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Contents:

- I. Cristian Ionescu: **The European Cross-Border Banking and Financial Stability**
- II. E. M Porumb & S. Silvas: **Knowledge Management in Public Services - Lessons Learned from European Experience**
- III. Oprescu Mihaela Adriana: **Vers une Législation Européenne Commune en Matière Contractuelle**
- IV. Dorin-Mircea Dobra: **The Antinomy Tradition-Modernity at Another Level**
- V. Lucian Jora: **Cultural Diplomacy and the Representation of History in Europe. Steps Towards a Research Agenda**
- VI. Claudiu Alexandru Bolcu: **Deliberative Democracy: A theory for the future or a luxury of the present**
- Special:**
- VII. Tünde Szabó, Partenie Dumbravă, Laura Bogdán: **Improving Processes Controlling Capabilities**

The European cross-border banking and financial stability

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Abstract: *The cross-border banking is one of the key factors to financial stability. Therefore, an analysis of the European framework is very important from the perspective of financial stability. Issues like systemic risk in the single financial market and the financial stability challenge, the impact of cross-border banking on financial stability, the European architecture for financial crisis management and the challenges of the European cross-border financial regulation and supervision and the policy issues are some of the concerns that are studies in this paper*

Keywords: financial instability, cross-border banking, European architecture, financial crises, regulation, supervision, institutions

1. Systemic risk in the single financial market

Taking into consideration the European financial framework, the following can be highlighted: i) financial integration was an accelerated process, in order to remove barriers to cross-border activities and to increase competition; ii) integration has broadened deepened the systemic inter-linkages across the European Union. Therefore, table 1 illustrates the transmission channels that increase the scope for systemic risk in the European Union.

Table 1. Major transmission channels in the single financial market

Integrated money markets and other financial markets
Integrated financial market infrastructures: <ul style="list-style-type: none"> • Payment systems • Securities clearing and settlement systems and other market infrastructures (trading systems, OTC markets)
Major banks in concentrated domestic markets
Emergence of pan-European banking groups with systemic relevance in several member states (contagion through intra-group linkages and exposures among network of counterparties)
Centralization of business functions in banking groups
Emergence of large and complex financial institutions with systemic relevance in several member states

Increased foreign ownership of financial institutions and assets (as intensified by the recent EU enlargement)
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Source: Garry J. Schinasi and Pedro Gustavo Teixeira, *The Lender of Last Resort in the European Single Financial Market*, IMF, 2006

2. The financial stability challenge

There are many challenges that may negatively affect the achievement and the maintenance of financial stability. In addition, the nature of the challenges also depends on the maturity and structure of the economic system. Regarding the mature financial systems, the challenge to financial stability is to maintain the proper functioning of the financial system and to maintain its ability to facilitate and support an efficient functioning and performance of the economy¹.

In order to reach financial stability, it is essential to implement mechanisms that prevent systemic financial problems or prevent the threatening to the financial system stability, while maintaining the ability of the economy to support growth.

It is important to underline that it is not necessarily to prevent every financial problem, because of two main reasons. First, a dynamic and effective financial system is incapable to avoid the entire market volatility, shocks and turbulences; it is also impossible for financial institutions to perfectly manage the risks and uncertainties that are involved by the provision of financial services and by the enhancement of the financial stakeholder value. Second, it may be not desirable to create over-protective mechanisms in order to protect the market stability or over-constraining risk-taking financial institutions, because constraints may diminish the extent of risk-taking (and so the efficiency may be inhibited). In addition, low designed and implemented mechanisms of protection or insurance may generate moral hazard problems, leading to higher risk taking behavior.

The maintenance of the ability of the economy, in order to support growth and in order to allow to perform other important functions, is another essential aspect related to the financial stability challenge. In order to achieve and maintain financial stability, some high-priority objectives (like economic efficiency) must be balanced against others. Thus, finance

¹ Garry J. Schinasi, *Defining financial stability and a framework for safeguarding it*, Central Bank of Chile, 2009

has an important role in improving the ability of the economic and financial systems to perform their functions.

