the Trio's behaviour in chairing the EU Council can indeed be empirically substantiated. Although it is impossible to generalize on one country case only (e.g. Slovenia), we tried to draw some lessons that are potentially relevant for the future design of presidencies and give some recommendations for further research. This is particularly relevant since the concept of Presidency – after the promulgation of the Lisbon Treaty – is *in flux*. That is why our findings are not only academically, but also practically relevant.

Firstly, the Trio has not constituted a substantial assistance mechanism to the presiding state as theorists and policy makers have predicted since most of the respondents claimed that “cooperation with GSC was more important” as compared to the cooperation between the Trio members. On the other hand, it seems that respondents did not use such contacts to compensate for their lack of expertise and experiences by entertaining more intensive cooperation with the representatives of the Commission, GSC, national delegates and partners within the Trio. Many also claimed that a better way to organize the Presidency would have been to divide the tasks by areas and not by time (6-months), which may call for changes in the Trio concept. Nevertheless, in general, the Trio has contributed to the development of a more positive culture of the Slovene national administration, enhancing its dual responsibility mentality (national and EU) as an important long-term Presidency side-effect. All actions within the Slovene Presidency reflected the desire of the Slovene public administration to be assessed as “well prepared” and “capable” in performing the Presidency. The Slovene civil service was able to successfully undertake the task of its 6-months

Presidency due to the early start of preparations, including the training of its officials, and despite of human resources limitations.

Secondly, according to our survey results, the Trio was relatively more important in the Presidency's preparations (as a training exercise), but marginal in conducting the Presidency (operational tasks). At this stage, the presiding country (Slovenia) was mostly left on its own, irrespective of its human resources pool and knowledge deficiencies. The Trio was also less important in facilitating compromises on the most sensitive issues, i. e. where actual negotiation stages already started. However, an overall evaluation is that Slovenia gained from the Trio in two ways: in the programme preparing process and from an educational point of view. Both gains forced the Slovene administration to focus on the Presidency early enough, spurring its own review of the dossiers and making it aware of the necessity to build-up its human resources well on time.

Thirdly, the Slovene Presidency was "piled with problems on intra- and inter-ministerial coordination, hierarchic culture, poor flow of information and a low level of informal contacts among civil servants" (Kajnič and Svetličič, 2010: 84). Another problem was a poor reversed flow of information (*feedback*) after the decision has been adopted by the EU Council to those creating proposals at the national level (experts). The Trio was also poorly functioning at the programme execution stage on issues among the Trio member states. This confirms the theoretical predictions that various differences among the Trio members (e.g. 'old' vs. 'new', 'north' vs. 'south', 'small' vs. 'large' member state) may be a barrier in finding common ground when substantial disagreements appear.

Last, but not least, the results of our survey showed that the Trio structure has influenced the conduct of the Presidency. In our case, the asymmetrical relations among the presiding three were established, reflecting a higher degree of cooperation between Slovenia and Germany, while relations with Portugal remained more on a margin (*cf.* Batory and Puetter, 2011). This can be explained by two inter-related facts. The first is the already existent, traditionally intensive relations between Slovenia and Germany deriving from historical, psychological

and geographical (*psychographical*) reasons (*cf.* Hollensen, 2010; Žigon, 2012), while the second can be explained by the “first Presidency” *syndrome*. Accordingly, Slovenia relied more on Germany, because of German prior experience within the EU Council presidencies and strong German relations with other member states. The result of such asymmetrical relations within the Trio was that for Slovenia the Presidency programme was a greater point of reference and guidance if compared to the two partner countries’ programmes. However, the Trio’s priorities were mostly framed by the German Presidency, while the Slovene and the Portuguese Presidency only added a “final touch” to the draft programme. By understanding this and the German attitude towards the EU, it is clear that the Trio programme did not reflect only national interests but was substantially more communitarian. As such, priorities and interests were built in a “realistic way”¹⁵, reflecting commonalities instead of particularities of a single Presidency.

Additionally, country size matters in the Trio decision-making processes, but other variables influence the Presidency programme as well. Among them are the status of the Trio countries (‘old’ vs. ‘new’, ‘north’ vs. ‘south’) and the perception of a *leading* state, which in our case was Germany (*founding state*). Germany used – in Presidency programme preparations – structural sources of power, sourcing from the normative framework (Zupančič, 2010), in which Germany is seen as a stable and progressive EU member-state. The argument is that such an environment caused a ‘benevolent dismissal’ of the other two countries (Portugal and Slovenia), voluntarily leaving the position of the “leader” to Germany and acknowledging that their power is limited to “cosmetic corrections”. Within this context, Slovenia was able to cope with positive challenges, and the low expectations vis-à-vis its Presidency only strengthened the people involved and offered a higher opportunity for them to “surprise” the other actors involved.

¹⁵ “Realistic” should be understood in an opposition to individual/nominalistic.

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Eurosceptics – enemies or a necessary part of European integration?

Petr Kaniok¹⁶

ABSTRACT:

Although it has been an important part of the academic discussion for more than 10 years, Euroscepticism (especially in connection with party politics) has not been so far adequately defined. The widely accepted definition given by Taggart and Szczurbiak, who has divided Euroscepticism between its “hard” and “soft” version, suffers from several weaknesses as the whole conceptualization lacks the counterpart of Euroscepticism (pro European attitude) as well as the definition of EU statehood (the EU as a polity). Thus, almost every critique against the current form of European integration is labelled as Euroscepticism. This approach, widely present both in political and scholarly discourses, is built upon the implicit conceptualization of the European Union as a static and finite actor. The paper challenges this conceptualization of Euroscepticism and through a detailed analysis of the current “state of the art” offers a different perspective where the conceptualization of Euroscepticism is a consequence of previously stated standards concerning the pro-European stance and the EU polity.

KEY WORDS: *Soft and Hard Euroscepticism, pro-European, evaluation, EU polity*

Introduction

In his oft-quoted study “Europe’s ‘Democratic Deficit’: The Question of Standards” the Italian political scientist Giandomenico Majone claims that the evaluation of any product or institution is a matter of defining standards and their subsequent application. The European Union (EU), its institutions and the state of democracy within constitute no exception. The issue of setting standards

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which are then used for evaluation is substantially a matter of choice for the individual who establishes them (Majone, 1998: 5-6).

Although Majone's study is related to the question of democratic deficit, it can be generally applied in evaluating the EU's political system as well as the approaches towards this system. Establishing standards for the democratic character of this *sui generis* organization or, on the contrary, pointing out its democratic deficit only makes sense if the target (the EU's nature and character) is precisely defined. The fact that the democratic deficit discussion developed in the mid-1990s and went hand in hand with an equally stormy debate about Euroscepticism was probably not an accident. Although the term as such was only introduced into academic discourse at the end of the 20th century (Taggart, 1998), an enormous number of both empirical case studies and theoretical treatises appeared over approximately thirteen years, focusing mainly on Euroscepticism manifested in political party programmes.

Simplifying matters somewhat, it can be said that this imposing body of research amounts to the academy's attempt to reckon with tendencies which have appeared in the European integration process since the beginning of the 1990s: the politicization of the integration process, the increasing involvement of the European public, and the gradual disintegration of the "permissive consensus"¹⁷ connected with the latter developments. Disapproval towards the evolution of European integration, expressed, for example, by the referenda on primary law revisions or during the European Parliament (EP) elections, appeared as a new phenomenon calling for a comprehensive theoretical explanation. However, despite these enormous efforts, no generally respected typology has been created so far, let alone placed into standard use. Simultaneously, the term Euroscepticism has been widely accepted and used both in the political as well as in academic discourses.

The research question this paper focuses on is the following: Why is it that a term which is so firmly present in the world of European politics has not been, so far, adequately defined? In other words, why does Euroscepticism cause so

¹⁷ This term denotes the public's implicit support for European integration (Norris, 1997).

many theoretical problems? The paper analyses existing typologies and conceptualizations of Euroscepticism by focusing on the typology developed by Taggart and Szczerbiak and places it in a broader discussion about the character of the European Union.

The paper presumes the importance of standards, as stated in the introduction, and is structured as a normative piece of work. Without a normative definition of the EU that takes into account the finality of European integration and its structure, attempts at conceptualising the criticisms of European integration and the opposition to it are pointless. Consequently, the paper is divided into five substantial sections. The first section briefly comments on the present day Euroscepticism research and introduces the relevant concept of soft and hard Euroscepticism. The second section focuses on absence of explicitly stated standards in these typologies, especially those regarding the statehood of the EU and the definition of the pro-European stance. Afterwards, these standards are applied to the prevailing conceptualization of Euroscepticism. Before the conclusion, the paper demonstrates what an explicitly defined EU – in this case EU as a political system – means for the conceptualization of Euroscepticism.

Euroscepticism: The creeping enemy

As indicated above, the discussion on Euroscepticism began both in the EU itself and in the political science field in the mid-1990s. Before the creation of the EU, European integration was an elite-driven project that did not impinge, directly or indirectly, on the life of the common electorate. The EU Constitution, which includes concepts such as European citizenship but which also strengthened the powers of the directly-elected European Parliament (EP), has brought European integration substantially closer to the public and to everyday politics.

The phenomenon of Euroscepticism is vague and its definitions vary. A number of theoretical studies were done in the first decade of the 21st century

focusing mainly on party based Euroscepticism¹⁸ (Taggart, 1998; Kopecký and Mudde, 2002; Conti, 2003; Taggart and Szczerbiak, 2003; Conti and Verzichelli, 2004; Riishøj, 2004; Flood, 2002; Szczerbiak and Taggart, 2008a). This “battle of abstract concepts and understandings” was followed by a huge amount of empirical work, in the form of either case studies or articles based on a comparative approach (e.g., Batory, 2001; Henderson, 2001; Lees, 2002; Church, 2003; Harmsen, 2004; Neumayer, 2008; Szczerbiak and Taggart, 2008b).

However, despite this intensive effort, no generally respected and uncontested typology was created during these debates. In the second half of decade, the theoretical discussion died down as no new input or idea on how to define Euroscepticism occurred. On the contrary, one can notice an opposing trend, especially in the last years, in the sense that many studies treat Euroscepticism as a theoretical phenomenon that can be operationalized simply as a lack of support for European integration (e. g. Boomgaarden et al, 2011; Lubbers and Scheepers, 2005). It is however questionable whether this minimal stance is able to explain what Euroscepticism really represents.

Looking back at the state of the art of Euroscepticism research, one can very quickly sum up that there never has been “one” Euroscepticism. Taggart (1998), who was the pioneer on Euroscepticism research, distinguished four types of party based Euroscepticism (Taggart, 1998: 368-369) by taking into account the degree of relevance or salience of opposition towards the EU for the respective party. Four years later, this initial typology was followed by a new typology developed by Taggart himself and his colleague Szczerbiak, splitting Euroscepticism between its soft and hard versions. According to this new approach, which worked with two dimensions (opposition towards the EU and opposition towards EU membership), “hard Euroscepticism is where there is a

¹⁸ There is also a stream of work on the so-called “public Euroscepticism” (e.g. Sørensen 2008). However, it remains true that almost all studies not dealing with party-based Euroscepticism (Williams’s study [2011] analyzing the connection between Euroscepticism in EU member states and the rate at which they adopt EU secondary legislation can serve as an example) employ definitions deriving from research of party-based Euroscepticism or avoid any attempt to define what they mean when employing the term Euroscepticism (de Vreese 2007).

principled opposition to the EU and European integration and therefore can be seen in parties who think that their countries should withdraw from membership, or whose policies towards the EU are tantamount to being opposed to the whole project of European integration as it is currently conceived” (Taggart and Szczerbiak, 2003: 6). Soft Euroscepticism, on the contrary, was defined as follows: “where there is not a principled objection to European integration or EU membership but where concerns on one (or a number) of policy areas leads to the expression of qualified opposition to the EU, or where there is a sense that ‘national interest’ is currently at odds with the EU trajectory” (Taggart and Szczerbiak, 2003: 6).

Taggart and Szczerbiak’s typology provoked several reactions and can be seen as the starting point of an intense theoretical debate. The most influential contribution was that of Kopecký and Mudde (2002), who raised two main objections. First of them concerned the category of soft Euroscepticism which they contested as too inclusive and thus encompassing any disagreement with the EU and its policies. Kopecký and Mudde’s second objection concerned the issue of EU membership. In their view, this was not the crucial point dividing hard and soft Eurosceptics. Instead of emphasising the support for EU membership of the given country (or lack thereof), they suggested taking two different factors into consideration: (1) the principle of ceding sovereignty of the nation state towards the supranational structures and (2) support for/opposition against further enlargement of EU sovereignty (as a contemporary trajectory of European integration). Combining these two dimensions led to a new typology consisting of four categories – Euroenthusiasts, Europramatists, Eurosceptics and Eurorejects (Kopecký and Mudde, 2002: 303). Both Eurosceptics and Eurorejects articulate some reservations about the EU – the former support the principle of ceding sovereignty and reject further enhancements of EU competencies while the latter fight against both the basic idea of European integration and an increase in its role.

Taggart and Szczerbiak reacted to this new typology by redefining their initial concept. Soft and hard Euroscepticism “version 2.0” abandoned the issue

of EU membership and replaced this criterion by another which looks into support for (or opposition to) the transfer of political power from the states to the supranational centre. In their revised conception, hard Euroscepticism is “principled opposition to the project of European integration as embodied in the EU, in other words, based on the ceding or transfer of powers to [a] supranational institution such as the EU” (Szczerbiak and Taggart, 2003: 12). Consequently, soft Euroscepticism is an attitude where “there is not a principled objection to the European integration project of transferring powers to a supranational body such as the EU, but there is opposition to the EU's current or future planned trajectory based on the further extension of competencies that the EU is planning to make” (Szczerbiak and Taggart, 2003: 12).

With Taggart and Szczerbiak's refinement, developments in the conceptualisation of Euroscepticism were essentially complete and their revised typology is now the oftenest used, notwithstanding the fact that scholars have attempted to articulate other, more or less sophisticated typologies (Flood, 2002; Riishøj, 2004; Conti and Verzichelli, 2004; for overview see Crespy and Verschueren, 2009). However, their influence – comparing to the previously outlined debate between Taggart & Szczerbiak and Kopecký & Mudde – is marginal as were attempts to introduce a new terminology, replacing the term Euroscepticism (Crespy and Verschuren, 2009: 382).

As mentioned above, the short but intensive theoretical battle that took place during the first years of the 21st century seems to have one clear winner: Paul Taggart and Aleks Szczerbiak's revisited typology dividing Euroscepticism between its soft and hard versions. This canonical version – especially due to the huge number of articles and studies which adopt it (from the most recent literature, see for example Leconte, 2009: 8) – as well as the other typologies and conceptualizations of Euroscepticism suffer from several major problems.

The first set of shortcomings was pointed out by Crespy and Verschueren (Crespy and Verschuren, 2009: 382). Using Sartori's work (1970), they argued that a typology should rather distinguish between the categories (difference in kind) than differentiate within the categories (difference in degree). Moreover,

Szczerbiak's and Taggart's typology of party based Euroscepticism is – *strictu senso* – not a typology as it hardly multiplies ideal types, each of which represents a unique combination of the organizational attributes that are believed to determine the relevant outcome (Doty and Glick 1994). The prevailing conceptualization of Euroscepticism is rather an umbrella term with a misleading character that has been illustrated by several empirical research studies (e. g. Boomgarten et al., 2011; Artner and Róna, 2012¹⁹). Crespy and Verschueren (2009: 383) also claim that Euroscepticism as a term has clear negative connotations, making it a strongly normative concept which can be fairly easily misused in political struggles. As Majone says (2009: xii), “words do matter.” If any questioning of one form of European integration (which is then identified with European integration as a whole) is considered an expression of Euroscepticism, an important function is removed from the EU's political system. This function, which ought to be a part of any political system, is the ability to receive feedback and react to it. To characterize any critique of the speed and depth of European integration as it unfolded in the 1990s as Euroscepticism is in practice to remove feedback from relevant political discourse about European integration. Instead of dealing with the arguments of so-called soft Eurosceptics, the EU pushes them outside the boundaries of legitimate discussion. The term Euroscepticism is then misused within the political struggle (Neumayer, 2007); the distinction between soft and hard Euroscepticism has fundamental social and political consequences. Soft is, in the logic of language, the preliminary stage of hard, from which follows their affinity. In other words, support for a slower tempo of European integration and emphasis on the importance of its intergovernmental character thus becomes associated with a principled refusal of European integration as such (Kaniok, 2005). A constituent part of European integration – intergovernmental cooperation – is thus seen as a first step towards a principled refusal of integration. Secondly, the hard Eurosceptic parties are (with a few exceptions) mostly considered extremist, whether of the Right or the Left (De Vries and Edwards, 2009; Crum, 2007). In political reality, the ranking of soft and hard

¹⁹ In their article, Artner and Róna (2012) treat Euroscepticism as a term expressing disapproval with the establishment of the Euro.

Eurosceptics alongside one another renders problematic the position of the former, who are typologically (and in social discourse also rhetorically, given that mass media, commentators and analysts do not distinguish between soft and hard Eurosceptics) put into one imaginary camp with the latter (Katz, 2008: 155). The consequences of this association include its reduction in political discussion and a refusal of soft Eurosceptic arguments as non-democratic, due to their association with hard Eurosceptics.

Apart from the methodological question, the prevailing conceptualization of Euroscepticism can be challenged also from the substantive point of view. The EU itself, as an actor against which the Euroscepticism should fight, is in all typologies and definitions of Euroscepticism hardly explicitly defined in terms that are substantial in any attempt to define any approach towards the EU – EU's statehood and opposite approach towards EU (in this case pro-European stance).

What does the EU represent and who supports it?

Before proceeding to the explanation of what kind of actor/or object the EU represents and who can be considered as a "friend of European integration", one has to clearly admit that these conceptualizations are always rather a matter of choice and subsequently a matter of argumentation. However, all these choices should be stated explicitly, clearly and supported by arguments.

Attempts to define the EU in terms of statehood are controversial and divide the scholarly community in several more or less irreconcilable camps (Fossum and Menéndez 2011: 1-2). There is only an elementary consensus in that the EU is an unprecedented entity *sui generis* for which a suitable comparison can be found neither in the past, nor in the present. But attempts to fill the term *sui generis* with concrete content are not very successful, even though political science has expended a remarkable effort and showed appreciable creativity in this regard. Offered types include classical views of the EU as a confederation (Wallace, 1982; Engle, 2006) or a federation (Pinder, 1986; Burgess, 2009). Other attempts conceptualize the EU in terms of a

regulatory state (Majone, 1998), a certain form of union of states (Dehousse, 2003: 137), a form of post-national governance (Reschová, 2003: 48), a political system (Hix and Høyland, 2010: 12-14), a regional state (Schmidt, 2004) or a communion (Manners, 2012). There is a much larger consensus, however, that the EU involves multi-level interactions encompassing supranational, national, regional and possibly local levels (Pitrová, 2009: 110), and on what the EU is not – a Westphalian state, or a union of Westphalian states (Eriksen, 2004: 5).