Although the probability of systemic problems may be constrained by rules and regulations that limit and restrict financial activities (in order to diminish the probability of destabilizing asset price volatility, the asset market turbulence and bank failures), it is also possible that the same financial stability could be achieved at the cost of economic and financial efficiency.

3. Cross-border banking and financial stability

Cross-border banking has financial stability implications, both benefits and costs. So, it is important to study the desirability and the implications of cross-border banking within the European Union. Within the European Union, there may be different levels of cross-border integration across different banking systems, depending on the perspective of society. The countries that have large banking centers are very diversified, while the new member states are extremely dependent on the developed European banks, being also very vulnerable to contagion effects. Thus, the European banking system is low diversified, being overexposed to the American banking system and underexposed to Japanese and Chinese banking systems.

3.1 Benefits of cross-border banking

One of the benefits of cross-border banking is given by its effects on risk diversification. Portfolio theory argues that investors can diminish the portfolio risk by combining assets (instead of investing in only one asset). Cross-border banking also provides diversification gains. If a domestic bank invests abroad (by providing credit to foreign borrowers from other countries or by buying foreign banks), the domestic bank is less sensitive to domestic shocks, which reduces the volatility of the asset portfolio, reducing the probability of bank failures within the domestic economy.

The diversification effects involved by the cross-border banking also diminishes the volatility of domestic lending, due to the fact that a smaller risk exposure of domestic banks diminishes the probability that domestic banks come have to reduce lending. Similar to the way that banks pick the cross-border diversification benefits on the asset side, they also may

pick the benefits on the liability side. So, a bank that has large depositor bases in foreign countries is less affected by the domestic depositor panic.

Although the cross-border activities of domestic banks have their benefits, the activities of foreign banks in the domestic economy have also their diversification effects. First, foreign banks offer to domestic firms various and multiple lending relationships between domestic banks and foreign banks. If domestic banks are face lending constrains, companies replace domestic lending with foreign lending. If companies do not have a relationship with a foreign bank, companies can move towards any foreign bank that undertakes banking activities in the domestic market. Companies may not obtain the needed financing from foreign banks (after a domestic shock); however, there are other available benefits, since the volatility of lending to domestic firms is lower than in the situation where the domestic financed firms are the only ones affected.

Therefore, one of the most important gains from diversification is that cross-border banking diminishes the risk of bank failures and has a stabilizing effect on lending, so that cross-border banking improves the risk sharing of an economy with other foreign economies. The effects of cross-border banking on the real economy variables' synchronization, especially on the gross domestic product, consumption and investment, are inter-connected with the real business cycle. A positive productivity shock in one country increases lending in that country, regardless the domestic resources provided by the cross-border lending.

The risk sharing could be beard by investors. But one essential feature of the international finance is that there are few main impediments related to international risk sharing, leading to a high lack of the risk sharing. For example, portfolios of investors involve a large bias towards holding domestic securities. Thus, the previous gains of the lack of risk sharing are very large.

These gains are a result of a lower consumption variability benefits households because of the risk aversion, or a result of lower risk exposures that lead to specialization in those activities that provide higher-return.

Other main financial stability benefit of cross-border banking is given by the interaction between competition and stability. Foreign banks in a domestic banking market increase competition within the domestic market. The more concentrated the inefficiently domestic banks market (the case of developing countries), the larger the effect of competition. The link between competition and stability improves financial stability by

reducing agency problems that arrive at the level of borrower. Higher banking competition reduces the lending rates and increases the borrowers' profits. So, this diminishes the borrowers' incentives for risk-shifting and diminishes the borrowers' risk. But this effect also depends on foreign banks that enter the domestic market as green-field, and not by the acquisition of domestic banks. Borrowers' risk also is reduced due to the fact that higher profitability reduces the probability of defaults.

Although foreign bank entry increases competition by increasing the number of active participants on the market, there are other effects, given by the fact that foreign banks are more efficient (foreign banks have more advanced systems of risk management). Thus, banking competition stimulates domestic banks to increase their efficiency, enhancing financial stability. Foreign banks may also improve financial stability by recovering the banking system in the case of a financial crisis by purchasing assets.

3.2 Costs of cross-border banking

Although cross-border banking has many benefits for financial stability, it has also various potential dangers for financial stability.

First, foreign capital is more mobile than domestic capital. After a negative shock that diminishes investment in the domestic economy, foreign banks may leave the domestic banking market. It is difficult for the domestic banks to bring capital quickly inside the country. So, the sensitivity of foreign capital is higher than the sensitivity of domestic capital, where both depend on the form of the cross-border banking pattern. There is a lower probability that foreign banks leave the domestic market if they have established their activities through subsidiaries (that involve very high fixed costs). So, the stability involved by lending through subsidiaries is higher than the stability involved by direct cross-border lending.

Another main cost is given by the contagion effects: similarly to the way that cross-border banking isolates the domestic economy from domestic shocks, it also exposes it to foreign shocks². If countries are financially integrated, a credit shock is easily propagated from one economy to other economies. Unlike productivity shocks, credit shocks are propagated to foreign countries, regardless the domestic fundamentals through financial

² Centre for Economic Policy Research, *Cross-Border Banking in Europe: Implications for Financial Stability and Macroeconomic Policies*, 2011

connections. So, a liquidity shock in the case of parent banks diminishes the cross-border flows to subsidiaries and diminishes direct lending to other banks.

Contagion may arise through different channels. Contagion may arise from direct exposures: domestic banks may face losses related to their foreign operations, negatively affecting their (domestic) lending. Contagion may also arise through asset prices: after a negative shock, domestic banks have to sell their assets; this sell reduce prices and has negative effects on foreign banks that have invested in these assets. So, asset price contagion is an important mechanism through which local shocks are transmitted, through the internationally integrated financial system, to the world-wide level. Contagion may also arise due to the informational nature: failures of institutions in an economy provide information regarding the performance of the country's assets, which may change the beliefs of debtors at other banks (that have invested in the country) regarding the banks' health, which may lead to bank runs.

Contagion may also arise due to the coordination problems of the financial system. Coordination failures may arise as a depositors run, or as a depositors run to other solvent banks. Coordination failures may also arise in wholesale financing, interbank markets and cross-border banking. Thus, global contagion given by coordination problems has a major role in financial crises. The breakdown of cross-border interbank markets may be a result of the coordination problems, and can negatively affect globally active banks, even if the breakdown's source is not related to these banks' fundamentals. Contagion may also occur after the breakdown of securitization markets.

But contagion effects should not invalidate the rationale for cross-border banking and financial integration, even if it exposes the domestic financial system to foreign shocks. This aspect is often ignored by the policy-makers. It is an error to consider negative spillovers as a motive of undesirability of cross-border banking, because it ignores the positive stabilizing effects of cross-border banking: if foreign banks have a large part of the domestic loan portfolio, domestic banks are less affected by domestic shocks, thus having stabilizing effects on the banking system and on the domestic economy.

The contagion's negative effects may be higher than the positive stabilizing effects if there are mechanisms that propagate the spillovers' magnitude or costs. These propagation mechanisms may arise as a result of: i) coordination problems; ii) deficiencies in cross-border resolution; iii) spillbacks from risk transfer; iv) higher costs of systemic crisis.

Although cross-border banking has positive effects for financial stability by maintaining competition in the domestic lending market, the competition channel may also have adverse effects. The “franchise value hypothesis” argues that when banking competition is higher, deposit rates increase, while lending rates decrease, reducing the franchise value. So, banks face default losses and their incentives to a riskier behavior increase. Therefore, the same mechanism that operates at firm-level and is enhancing stability, is the same that operates at bank-level and which is enhancing instability.