Table 1: Overview of types describing the EU polity form

Type	Description
Confederation	The central authorities are kept subordinate to those of its member states; hence any devolution of functions to those authorities must be approved by those states...confederal-style unions do not raise any questions of the transfer of ultimate authority, which remains firmly fixed with the national governments... (Lister, 1996: 22-24)
Federation	Federal governance employs a detailed constitutional framework setting forth division of the field of government between a general authority and regional authorities which are not subordinate one to another, but co-ordinate with each other. (Lister, 1996: 19)
Regulatory state	The term regulatory state refers to the expansion in the use of rulemaking, monitoring and enforcement techniques and institutions by the state and to a parallel change in the way its positive functions in society are being carried out. The expansion of the state nowadays is generally via regulation and less via taxing & spending. (Majone, 1997)
Union of states	-
Post-national governance	-
Political system	Political system is characterized by four key concepts: stable set of institutions for collective decision-making system; decisions of these institutions do have impact on distribution of economic resources; citizens seek to realize their political desires through this decision-making system; and presence of continuous interaction between political outputs and new demands. (Easton, 1957)
Regional state	Regional state is based on shared sovereignty, variable boundaries, multiple levels and modes of governance, composite identity, and fragmented democracy. (Schmidt, 2004: 993)
Condominium	A territory under the joint tenancy of two or more states, these several states exercising sovereignty conjointly over it. (Oppenheim, 2008: 308)

Communion	Communion sees the EU as a political object consisting of three levels - the EU as a constellation of communities; the EU as a cosmopolitan space; and the EU as an example of cosmopolitical co-existence. In this respect the projects, processes and products of European union involve the recognition of the difficulties and diversities of constitutionalizing an increasingly numerous and diverse political object in a globalizing era. (Manners, 2012)
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Source: Author's own compilation

Table 1 does not offer an exclusive list of all possible conceptualizations of the EU as a polity. However, except showing many choices that we have in identifying the EU statehood, it also proves that in many cases terms are used without their definition – that is exactly the case when using the expression “union of states” or “post-national governance” which were used by Dehousse without a detailed explanation on what they mean.

The second important choice to be decided is related to the possibilities that we have in defining the supportive camp. Who is in favour of European integration? How does the positive side look like? The basic decision to be made is whether one can identify the support for European integration exclusively with the support for its supranational components or with the support for current trajectories and majorities at the EU level. Can we – in light of the above paragraphs – capture one long lasting pro-European stance? Conti and Verzichelli (2002), in one of the rare attempts to operationalize the “pro-European stance” in concrete words, distinguish between functional and identity Europeanism. The former is seen in the following manner: “support for European integration can be re-conducted to a strategy, serving domestic interests or a different party goal. There is no commitment for further integration, unless it is proved that it would serve such interests. Otherwise, commitment to European integration is mainly conceptualized in terms of the defence of the status quo”. On the contrary, the latter is explained in the following words: “There is a principled support to the EU and European integration. There is claim in favour of further competence shift from the national to the supranational arena, of Federal Europe and of a European citizenship. Further integration is a fundamental party goal”. In the same year as Conti and Verzichelli, Flood (2002) developed his six

fold typology, containing approaches from simple rejection of European integration to support for rapid and deep integration. However, neither Conti and Verzichelli, nor Flood operationalized the concept of “support for European integration”.

Table 2: Overview of the expression of support towards the EU

	Description
Functional Europeanism	Support to European integration can be re-conducted to a strategy, serving domestic interests or a different party goal. There is no commitment to further integration; unless it is proved it would serve such interests. Otherwise, commitment to European integration is mainly in terms of defence of the status quo. (Conti and Verzichelli, 2002)
Identity Europeanism	Principled support to the EU and European integration. There is claim in favour of further competence shift from the national to the supranational arena, of Federal Europe and of a European citizenship. Further integration is a fundamental party goal. (Conti and Verzichelli, 2002).

Source: Author's own compilation

Euroscepticism does (not) meet standards

Taking into account the two above mentioned standards and their possible content, one can briefly develop several “European Unions” – one being considered as a union of states and pro-European stance operationalized as the support for further federalism as a standpoint for developing Euroscepticism. Another conceptualization can be built upon the EU as a condominium, whose support is operationalized very broadly. Tables 1 and 2 offer a quite high number of possible combinations. The problem we are facing here is that most of EU conceptualization, no matter how sophisticated they are, is so specific and abstract that it is very difficult to operationalize them²⁰. Anyway, each of EU conceptualization set up different standards – precisely those standards which are absenting in dominant conceptualization of Euroscepticism

²⁰ This is the case of, for example, the conceptualization of EU as a „form of post-national governance” or as a „condominium”.

The absence of explicitly stated postulates does not constitute a problem for the definition of hard Euroscepticism. Authors who originally delineated hard from soft Euroscepticism, Szczerbiak and Taggart, along with, e.g., Conti and Verzichelli, agree on the fact that hard Euroscepticism centres on the rejection in principle of the integration process as a whole. This approach thus includes demand for withdrawal from the EU or rejection of existence of a supranational political entity based upon the transfer of political power from the national state to the supranational entity. The Eurorejects of Kopecký and Mudde, along with Flood Rejectionist category, also conform to the criteria for Hard Euroscepticism. By summarizing all these definitions, one may characterize hard Euroscepticism as an approach deriving from principled opposition to the European integration project. The concept of hard Euroscepticism makes sense as a consistent and long lasting category that can be captured in analytical terms.

However, as one proceeds to the category of soft Euroscepticism, several major problems can be identified. What is important is that soft Euroscepticism is also labelled as an expression of Euroscepticism, which evokes logical proximity between soft and hard Euroscepticism. Hooghe and Marks directly refer to the Euroscepticism as a “term expressing doubt or disbelief in Europe and European integration in general...encompassing a range of critical positions on European integration, as well as outright opposition” (Hooghe and Marks, 2007: 120). In other words: in this understanding, hard Euroscepticism is a logical continuation of soft Euroscepticism, with all possible implications of such treatment. Matching the conceptualization of soft Euroscepticism with the dimensions outlined in section 3 leads to the conclusion that both are missing in terms of their explicit statement. The whole conceptualization is built upon one important hidden assumption – everybody knows what the EU is, which kind of polity it represents and where are the positive sides. In detail, the EU is implicitly seen as a static actor whose finality must be a federation. Thus, support for European integration is implicitly identified with support for one specific form of European integration: the one that dominated the EU throughout the 1980s and 1990s.

The question which comes up is whether we can offer a different conceptualization or are there some given axioms of soft Euroscepticism? How the concept of Euroscepticism and especially the concept of soft Eurosceptics might be alternatively tackled?

The suggested solution consists of a two-step process. The first phase should consist of an explicit and precise definition of European integration and of the European Union. Both terms are not given automatically, as section 3 illustrated – there are a lot of possible classifications of EU statehood, conceptualizations of support towards the EU is a questionable issue as well as the character of EU governance. The implicit assumption that the EU is a liberal democratic state-like entity is hardly tenable. Reasonable conceptualizations of Euroscepticism as a second step can follow only after such a “description of target” has been made.

The paragraphs that follow seek to offer an alternative conception built upon such a two-step approach. First of all, I would argue that in terms of statehood the best category for the EU is its description as political system. Based on Almond (Almond 1956) and Easton’s (Easton 1957) work on systems’ theory, Hix and Høyland (Hix and Høyland, 2011: 12-14) argue that the EU is a unique political system meeting all four criteria. Summing them up and applying them to the EU reality – there is substantial stability in the basic EU institutions and its decision making system; EU member states and individuals express demands addressed to these institutions, outputs produced by the EU decision making system have a strong impact on the actors inside EU. Finally, there is a continuous interaction between the EU institutions and, for example, the EU member states or citizens of the EU.

This classification is neutral in terms of finality and can capture dynamic processes that are still present in the EU decision making system²¹ as well as in its policies. The definition of the EU as a political system is a minimalist one (and one can argue that it is a simplification), but due to the specificity of the European

²¹By these dynamic processes, I mean the development of mutual relations among EU institutions. This development does not, however, affect the overall stability of the EU political system.


Union, it may be probably the only one. In contrast to other terms as a federation or union of states it is an EU classification, which allows establishing clear and long term lasting standards²². These standards can be interpreted as support for or opposition towards the processes that take place in the political system and which may be describe as a formulation, selection, application, evaluation and termination of concrete policy or political action (Jann and Wegrich, 2007: 43-63).

Concerning the second important dimension for the conceptualization of Euroscepticism – support for the EU – I adopted the same minimalist approach as in the case of EU polity. Although one can accept that the postulate of “ever closer Union” was already present as the goal of European integration in the first documents of the primary law in the 1950s, both the institutional design and the political development of European integration do not suggest that the one and only way to this Union leads through a swift transfer of powers from the nation states to the supranational centre. Given the inherent presence of important intergovernmental institutions such as the Council of the EU and the European council in the EU’s institutional structure, the terms “supranational” and “European” can hardly be used interchangeably. In other words, the EU’s finality as a federation is not the only possible outcome of the EU’s development – and it is not even a realistic one (Majone, 2009: 219-221). One can find in the history of European integration phases and events when intergovernmental bodies prevailed over the supranational authorities. It can be also argued that it is not the Commission, but the tension between it and the Council what is the driving force of European integration. Thus, support both for the intergovernmental and supranational modes of European integration should be treated as a form of support for European integration.


²² Another advantage is the fact that the political system can exist without a state (Badie and Birnbaum, 1983: 135-137) while, for example, a federation or a union of states are terms usually contaminated with the Westphalian conceptualization of statehood.

Figure 1: Prevailing and new conceptualizations of Euroscepticism

Prevailing logic

	Polity	Support for EU	Euroscepticism
Phase in conceptualization	NA	NA	First
Direction			
	Just implicitly present	Just implicitly present	Definition as a matter of choice. Definition of Euroscepticism as both soft and hard versions of EU opposition.

Suggested logic

	Polity	Support for EU	Euroscepticism
Phase in conceptualization	First	Second	Third
Direction			
	EU as a political system	EU can be supported both from supranational and intergovernmental positions	Definition as a consequence of polity and support conceptualization. Thus, Euroscepticism limited to its hard version

Source: Author

What would this broad conceptualization of support for European integration as well as the minimal definition of EU polity mean for Euroscepticism? First of all, as indicated in Figure 1, it follows a reverse logic of conceptualization than the logic that can be identified in previous efforts. All typologies and concepts of Euroscepticism are built either upon a non-definition of the EU as a polity and support for the EU, or upon some hidden assumptions. Thus, one first explains what Euroscepticism is and subsequently the rest of the

picture must be somehow added. This direction is however very problematic in the case of controversial issues such as the EU polity and support for the EU.

The proposed conceptualization is built upon the logic that the concept of Euroscepticism is a result of previous definitions given to the concepts of “EU as a polity” and of “support for the EU”. Thus, it is not a matter of choice, but a result of previous steps. One can debate whether arguments for the conceptualization of the EU as a polity or as a political system are sufficient (the same is the case for arguments aimed at a broader understanding of the support towards the EU), but one can hardly deny that they have been stated and can be subsequently tested.

There would be several positive effects of such approach. Firstly, if we consider EU as a political system which can be supported in very broad ways, the so-called soft Eurosceptics would represent a natural component of the political system, focusing on the functions of evaluation or termination/reformulation of concrete political steps. At the same time, an unnatural enemy would be removed from political discussion, one which is presently analysed in the political science through a political prism. Removing the taboo against critical views on the present tempo and depth of European integration would likewise improve the general political discussion within the EU, shifting the actors’ attention away from the overemphasised constitutional aspects of the integration process and focusing this attention on the contents of common policies. This would minimise the concerns voiced in relation to the politicization of the EU by Bartolini (2006), van der Eijk and Franklin (2004). Van der Eijk and Franklin see in the politicization of the EU the risk of awakening a “sleeping giant” by which they mean a certain line of conflict which has not been very important in Europe thus far²³. For instance, according to van der Eijk and Franklin, the creation of this fault-line could destroy the existing incentives for party mobilization in most of the national party systems of the member countries and inhibit the formation of a Europe-wide party system (van der Eijk and Franklin, 2004: 32-47). As for Bartolini, he is worried that the politicization of the

²³ There are several authors (Hloušek and Kopeček, 2008) who doubt that European integration as an issue can transform into a cleavage.

EU could mean that “the baby would be thrown out with the bath water”, as it might lead not to the politicization of the common policies, but to the politicization of the basic elements of the EU, such as membership of the individual countries or the EU’s institutional setting (Bartolini, 2006: 35). In other words, if soft Euroscepticism were no longer a taboo, it would become “part of the game”.

If we bring together the conceptualisation of the EU as a political system with the conceptualisation of Euroscepticism, we will be in a better position to understand several phenomena which have been present both in the EU as a whole and in the member states since the beginning of the 21st century. Repeated manifestations of disapproval towards the process of deepening integration (for instance, the rejection of the Treaty Establishing a Constitution for Europe in France and Netherlands by referenda, or the increased popularity of the so-called Eurosceptic parties in parliamentary elections) does not necessarily mean that the electorate’s disapproval towards European integration has grown as such, but rather its disapproval towards the absence of the political system’s evaluation function. The evaluation of the steps taken and potentially the termination or reformulation of a policy are as legitimate a part of the political system as are the initial phases of articulating a policy, choosing a solution and applying it. In the EU, however, the critical elements of the political process which provide the system with feedback are chronically neglected or undervalued by the political elites. This is particularly true of the most conspicuous aspects of the integration process. Fiala (2010: 145–146) illustrates this fact by pointing to the speed with which the primary law of the EU was revised at the end of the 20th century and the beginning of the 21st century. Even through seven years passed between the ratification of the Single European Act and the adoption of the Treaty on the EU, the revisions that followed – The Amsterdam Treaty, Nice Treaty and the Draft Treaty Establishing a Constitution for Europe – were proposed at ever-shortening intervals, precluding the possibility that the Treaties currently in force were to be evaluated and conclusions drawn. Over the last few years, the possibility of any reformulation or termination of a policy has been unacceptable to the EU’s political elite, as it was apparent from both the repeated

referenda on the Nice and Lisbon Treaties and the attempts to exclude the referenda altogether from the process in which future developments of the EU were to be decided. The inability of the EU's political elite to accept a "no," and the fact that its way of dealing with disapproval consists in attempts to find a "yes" hidden inside, decrease the general confidence in the political system as such and lead to the mutual alienation of both the public and the elites. Clearly, if evaluation is pushed out of the mechanisms used in the EU to formulate and constitute the primary law – the constitutional framework of European integration – such patterns of behaviour are transferred into day to day politics.

A hypothesis that might seem daring can be proposed here: it is precisely because negative or critical feedback is underrated by the elites and pushed out of the EU's political mainstream that the so-called Eurosceptic parties, especially the "soft" ones, have been recently successful and are gaining strength in both national and European politics. They aggregate discontent which – if constantly ignored – could gradually develop into a wholesale refusal of the EU's political system as such. The universal success of soft Euroscepticism, which has always been present in the rhetoric of the political mainstream, can be explained by pointing out that it is in fact a manifestation of a natural part of the EU's political cycle, no matter how refused and suppressed it has been. Especially in the case of soft Euroscepticism statements that we cannot empirically claim that specific cultures, nations or party families tend to be Eurosceptic (Vasilopoulou, 2012) leads to the conclusion that there is no single approach and analytical category towards soft Euroscepticism.

Conclusion

This paper has provided a normative analysis of Euroscepticism as it is currently understood in both the political and academic contexts. This phenomenon is most precisely defined in the framework of its party-based manifestations where the dominant division of Euroscepticism into its soft and hard variants has been developed. A critical analysis of Euroscepticism, which forms the core of the present paper, has uncovered several major shortcomings

concerning its current stage: normativity, insufficient robustness of typology, the umbrella character of the term as well as its abuse in on the political stage. Additionally, the analysis has pointed out two problems concerning the absence of a definition of what kind of polity Eurosceptics actually oppose and a definition of the supportive side. In addressing these two dimensions, the prevailing conceptualisation of Euroscepticism is based upon an implicit understanding of the EU as a state-like entity moving towards a federation, whose supporters can be found only among advocates of speed and deep supranational integration.

However, the choice made in this conceptualisation of Euroscepticism is not the only possible one. The EU can also be viewed differently, by using alternative premises and a different set of arguments. Moreover, the paper suggests that the process of conceptualization which follows the natural logic of consequences can lead to better and clearer results concerning the definition of Euroscepticism. By applying this logic, this paper has tried to offer one of these alternatives by concentrating on the concept of the EU as just a political system, which can be supported more broadly than in terms of support only for the process of supranational integration. Its advantage is that it takes into account the whole development of European integration and it avoids equating the concept of “support for the EU” to “support for rapid European federalization”. Grafting systems theory onto the concept of Euroscepticism allows us to explain the success and substantial popularity of the so-called soft Eurosceptics, who are then not viewed as enemies of European integration but as its natural component and the ones who focus on the evaluation function of the political system. The only disadvantage of such an alternative conception of Euroscepticism is, briefly stated, a certain loosening of the category “pro-European.” On the other hand, however, European integration has never been, metaphorically speaking, solely the story of the European Commission or the European Parliament.

I concur with Szczerbiak and Taggart’s claim (2008c) that the study of Euroscepticism does not make sense unless the phenomenon is placed in a positive context and made an integral part of a typology containing and describing both positive and negative attitudes towards European integration.

Given the arguments employed and developed in this paper one can surmise that no typology stands a chance of being generally accepted unless it respects the nature and reality of the EU. It must be grounded in explicitly articulated premises which this study tried to show by pointing to the concept of the EU as a polity and to that of support for the EU. However, these two dimensions do not make an exhaustive list – one can also take into account the quality of the European public and political space. In this sense, any further research on conceptualizing Euroscepticism (but also positive approaches) must very carefully pay attention to the simple fact that the EU is not just a “big national state” and that politics, in its structure, differs from, for instance, politics in classic liberal democracy. Summing up, one can state that research into Euroscepticism should therefore first and foremost take a normative turn. Without clear definitions and conceptualisations supported by strong arguments, empirical studies are nothing but intellectual exercises.

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Romania under EU Influence: Note on the Constitutive Limits of External Constitutional Interventions²⁴

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ABSTRACT:

Constitutionalization occurred in the past primarily by way of referential and jurisdictionally confined forms of approximation of constitutional transplants. The erosion of classical, government-related constitutionalism and the countervailing appearance of quasi-constitutional structures of governance beyond the nation-state have dramatically changed the original paradigm and, by implication, the conditions for the possibility of constitutionalism and constitutional modernization. The general phenomenon of displacement of constitutional institutions, principles and vocabularies is referred to nowadays as ‘transnational’, ‘pluralist’ or ‘global’ constitutionalism. The article inquires into the limits and shortcomings of constitutionalism beyond the state, extrapolating from the case study of an intervention by the EU Commission in a recent Romanian constitutional crisis.

KEY WORDS: *constitutionalism, constitutional modernization, constitutional transplants, global constitutionalism, foreign interventions in constitutional crises, EU constitutionalism, Romanian constitutionalism*

Constitutionalism and Constitutional Law: Referential, Transnational, Supranational, Global

Since the appearance of the modern normative constitution, at the end of the 18th and the onset of the 19th century, the question as to the proper balance of universal “essence” and idiosyncratic particularities in constitutionalism has been a recurrently perplexing theme in legal and political philosophy. At the normative level, this local/universal tension reflects in fundamental legal key an overhanging Enlightenment dialectic concerning the preconditions and limits of reason. To wit, Montesquieu himself, the father of modern separation of powers

²⁴ This topic was also covered in Volume 10, Special Issue, September 2010 of the Romanian Journal of Political Science which focused on the topic “EU as a Good Governance Promoter”.

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theory, straddles in his *Spirit of Laws* a fine and rather hesitantly drawn line between sociological determinism and the extraction of ideal-typical, purportedly rational, immutable, and universal models of government. The simultaneous conceptual symbiosis and tension between constitutionalism and constitutional law²⁶, the notorious irresolution and confusion of methodology in comparative constitutional law (constitutionalism?)²⁷, and the recurrent divergences between 'functionalist' and 'expressivist' schools in comparative law have in the meanwhile constantly evinced, replayed, and reinforced, in various keys, the original problematic²⁸.