Cross-border banking has its effects on the resolution of financial crises, which is important for *ex post* efficiency, but which also involves stability *ex ante* implications. An uncertain and opaque resolution mechanism increases uncertainty *ex ante*, enhancing the coordination problems and rising banking fragility. Thus, cross-border banks should be treated more regulated and supervised. But because cross-border banks are difficult to supervise, and because an efficient supervision requires access to the information related to the banks’ foreign operations, the bank stability may be undermined by the intensification of risk-taking problems at the banking level.

The enlargement of cross-border banks increases the institutions’ size, complexity and interconnectedness, so there is a high probability that cross-border banks may become systemically relevant banks. The failure of these banks may involve very large costs on the economies than the failure of only domestic banks. Cross-border banks also raise systemic risk by a higher degree of similarity among institutions. So, international diversification may expose banks from other countries to the same shocks. An internationalized banking system may involve fewer individual bank failures, but may involve more joint banking failures.

3.3 Implications for stability-enhancing of cross-border banking

In order to evaluate the implications for stability enhancing of cross-border banking, it is important to underline that there is a trade-off between stability and efficiency: while diversification enhances stability, it involves losses of bank specialization, which may lead to less efficient monitoring, and to increases in the costs of banks’ activities.

Although cross-border banking has large financial stability benefits (through bank diversification and risk sharing), it also has potential costs. But, in order to benefits to outweigh the costs, it is necessary that the cross-border banking do not become excessive, for at least four important reasons.

First, diversification benefits are very large. The contagion effects by themselves (the main disadvantage of cross-border banking) are outweighed by these gains: portfolio theory argues that even if new assets diversification increases new exposures, the aggregate risk is diminished. A high foreign banks participation reduces the probability of a banking crisis. There is also a negative correlation between the bank assets' foreign share and the crises' probability. Deregulation may reduce the lending volatility, while enhancing risk-sharing for the foreign bank activities diminishes the probability of financial crises, leading to less pro-cyclical lending in the domestic country.

Second, the (marginal) benefits of cross-border banking are larger for lower levels of cross-border banking, while costs are small. For lower levels of diversification, the marginal gains (the reduction of portfolio variability) are larger. The larger the diversification increases, the smaller the additional gains. In the case of full diversification, the volatility is extremely low. In the same time, low levels of cross-border banking involve low costs (such as from contagion or systemic crisis³), so that a small exposure to foreign shocks is not causing any failures in the domestic economy. But the higher the degree of integration, the higher (or at least non-decreasing) the costs. It is possible that there may exist a threshold level where marginal costs are increasing, due to the fact that a certain minimum exposure to foreign shocks is required in order to damage the domestic banking system. Regarding the marginal benefits and marginal costs of cross-border banking, it can be argued that the optimal degree of integration is given by the point at which the marginal costs equals the marginal benefits⁴. Since the marginal benefits are decreasing, while the marginal costs are increasing, the optimal degree of integration is likely to be interior. Thus, although some degree of integration has its benefits, an excessive degree of integration has its costs.

Third, the costs of cross-border banking can either be avoided or diminished. For any level of cross-border activities, the negative effects of foreign shocks can be reduced by diversifying foreign activities. The more diversified the foreign activities, the less important the foreign shocks. Thus, the net benefits of foreign banks are maximized when foreign banking takes the form of subsidiaries, since lending through subsidiaries is usually more stable even in times of financial crises than direct cross-border lending.

³ ibidem

⁴ ibidem

Fourth, different cross-border banking costs are not characteristic to the cross-border banking. Cross-border banking may involve stability costs by higher levels of institutions' complexity, size and interconnectedness. But large domestically institutions may also involve stability problems (for example, due to its larger size, as it expands abroad). Therefore, cross-border activities are not problematic by themselves. Actually, for any given size, complexity or interconnectedness there is a high probability that it is preferable a higher level of cross-border activities, because of the diversification benefits.