Until recent times, the primary import of such cross- and counter-cultural constitutional debates was relatively and relationally limited in both normative and contextual terms. Namely, the practical stakes of "constitutionalism beyond the nation state" concerned either the transplant of foreign models as a constitution-making tool or – more recently – the relevance of foreign interpretations of analogous provisions and concepts in domestic constitutional adjudication. In both cases, the scope of the transplant and the approximation of the local instantiations of borrowed rules and institutions to the logic of their original models have been the object of an, albeit referential, jurisdictionally confined assessment. This is not to deny the pre-existence of direct foreign interventions in domestic constitutional affairs. During the nineteenth century, for instance, such inroads commonly took place by way of capitulations or demands extracted from non-Western, 'uncivilized' states by the means of bi- or multilateral treaties²⁹. Yet, in such cases, interventions were punctual and

²⁶ András Sajó, *Limiting Government: An Introduction to Constitutionalism* (Budapest, NY:CEU Press, 1999).

²⁷ Peer Zumbansen, "Comparative, global and transnational constitutionalism: The emergence of a transnational legal-pluralist order", *Global Constitutionalism* (2012), 1:1, 16-52.

²⁸ Mark Tushnet, "The Possibilities of Comparative Constitutional Law," 108 *Yale L. J.* 1225 (1999).

²⁹ The latter case is exemplified by the conditioning of the recognition of Romanian independence, at the 1787 Congress of Berlin, upon the modification of article 7 in the Constitution, in order to extend citizenship to non-Christians (this concerned primarily the Romanian Jewish minority). See, for an exemplification and analysis of the place of capitulations in international and domestic law, David Fidler, "A Kinder, Gentler System of Capitulations? International Law, Structural Adjustment Policies, and the Standard of Liberal, Globalized Civilization", in 35 *Texas Int'l L. J.* 387 (2000).

emphatically pragmatic in nature. Namely, they concerned concessions extracted by the dominant Western powers from civilizational laggards in the name of bare state interest. Even though such instrumental considerations were sometimes thinly veiled in a universalistic-idealized garb, they were and were certainly perceived by the weaker party as the result of uneven power relations rather than as expressions of a disinterested desire to enforce universal constitutional values³⁰.

Constitutionalization, primarily undertaken by way of import or cross-fertilization or “migration of constitutional ideas”³¹, is still a widespread phenomenon, for example in the wake of transitions from authoritarian regimes³². However, these developments take place nowadays in an environment characterized by an important paradigm shift. Contemporary constitutionalism does no longer function in a limited normative and institutional universe, wherein processes of legal modernization in one jurisdiction tread purely referential and jurisdictionally delineated paths. First, as a result of both phenomenal evolutions towards the erosion of the state-centred lines of division that enabled and reinforced the practices of nineteenth- and early twentieth-century constitutional and public international law³³ and of related theoretical/ideological leanings towards cosmopolitanism³⁴, constitutionalism is nowadays a ubiquitously global legal phenomenon and doctrinal narrative. In contemporary legal and political science literature, overlapping references to “multi-level governance” and “transnational”, “global”, and “pluralist” constitutionalism abound, sometimes to

³⁰ Cf. Fidler, *supra*.

³¹ See Sujit Choudhry, *The Migration of Constitutional Ideas* (New York: CUP, 2006).

³² “[A]t least 110 countries around the world’ engaged in constitution writing or reform since 1990”, Susan H. Williams, “Introduction: Comparative Constitutional Law, Gender Equality, and Constitutional Design”, in same (ed.), *Constituting Equality. Gender Equality and Comparative Constitutional Law* (New York: CUP, 2009), cited after Zumbansen, *supra* note 2, at p. 22.

³³ See Dieter Grimm, “The Constitution in the Process of Denationalization,” 12 *Constellations* 447 (2005) and Neil Walker, “The Place of European Law”, in Gráinne de Búrca and J.H.H. Weiler (eds.), *The Worlds of European Constitutionalism* (Cambridge: Cambridge University Press, 2012), p. 57-104.

³⁴ Alexander Somek, “On cosmopolitan self-determination”, *Global Constitutionalism* (2012), 1:3, 405-428.

the point of satiety³⁵. Secondly, and related as a matter of actual developments, numerous inter- or supra-national systems are now securely in place, whose legal acts have a direct and often binding impact on the juridical systems of nation-states and whose adjudicative and administrative bodies are sometimes charged with attributions that make interventions in domestic constitutional affairs and the assessment of domestic constitutional evolutions inevitable. Such interferences are not always couched in constitutional language but are often framed in ostensibly more abstract and neutral vocabularies such as “good governance”, “the rule of law”, “judicial independence”, “democratization”. Semantics notwithstanding, the impact of these developmental trends on the structures of justification and fundamental law institutions in the nation-state has become an undeniable feature of the contemporary legal world. The European Union, which imposes on its new member states, as part of the *acquis*, standards of “political conditionality” according to the Copenhagen criteria, is the best case in point to illustrate the general tendencies. After all, the EU has itself progressed from a form of transnational economic cooperation towards the current form of an inchoately constitutional supranational system.³⁶ But purely international administrative organs such as the IMF and World Bank have also started, since the late 1980s, to make loan programs conditional upon “good governance” reform packages that demand or imply the readjustment of governmental scope, including the realignment of constitutionally-relevant and structures.³⁷ The ‘migration of constitutional ideas’ and structures is therefore, in an increasingly broader array of settings, fused at the hip with direct intrusions in domestic constitutional affairs.³⁸

³⁵ To be sure, the frequency of usage is not usually conjoined with a similar degree of analytical precision. Cf. Joseph Weiler, “Prologue : global and pluralist constitutionalism-some doubts”, in Weiler and de Búrca, *supra* note 8, at p. 8-18.

³⁶ On the constitutional impact of EU accession on the new member states, see generally, Wojciech Sadurski, Adam Czarnota, and Martin Krygier (Eds.), *Spreading Democracy and the Rule of Law: The Impact of EU Enlargement on the Rule of Law, Democracy, and Constitutionalism in Post- communist Legal Orders* (Dordrecht: Springer Verlag, 2006).

³⁷ Kerry Rittich, “Functionalism and Formalism: Their Latest Incarnations in Contemporary Development and Governance Debates”, 55 *U. Toronto L. J.* 853 (2005).

³⁸ Rosalind Dixon and Vicki C. Jackson, “Constitutions Inside Out: Outsider Interventions in Domestic Constitutional Contests” (November 11, 2012). Wake Forest Law Review, Forthcoming; UNSW Law Research Paper No. 2012-53. Available at SSRN: <http://ssrn.com/abstract=2174134>

Insofar as such intrusions are cast now in a completely different mould, it would appear that their effect on a transitional jurisdiction could only be beneficial. External recommendations made in the name of constitutionally germane principles and values and not in pursuit of punctual instrumental considerations would help in nudging newcomers towards a higher degree of constitutional civility and eventual full membership in the club of the finest gentlemen. This important hypothesis, compelling though it may be in theory, must nonetheless be subjected to the test of actual practices.

What follows is a limited and tentative inquiry into the preconditions and limits of this newer form of transnational constitutionalism, starting from recent interventions by the EU Commission, primarily through a Cooperation and Verification Mechanism report, in Romanian constitutional entanglements³⁹. The Commission's position was occasioned by a recent local constitutional crisis, which followed a protracted and escalated course over the summer of 2011, in the context of an attempt by the parliamentary majority to impeach the sitting Romanian president.

Constitutional Transitions in Romania: From the Logic of Transplant to the World of Transnational Dialogue

In Romania, as in many other peripheral Eastern areas of the European continent, legal modernization was undergone from the very onset by way of transplanting, oftentimes by means of wholesale importation, Western models. The building as such of the modern nation-state in the nineteenth century was achieved at the level of juridical practices by a massive process of adopting foreign legislative frameworks and institutions. For instance, the first truly modern Constitution, that of 1866, was a slightly adapted replica of the 1831 Belgian Constitution. To be sure, the way in which it functioned in the Romanian principalities and later the Kingdom diverged to a good extent from practices in the country of origin. For example, much unlike settled nineteenth-century parliamentary routines, Romanian "dualism" followed for the most part an original

³⁹ Report of 18.7.2012 from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism, COM (2012) 410 final.

local paradigm, whereby the king, instead of designating prime ministers in the aftermath of the regular parliamentary poll, ensured governmental rotation by removing the incumbent and charging a nominee with the organization of new (and in practice usually rigged) elections⁴⁰. Fiery debates ensued, up until the beginning of the 20th century, regarding the fitness of the foreign form to the substance of the local environment and, consequently, the civilizational benefits of its adoption⁴¹. In time, such debates forged a better understanding and assimilation of the internal logic, mechanics and preconditions of liberal constitutionalism and broke the path to a more genuine constitutional foundation. Parliamentary and judicial practices were gradually rationalized. Moreover, the fundamental law of 1923 adapted the initial 1866 template to the local needs and the intervening transformations in the Romanian kingdom⁴². Whether or not, without the rise of authoritarianism, fascism, and --later on-- military and Communist dictatorships, the process of liberal democratization would have progressed unabated, stands under open debate. What this brief exemplifying review of Romanian nineteenth century constitutionalization goes to point out is that the practice of juridical modernization by means of foreign transplants functioned in a different setting as long as the process of constitutional rapprochement could be confined jurisdictionally and internalized gradually and referentially by the neophyte.

⁴⁰ Manuel Guțan, "Reflecții în legătură cu începuturile regimului parlamentar în România modernă, între transplant constituțional și autoritarism regal (1866-1914)", *Dreptul* nr. 8/2011, pp. 131-162.

⁴¹ The following passage from a lecture delivered at the Romanian Social Institute on 18th December 1921 by Nicolae Iorga, a prominent Romanian historian and statesman, is emblematic of local resistance to the constitutional graft: "Obviously, once the coat borrowed from abroad was made, without them having first taken our measurements, we received it just as it was sent to us, made in fact by an excellent tailor, but one accustomed to tailor suits for different kinds of bodies, and such have we lived ever since, with our body on one side and the foreign coat fluttering about it on the other, with almost no effect whatever on our political life other than having brought in yet another hypocrisy." "Istoricul constituției românești", In *Constituția din 1923 în dezbaterile contemporanilor*, Humanitas, București, 1990, pp. 25-53, at pp. 25-26. (Unless otherwise indicated, the translations are mine.)

⁴² On the disconnect and progressive approximation of constitutional and parliamentary practice under the 1866 Constitution, see generally Tudor Drăganu, *Începuturile și dezvoltarea regimului parlamentar în România până în 1916*, Editura Dacia, Cluj, 1991 and Bogdan Iancu, "Constitutionalism between Transplant and Irritation: The Case of Nineteenth-Century Romanian Modernization" forthcoming in Jani Kirov și Michael Stolleis (Ed.), *Establishment of National Legal Systems in Post-ottoman South Eastern Europe. Deconstruction, Formation and Transfer of Normativity*, Frankfurt a. M., Vittorio Klostermann.

The drafters of the post-communist Romanian Constitution of 1991 were also influenced by external references. For instance, the French semi-presidential model served as a prototype in the choice of a political regime, whereas the fundamental rights provisions were marginally adapted versions of counterparts in various constitutional and international law charters. Thus far, the benefit of these transplants is hard to ascertain, partly as a consequence of poor constitutional drafting and to a certain extent due to immature and incongruous constitutional adjudication. Poor constitutional drafting is evidenced for instance by the unfortunate option to copy the French model in a partial and contradictory way. A Romanian president is directly elected and enjoys therefore a considerable legitimacy benefit. Contrariwise, unlike the French counterpart, he can muster few effective legal powers. This is due to the fact that the framers of the Romanian constitution imported primarily the decorative attributions from the French fundamental law (e.g., conferral of decorations, etc.) and deprived the others of binding effect or discretionary character (initiate a *consultative* referendum, dissolution of the Parliament strictly circumscribed, etc.). This tension between legality and legitimacy has generated continuing crises and a general sense of uncertainty with respect to the place of the presidential institution within the constitutional architecture and the proper division of powers between the head of state and the prime minister⁴³, most recently respecting representation of the country in the European Council⁴⁴. By the same token, poor constitutional adjudication resulted in a number of exotic hermeneutical glosses on the settled meanings of the borrowed forms. For example, the human dignity provision (Art. 1(3)) was copied from Art. 1 (1) of the German Basic Law. In the jurisdiction of origin, as well as in other legal systems that incorporated this provision by reference, it serves as a juridical expression of the Kantian non-

⁴³ Elena Simina Tănăsescu, "The President of Romania, Or: The Slippery Slope of a Political System", în 4 (1) *European Constitutional Law Review* 64-97 (2008). Also see, Bogdan Iancu, "Formă de guvernământ și regim politic: condiții de posibilitate constituțională", *Sfera politicii*, No. 6 (172) Nov.-Dec. 2012, p. 62-69.

⁴⁴ Decision No. 683 of 27 July 2012, OJ No. 479 of 12 July 2012.

instrumentalization principle⁴⁵. This conceptual background induces a more focused and limited judicial bite in actual enforcement of the provision. Impervious to the original meaning of the notion, the Romanian Constitutional Court has defined dignity in a recent decision as embracing “the relationship of mankind with its environment, including the animal world”, with the attendant free-for-all adjudicative liberties entailed by such interpretive largess⁴⁶.

Nonetheless, it would at first sight appear that such syncopated missteps could be, within the current framework of reference, more easily and speedily surpassed. Romania is a member of the Council of Europe and, since 2007, of the European Union. Membership in the Union, most importantly, has presupposed the pre-accession adoption, under the watchful and competent guidance of the EU Commission, of the political *acquis*. Moreover, aside from the general democracy safeguards provided as a matter of primary EU law⁴⁷, Romania, together with Bulgaria, is also subject to a supplementary form of constitutionally-relevant post-accession tutelage by the Union, through the Cooperation and Verification Mechanism (CVM). The Mechanism monitors progress undertaken by the two countries in terms of judicial reforms and the fight against corruption (Bulgaria is also monitored with respect to its progress in the fight against organized crime). The latest two EU additions are in this respect in a state of partial limbo as to their full membership or – to put it in more exacting terms- status in the Union. Even though the instrument is technically limited to the indicated areas of continued scrutiny and although the actual impact of the by-yearly Commission reports to the European Parliament and Council is to a certain extent hard to quantify, the mechanism has important spillover and ratchet effects with respect to both Romanian and European constitutionalism. Namely, although the Commission itself treats the issues as distinct, as of necessity it must do as a matter EU law, the accession of Romania and Bulgaria to the Schengen area has been recently related by key member

⁴⁵ Case C 36/02 Omega Spielhallen- und Automatenafstellungs-GmbH v. Oberbürgermeisterin der Bundesstadt Bonn, Judgment of the Court of Justice (First Chamber) of 14 October 2004.

⁴⁶ Decision No. 1 of 2012, OJ No. 53 of 23 January 2012.

⁴⁷ For example, Art. 7 TEU.

states, among which are Germany and the Netherlands, to strong evidence of progress in judicial and anti-corruption reforms and actions⁴⁸. In what concerns the internal constitutional implications of the CVM, even though the Commission has tried for the most part to shirk from making qualitative statements bearing directly on internal political-constitutional events, the issue of corruption and the general problematic of the judicial system overhaul cannot be treated solely in the sanitized language of “governance”-oriented policy analysis (“benchmarks”, “state of play assessments” and the like). The subject matters present evident normative, constitutional-level implications. In short, all these forms of trans- and supranational comity and control provide, it would seem, reliable guidance on the constitutionalization/democratization path and, at the very least, erect relatively secure bulwarks against authoritarian slippages.

The Internal Crisis

Following a vote of no-confidence in the centre-right coalition government in power (of the Democratic Liberal Party (PDL), the party representing the Hungarian minority (UDMR), and a splinter faction (UNPR)), a new government, representing a centre-left political alliance (USL), initially composed of the Social Democratic Party and the National Liberal Party⁴⁹, came to office in Spring 2012. On the immediate agenda of the new government and its supporting parliamentary majority stood prominently an initiative to remove the Speakers of the two Houses of Parliament and to impeach the incumbent President, Traian Băsescu, whose candidacy had been initially supported by one (the main) of the former parties in power, PDL. The President stood under various accusations among which that of trespassing his powers repeatedly, for instance by encroaching on the constitutional attributions of the Government and by breaching his duty of political impartiality. A thorough inquiry in the larger context

⁴⁸ The condition is important, since, in order for Romania to accede to the Schengen Area, the vote in the Council has to be unanimous.

⁴⁹ The USL is a *political alliance*, formed in accordance with the Political Parties Law 14/2003 (Chapter V, The Association of Political Parties). Unlike coalitions, political alliances, albeit the parties composing them preserve their separate legal personalities and structures, are subject to relatively restrictive procedural and substantive requirements, partly analogous to those provided for in the case of parties. Nowadays the formation is composed of four parties, grouped in two alliances, Center-Left (PSD and UNPR) and Center-Right (PNL and the Conservative Party).

and actual merit of the accusations exceeds the needs of this argument. For our current purposes, only the unfolding of the immediate legal-constitutional mechanics and dramatics needs to be summarized.

According to the Romanian Constitution (Art. 95), the President can be suspended from office for “committing grave acts infringing upon constitutional provisions”. A third of the number of MPs (Deputies and Senators) can initiate the procedure. Following the receipt of an advisory opinion by the Constitutional Court, an absolute majority must vote on the articles of impeachment, in joint sitting of the two Houses, for the suspension from office to take effect. A popular referendum is subsequently held, within thirty days from the adoption of the parliamentary impeachment resolution. During this period, the Speaker of the Senate (or, in this order of succession, that of the House of Representative) serves as acting president (Art. 98). The interim president exercises almost the full gamut of presidential attributions (with the exception of parliamentary dissolution, addressing the legislature, and initiating a consultative referendum). The acting president can also be impeached, for the same reasons and following the same procedure (Art. 99). If the impeachment is confirmed by popular vote in the referendum, the president is removed from office.

A number of procedural hurdles stood in the way of the new majority. First, the Speakers of the two Houses had been appointed by the former party in power. According to two constitutional decisions of 2005, the symmetrical removal provisions of the Standing Orders of the Houses had been declared unconstitutional. According to the two almost identical holdings, removal of the Speakers as a sanction for breaches of constitutional provisions or for “repeated and serious infringements” of the Standing Orders contravened the “rights to defence” of the ‘accused’ (i.e., the Speaker). Conversely, as the Court decided, a purely political removal could not be accepted either, since it contradicted “the constitutional principle of [electing the Speakers in conformity with] the political configuration resulting from the parliamentary elections”⁵⁰. The rationales were unusual, as two isolated dissenting opinions had then pointed out. Removal as a

⁵⁰ Decision Nos. 601 and 602 of 14.11.2005, OJ Nos. 1022 and 1027 of 17 and 18.11.2005, respectively.

political sanction could not be analogized to the rigors of a criminal prosecution and thus the appeal to Art. 24 in the Constitution, concerning the defence rights of the criminally accused, was fallacious. Moreover, the political configuration that forms a parliamentary and by consequence a governmental majority does not result directly, *deus ex machina*, from poll results but from post-electoral negotiations *within* the newly convened Parliament. Be that as it may, this was, as of spring 2012, still the established principle in both constitutional law and prior parliamentary practice.

Second, the removal of a parliamentary Speaker, as well as the vote to suspend the President, is legally effected by parliamentary decisions (*hotărâri*). According to the text of the Constitution, such decisions are not subject to constitutional review but the Court's attributions can be increased by amendments to its organic law, Law 47/1992. Art. 47 (l) in the Constitutions reads: "[The Constitutional Court] exercises other attributions, as provided in its organic law"⁵¹. Article 27 in the Constitutional Court Law had accordingly been amended in 2010, adding the review of parliamentary decisions to the jurisdictional competence of the Court. As a gloss on the fluidity of current Romanian constitutionalism, it should be mentioned in passing that the amendment bill was initially sponsored by a social-democratic Senator but, following a change in the Court membership by new appointees, eventually passed with the vote of the centre-right coalition in power (PDL-UDMR-UNPR). Constitutional control of parliamentary decisions meant in practice that not only the removal of the two Speakers but also the decision to suspend the President could be judicially reviewed. In the latter case, the *ex post* review of the legislative decision would have provided the Constitutional Court with the possibility to intervene twice in the parliamentary impeachment procedure (prior advisory opinion for the Parliament and an actual decision on the resolution to suspend the president), the second time with binding legal effect. That is to say,

⁵¹ Analogous practices exist in other jurisdictions. See for instance Art. 99 (3) in the German Basic Law: Das Bundesverfassungsgericht wird ferner in den ihm sonst durch Bundesgesetz zugewiesenen Fällen tätig.

the Court could have circuitously transformed its advisory opinion into a mandatory decision.

A third hindrance concerned the legislative and constitutional regime of the impeachment referendum. The Constitution as such entrenches neither a validity condition (quorum) nor a clear decisional rule (majority) for the procedure, and thus Article 10 (impeachment referendum) in the Referendum Law 3/2000 was, over the years, repeatedly and equidistantly tinkered with by all parties in power, as the circumstances required. In 2007, during a prior attempt to impeach President Băsescu, the parliamentary majority amended the law, providing for an absolute majority (i.e., a majority of voters registered on the electoral lists) to remove a president elected in the first ballot and a relative majority (a majority of those actually taking part in the referendum) to confirm the impeachment of a president elected in the second ballot (i.e., Băsescu's case). The amendment was promptly declared unconstitutional. As the Court's reasoning noted, the presidential mandate was the same in both situations and, besides, an interim (and thus unelected) president could also be impeached, following the same procedure. Nonetheless, as the court noted in obiter, nothing prevented the Parliament from opting for the same legal solution [absolute or relative majority] in all these hypotheses.⁵² Upon a change in the parliamentary majority, the law was again modified by the new government, politically close to the President: Emergency Ordinance 103/2009 amended Article 10, so that a quorum (the majority of registered voters) was set again as the validity condition of all constitutional referenda, including impeachment. Subsequently, the law that approved the ordinance (L. 62/2012) modified the article yet again, raising the procedural bar to a practically almost unattainable height; the new form of the provision read: "The impeachment of the President is approved *if voted for by a majority of the citizens registered on the electoral lists*".

Fourth, in the Romanian constitutional system laws can be amended either through the ordinary legislative process or by means of delegated, i.e., executive legislation (art. 115). Whereas ordinary delegations are authorized by

⁵² Decision No. 147 of 2007, OJ No. 162 of 7 March 2007. This obiter appreciation was restated in Decision 420 of 3 May 2007.

the Parliament within a certain time-limit and within the domain of ordinary legislation, so-called 'constitutional delegations' by emergency ordinances are in practice a very loosely fettered prerogative of the executive. In this respect, the term as such of 'delegation' is a partial misnomer. An emergency ordinance needs no enabling law as legal basis, takes effect immediately (it must only be "laid before parliament", and is considered adopted if neither of the legislative chambers takes action within 30 day-periods). Furthermore, emergency ordinances can amend organic legislation (such as the Referendum and the Constitutional Court Laws)⁵³. Leaving aside the arguably unreviewable emergency condition, the only relatively effective limitations set forth by the constitution (Art. 115 (6)) are that emergency ordinances cannot amend the constitution, affect the regime of "fundamental state institutions" or of the fundamental rights, liberties, and duties, or effectuate takings. The possibility to adopt legislation upon a plea of necessity gives therefore governments in power a formidable regulatory instrument, which, due to the onerous time limitations and a very cumbersome law-making process, is hardly ever subject to parliamentary scrutiny. Post-communist governments have availed themselves of this instrument with considerable enthusiasm (the number and scope of ordinances often exceeds the legislative activity of the nominal law-maker). Due to the fact that the current constitutional regime immunizes such measures from timely review, ordinances are also an edgy political weapon. Unlike ordinary laws, whose constitutional validity can be challenged *in abstracto, ex ante* (before promulgation), at the request of the enumerated public authorities (President, Speakers, etc.) or of at least 50 deputies or 25 senators, ordinances can, as a rule, be reviewed only *ex post*, through an exception raised by a party in the course of ordinary litigation and referred to the Constitutional Court by the case adjudicator (an ordinary court of law or commercial arbitration tribunal). This means in practice that it could take years before the dispute is submitted, if ever, to constitutionality review; until that time, the political context and stakes would

⁵³ The procedure is partially similar to that provided by the Italian Constitution in Art. 77. Unlike in the Italian case, where emergency decrees lose effect if they are not transposed into law by Parliament within 60 days, emergency ordinances are adopted if the Parliament within a month.

have changed considerably or the issue as such would become moot. However, the Ombudsman can bring an exception of unconstitutionality against provisions in an ordinance directly before the Constitutional Court (Art. 146 (d)). According to the Constitution (Art. 58 (1)), the Ombudsman (“Advocate of the People”) is appointed for a term of office of 5 years “to defend the natural persons’ rights and freedoms.”

The events that took place in quick succession over the months of June-July 2012 can be better perceived against this constitutional and legislative background. In the same day, July 3, the Parliament revoked the Speakers of both houses and the Ombudsman. Formally, the Ombudsman was accused of challenging the constitutionality of a number of ordinances that regulated purely administrative matters and thus of exceeding the constitutional purview of the institution (that of safeguarding the fundamental rights of *natural* persons)⁵⁴. The most likely circumstantial motive for the action was, however, to replace the incumbent with an officeholder more sympathetic to the new power and thus to prevent further constitutional challenges to emergency governmental ordinances. At the same time, amendments to the Constitutional Court Law and the Referendum Law were made, in the simultaneous form of parliamentary bills and emergency ordinances, in order to remove parliamentary decisions from the jurisdiction of the Court and to provide for a relative majority rule applicable to the impeachment referendum. The probable rationale of this procedural duplication was that, in the event that the bill would be declared unconstitutional, the analogous provisions in the ordinances would remain in force due to the lack of a legal remedy against them (that is, of an Ombudsman willing to refer the matter). The Constitutional Court was subsequently asked to render its position on the impeachment within 24 hours. Following the receipt of a rather ambiguous

⁵⁴ One example regarded the reorganization by emergency ordinance of the Romanian Cultural Institute, taken from the institutional custody of the Presidency and placed under the authority of the Senate. The measure was in reality an act of retaliation against the President and against public intellectuals perceived by the new majority as sympathetic to or affiliated with Bănescu.

advisory opinion⁵⁵, the President was suspended on the same day, the 6th of July.

The objections of unconstitutionality regarding the legislative proposals to amend Law 47/1992 and Law 3/2000 and the constitutional complaints against the removals reached the Court. Five decisions were rendered in quick succession, during early July 2012. The decision on the Referendum Law declared the amendment unconstitutional, upon a rather overwrought and tortuous reasoning. The Court held the Referendum Law as amended “constitutional...insofar as it ensures the participation in the referendum of fifty percent plus one of the number of citizens registered on the electoral lists”⁵⁶. Leaving aside problems of formal logic in the reasoning (the law as such cannot ensure an outcome), the departure from the prior 2007 jurisprudence, which had expressly left the matter at the unencumbered appreciation of the legislature, was insufficiently explained, other than by a few general asides extemporizing on the effective exercise of popular sovereignty and the civic duties of the citizens. Moreover, the primary reference made in support of the holding, to a Code of Good Practice in Referenda adopted by the Venice Commission, is partly incongruous.⁵⁷ Following faithfully the recommendations in that document would have indicated precisely the opposite. The authors of the Venice report warn against quorum provisions in referenda, which –according to them-- open the possibility of political manipulation of results, for instance by equating actual negative votes with the purported motives of absentee electors. This is, as we shall see, precisely what happened in Romania.

The decision on the constitutionality of the Constitutional Court Law amendments is, in its jurisprudential context, more unusual still. The amendment

⁵⁵ Advisory Opinion No. 1 of 6 July 2012, OJ No. 456 of 6 July 2012. The Court rejected most of the articles of impeachment, upon a consistent general reasoning (excluding the expression of political opinions as not covered by the constitutional impeachment provision, which sanctions actual deeds that contravene the constitutional provisions). A number of arguments in the impeachment proposal were however, albeit very cautiously and partially, validated, and insofar the appreciation of their seriousness was left at the political discretion of the legislature.

⁵⁶ Decision No. 731 of 10 July 2012, OJ No. 478 of 12 July 2012.

⁵⁷ See Code of Good Practice in Referendums, adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007) on the basis of contributions by Pieter van Dijk, François Luchaire, and Giorgio Maliverni, CDL-AD (2007)008rev, at p. 23.

was declared unconstitutional with the tenable reasoning that the Court's jurisdiction cannot be removed for instrumental considerations, while pertinent cases are pending on its docket. Yet the justices hastened to add that not all parliamentary decisions would be reviewed, since this would constitute an encroachment by the Court upon the constitutionally guaranteed autonomy of the legislative body: only parliamentary decisions that affect "constitutional values, rules, and principles" would be subjected to judicial scrutiny.⁵⁸ Yet, strangely enough, in the cases that followed immediate suit, those regarding the constitutionality of the actual parliamentary decisions removing the two Speakers, the justices did not find any breach of constitutional principles or values.⁵⁹ This position, however, stood in direct and evident contradiction with the 2005 constitutional jurisprudence declaring the majority resulting from elections as the paramount principle governing the Speakers' elections and stating that only the parliamentary group which had initially sponsored the nominations to these offices could require the removal of the incumbents before the end of their terms.

The events that unfolded in the month of August pushed even further the earlier general sense of ad-hoc-ery and checkerboard constitutionalism and parliamentarism. The permanent electoral lists for presidential elections comprised at the time the figure of 18.292.464 registered voters. Eventually, 8.459.053 citizens (46,24 % of the baseline figure) took part in the referendum on the 29th of July. Among these, over 87 % voted in favour of dismissal. The vote was influenced by a strategic about-face of the impeached President, who, while initially supporting participation, changed tactics in mid-course and campaigned for a boycott of the procedure by his supporters. This action was subsequently challenged before the Court which, in a ruling of early August, declared the boycott fully conformant with the constitution and equally expressive of sovereignty and civic duty. This was the case, as the Court observed, especially when "the applicable legislation requires participation." In this Münchhausen-like scenario, the civic duty to participate in the referendum, in the name of which the

⁵⁸ Decision No. 727 of 9 July 2012, OJ No. 477 of 12 July 2012.

⁵⁹ Decisions Nos. 728 and 729 of 9 July 2012, Of Nos. 478 and 480 of 12 July 2012.

Court had imposed a quorum in July (in flagrant contradiction with the 2007 precedents), became less than a month later a political right to subvert participation. The prior action of the Court is presented in this reasoning, somewhat circularly, as an objective factual predicate and an unassailable premise independent of the Court's volition ("the legislation requires!")⁶⁰.

What remained unsettled for a few more weeks was whether the validity of the referendum was to be measured in terms of the permanent electoral lists applicable by virtue of the Law on the Election of the President (370/2004) or of the general electoral laws. The difference is that, whereas the permanent electoral list for presidential elections comprises all Romanian citizens over the age of 18, only citizens whose residence is registered in their respective constituencies are on the other permanent electoral lists. The reference to the Presidential Elections Law was, prior to the referendum, not contested by the political actors, but, in view of the results, the focus of the legal squabbles immediately shifted to the figures. The Court awarded the Government time to update the lists prior to a final ruling on the validity, but neither the text of the Referendum Law nor the August 2 ruling gave clear guidance as to what the recount would actually have to bear on. A reference in the text intimated however that Romanian citizens residing abroad vote on "supplementary electoral lists" and a reasonable implication could have been that the justices were favourable to a reassessment of the baseline. In view of massive immigration from Romania over the past decades, subtracting the diaspora (1.101.809) registered voters from the recount figure would have decisively tilted the balance in favour of dismissal. On the 6th of August, however, while the Court was out of session, an "errata", making express reference to Law 370/2004, was sent by the justice on duty to the Official Journal, published, and inserted retroactively in the original decision, immediately below the paragraph referred to

⁶⁰ Ruling No. 3 of 2 August 2012, OJ No. 546 of 3 August 2012. See, for a chronology of the events and an analysis of the contradictions in the referendum-related jurisprudence of the Court, Bianca Selejan-Gușan, "The Illusion of the Romanian Constitution?", post of December 7 2012 on I-CONnect, the blog of the International Journal of Constitutional Law and ConstitutionMaking.org, at <http://www.iconnectblog.com/2012/12/the-illusion-of-the-romanian-constitution/> (retrieved on January 9, 2013).

above. Three of the justices, which had taken part in the initial ruling, were not informed by the Court President of this change until it had already become a *fait accompli*. After a few more weeks of procrastination and dogged political squabbling, the Court invalidated the referendum for lack of quorum, a decision that could after all, under the circumstances, have been taken in July, immediately after the poll results were made public by the Central Electoral Bureau⁶¹.

The External Backlash

The Commission issued its second CVM country report on the 18th of July, in the middle of these events. As noted above, the Mechanism consists in the periodic (bi-yearly) assessment of judicial and anti-corruption reforms. In view of this limited legal mandate, the EU executive has over the years tried in general to shy from interfering with domestic political-constitutional contests. Most of the biannual reports proceed on the template of a routinized bureaucratic enumeration of particulars, whereby evolutions are scrutinized in technical language, criticism is understated and qualified, and recommendations are iterated carefully, with the didactic and patient tone of an experienced grammar school teacher.

The summer 2012 report displayed an abrupt change in both inflection and scope: “The Commission is...extremely concerned by the indications of manipulations and pressure which affect institutions, members of the judiciary, and eventually have a serious impact on society as a whole.”⁶² The Commission took therefore upon itself a new task, that of “help[ing to] restore respect for principles which are cornerstones of European democracy”.

To this effect, a number of structural changes in the general approach were made. Unusually, constitutional developments are in this document

⁶¹ Ruling No. 6 of 21 August 2012, OJ No. 616 of 27 August 2012. See the dissenting opinion by Justices Toader, Gașpar, and Predescu: “Our disagreement with the ruling...rests on the fact that it has been adopted by reference to the provisions of Art. 2 (1) of Law 370/2004 on the election of the President of Romania, a solution anticipated through the “errata” of August 6, 2012, referring to the Ruling of the Constitutional Court No. 3 of 2 August 2012, an “errata” regarding the adoption of which we were not consulted, a *procedure unprecedented in constitutional jurisprudence*.” [emphasis in original]

⁶² COM (2012) 410 final.

incorporated under the chapter “Judicial Reform”. Concern is expressed with respect to the Constitutional Court’s “judicial independence”⁶³ and, more particularly, with the restoration of its competences “in accordance with the Romanian Constitution.” Respect for judicial review “including at the constitutional level” would, as we are told, “[win back] the trust of Romania’s partners in the EU”⁶⁴.

However, apart from systemic collision dangers, there are good technical reasons why constitutional review had not been previously incorporated in the CVM chapters treating judicial reforms. Constitutional justices are not a part of the regular judiciary as a matter of Romanian law and fall therefore outside of the CVM mandate. Constitutional adjudication is, moreover, a form of law charged with political implications. These are made explicit in the structural features of constitutions, which incorporate various safety valves against the compounded dangers of excessive juridification of politics and politicization of adjudication (for example, limited and non-renewable, often staggered terms of office for the court members). Whether a remote bureaucracy such as the European Commission is the proper setting for reducing the legal, political, and contextual complexity to manageable solutions in the case of domestic constitutional derailments is a different and apposite question.

What follows at the end of the report, under the heading “Respect for the Rule of Law and the Independence of the Judiciary”, widens the compass to an even broader scope. The Commission issued, namely, a Decalogue of boulder-point constitutional recommendations in imperative form⁶⁵. Some of them were formulated as precatory exhortations: “Require all political parties and government authorities to respect the independence of the judiciary; with a commitment to discipline any government or party member who undermines the credibility of judges or puts pressure on judicial institutions.” In this passage, even though the notion as such of civility in public debate is an elegant and

⁶³ Interestingly enough, in the same report, at p. 7, in a different context, the Commission seems aware of the countervailing dangers of the principles and bemoans “an extreme interpretation of [judicial] independence”.

⁶⁴ *Id.*, at p. 19.

⁶⁵ *Id.*, at pp. 20-21.

worthy desideratum, the recommendation, expressed in such broad phrasing, implicates obvious free speech issues. Whereas governmental intimidation of the judiciary obviously hampers the rule of law, open and even harsh criticism of judicial decisions and even of the judiciary by individuals, including party members, is a normal form of political speech and a routine part of public debate in all constitutional democracies.

Other recommendations are more precisely formulated, concerning a command to repeal the ordinances duplicating the two bills, already declared unconstitutional, that amended the Constitutional Court Law and the Referendum Law. Three elliptical admonitions were made to “implement all decisions of the Constitutional Court”, “ensure the immediate publication of all acts in the Official Journal, including decisions of the Constitutional Court”, and “respect constitutional requirements in issuing emergency ordinances in the future.” Further imperative requests concerned the interim presidency. After a general reference to the conditions under which the two key prosecutorial positions, the Prosecutor General and the Chief Prosecutor of the Anti-Corruption directorate, are to be filled (“transparent process...open applications based on criteria of professional expertise, integrity and a track record of anti-corruption action”), two blunt orders followed: “No nomination should be made under the acting Presidency” and “Avoid any presidential pardons during the acting Presidency.”

There are a number of problems with the approach. Some concern matters of pure prudential considerations and tactical asperities or blunders. As a matter of prudence, against the jurisprudential background outlined above, a reasonable query may be posed as to the unintended local consequences of the Commission’s approach. Did the unqualified manner in which the Court is presented, as an unblemished exponent of the “cornerstone principles of European democracy” help the rule of law in Romania or had it provided the tribunal with a European certificate of respectability and by implication a blank check for churning out ever more inconsistent jurisprudence? The surreptitious substantive modification of an already rendered ruling, through an “errata” transmitted by a group of judges, without convocation of the Court Plenum, was

for instance unprecedented in Romania until this report. Indeed, such practices are unusual in most jurisdictions. Would the justices have sent the document for publication to the Official Journal (and would it have been published in that form) in the absence of the Commission's unconditional support for the institution and precise reference to "immediate publication of all acts" in the Official Journal?

At a deeper level of perception, the background review in the previous section of this argument evidences a general environment where the rule of law means in practice a continuous and generalized manipulation of rules and institutions by entrenching syncopated status quos that favour one's party and disadvantage opponents. In such a context, will a punctual and unqualified intervention for a momentary legislative or jurisprudential aggregation be conducive to more constitutional civility in the future or will it be (locally perceived as) taking 'black and white' sides in a zone characterized by various shades of grey? At times, the impression of bias is hard to ignore. For instance, the pre-emptive order to avoid presidential pardons during the interim mandate was obviously targeted at the situation of Adrian Năstase, a former PSD prime minister, convicted in June 2012 of corruption crimes and sentenced to two years in prison. The accusation that the new power wanted to seize the presidency in order to pardon Năstase was a deft slogan, used by the opposition in the 2012 local elections referendum campaign. Under the circumstances, such an action would have been improbable, given the electoral and external reactions; nothing indicated that it would have been taken. But, even if the preoccupation of the Commission was in principle legitimate and fell within its anti-corruption monitoring mandate, the superfluously overbroad formulation of the directive ("avoid any pardons") produces an unmistakable impression of haughtiness.