Therefore, a proper amount of cross-border banking is beneficial for financial stability. But it is also crucial that cross-border banking minimize costs while obtaining maximum benefits. So, cross-border banking is a threat to financial stability if it exceeds a certain degree, which depends on multiple factors (a country that has a less synchronized business cycle to other countries also has a larger diversification potential; therefore, its optimal degree of integration is higher).

Therefore, in the case of European Union, the optimal cross-border banking integration should be lower, since the European countries are relatively homogenous, in comparison with the rest of the world. But it is important to emphasize the fact that in the euro area the instrument of exchange rate is no longer a shock absorber. Shocks outside the euro area lead to disparities across countries, which can only be absorbed through price adjustments. The price adjustments is a long and relatively costly process. So, the optimal level of integration in the European Union may also be higher, where a higher coordination of actions limits the adverse problems that arrive from cross-border banking. Thus, European integration involves lower costs and a higher optimal degree of integration.

One important issue is the regulation of cross-border banking. If financial institutions by themselves are fully internalizing the cross-border banking social costs and benefits, there is no need for regulating the cross-border activities. Thus, because of the absence of externalities, financial institutions may find the proper degree of integration. But cross-border banking also involves significant externalities, increasing similarities between banks from different countries and increasing their interconnectedness. These externalities may raise the risk of systemic failures, even if the failures of individual banks are less probable due to diversification benefits. Thus, the bank failures' externalities lead to systemic failures, so that unregulated banks choose a degree of integration that is higher than from the efficiency perspective.

The absence of an effective cross-border framework challenges the crises management. Authorities that manage the failing banks usually focus at national level, and do not include cross-border externalities in the process of decision making. So, it can be argued that it is essential to focus on the financial regulation by solving cross-border crises resolution and by strengthening the cross-border financial supervision.

4. The current architecture for financial crisis management

The European institutional architecture of the financial crises management is based on three principles: *decentralization, segmentation, and cooperation* (table 2).

The European institutional architecture is based on decentralization, because the performance of financial stability functions that are relevant for the crises management involves national responsibilities by public institutions (central banks, banking supervisors, deposit insurance schemes, treasuries). The European Central Bank and the national central banks of the Euro-system are responsible for maintaining financial stability, especially regarding the payment systems and the effects of national policies on financial stability and supervision. But the performance of the lender-of-last-resort mechanism is also a national responsibility, even within the euro area, where the national central banks have the responsibility of provisioning the emergency liquidity assistance. It is a unique situation where a central bank can provide emergency liquidity assistance, without having any monetary policy responsibilities, as opposed to monetary operations. The arrangements within the Euro-system aim to a proper information flow in order to manage the liquidity impacts of the emergency liquidity assistance operations within the single monetary policy.

Table 2. The institutional architecture of the single financial market

Levels	FUNCTIONS	DECISION-MAKERS	COOPERATION STRUCTURES
EU	<ul style="list-style-type: none"> • EU legislation (minimum harmonization) • Policy-coordination • Policy-shaping • State aid control 	<ul style="list-style-type: none"> • ECOFIN Council • European Parliament • European Commission: <ul style="list-style-type: none"> i) legislative proposals/ ii) competition authority 	<ul style="list-style-type: none"> • Economic and Financial Committee • Financial Services Committee • Regulatory committees
EMU	<ul style="list-style-type: none"> • Single monetary policy • Payment systems' 	<ul style="list-style-type: none"> • ECB's Governing Council 	<ul style="list-style-type: none"> • Eurosystem committees

	oversight • Contribution to financial stability and supervision		
National	• National legislation • Use of public funds	• finance ministries • national parliaments	• At the EU level
	• Banking supervision • Insurance supervision • Securities regulation • Supervision of financial Conglomerates	• national central banks • single (cross-sectoral) supervisory agencies • banking supervisor • insurance and pensions supervisors • securities regulators	• Home- /host-country relationships • Consolidated supervision of banking groups • Supplementary supervision of financial conglomerates • Supervisory committees • Bilateral, banking groups', regional and EU-wide
	• Central banking functions (member states outside euro area) • Lender of last resort (emergency liquidity assistance)	• national central banks	• ECB's Governing Council (euro area) and General Council (EU) • Euro-system committees (euro area or EU) • EU-wide and regional
	• Deposit insurance	• schemes (with diverse features)	• Informal
Legal framework: EU Treaty + directly applicable national laws and regulations (minimum harmonization through EU legislation) enforced by national authorities and courts			