Other questions posed by the Commission's report reach systemic implications located at the interface of Romanian and EU constitutionalism, which are yet more difficult to overcome than the above-noted, courtesy-related misadventures. The Romanian Constitution was amended in 2003, largely at the behest of the Commission, and the Superior Council of the Magistracy (CSM) gained by virtue of the changes a full autonomy from the political branches. The

autonomy from politics of the judiciary as a whole was consistently presented by the Commission, in its pre-accession country reports, as an optimal instantiation of the principle of judicial independence. This tunnel vision effect was due perhaps to the incapacity of reducing contextual and conceptual complexity in a bureaucratically manageable policy imperative⁶⁶. The principle of judicial independence does not presuppose corporatist isolation from all social and majoritarian democratic inputs, as the Commission itself found out. Soon after the constitutional amendments took effect, the problem of corporatist corruption within the judiciary became another insuperable paradox of Romanian --and by virtue of the boomerang effect also of EU-- constitutionalism⁶⁷. Moreover, the entrenched political insulation of the judiciary created an antinomy within the structure of the Romanian constitution. In the Romanian legal system, prosecutors are considered magistrates and stand therefore, like judges, under the decisional and protective umbrella of the Council, the “guarantor of judicial independence” (Art. 133 (1)). At the same time, the prosecutorial function has unmistakable executive connotations, equally recognized by the constitution: the prosecutors form the “Public Ministry” and their activity is explicitly placed “under the authority of the Minister of Justice” (Arts. 131-132). The current appointment procedure for the two positions at the apex of the Public Ministry accordingly recognizes a place for politics in the constitutional structure: the Minister of Justice nominates the candidates, the Council issues an advisory opinion on the candidacies, the President appoints. This constitutional mechanism has at least a certain self-correcting potential (the institutional balance produces, in and of

⁶⁶ On the general problematics of the Commission's struggles with judicial independence during the previous accession wave, Daniel Smilov, See Daniel Smilov, 'EU Enlargement and the Constitutional Principle of Judicial Independence', in Sadurski, Czarnota, and Krygier, *supra* note 11, at p. 313. On the problematics of using judicial independence, at the level of abstraction of the principle enunciation, as a shibboleth for externally induced reforms, Stephen Holmes, “Judicial Independence as Ambiguous Reality and Insidious Illusion,” în Ronald Dworkin (Coord.), *From Liberal Values to Democratic Transition: Essays in Honor of János Kis* (Budapest: CEU Press, 2004), at p. 3.

⁶⁷ See *generally*, Bogdan Iancu, Post-Accession Constitutionalism with a Human Face: Judicial Reform and Lustration in Romania, in 6 (1) *European Constitutional Law Review* (March 2010), pp. 28-58 and Simina Elena Tănăsescu, „Reforma Consiliului Superior al Magistraturii între analogia dreptului și nimicuri etice”, *Pandectele Române*, n°2/2011, p.19-28.

itself, a measure of transparency) and induces --through the ministerial nomination and the presidential appointment-- a degree of political accountability in the process. Apart from the already indicated constitutional tensions, the question is worth pondering, whether the Commission's preference for an apolitical appointment procedure resting directly on ostensibly neutral but practically arcane abstractions (transparency, integrity, etc.) offers a better alternative.

Conclusion

In the short term, the inroad of the EU Commission in the last Romanian constitutional crisis may have prevented the escalation of the conflict. The long-term effects, however, are not necessarily beneficial for the constitutional evolution of the country. In addition, the events cast a longer shadow on the conditions for the possibility of constitutionalism beyond the nation state.

In the established Western liberal democracies where constitutionalism took deeper root, institutions, principles, and vocabularies evolved incrementally, embedded in local contexts, over a time span that in some jurisdictions can be counted in centuries. Successful processes of constitutional modernization presupposed in the past the slow approximation of borrowed models whereby prodigies slowly internalized the inner logic and supported values (the 'substance') of the transplanted forms. Whether the general principles of the classical constitutional state (rule of law, judicial independence, etc.) can be abstracted and extrapolated for purposes of cosmopolitan (global, supra-, international) enforcement is the overarching question of constitutionalism today. The intersections of Romanian and EU constitutionalism, in the example under scrutiny in this text indicate thus far a qualified, perhaps sceptical answer.

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Good governance in the Slovenian employment and education policy fields: myth or reality?⁶⁸

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ABSTRACT:

This article aims to identify the potential of the Open Method of Coordination (OMC) to promote the participation of civil society in the policy-making process in the fields of employment and education in Slovenia. Our analysis reveals that both EU factors as well as national factors determine the role of the civil society in the OMC processes. At the EU level, neither of the two policy fields requires a (large-scale) harmonisation of national legislation with the European framework and they both place competence at the national level. Thus, national actors play the OMC game only “as much as it is required”. This leads to a very weak political will for making (extensive) policy changes at the national level. In relation to domestic factors, the existing structure or policy style is only marginally relevant to the participation of the civil society in the OMC processes. It seems that the (in)capability of civil society is closely linked to the extent/ limits of their knowledge about the OMC’s potential and opportunities. In the field of educational policy, the participation of civil society is further limited by lack of the financial resources.

KEY WORDS: *good governance, open method of coordination, civil society, Slovenia*

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Introduction

Civil society has become a fashionable concept in political science, closely associated with democracy and representation (Almond and Verba, 1965; Putnam, 2002). Its significance has increased remarkably after the fall of communist systems in Central and Eastern Europe. As Communist Europe lacked an independent civil society for almost half of a century, a major focus in the 1990s was “to build civil society” as a key precondition for a successful transition to a market economy. The Civil Society Index (CSI) research found that this “weakness” was caused by a limited degree of citizen participation and the lack of financial resources available to civil society organisations. Moreover, the CSI noted that the political and cultural environment in post-communist countries has been affected by institutional deficiencies (i.e. the weak rule of law, widespread corruption and low institutional effectiveness) and limited social capital. This also hampered the strengthening of civil society. In general, civil society organisations in post-communist countries adhere to universally accepted values, but often failed to promote them. Furthermore, their impact on policymaking and their capacity to meet societal needs have been limited.

Nowadays, the importance of civil society⁷¹ is widely acknowledged in promoting new modes of governance within the European Union (EU). NGOs can play a vital role in reducing the EU’s democratic deficit and can contribute to greater respect for the principles of good governance. New modes of governance are especially relevant for post-socialist new EU member states, as they often lack the adequate mechanisms of accountability and the institutional forums for open and transparent interaction between the government and civil society (Copsey and Haughton, 2009). In this regard, the EU supports the establishment

⁷¹ Since civil society is such a heterogeneous concept, not only scholars but also EU institutions place some emphasis on the development of the definition of civil society. From the perspective of understanding the whole concept of “good governance”, we found particularly relevant definition of civil society, stated in the White paper on European Governance, including the following: trade unions and employers’ organizations (“social partners”); nongovernmental organizations; professional associations; charities; grass-roots organizations; organizations that involve citizens in local and municipal life with a particular contribution from churches and religious communities (European Commission, 2001: 14).

of a sustainable cooperation between civil society organisations and the state (e.g. government, bureaucracy). In the case of policy fields where the harmonisation of the legislation is not (or not entirely) “EU-prescribed”, as it is the case for employment and education, the chief hope for increasing the role of civil society has been placed on the Open Method of Coordination (OMC). The OMC as a new mode of European governance holds considerable potential to change and improve policies in individual EU member states. Besides changing the policy content in order to achieve EU common goals, a great emphasis has been put on its potential to improve the openness of the policymaking processes in member states. As the OMC has been formally introduced more than ten years ago, it is time to evaluate whether these expectations were met. Hence, the main research question of this article is: what is the potential of the OMC in promoting the participation of civil society in the process of policy-making, in the fields of employment and education in Slovenia? We will address this question in two steps. Firstly, by developing a research model which takes into consideration the theoretical presumptions of new (soft) modes of governance and Europeanization processes. Secondly, by conducting two case studies, one from each policy field: active ageing in the framework of employment policy and lifelong learning (with special emphasis on adult education) in the framework of education policy.

The article analyses the Slovenian legislation and other official documents as well as EU official documents governing employment and education policies together with other data concerning Slovenia's EU cooperation in these fields. The authors have also conducted interviews with relevant officials in Slovenia during the period from 2008 to 2011. The information obtained via semi-structured interviews provided an additional insight into the investigated process and were used to clarify certain aspects which were not covered by official documents.

Theoretical argument and research model

The process of European integration has increasingly been shaped by the recent activities of the groups and lobbyists representing societal interests such as consumers, environmentalists, women's groups, and others (Wallace, 2010: 86-87). This means that not only EU institutions, but also national member-state institutions which bear the principal responsibility for introducing policy changes to ensure a high degree of civil society participation. Recently, this point of view has been embedded within the so-called new modes of governance. New modes of governance and policy innovations are in general operationalized through the selection of new policy instruments. It may be that new policy instruments are sought when other mechanisms of coordination or governance have failed (Kassim and Le Galles, 2010: 7). Scott and Trubek (2002) define new mode of governance in a broad manner as "any major departure from the classical Community method". Meanwhile, Treib, Bähr and Falkner (2007) argue that the classification of modes of governance as "old" or "new" is of little analytical value.

The White Paper on European Governance, published in 2001, is of crucial importance in defining the role of civil society within the framework of the new modes of governance. In this document, the European Commission assigned to civil society "a key function in the implementation of good governance by openness, participation, accountability, effectiveness and coherence". Building on these principles, the aim of the White Paper is to structure the EU's relationship with civil society, to enhance dialogue and contribute to the openness of organised civil society. According to the principles of good governance, civil society should play an important role in voicing the concerns of citizens and delivering services that meet the people's needs. In this respect, it allows citizens to become more actively involved in achieving the EU's objectives and offers them a structured channel for feedback, criticism and protest.

There are two key strains of argument that explain the increased involvement of civil society actors in the processes of OMC can be encountered

in the documents of EU institutions and in contemporary academic debates. The first argument refers to the role of civil society in improving the efficiency and effectiveness of European governance and policymaking (e.g. de la Porte, 2007). In this respect, non-governmental groups and organisations are seen as working nearer to the grass-roots level, being equipped with specific knowledge and expertise, having efficient and problem solving techniques, and acting as stakeholders in their respective policy areas. All in all, civil society representatives are assumed to fill in the multiple gaps of multi-level policymaking, where powers and responsibilities are dispersed and coordinated action is difficult to achieve. The second argument refers to the role of civil society in overcoming the EU's democratic deficit (e.g. Armstrong, 2006). Representative democracy alone is not able to provide the necessary democratic legitimacy for the European polity. Therefore, through their participation in both decision-making and policy implementation, civil society representatives may provide legitimacy to European governance. Scholars conceptualise and theorise these phenomena as alternative forms of democracy, that is to say, as associative and deliberative democracy (Radaelli, 2003; de la Porte and Nanz, 2004; Armstrong, 2006).

Some critics (e.g. Smismans, 2006) warn that, although there are some signs of civil society involvement in the OMC – albeit strongly dependent on policy area and national circumstances (de la Porte and Pochet, 2005; Armstrong, 2006), the dominant picture remains one of a narrow, opaque and technocratic decision-making system. This process involves high domestic civil servants and EU officials in a closed policy network, rather than a broad transparent process of public deliberation and decision-making that is open to the participation of all those with a stake in the outcome (Jacobsson and Viffel, 2002; Smismans, 2004; Zeitlin, 2005). Therefore it is hard to argue that “new modes of governance” are characterised by their democratic and participatory nature. A greater degree of horizontal and hierarchical governance does not automatically lead to a greater degree of participatory governance in normative democratic terms (Smismans, 2006).

Considering the above mentioned principles of good governance in relation to the OMC definition, the first two principles – openness and participation – are the most relevant for evaluating the role of Slovenian civil society in employment and education policy-making. The principle of openness states that the OMC must be designed in such a way as to enable citizens to have an equal control over public policies which concern them directly (Friderich, 2006: 373). This implies that the EU should make the rules and politics more accessible to EU citizens in terms of language and the availability of the information (de la Porte, 2007). The term openness is also connected with the question: “How open is the OMC to various actors?” The analysis of the White Paper reveals that this question concerns the second principle – participation. Participation would improve democracy because a wider citizen participating in the decision-making process would improve the quality of regulation and its subsequent implementation. In other words, the new form of governance by involving more actors and interests should lead to better decision-making and better implementation (de la Porte and Pochet, 2003: 2). The model of stakeholder participation has clearly been perceived as a positive feature of the OMC and as ‘one dimension of the whole issue of accountability, democratisation and legitimacy of the new mode of governance’ (Radaelli, 2003: 59). Additionally, input legitimacy employed in the OMC literature assumes that political interests are ideally directed into the policymaking process *via* a broad participatory model that includes not only citizens but also a variety of stakeholders (de la Porte and Nanz, 2004: 272; Borrás and Conzelmann, 2007: 542). The White Paper places considerable emphasis on participation in terms of its input legitimacy and also its expected output legitimacy (de la Porte, 2007). Central governments have the primary responsibility in ensuring that this principle is respected by following an inclusive approach when developing and implementing EU policies.

Regarding the Europeanization processes, both directions (top–down and bottom–up) must be considered since member states are never passive recipients and implementers of EU policies and initiatives. This means that distinct European practices, institutions, policies and discourses developed at the

EU level create pressure for reform or change in structures, processes, and policies at the domestic level. The pressure to harmonize the internal legislation varies according to the type of EU rule in question, as well as the degree to which it fits with pre-existing policies in the member states. Scholarly debates have identified the following domestic factors having as having a key impact on the OMC reception: political ideologies and policy paradigms, state traditions and administrative legacies, state capacities and resources, actor constellations and social interests (Cowels, Caporaso and Risse, 2001; Featherstone and Radaelli, 2003; Jacobsson and West, 2009). In order to understand the reception of the OMC in a given national context, both the institutional setting in which the OMC is to be implemented and the micro-politics of the OMC in Slovenia (i.e. actor responses and activities as well as relationships between actors) need to be taken into account (Jacobsson and Johansson, 2009).

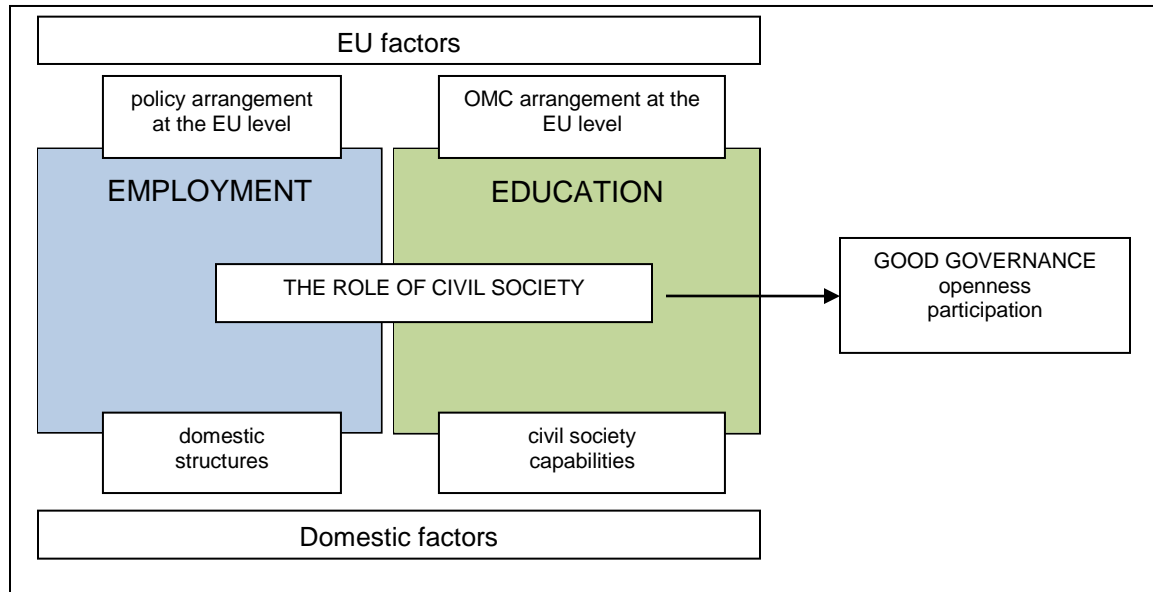
Given the importance of civil society in respecting the principles of good governance, it is also appropriate to identify the domestic factors influencing the role of the civil society in the processes of policymaking. Various authors recognise that a variety of different factors can undermine or enable the impact of civil society on policymaking. Some emphasize the important of “*external*” factors, such as the political context, such as political culture, legal environment, corruption, etc (Marsh and Smith, 2000; Edwards, 2004). Meanwhile other authors place greater importance on “*internal*” factors such as civil society’s expertise, networks and mobilisation capacity (Keck and Sikkink, 1998; Anheier, Glasius and Kaldor, 2001).

The research model assuming the high impact of EU and domestic factors on the reception of the OMC, can be employed as a useful analytical tool for explaining the role of the civil society in the OMC processes in Slovenia. By applying a bottom-up approach⁷² we would like to emphasize that it is important

⁷² The bottom-up approach in the EU means that the national political systems and cultures of the member states are regarded as the main source of input into the process of establishing supranational norms (Olaf, Zoethout and Peters, 2007).

for every member state, including Slovenia, to respect all the principles of the OMC. Only then, good governance can be an attribute of the EU as a whole.

Figure 1: Research Model



Source: Authors' compilation

As can be seen from Figure 1, we hypothesise that both the EU and domestic factors determine/influence the role played by civil society in the OMC processes. On the one hand, the EU factors include the arrangement of respective policy fields at the supranational level (in terms of transfer of the sovereignty from national level). They also prescribe the introduction/employment of different OMC instruments which provide various opportunities for civil society participation. On the other hand, domestic factors include the openness of national policy style in the respective policy field, based on the already existing structure and forms of cooperation between the government and civil society actors. This includes the ability of civil society to engage in OMC processes, in terms of personal, financial and information resources.

OMC arrangements at the EU level: employment and education policy fields

The European Employment Strategy (EES) occupies a place of special importance in the field of EU employment policy. The EES was established in 1997 with the aim of responding to the economic and social problems of the early 1990s, which called for the greater coordination and alignment of policies to reduce unemployment and its structural causes. Since 2000, the EES has been part of the Lisbon Strategy, which seeks to combine economic efficiency and competitiveness with social progress and cohesion (European Commission, 2008). The OMC aims to achieve the following EES goals: to encourage the exchange of information and joint discussions between all member states and to try to find solutions or best practice which could help create a greater number of jobs and to create better jobs in every member state (López-Santana, 2006). The employment OMC thus consists mainly of a dialogue between the EU member states and the European Commission on the basis of various documents. Such documents include: the guidelines, the recommendations and the annual joint employment report. A key role is played by the Employment Committee (Nedergaard, 2006), which is composed of representatives of the member states and the European Commission. The Committee coordinates the objectives and priorities at the EU level. These objectives are organised according to common indicators and measurable employment targets (see Article 150 of the Lisbon Treaty). According to Nedergaard (2006: 311), the purpose of the EU's employment policy is the mutual learning between member states. The two most important questions in this regard are how learning occurs and how much learning takes place. Our assumption here is that the Mutual Learning Programme (MLP) plays a crucial policy-learning role in the field of employment policy, especially since peer reviews are a part of the MLP.

In the field of education, the foundations for cooperation between the EU member states have also been laid down through the OMC. Firstly, in 2001, the European Council formally adopted the three strategic goals: the quality and effectiveness of education; access to education; and the opening up of national education and training systems to the entire society. In 2002 these objectives

were encapsulated in the Working Programme of Education and Training 2010, which presents the core of the OMC process in the field of education (Lange and Alexiadou, 2007). With the Working Programme 13 common objectives were defined and a work organisation was set up around these objectives. It includes: diversified clusters and working groups which bring together national experts and the partners concerned (8 clusters and one working group were established); the sharing of practices and experiences regarding common objectives adopted by ministers (peer learning activities were organised by clusters and working group); defining indicators for monitoring progress (16 indicators were defined in accordance with 13 common objectives); producing European references for supporting national reforms (5 benchmarks were agreed); and monitoring common progress (with (bi)annually quantitative and qualitative reports). By introducing the OMC, the Lisbon Strategy established a common European education space in which (hitherto completely heterogeneous) education systems could connect to create a uniform core of lifelong learning (Gornitzka, 2005). The Lisbon process and the introduction of the OMC formed the basis for installing the education sector in the broader EU context and for legitimising it as a subject of European integration (Gornitzka, 2006). In this respect, the OMC represents a milestone in European education policy since it has arguably increased and strengthened the education sector at the EU level, whilst opening it up to influences from other fields, such as economic and social policy (Gornitzka, 2006: 10).

The above described characteristics of the employment and education OMCs reveal, at least to some extent, a different application of the OMC instruments in each of the policy fields described. We can infer that the different institutional architecture of each OMC might have an impact on the participation of civil society. Table 1 systematically compares the instruments used in the employment and education OMCs.

Table 1: OMC Instruments in the employment and education policy fields

OMC instruments	EMPLOYMENT	EDUCATION
<i>Fixing guidelines for the Union combined with specific timetables for achieving the goals which they set in the short, medium and long terms</i>	European Employment Strategy Guidelines	Working Programme Education and Training 2010
<i>Establishing, where appropriate, quantitative and qualitative indicators and benchmarks against the best in the world and tailored to the needs of different Member States and sectors as a means of comparing best practice</i>	Indicators are divided into analysis indicators and monitoring indicators and distributed according to the 2005-2008 Employment Guidelines	5 benchmarks and 16 indicators
<i>Translating these European guidelines into national and regional policies by setting specific targets and adopting measures, taking into account national and regional differences</i>	National Action Plans	Lifelong Learning Strategy
<i>Periodic monitoring, evaluation and peer review organised as mutual learning processes</i>	NAP-process and specific reviews	Annually quantitative Progress Report Biannually qualitative Progress Report
	Country-specific recommendations	No country-specific recommendations
	Peer review process	Peer learning process

Source: Lajh and Silaj (2010) and Lajh and Štremfel (2010)

When comparing employment and education OMC processes (see Table 1), the greatest differences can be identified in the last two packages of instruments – the translation of European guidelines into national and regional policies and the periodic monitoring, evaluation and peer reviews organised as mutual learning processes. In the case of the employment OMC, member states are expected to prepare their National Action Plans, which are reviewed by the European Commission. The country progress is evaluated by the European Commission and recommendations are made to each particular member state with regard to their potential for improvement. In the education OMC, member states are not expected to prepare any National Action Plans, while the

European Commission's recommendations are addressed to all member states; that can be understood as softer mechanisms than in the case of employment policy. Within the framework of mutual learning processes in the employment OMC, the peer review process is used, while in the education OMC we find peer-learning activities; again, peer-learning activities represent a softer mechanism. Comparing employment and education OMC instruments, normatively there is no difference in civil society participation. While employment OMC instruments are in some sense "harder" than instruments in education OMC, we can expect civil society to play a more proactive role.

Empirical evidence from Slovenia: a marginal role for civil society in the reception of the OMC?

As previously mentioned, we aim to assess the potential of the OMC in promoting the participation of civil society in the policy-making process in the fields of employment and education in Slovenia. Therefore, we will conduct two case studies, one from each policy field: active ageing within the framework of employment policy and lifelong learning (with special emphasis on adult education) within the framework of education policy. These two case studies are relevant because of their interdependence as explained in the next section, and because of the currently highly topical issue of the ageing society both at the EU and national levels. We assume that pressing nature of the topic will attract a lot of public attention and trigger cooperation between governmental and the civil society. In this respect we will try to present the role of civil society in these two cases through the OMC instruments as defined in the Lisbon Strategy: drafting guidelines for the Union together with specific timetables for achieving the goals which have been set for the short, medium and long term; establishing, where appropriate, quantitative and qualitative indicators and benchmarks following best practices, and tailored to the needs of different member states and sectors as a means of comparing best practices; translating these European guidelines into national and regional policies by setting specific targets and adopting

measures, taking national and regional differences into account; and periodic monitoring, evaluation and peer review organised as mutual learning processes.

Since our main interest focuses on the role of civil society in policymaking at the national level, we believe that the first two above-mentioned OMC instruments are not relevant. Hence, in the article our concern will primarily focus on the last two instruments.

Close Interdependence between the Problems of Active Ageing and Lifelong Learning

Slovenia's ageing population represents a major economic and social challenge for the future. It puts great pressure on public finances and risks reducing the growth of living standards due to the potential reduced economic growth and productivity. Based on the available information, the proportion of older persons will increase significantly, whilst the proportion of people within the middle age and young age group is decreasing. Hence, it is necessary to change the pattern of employment and the attitudes towards older people in society (Ukrepi za spodbujanje aktivnega staranja, 2010: 4). The importance of adult learning in this context is well documented. By providing elderly people with key competences, adult learning has an essential contribution to raising the employment rate and the degree of mobility in a modern labour market. It also has a key role in promoting social inclusion. Relevant skills and training of the elderly are extremely important in order to ensure their successful integration into the labour market, their competitiveness, long-term employability, as well as increased social returns. These social returns include a higher level of civic participation, better health, lower incidences of criminality, and greater individual well-being and fulfilment. Therefore it is necessary to develop educational policies for adults in a coherent and interrelated manner with employment policies.

Table 2: EU Targets in the Field of Active Ageing Related to Lifelong Learning

EU target	Slovenian achievement	EU achievement
12.5 % participation of people (25-64) in lifelong learning	15.3 % in 2005 14.6 % in 2009	9.8 % in 2005 9.2 % in 2009
50 % average employment rate for older people (55-64)	30.7 % in 2005 32.8 % in 2008	42.4 % in 2005 45.6% in 2009

Source: Eurostat (2009)

As can be seen from Table 2, compared with the EU average, the indicators of lifelong learning in Slovenia show a positive picture. The data suggests that the involvement of Slovenian citizens in lifelong learning (in the age group 25-64) is higher than the EU average, but that it needs to dedicate much more attention to older workers who need lifelong learning the most. This category of workers is the most marginalised when it comes to training and the acquiring of new skills. In 2008, the percentage of the Slovenian population participating in lifelong learning (aged 25-64) was 13.9% (compared to 9.6% in the EU-27, and 11.0% in the EU-15). The highest level of participation in lifelong learning is found in the age category 25-34 year (in 2008 in total 25.9%, compared to the EU-27 average of only 15.4%). However, participation in lifelong learning decreases with age. In 2008, only 5.4% of the total number of employed older workers in the age group of 55-64 years in Slovenia were involved in lifelong learning (although the average for the EU-27 is just 4.9%) (Eurostat, 2009).

Implementation of OMC Activities in the Field of Active Ageing

A new EU objective was set in 2002 within the framework of the Spring Council in Barcelona: to achieve a more active elderly population and a higher retirement average age (for five years) in the member states until 2010. This has been incorporated into the objectives of the common European employment policy and the objectives of the Lisbon Strategy. In 2005, the renewed Lisbon Strategy (subsequently confirmed in virtually unrevised form in 2008) under the Employment Guidelines stressed the importance of developing national

strategies for active aging in the context of the lifecycle approach to work, and the importance of facing the challenges of unfavourable demographic changes, particularly within two of the Employment Guidelines:

- Employment Guideline 17, which presupposes the aforementioned EU target of a 50% average employment rate for older people (aged 55-64);
- Employment Guideline 18, which recommends support for active aging strategies, including appropriate working conditions, improved (occupational) health status, and adequate incentives to encourage employees to continue working and to discourage early retirement.

In its annual reports for the years 2006-2008, the European Commission warned Slovenia about the problem of the aging population and a low employment rate among the elderly. In this respect, the European Commission recommended the development of a strategy for encouraging active aging, raising the employment of older workers and delaying retirement.

Special measures must be taken to improve the situation of older people in the labour market in Slovenia in terms of raising the employment rate of older people, improving their working conditions, and their education and training. The primary goal of these measures, as outlined in the Operational Programme Human Resources Development (OP HRD) for the period 2007-2013, is to raise the average employment rate of older persons in the 55-64 age groups to 43.5% by 2013. At the same time, this progress would also represent a step towards reaching the Lisbon target of a 50% average rate of employment amongst older workers. In this respect, the Slovenian government has started preparing the Active Ageing Strategy. This strategy focuses on the target population over the age of 45, since an effective investment in the workforce is required to provide suitable integration in skills upgrading and increase long-term competitiveness in the labour market (Ukrepi za spodbujanje aktivnega staranja, 2010: 8).

The strategy in fact represents a supplement or upgrade to the "Strategy for the Protection of the Elderly by 2010" (solidarity, harmony and the quality of life of the ageing population), adopted by the Government in September 2006. The

Strategy is very comprehensive since it should enable the maintenance of solidarity and human coexistence between the third-, middle- and the younger generation.

The Directorate for the Labour Market and Employment, within the Ministry of Labour, Family and Social Affairs (MDDSZ), coordinated the process of drawing up the strategy. In the second half of 2006, the directorate produced a draft document which specified what should be included in the strategy. The directorate relied on existing good practices in the member states, since these represented already-adopted strategies which had successfully “activated” the older population (as Finland has demonstrated), as well as some additional studies. In December 2006, the directorate, along with the other directorates of the ministry, organised an internal meeting at which the draft document was discussed, and the most important elements were identified, and the structure of the strategy was proposed. In this way, in early 2007, the supplemented draft document was submitted for further discussion and proposals to the government's Working Group on Reform of the Labour Market. In April 2007, the draft document was presented at the meeting of NGOs, where they discussed the document entitled “The Strategy for the Protection of the Elderly by 2010”. In mid-May 2007 the Strategy was presented at the conference “Lifelong Learning and Active Ageing”, organised by the National Council. Both presentations were attended by social partners (representatives of trade unions and employers' organisations) as well as other actors, especially researchers. However, the Strategy was presented within the framework of some broader topics. Civil society actors criticised governmental representatives for not sending them the document in advance, thus they were unprepared for discussing it. In 2008 and 2009, programmes and financial resources in individual fields were coordinated, and in the middle of 2009 the document finally reached the minister's cabinet for approval. In March 2010 the Strategy was finally sent to the National Assembly. This case shows the limited political will to adopt strategies like the Active Ageing Strategy (Zupančič, 2010).

In drafting this Strategy, various national documents and country specific recommendations for the years 2005-2008 were taken into consideration. In addition, Slovenian representatives attended three peer reviews within the framework of the MLP, which were directly related to the topic of active ageing: Increasing the Employment of Older Workers through Lifelong Learning; Activation of the Elderly - Increasing Participation, Enforcing Employability and Working Age until the Age of 67; and the Ageing Population and Educational Choices. The state as well as civil society representatives (generally from different research centres, especially from the Universities) attended all three peer reviews within the framework of the MLP (Lajh and Silaj, 2010).

Due to its characteristics and development variables, the Strategy represents a living document that is constantly changing. Because of the integration of measures related to European funds (OP HRD) it is drawn in the time period 2007-2013. The Strategy also includes some wider implications, such as the introduction of so-called “small work/mini job”, reflecting changes in the field of student work, and changes in pensions legislation. Therefore, it could be perceived as a catalyst for some unwanted reforms. In the process of addressing the issue of active ageing, virtually all the potential OMC features were (although not in the whole) applied: integrated guidelines; country-specific recommendations; mutual-learning activities (especially participation in peer reviews); the best practices of selected EU member states; and, finally, the identification (but not yet formal adoption) of specific measures in the form of a national action plan/strategy.

As previously mentioned, the Strategy also includes wider implications and it is (at least indirectly) linked to the introduction of the so-called “small work/mini job”, and to changes in the pension legislation. This has triggered a strong response from civil society actors, who have been much more active as well as effective in achieving their goals. For example, after the government prepared

and the National Assembly adopted the Mini Jobs Act⁷³ and the Pension Reform, civil society actors triggered a veto by calling a referendum. They managed to collect the necessary number of citizens' signatures to secure a referendum and – although various international organisations (especially IMF and OECD) as well as the European Commission warned Slovenia that pension reform is crucial for its financial stability and economic development – they comfortably won both referendums. These two cases illustrating the “successful” activities of civil society organisations certainly do not represent good practice or good governance.

Implementation of OMC Activities in the Field of Adult Education in Slovenia

In the field of adult education in Slovenia, there are two documents which respond to the challenge of *translating European guidelines into national and regional policies*. The first document is the Resolution on the Adult Education Master Plan in the Republic of Slovenia which was adopted by the Slovenian Parliament and in which the public interest in adult education is expressed. The Resolution serves as a foundation for the Annual Adult Education Plan, prepared by the Ministry of Education and Sports and the Ministry of Labour, Social and Family Affairs, verified by the Council of Experts of the Republic of Slovenia for Adult Education and approved by the Government. Besides the short-term goals which are determined in the Annual Adult Education Plan, the activities which have a long term influence on the development of adult education are also defined. These include: stimulating the involvement of other ministries, local communities, social partners and civil society in planning and implementing the strategy of life-long learning. Resolution (2004) has set the priorities and objectives to be achieved by 2010, and targets in accordance with the European Commission's benchmarks. Thus, the percentage of adults in lifelong learning should have increased to 15% by the target year, whilst the percentage of adults

⁷³ Preparation of the Act was accompanied by criticism from students in particular, who protested in front of the National Assembly. Violent protests finished with the throwing of granite tiles at the building of the National Assembly, causing major damage to the Parliament building.

(age group 25–64) who have completed at least a four-year secondary education programme should have advanced to 85%.

The second document is the Slovenian Lifelong Learning Strategy. This Strategy was prepared at the initiative of the Ministry of Education and Sports within the framework of implementing the EU Working Programme on Education and Training 2010. The editor of the Strategy was the head of the “Andragoško društvo Slovenije”, the most important civil society organisation in the field of adult education in Slovenia. The elaborating of the Slovenian Lifelong Learning Strategy was based on input from more than 15 European and over 17 national evaluations, reports, strategies and action plans. The draft strategy was presented to the public for discussion (public debate in the National Assembly, publication on the internet, the public could appeal through the ministries if they dislike some aspect) in January 2007. In March and April of this year the draft strategy was further discussed by the three highest expert government bodies in the field of education, i.e. the Expert Councils for general education, vocational and technical education and adult education. All interested groups were asked to contribute to the drafting of the strategy in the National Assembly and *via* publication on the internet. In February 2007, in connection with the further development of education, the Ministry held a number of discussions with the social partners. Their comments and suggestions were taken into account in the completion of the strategy, and above all, in the drafting of the operational plan. The Slovenian Lifelong Learning Strategy was mainly developed by the Ministry of Education and Sports. Therefore, the main emphasis has been put on identifying policies directly connected to the Education and Training 2010 Work Programme. Policymakers from the education field report that other fields, for instance the economy, have been responding relatively well to their various initiatives. Nevertheless, it is still hard to foster the mentality that the issue of lifelong learning requires a cohesive and integrated trans-sectorial approach (Ministry of Education and Sport, 2007a).

In terms of the *periodic monitoring, evaluation and peer review organised as mutual learning processes*, we can highlight two OMC instruments in which

civil society is expected to play an active role, such as the process of *periodic monitoring*. In the educational field, OMC presents annual quantitative reports which are based on statistical data provided by the Statistical Office of the Republic of Slovenia and biannual qualitative reports prepared by the Ministry of Education and Sports. While the role of civil society is quite irrelevant in the preparation of the quantitative reports, the representation of civil society in drafting qualitative reports should be assured. An analysis of the existing reports (Progress Reports, 2005; 2007b; 2009) reveals that the reports were mainly written by the Ministry of Education and Sport in collaboration with other governmental organisations in this field. It could be regarded as reasonable that the majority of the working group preparing national reports consists of ministerial representatives since the ministries assume the role of lending administrative support to the process. Moreover, the state finances the implementation of the programme (Lajh and Štremfel, 2011). However, the participation of civil society in the working group would enable them to present their opinions and suggestions and would improve the level of accountability. Officials at the Ministry explained that civil society representatives are always invited to comment and formulate recommendations but so far they have remained passive (e.g. not responding to the Ministry's initiative to comment on the report) (Černoša, 2008; Arnejčič, 2010). There can be various reasons for their passivity. One of them is that they might have decided not to respond due to the perceived low impact on the content of the report. Although this working group generally does not include representatives of civil society, Slovenian representatives claim that objectivity is ensured through the public release of these reports.

Their passivity is also noted in the second instrument, the *mutual learning process*. Within the framework of the EU Working Programme on Education and Training 2010, eight peer learning clusters were active and one working group (the Working Group on Adult Learning) were most directly connected to adult education. The analysis of the Slovenian participation in peer learning activities reveals a passiveness (the attendance rate is only 31% of the 47 organised peer learning activities). The most interesting aspect is that governmental officials

were the only ones who participated in the all peer learning activities. Meanwhile, the EU strongly recommends that these activities are attended by both policymaking actors and those responsible for the implementation (which can also be understood as referring to the civil society).

Conclusion

On the basis of the analysis conducted, we can confirm that both EU factors, as well as national factors determine the role of the civil society in OMC processes. Firstly, since both investigated policy fields at the EU level do not require the (large-scale) harmonisation of national legislation with the European framework and place competence with the national level, national actors play the OMC game only “as much as is it required”. This leads to a very weak political will for initiating (extensive) policy changes at the national level. Secondly, the existing domestic structure or policy style is only marginally relevant to civil society’s (in)active engagement in OMC processes. It seems that the (in)capability of civil society is closely linked to the extent/ limits of their knowledge about the OMC’s potential and opportunities. In the field of education policy, limited financial resources additionally impede more active civil society’s involvement in OMC processes.

In the case of Slovenia, we can confirm that a majority of initiatives at the EU level do influence the deliberations of governmental actors in directing employment as well as education policies to achieve results comparable to other member states. On the other hand, extensive changes in legislation have not yet taken place, and it is impossible to perceive changes in the policy process in terms of a greater degree of democratic governance (see also Lajh and Silaj, 2010; Lajh and Štremfel, 2010).

In the case of the employment OMC our analysis reveals the very marginal role played by civil society actors which is restricted to a) (limited) consultations about the already-drafted Strategy document, and b) participation in peer learning activities at the EU level. As previously mentioned, the Strategy

also includes wider implications and it is (at least indirectly) linked to the introduction of the so-called “small work/mini job” as well as to changes in pensions legislation. If we take only these two problems into account, then civil society actors have been much more active as well as effective in achieving their goals.

In the case of the education OMC, our analysis reveals that civil society in the field of adult education plays quite an active role in translating European guidelines into national policies. Yet, their role remains rather limited in the process of periodic monitoring and mutual learning. The picture of civil society involvement in the field of adult education in Slovenia seems to be quite positive and there is one fact that can explain the relatively close cooperation between the Ministry of Education and Sport and the civil society organisations. There is quite a significant replacement of leading persons between governmental and civil society organisations in this field. On the one hand, this can be explained by the fact that Slovenia is a small country, which limits the number of persons who have the necessary competences and are willing to assume the leading positions in the field. On the other, it is due to the power struggle between the different actors in this field. Although these actors work closely together, they also have different viewpoints about the appropriate organisation and functioning of adult education in Slovenia. The power struggle is therefore associated with the question, whose viewpoints will prevail and the desire to acquire leading governmental position, which to some extent guarantee the implementation of certain viewpoint.