Source: Garry J. Schinasi and Pedro Gustavo Teixeira, *The Lender of Last Resort in the European Single Financial Market*, IMF, 2006

The European institutional architecture is based on segmentation; thus, the financial stability functions are segmented across sectors and member states⁵. The banking supervision is done by one (cross-sectoral) supervisory authority and national central bank (in some countries, it is shared between the supervisor and the central bank). Although the prudential framework within the European Union is highly harmonized by legislation, the practical application varies, due to the decentralized setting. Thus, the supervision of banking groups and financial conglomerates is done by each licensed supervisor for each entity of the group.

⁵ Garry J. Schinasi and Pedro Gustavo Teixeira, *The Lender of Last Resort in the European Single Financial Market*, IMF, 2006

The coordination between supervisors requires consolidation and coordination between supervisors, which are power-limited regarding the override of decisions by individual authorities. In the monetary union, governed by the European Central Bank, the banking supervision and the emergency liquidity assistance are the responsibility of the national authorities. Even if there are some harmonized elements of deposit guarantee schemes within the European Union, these have differently developed in each member state.

The European institutional architecture is based on cooperation; therefore, there is a large number of cooperation structures that link the potential gaps of coverage between national responsibilities and the several functions⁶.

5. Cooperation between functions through committee-structures

Because of the financial stability functions' decentralization and segmentation, there is a high number of committees that organize the cooperation between authorities within the European Union (table 3), including supervisory functions, treasury functions and central banking functions. Regarding the supervisory field, there are several sectoral committees in the securities, insurance and banking fields. The purpose of these committees is to give technical advice to the European Commission regarding regulation and to increase the convergence of supervisory practices. Cooperation between treasuries is undertaken at the highest level through the Council of the European Union, comprised by the Economics and Finance Ministers (Ecofin Council), which has decision power related to the European Union policy on financial markets. The Economic and Financial Committee (which comprise the finance ministries and the central banks) advises the Ecofin (especially on financial stability issues and crisis management). Regarding the central banking, the committees advise the decision-making bodies of the European Central Bank.

Table 3. The committee-structures of the single financial market

Decision-making	ECOFIN Council	European Parliament	ECB's Governing Council (euro area of 12 member states)
Finance Ministries	ECOFIN Council (Informal)	Economic and Financial Committee	Financial Services Committee

⁶ ibidem

(policy-making)	Eurogroup)			
Commission and Finance Ministries (regulatory)	European Banking Committee	European Insurance and Occupational Pensions Committee	European Securities Committee	Financial Conglomerates Committee
Supervisors (operational)	Committee of European Banking Supervisors (London)	Committee of European Insurance and Occupational Pension Supervisors (Frankfurt)		Committee of European Securities Regulators (Paris)
Central Banks (operational)	Committees of the Eurosystem/ESCB—in euro area or EU-wide compositions (market operations, payment and settlement systems, banking supervision and financial stability)			

Source: Garry J. Schinasi and Pedro Gustavo Teixeira, *The Lender of Last Resort in the European Single Financial Market*, IMF, 2006

6. Cooperation agreements at the European Union Level

But the architecture also includes European Union-wide cooperation agreements between authorities in situations of crises, in order to settle the main principles and procedures related to the dissemination of information (after the occurrence of disturbances) and in order to support the performance of financial stability in the single financial market.