When looking at the practice of Slovenian civil society representation in the employment and education OMC processes, the picture is much less positive than might be presumed on the basis of the literature and the EU's official documents. Even though the question of the OMC's impact on Slovenian employment and education policies remains to some extent open, one thing is clear – a greater knowledge about the OMC can lead to a better exploitation of its potential.

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Creating a citizen centric administration through eGovernment in Romania⁷⁴

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ABSTRACT:

By trying to stop and reverse the effects of the economic crisis, governments resort to new methods of clarifying and communicating public services. eGovernment has the necessary capacity to attain such a desideratum. Although it does not represent a cure in itself, eGovernment may be successfully implemented using marketing. In this respect, this paper aims to ascertain the propensity of the Romanian public management system to digitize offered services and the contribution that marketing may be able to offer in the implementation process. Following a thorough analysis of the interviews conducted with public managers, this article shows that the degree of importance given to citizen centric principles, by establishing efficient, reachable and inexpensive services, is low. The few identified digitized solutions have been introduced following political decisions and the post-implementation results show a degree of use which is below the initial expectations.

KEY WORDS: *New Public Management, eGovernment, Public Services, Public Marketing, Romania*

Introduction

Beginning with 2008, the year that marked the debut of the economic global crisis, the governments of different states are now being confronted more than ever with the imperative of redefining the concepts that guide their activity. Huge deficits, efficiency losses, or redundant processes represent only a few of

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the factors leading to the aggravation of a situation which seemed to affect economies only slightly. Citizens' trust in the public administration's capacity to surpass critical moments decreased to a minimum and caused ample social movements often culminating into government changes and extended economic instability. Thus, the implementation of concepts such as transparency, efficiency, efficacy within the public sector became primordial objectives. One field that finds itself more and more in the limelight is the implementation of public electronic services. EGovernment (eGov) involves the use of information and communications technology (ICT) in intensifying the access to and distribution of governmental services for the benefit of the citizens, business partners and employees (European Commission, 2006). The electronic mediation process between the citizen and public administration, for instance via the Internet, is able to substantially enhance the quality of public service, to increase transparency, responsiveness and the citizens' trust in the government (Ahn and Bretschneider, 2011).

Considering that eGov involves focusing on providing more efficiently high quality services to all socio-economic participants, the use of marketing concepts could become relevant in founding the strategies aimed at implementing electronic public services. Thus, this article deals with a few of the decisive aspects in the implementation of eGov and tries to emphasize the role that marketing had and still could have in this process.

EGovernment Management via Public Marketing

The essence of eGov should be focused upon transmitting public value. This concept draws its essence from three important sources, namely the citizens' perception of the quality of the public service provided, attaining the desirable public targets (e.g., improving healthcare services or lowering poverty) and the increase of trust in public administration (Baptista, 2005). Before attempting to describe the synergy resulted from the interaction of eGov implementation strategies with marketing, it is required that we tackle the taxonomy of the characteristic features of these two fields.

From the point of view of the doctrine, public marketing appeared at the same time as the reformation of the concept of public management, ideologically known as New Public Management (NPM). The concept is based on the use of practices and techniques specific to the private sector in governmental activities (Lynn, 1998), with the purpose of *producing more by using less resources*. The main suggestions decided upon by NPM refer to reducing the size of the public sector, co-opting the experts in management activities, de-bureaucratization, introduction of performance recompensing mechanisms, competition, institutional de-centralization and, perhaps the most important component, implementation of an organizational culture around the concept of the *citizen regarded as a customer* (Barzelay, 2000; Behn, 1995). Therefore, from an operational point of view, since the end of the 1990s, the citizen-customer concept has become the focal point of organizational activities. Furthermore, Martin and Webb (2009) consider that an administrative reform cannot really be implemented without involving the citizens.

Dunleavy et al. (2005) introduced a new paradigm for the public sector. The alternative consists of Digital Administration which should be based on the following concepts: *Reintegration*, *Needs-based Holism* and *Digitalization*. A careful analysis of the described directions denotes the interdisciplinary character on which the construction of Digital Administration is based on. Thus, *Reintegration* refers to the ample reform of the manner in which the institutions' administrative apparatus functions. The measures aim to establish a type of activity based on performance criteria. Together with the increase in efficiency, the improvement of inter-institutional relations is also a target. The concept of *Needs-based Holism* aims at making the citizen, seen as a consumer, the focal point of the public administration's existence. If this is the case, then the inclination towards the concepts guiding organizations in the business environment which aim at satisfying the consumers' needs is obvious. The last concept (*Digitalization*) assumes the introduction of electronic public services. Consequently, three domains, namely public management, marketing and eGov are necessary for a paradigm change in the public administration field.

The leap from these ideas to their implementation is *a priori* the appendage of decision-makers. Taking into consideration the fact that inefficient managers may make eGov implementation difficult (Vasiu and Vasiu, 2006), Andersen (2006) has defined five key-challenges on which the management structures within the public administration bodies should focus on if they intend to implement eGov⁷⁶. Andersen's guidelines may help public decision-makers implement efficient electronic public services, by means of making the processes and the activity of public institutions automatic and thus achieving higher quality, ubiquitous and uninterrupted access, and the elimination or reduction of the human factor in the service processes, lower costs for the beneficiaries as well as for providers.

In a chronological approach, which is necessary for a general view of the field, marketing evolved following a sequence of stages (Balaure et al, 2002: 45-46), including, successively, the orientation towards production (the 1900 – 1930s), the orientation towards sales (the 1930 – 1950s), to the climax in the orientation towards the modern concept of marketing (after the year 1950) which aims at the analysis and the study of the needs and wishes of the customers with the purpose of achieving a higher and better level of satisfaction.

The article published in the Journal of Marketing by Kotler and Levy (1969) virtually proclaimed the universality of the marketing approach and the validity of the discipline for any organization dealing with products and customers. Thus, the attention was also directed towards the public sector since there was a demand for better services and efficient public institutions. The use of the marketing concept in the public sector supposes the implementation of programs by means of which the public institutions create, communicate and supply value to the citizens. Nevertheless, not everyone embraced the new direction. Walsh (1994) issued an almost antagonistic assertion regarding marketing and public interest. In his view, marketing should have only a limited,

⁷⁶ The balance between the budget earmarked for the implementation of new technologies and the operational cost reductions; the implementation strategy should take into account the routine, time assignments and psychological barriers; the reduction of the intensity needed in providing the service; the assessment of the employees' availability; the mechanisms of establishing the needed competencies.

strictly controlled application in the public sector. The characteristics specific to public administration cannot be captured by adjusting the definitions. However, public entities, just like those in the private environment, should follow principles such as improvement of efficacy, renewal, adjustment. The differences between the two types should not justify the losses or the ineffectiveness. The pillars of the classical marketing science could therefore be applicable also for public institutions.

In contrast to Walsh, Andreassen (2012) pointed that nonprofit/social marketing represents the most complex and difficult context in which marketing activities can be carried out, the commercial classification being only a simplified version of this convolution, having as its aggregating point the sale of products and services. In his opinion, non-profit and social marketing represents the most complex and difficult context in which marketing activities can be carried out, the commercial classification being only a simplified version of this convolution, having as its aggregating point the sale of products and services.

EGovernment in Romania

The term of public service comprises activities such as public lighting, public road construction, healthcare or antiterrorism. In order to deal with this field in an efficient manner, it is necessary to define the limitations with regards to the types and specificity of public services, which could be digitalized and transmitted efficiently in an electronic manner to the citizens. The filter must be taken into consideration in a European context. The European Union's (EU) strategy regarding the access to an Informational Society for the member states proposes the following services as being primordial for the field of eGov:

Table no. 1: Essential Public Services

Services addressing the citizens	Services addressing the business environment
1. Income tax	1. Social contributions for employees
2. Job search services	2. Corporate tax
3. Social security benefits	3. VAT

4. Personal documents	4. Registration of a new company
5. Car registration	5. Submission of data to statistical offices
6. Application for building permission	6. Custom declarations
7. Declaration to police	7. Environment-related permits
8. Access to public libraries	8. Public Procurement
9. Certificates	
10. Enrolment in higher education	
11. Residence modification	
12. Healthcare services	

Source: European Commission, 2008

Romania, as a member of the EU, adopted the Community *acquis* with regards to its policy in the field of public administration and committed itself to being an integral part of the Informational Society. By trying to digitalize public administration, the most important initiative was launched in 2009 as “e-Romania”. The project aims at the computerization and interconnection of all public services in Romania (under the guidance of the Ministry of Communications and Information Society). However, the circulated costs led to the suspension of the project. Some of the eGov specific initiatives were implemented nonetheless. Notable projects refer to the possibility of transmitting a few official financial forms in an electronic format, an electronic system for Public Procurement (SEAP), the issuance of transportation permits and the possibility to pay some (income) taxes online.

Although the initiatives are commendatory, certain negative aspects must be emphasized. Thus, the number of financial forms which can be filled in and sent electronically is reduced as compared to the number of forms which must be sent by a company throughout a year. Using SEAP is not mandatory and the great majority of public procurement processes are still performed in the traditional manner. The service regarding the transportation permits may only be initiated electronically, as the subsequent issuance and transmittance is not digitalized.

Another drawback is represented by the reticence of public institutions to be a part of digital projects. Such an example is the Virtual Payment Desk (VPD) – by means of which citizens can pay taxes. Currently, forty-nine institutions joined this program (www.ghiseul.ro). The number of institutions is insignificant and shows the incipient status of public institutions' perception on the necessity to enrol in this program.

In order to facilitate access, a unique access point was created for electronic public services – the web portal “www.e-guvernare.ro”. It functions as an aggregator for eGov specific services. The portal currently contains twenty-two sections. Section analysis revealed the fact that only four of them can be categorized as eGov services (Velicu, 2011). The remainder these sections offer a link to the Internet page of the most important public institutions in Romania, pages which are used eminently for displaying miscellaneous information. An analysis of the web pages built by sixty City Halls (Pribeanu et al, 2012) showed the fact that the accessibility of electronic public services is far from optimal. Moreover, the web page developers failed to include instruments which a disabled person needs in order to access such services. Thus an important category of citizens is practically excluded.

EParticipation, one of the main EU strategies in the field of eGov (European Commission, 2010) which aims at improving citizen participation in the public administration sector by using ICT, is also slightly developed. Romanians do not have many options through which they can make their voices heard vis-à-vis the manner in which public administration provides services (Stoica and Ilas, 2009).

Having a total number of broadband Internet access connections at a fixed point of 3.26 million and a penetration rate of 17% per one hundred inhabitants at the end of 2011, an extremely low household PC equipment of only 50% (NAMRC, 2012), Romania is urged to rapidly lower the digital divide. Nevertheless, the degree of endowment with IT equipment and Internet access may rapidly increase since it is a question of resource allocation (Laszlo, 2012).

From a comparative point of view, according to the 2012 United Nations (UN) study with regards to the development of eGov, Romania is on the 62nd position on a worldwide scale, occupying the last position among EU countries. This situation is also emphasized by Eurostat (2012) within the study on the population aged over sixteen, which interacted with the public administration over the Internet. Romania was in 2011 on the last position with 7%, compared to the EU average of 41%.

Research objectives

The literature in the field of public marketing and eGov implementation is scarce with regards to the connection and the possible interdependence of the two concepts. Thus, although eGov implementation – for efficiency, transparency, cost considerations, etc. – represents a field covered by scientific research (Tat-Kei Ho, 2002; Edmiston, 2003; Treiblmaier, Pinterits and Floh, 2006), the use of marketing specific concepts and instruments – gravitating around the superior satisfaction of the consumers' needs, in this case of the citizens – in order to implement eGov, was not at the centre of scholarly attention.

An exploratory research was conducted in order to clarify in terms of concepts the field of electronic public services and the possible contribution marketing can have in its implementation. The purpose was to determine and assess the inclination of the decision-makers in the public management structures towards building a mechanism to transmit public value by implementing electronic mediation between institutions and consumers. The following objectives have been defined:

- The perception regarding the adoption of eGov – current stage, strategy, necessity, action;
- Identification of the changes required for adopting eGov;
- Identification of the way and depth needed in understanding the principles and concepts specific to marketing and the modalities in which it affects the institution's activity;

- Testing the existence of a determination/causality between marketing and the implementation of eGov.

Thomas Kuhn's theory on paradigms and paradigm changes was used by Hall (1993) in examining and understanding the modifications in the economic policy of the United Kingdom. According to him, the changes, depending on the impact, may be of three types. On the first level – having a negligible, marginal magnitude, on the second level – stronger, but still of an incremental nature and on the third level with regards to the modification of a general paradigm. The minor changes arise as a consequence of accruing technical knowledge by the public clerks and experts. A general change is a consequence of the accruals at the societal level as a whole. In most of the cases, a paradigmatic change occurs following a crisis or an abnormality. For an overview over the public sector, we will attempt to determine where Romania stands, by using the pattern developed by Hall.

Methodology

The changes in the perception, behaviour, decisions, require an investigation particularly through a qualitative-type exploratory research. For achieving this, a sample consisting of decision-makers/representatives of the management structure from eleven Romanian public institutions was selected, seven of which belonging to the central administration and four to the local one or to the de-concentrated agencies. The aim was to investigate mainly the institutions that provide the services mentioned in Table 1. The activities of the eleven institutions cover a large scope of fields such as public finances, transportation, education, agriculture or environmental protection. Appendix A lists the institutions represented in the present research.

Although the participation of the decision-makers within the research was subject to the execution of a confidentiality agreement, there are a few clarifications referring to the selection process and hierarchical levels of those interviewed that must be mentioned:

- Members of the management structure at the executive levels were targeted in the selection process as they can provide a strategic view both on the institution and on the operability of activities. The politically sensitive positions were avoided in order not to influence the results of the research by subjective political opinions, the relatively short time spent in office or the lack of experience;
- A few key-positions were identified, namely the Coordinators of the following Departments: General Policies and Strategies, Control, Internal Audit, Urbanism and the Registration of Persons;
- Each institution was represented by one decision-maker only.

The recourse to the qualitative-type research is based on the need to understand in detail the analysed phenomenon. It is intended to approach reality in an interpretative and naturalistic manner, having as its end the highlighting of its main features (Catoiu et al, 2009: 209-210). In this way it is attempted to *also* identify the factors which the individuals are not aware of or keen on expressing in a direct way, and which could have a significant influence over their behaviour.

In order to serve the principle of non-directivity, respectively to grant the respondent the highest possible degree of freedom, the semi-guided in-depth interview was used. The main conversation topics are described in Appendix B. Most of the interviews were recorded electronically and are paralleled by notes regarding non-verbal language. The interviews were conducted in July and August 2012, following a prior scheduling, at the offices of the respondents and lasted no longer than sixty minutes. In addition, the organizational and functional charts of the represented institutions were analysed in order to express an opinion on the possible structural modifications necessary to efficiently implement eGov.

There is still much debate on the adequacy of using the term *customer* for public services consumers (Jones and Needham, 2008; Osborne, 2010; Jos and Tompkins, 2009). Therefore, throughout the research, *consumer* will be used in relation to public services and *customer* when referring to private sector concepts.

The hypotheses on which the research was based are the following:

H1: If the interlocutors are familiarized with the field of eGov and know its principles and characteristics, then such systems should be implemented more easily;

H2: If the decision of adopting eGov is asserted, but this is not confirmed by drafting and implementing a specific strategy, then the assertions have only a declarative value;

H3: If there is a clear and consistent gap in terms of vision and openness, between the decision-makers in the central administration as compared to those from the local administration with regards to the implementation of specific eGov services; the gap is also visible when referring to the actual steps of implementation or at least in adapting the structures to possible transformations imposed by the adoption of eGov;

H4: If the interlocutors assign a correct signification to specific marketing concepts, then they will be aware of the necessity of using its specific techniques and methods;

H5: If the improvement of the provided services and the relations with the consumers represent fundamental topics in the public institutions policy, then the creation of departments and internal structures specialized in public marketing should constitute a priority;

H6: If the decision-makers admit that adapting public services is beneficial to the extent that such benefits arise from knowing the citizens' opinions, then the afferent strategies have to be defined based on research or studies on their opinions;

H7: If the aim is to improve the *public institution-target public* relation, then eGov implementation should have as a triggering factor a strategic approach involving marketing.

Results

The interviews were transcribed and analysed using the hermeneutic method. It involves the reviewing of the entire transcript and the development of a holistic palette for the analysis of data (Smith and Fletcher, 2004). The analyst

aims at identifying certain themes or categories expounded in detail, resulting from the collected information. Subsequently, patterns or general models based on understanding the text in detail are sought after. Already at this stage, the overview may be modified (Sitz, 2008; Lavery, 2003). If, following the analysis, interest areas are identified which had not been identified at the beginning, the literature is examined in order to elucidate them (Wiklund, Lindholm and Lindstrom, 2002).

The features of eGov

In order to analyse H1, five key-elements were established, regarded as definitory for eGov: the use of ICT, digital services, electronic forms, web portal and electronic official communication. The interlocutors mentioned frequently these concepts among their daily activities and priorities. Moreover, they were asked to exemplify the way in which the elements regarded as essential for eGov are reflected in the activity of the institution. From answers such as: “I would say that online tax payment is convenient for the citizens and is bound to become, financially, even more efficient and convenient as it is adopted by an increasing number of people”; “The office may be closed or the number of employees too low, but the portal may be access at any time and from any location”, one can see that the interlocutors know the elements specific to electronic public services. Presentation/information websites may be found in all the represented institutions, but the provision of digital services was met only in two of the eleven institutions, namely those activating in the field of public finances and of transport. Although digital interaction is reduced, in the majority of cases, to the implementation of a portal in order to display information, the considerations following the analysis led to the *acceptance of hypothesis H1*.

Implementing eGov

Hypothesis 2 aimed at the specific strategy of implementing eGov. The transformations necessary at the institutional level presume: *proportioned budgets, an implementation strategy, rarefying the service required activities, employees’ openness to use such systems, training programs for employees in*

the field of ICT. These elements were not encountered – in their vast majority – in the discussions with the eleven interlocutors. As far as the budget is concerned, an interviewee manifested that “...I speak from the perspective of the whole administrative apparatus, but I believe it is applicable also for the local administration. Take a look at the budget earmarks for the agents throughout the country, particularly at the difference between the amounts allotted and those minimally required for operating”. Even the institutions which have taken important steps towards implementing eGov are in a status of “hibernation”, the mentioned causes relate mainly to budget, but also to the fact that “the use is by far lower than expected”. Overestimated expectations were pointed at as well by another interlocutor: “People assumed some new responsibilities along the automation process, but we failed to witness a decrease (of operational costs) which was expected to occur together with all the increase in efficacy proclaimed by information technology in the public sector”. The conclusion was expressed by one of the subjects under the guise of a dilemma: “We undergo an economic-financial crisis. Which services require additional investment? Which services are inefficient and should be eliminated, and which supported?”. As a consequence, the *hypothesis H2 is accepted*.

Local administration versus central administration

Before analysing the results of the hypothesis 3, which seeks a possible gap in terms of vision and openness between the decision-makers in the central administration and the ones coming from the local administration regarding eGov implementation, we find it necessary to make a number of methodological clarifications. Therefore, the target was not a comparison between an institution and its branch offices. We deemed it adequate to show the possible differences between a local/de-centralized institution, characterized by a more intense theoretic contact with the citizens and an institution belonging to the central administration, focusing mainly on establishing specific policies and having a more reduced contract with the public. *Local* refers to the institutions which are active in the administrative-territorial units, at the local/county level, regardless of

the form of organization or type of subordination (de-centralized or local institution). Having analysed the opinions of the interviewees, we may assert first of all that the need for an in-depth organizational change, able to determine the long-term development of the institution, is not felt by the respondents since the status conferred by a public institution offers a *sine die* stability. However, the wish to improve the processes and the general operation is identified, while the automation systems are a viable, real and achievable aim. Following the interviews' analysis, the major difference between the two types of institutions is rather procedural, determined by the additional steps needed to be taken by a local institution in order to reach the central management. No additional or stronger reservations were identified in the case of the *local institutions* or other significant differences of vision concerning eGov implementation. *Hypothesis H3 is thus invalidated.*

Marketing concepts

The *next hypothesis* (H4) focuses on the need to *understand and use marketing concepts* with the aim of identifying both the features characterizing the classical acceptance of the term (close to the transactional marketing), such as: increase of consumption, raise the number of customers. In addition, it focuses on the features specific to the modern concept of marketing, such as: customer-orientation, customer satisfaction, attachment of the clients. The answers coming from the institutional sphere, such as "Our institution aims at improving the response rate for the received petitions/notifications"; "We believe that the attitude of employees in the front line has a significant influence over the availability of contracting partners to fulfil their financial obligations"; "Although the public services in the field of education do not involve a direct cost, we are aware that to the results of our activity depend the future enrolments, and we endeavour to permanently improve the didactic process"; "We established a department which deals strictly with the notifications regarding the activity of the institutions and suggests quality improving measures", we may state that most of the interviewees make a more or less informed use of notions belonging to

marketing theory. However, assertions such as “The main objective of a public institution is not to improve the citizens’ satisfaction” or “The institution was established with the single purpose of monitoring a well-defined activity in the private environment” tend to discourage or even to remove from the managerial act the empathy towards the needs of the citizens. Without looking for a definition or detailed knowledge of the marketing field, one may affirm that, generally, *marketing-specific notions and concepts are known by the decision-makers but no institution considered it opportune to use marketing methods and techniques, thus infirming hypothesis H4.*

The marketing department, the quality of services and the relation with the citizens

The answers render it clear that most interlocutors fail to find the existence of a marketing department useful. The promotion and sales activities are assimilated to marketing. Because the institutions they represent do not *sell* and do not need *promotion*, the marketing department is out-of-place, in their opinion, within the organizational chart. Answers such as “Not necessarily, rather not” or “Marketing is marginally acknowledged within the institution, since it is considered as a private-sector activity” to the question “Is there a marketing department or a person charged with marketing activities within the institution?”, are surely startling with regard to a public institution nowadays. The results support the findings made by Ticlau et al (2010) regarding the absence of a necessary framework for the implementation of public marketing strategies within Romanian public institutions. The conclusion is that *hypothesis H5 (involving the creation of departments and internal structures specialized on public marketing) is invalidated.*

Marketing research and marketing strategies

Hypothesis 6 assumed that *strategies should to be defined based on research or studies on the citizens’ opinions.* The analysis of the interviewees’ answers *invalidates the hypothesis.* Although punctual measures were implemented with the aim of improving the activities, the processes or the service quality, no research was conducted and there are no plans to do so in the future.

Nevertheless, the comments suggest that the image of public institutions is influenced by the media and the audience's limited understanding of its role and thus their specific functions are exacerbated –"being acutely judged by the media and the public about what they reckon the institution is or is not supposed to do, is reflected at the political level, having a direct influence over our stability and performance". A respondent asserted that, notwithstanding the attempts to provide the public accurate information "...they do not publish what you say, but fabricate their own stories". Consequently, at least the public relations department should be improved. Most of the interviewees felt the need to justify the situation by invoking the high changeability of the legislative, financial issues or political instability. Additionally, the representatives of the de-concentrated institutions were required to provide information regarding the involvement of the branch offices in the creation of strategies and on the decisions taken by the institution's central management. Answers such as "an important part of my role is to implement the guidelines received and to report the course of the implementation process" or "there is a reticence, at the central level, on the adoption of proposals coming from the branch offices", points not only at the presence of a gap in the internal communication, but also at the minimal role assumed *a priori* by the management of de-concentrated institutions.

Adoption of eGov and Marketing

One of the interviewees affirms that "Unfortunately, the people who establish the mode of institutional operation as well as all the other policies did not have any relevant experience and do not understand our activity. They form the majority of those establishing the strategies. They do not have to implement any of the very decisions they take, and do not suffer the consequences of adopting such decisions. However, from an operational point of view, we are the ones supposed to implement the changes and make them work". This is relevant for most of the decision-makers, although the more categorical expressions were not recorded. The decision-taking mechanism for strategic issues operates, however, with great difficulty, and the autonomy of institutions vis-à-vis the government, although established under the law, is used only as a by-effect of a

political decision. The institutional de-centralization required for the self-governing of institutions is questionable. And, together with it, the strategies and decisions of great impact over the medium- and long-term development. The digitalization of activities and service provided via electronic means may be assimilated, at least indirectly, to certain concepts specific to modern marketing. A thinking based on marketing strategies may be identified at the management level, but, as we have found, there is no such strategic approach. Consequently, *hypothesis H7 (if the aim is to make the public institution-target public relationship more efficient, then eGov implementation should have as a triggering factor a strategic approach involving marketing techniques) is invalidated.*

Analysis of organizational structures

In order to support the results obtained following the interpretation of the interviews, the organizational structures of the institutions involved in the research were analysed. Eight of the analysed institutions published the organizational charts on their web page. By reviewing the name of the departments, it was apparent that no institution has a department formally in charge of marketing. Offices having PR attributions were developed instead. The position of these offices in the organizational charts, under the direct coordination of the management structure, reveals an increased importance granted to the aspect of communicating with the external environment. The science of marketing places public relations among the main instruments of communication policy, which is part of the marketing mix (Balaure et al, 2002: 486). The creation of PR departments represents the only actual link between the institutions and the marketing field.

The development and implementation of systems necessary for providing electronic public services to the citizens should be the prerogative of the IT departments. The analysis of the organizational charts reveals that such departments are subordinated, to a great extent, to the administrative departments. Although previous research has shown that investments made by governments in ICT have a significant positive impact on economic growth (Lee

and Perry, 2002), the main function of the IT departments in the present sample seems to be *to ensure the proper functioning* of the existing IT equipment (PCs, printers, etc.).

The main limitation of the present research is the fact that the results cannot be regarded as final. They constitute only a further step taken towards the superior conceptualization of public sector mechanisms and of the ways in which marketing may be used in guiding the implementation of eGov. Considering that a qualitative research was conducted, it is preferable to avoid the extrapolation of the conclusions to other institutions or their generalization.

Conclusion

The present article focused on the question whether the implementation of electronic public services is desirable in Romania. If this is the case, is this an effect of adopting policies that are based on the theory of public marketing? Although the answer is not an obvious one, this research may enable us to draw some pertinent conclusions.

Regarding the implementation aspect of eGov, a thorough administrative reform emphasizing ICT is necessary. At the institutional level, the organizational change has to occur and the leading actor must be the management structure. The management's vision regarding eGov weights more as compared to a function comprising resources, planning, or the very existence and size of the IT department (Carrizales, 2008). There are managers who will embrace the idea of eGov, thinking of its benefits and gains in efficiency while others will be reluctant as for them the necessary costs are an insurmountable barrier for the moment. A political decision in the sense of establishing and adopting a coherent legal framework and a clear and comprehensive strategy may be the answer in both cases. EGov should be integrated in the wider framework of the administrative reform (Pina, Torres and Royo, 2010). Thus, those in favour of its implementation will find the legal framework and the necessary resources, while the refractory ones will receive an impulse toward its creation. Furthermore, the analysis revealed the fact that all the institutions developed online presentation sites, but

only two took a step further and implemented electronic mediation systems for some of the offered services. Once again, in the opinion of the interviewees, the limited budget and a certain incapability of the political decision-makers are the greatest hindrances in creating an eGov strategy.

Regarding the use of public marketing mechanisms, citizen centric concepts were invoked and represent important benchmarks, at least at a declarative level, for most of the interviewed decision-makers. This conclusion supports the findings of Richter, Cornford and McLoughlin (2004) according to which the satisfaction of consumers of public services is extremely important in the paradigm *citizen-client*. However, none of the institutions has a department/person formally appointed to be in charge of marketing and did not commission any research in this field. Marketing, where it exists, has a marginal influence over basic public services, and consists, at best, in using one or several specific techniques. In order to benefit from this domain, public administration needs to develop an integrated marketing orientation. This kind of orientation is not currently included in their development plans. As a consequence, a legislative reform is necessary. This reform should go beyond the principles of conventional theory, in the field of public administration and public management, fact which is also embraced by Ewing and Caruana (2000). Marketing-oriented thinking does not form the basis of the current eGov implementation strategy. The emergence of some marketing concepts represents rather a consequence than a target to aim at. This is, in our opinion, the reason for which the expected results of the already implemented services are yet to be seen, and shows that it is not enough only *to do the right thing*, but it is equally important the modality, the process, *to do it the right way*. Although the direct transfer to the public sector of the customer concept, as it was defined in the private sector, has an inadequate feature (Alford and Speed, 2006), still, public institutions should apply a vision „focused on customers”. In other words, they should consider citizens “defined by regulations”, as customers and clients in order to understand their wishes and their needs and take them into consideration in the process of service providing.

EGov's success shall be accomplished by the synergy of three forces: institutional, technological and the citizens' demand. Such forces have to be harnessed in both the implementation of specific applications and services and also in developing an efficient communication system with the public. The intended public value will spring at the same time with the adoption of electronic mediation by an increasingly large part of the society, fact which will lead to the creation of a stronger relationship between the administration and the public (Baldwin, Gauld and Goldfinch, 2012). Romania has to identify the necessary means to at least try to reduce the gap that separates it from the other EU countries in the field of eGov. And the synergy created by using concepts specific to NPM and marketing could be the expected answer.

In conclusion, this research conducted a stage analysis of the state in which public administration in Romania finds itself by using the pattern developed by Hall. The outcome is rather pessimistic: although we are in an environment favourable for a structural change, public institutions display a refractory attitude towards adopting at least the NPM precepts. Public institutions should not be limited to the interaction with a variety of organizations within the public or private sector, as all the stakeholders are important. Governmental activity should include also the mechanisms, processes, relations or organizations which help citizens exercise their interests, rights and obligations. The dialogue with the public as well as the consultation process with the citizens must be improved (Profiroiu and Pacesila, 2010). Only in this way is the administration going to undergo the modifications required to answer the current and particularly future challenges.

Suggestions for further research

The results may be used as a starting point for testing and accurately determining the factors with a significant impact that may subsequently be used in the digitalization process. The aspects related to the features the citizens expect from a public service may constitute the difference between the success and failure of a project. Thus, a complete strategy should also include the

conclusions of research made at the beneficiaries' level. The use of marketing in public administration raises some moral and operational issues (Aberbach and Christensen, 2005) and future research should aim at adapting the concept for each type of service or public institution.

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Appendix A: List of institutions and their web addresses for organizational charts

No.	Institution	Organizational chart
1	Ministry of Agriculture and Rural Development	http://www.madr.ro/pages/organigrama/organigrama-madr-decembrie-2012.pdf
2	National Agency for Fiscal Administration	http://www.anaf.ro/public/wps/portal/!ut/p/c1/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gvY1PLEGczFzMP32ADAYMfPx93Z0sDQ3dHM_2CbEdFAIHbV8A!/
3	National Agency for Health Insurance	http://www.cnas.ro/despre-noi/organigrama-cnas
4	Ministry of Labour, Family and Social Protection	http://www.mmuncii.ro/pub/imagemanager/images/file/Minister/Organizare/Organigrama%2011%20mai%202012.pdf
5	District 3 Bucharest City Hall	http://www.primarie3.ro/primarie/organigrama/
6	County Library of Giurgiu	-
7	<i>National Agency for Employment</i>	-
8	Bucharest Academy of Economic Studies	http://www.ase.ro/ase/management/index.asp?item=Organigrama%20ASE
9	Giurgiu City Hall	http://82.79.4.66/portal/portalgi.nsf/AllById/1.20.10
10	National Company for Highways and National Roads in Romania	http://www.andnet.ro/pagina.php?idg=56
11	Agency for Environmental Protection Giurgiu	-

Appendix B: The structure of the Conversation Guide

1	Opinions on the improvement of public administration, refinement of public management and openness of public services towards increasing efficiency, transparency and responsibility
2	Computerization of public administration, agreed development objectives, applied strategies and stage of eGov implementation
3	Comments regarding the use of marketing, citizens' opinions research and the relation with the target public
4	Determinant factors for eGov adoption

POLSCI BOOK REVIEW

Douglas A. Irwin. Free Trade under Fire. Third Edition. Princeton University Press. 2009

Andreas Stamate⁷⁷

In the fifteenth and sixteenth centuries trade and economic development received a painful hit, that of mercantilism. This was a system of monopolistic privileges given by the Crown to domestic producers of different goods; it also reflected a powerful attraction for acquiring, by means of increasing exports and taxing imports, of a greater quantity of money inside the country. Thus, it was believed that more money will necessarily lead to economic welfare. Or, at least, this was the official view, because often this additional money was a mean to fulfil the destructive military plans of the despots who happened to be in power at that time. Professor Douglas A. Irwin's Third Edition *Free Trade under Fire* is a striking proof that mercantilism still rules the minds of people. The book is a sound and clear exposition of all important problems of modern international trade (environmental and labour standards, multilateral and bilateral trade agreements, antidumping issues etc.), in an obvious liberal or free trade key. Chapter two *The Case for Free Trade: Old Theories, New Evidence* should be perhaps, the must-read of the book, because it states a theoretical vision of free trade, but also, by contrast, of protectionism, which is the new name for mercantilism. After reading chapter two, the rest of the book becomes empirical evidence, aiming at helping Irwin to show the great fallacies embodied in the theory of protectionism. Thus, the book assumes a certain degree of innovation

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by choosing to reflect empirical proof for the case against protectionism. To sum up, the essence of this book is the belief that whenever free trade is impeded by governmental intervention (tariff regulation or subsidies), the consumers bear the costs of higher prices while domestic inefficient producers are protected. But that is a matter of common knowledge. Others have stated it before. However, Irwin's contribution is to put the theory to work, using a clear and concise methodology of interpretation and comprehension, by analysing different historical facts. It also uses verbal logic analysis and the method of induction, these being very popular qualitative methods in economic science. *Free trade under fire* is a powerful tool for those who study international economics and are particularly interested in how political competition diverts resources in the global market. Or, in a more generous perspective, the book offers some key lessons (study cases) which reveal the true nature of what was termed as crony capitalism.

Following these lines, it can be easy to see how a great deal of trade policies are developed to improve the market position of some special interests, and not for the *common good* as is officially asserted. The case of U.S. sugar industry (for many years protected by tariffs) and Monica Lewinsky testimonials about Bill Clinton and the notorious sugar oligarch Alfonso Fanjul is the starkest example of how protectionism works. According to one of Lewinsky's reports, cited by Irwin (2009: 80), when she was in an "important" meeting with the president, he received a call from Fanjul, which he had to give course. In Irwin's opinion this fact suggests the influence and importance that Fanjul had around the White House. According to him, when politically well-connected firms make lobby to determine governments to protect them, they give a wrong signal on the market, meaning that "the way to get rich is to invest in political influence, not to invest in productive efficiency" (2009: 77). And this is true irrespective of the form of government. The protectionist argument according to which domestic producers create employment finds no mercy in the author's exposition, because, the reality shows "a trade-off between jobs in one sector of the economy for jobs

in another sector” (2009: 90). We protect some jobs with the costs of losing others.

An interesting case is made against subsidies although the author loses consistency on this matter, in the final chapter. What is the problem with subsidies? Irwin states that subsidies often encourage the development of some economic activities which are inefficient. The result is resource diversion, birth of intensive industries which are environmental unfriendly. Irwin would almost ask: “Did you ever think that the use of pesticides and fertilizers in agriculture is an effect of subsidies and protection?” So what is wrong with that? First, using chemical substances for crops in agriculture can determine other negative effects in the food industry, and second, techniques of chemical usage may simply suggest that the soil is not suited for agriculture. This would imply that the crops should be relocated, by liberalizing trade in agriculture and abolishing subsidies. But this will be desirable for whom? Definitely not for the protected farmers, this being a sign of their political dependency of the subsidy program, and not of the consumers’ needs. The same is true in the case of meat and milk industries. Consumers perhaps would say a big thank you, knowing that they can have a chance not to eat chicken treated with medicine. Says Irwin: “The relocation of meat and milk production from intensive grain-feeding enterprises in densely populated rich countries to pasture-based enterprises in relatively lightly populated poor countries would reduce the use of growth hormones and medicines for animals” (2009: 64-65). The argument against subsidies is weaker at the end of the book, where the author pleads for the supposed beneficial effect of subsidies for the purchase of dolphin-safe nets and turtle excluder devices, because dolphins and turtles are in danger when people fish for tuna and shrimps. But what if there are no economic incentives for protecting dolphins and turtles? Should these costs be externalized? It remains an open question, also for the cases of endangered animal species from Asia and Africa, mentioned by Irwin. The failure to apply same economic logic principles in the case of dolphins

and turtles is definitely a shortcoming (perhaps the single) of the way in which the author chooses to follow its own methodology.

Another sensitive point of discussion in Irwin's book concerns the problem of labour standards which developed countries try to impose on developing countries (mostly from Asia and Africa). In a nutshell, many people from developed countries (determined, of course, by different protectionist policies of their states) become more and more sceptical in buying a shirt imported for example, from Bangladesh, produced by a poor worker who receives less than \$1 per day. Irwin nicely shows that they should think twice, because by rejecting the shirt it may send that worker back to the misery where he came from. Thus \$1 per day is seen as a decent alternative to a promiscuous life. Wages do not rise by imposing labour standards or minimum wage laws, but by raising the productivity of these workers, this being possible only if the product of their work can be freely sold on the international markets.

There are many other instances in *Free Trade under Fire* which pose difficult questions on the real intentions of modern mercantilists, i.e. the protectionists. The book is definitely a revival of economic arguments which were used against protectionism or, as the author states, of the case for free trade. It shows, as French economist Frédéric Bastiat would say, what protectionists omit to say or what is not so easy to see, that in almost all cases, political benefits of those protected, unfortunately win the battle against economic efficiency and welfare, and most important, against consumers.

Call for Papers

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Submissions are now being accepted for the summer 2013 issue.

The topic proposed is **Democracy and the rule of law**. The Nobel Peace Prize was awarded to the European Union (EU) in 2012 for its work towards peace and reconciliation, democracy and human rights in Europe. However, the EU's work in strengthening democracy within and outside its borders is far from complete. In the last two years, we witnessed democratically imbued uprisings in the Middle East and North Africa, but also the erosion of democracy and the rule of law in EU member states such as Romania and Hungary. In Romania, the July 2012 impeachment of the Romanian president generated a serious political crisis. The controversial adoption of the new Hungarian Constitution in April 2011 without the consultation of the Hungarian opposition parties raised questions regarding the commitment towards democracy of the Hungarian government. Do such events indicate a true degradation of democracy? What mechanisms does the EU use to tackle such events and how effective are those mechanisms? Are the EU's actions firm and objective or context-dependent and driven by transnational party politics?

PolSci invites articles and reviews that touch upon these issues and answer some of the questions posed above. **The Journal is also willing to publish outstanding articles/ reviews that do not fall under the main topic proposed for the summer 2013 issue.**

Please submit your work saved as a Microsoft Word document at polsci@sar.org.ro before **April 1st, 2013, midnight Central European Time**. Please note that we will not review manuscripts that have already been published, are scheduled for publication elsewhere, or have been simultaneously submitted to another journal.

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