7. Current supervisory arrangement at European Union level

There is no such thing as an optimal or superior financial supervisory structure. The reforms of the supervisory models of the last 20 years (from a “single regulator” model to a regulatory framework based on objectives), were justified by the uncertain boundaries between intermediaries, which undermined the traditional regulation in several sector of activities (like the banking sector, the securities sector and the insurance sector), which didn’t take into consideration some of the main differences between sectors.

The regulatory and supervisory arrangements were mainly organized along national levels, and were inadequate in tackling the cross-border dimensions of regulation and supervision. In the European Union, the last crisis has involved huge loopholes in the allocation of supervisory tasks and in the lack of rules related to the burden-sharing in the eventuality of a financial crisis of a large European cross-border banking group. Therefore,

cross-border banking, while having large benefits, also involves high challenges for financial stability.

The European authorities have faced the “trilemma” related on how to simultaneously achieve the objectives of financial stability, national supervision and integrated financial markets. It is known that only two of these objectives can be achieved simultaneously.

In the European Union, the responsibility for consolidating the supervision of credit institutions (including subsidiaries and branches) is given to the home country authority, while host country authorities supervise the locally incorporated subsidiaries and have limited oversight of branches. Therefore, the supervisory arrangements illustrate the tasks allocation between the host country and the home country regarding the deposit guarantee and the reorganization of credit institutions (table 4).

The architecture of supervision is similar to the banking groups’ legal structure, with the difference that the host-country authority is able to delegate the responsibility for subsidiaries’ supervision to the home-country authority. If the host-country supervisor is delegating supervision, the home-country supervisor has exclusive oversight over the entire group. Delegation has the advantage of allowing a full consolidated supervision, but has the disadvantage of creating conflicts of interest between the home countries and the host authorities.

Table 4. Allocation to home and host country of supervision, deposit insurance and resolution functions within the European Union

	Prudential Supervisor	Deposit insurance regulators	Reorganization and winding up authority
Banks locally incorporated Parent banks authorized in home country	Home country authorizing parent bank (consolidated supervision – solvency)	Home country	Home country
Subsidiaries of parent banks headquartered in another EU country	Home country authorizing parent bank (consolidated supervision – solvency) Host country authorizing the subsidiary (‘solo’ basis)	Host country	Host country
Branches	Home country of head office	Home country	Home country

Branches of banks headquartered in another EU country	(consolidated supervision – solvency) Host country (liquidity)	(possibility of supplementing the guarantee by host country)	
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Source: Jacopo Carmassi, Elisabeta Luchetii, Stefano Micossi, *Overcoming too-big-to-fail a regulatory framework to limit moral hazard and free riding in the financial sector*, Centre for European Policy Studies, 2010

The structure of European cross-border supervision involves a misalignment of incentives between the home country and the host country supervisors when managing the faltering of a financial institution. Host countries may be affected by the impact of a crisis of local entities of foreign banks, without having the proper instruments of defense, neither for locally incorporated subsidiaries or local branches. The host countries' vulnerability is higher in the case of branches, due to the fact that the host supervisor cannot ascertain the situation of the parent bank.

Conflicts between the home countries and host countries are increased by the asymmetries in the supervisors' human capital, financial resources, legal and financial infrastructure and risk exposures. The risk exposure for the host country is higher if the foreign subsidiaries are large in the country, but small or not important for the functionality of the parent bank in the home country (the case of small countries where there is a strong presence of foreign banks). The agency problem is increased by the cross-border banking groups that centralize the key corporate functions (liquidity, large corporate lending, IT), which is a source of competitive advantage.

In the case of crises within a cross-border banking group, the incentives entails strong home-country bias by national supervisors, giving priority to national interests and not to repercussions within the host country. The home-country bias may lead to an oversight of foreign operations that may become more lenient, so that the parent bank may undertake excessive risks regarding the foreign operations, without any oversight for the home authority and the host authority, distorting the competition.

8. The European financial system reforms and the new European framework for supervision

The European reform proposals include the following: i) *macro-prudential supervision*: the creation of the European Systemic Risk Board, which is composed by the

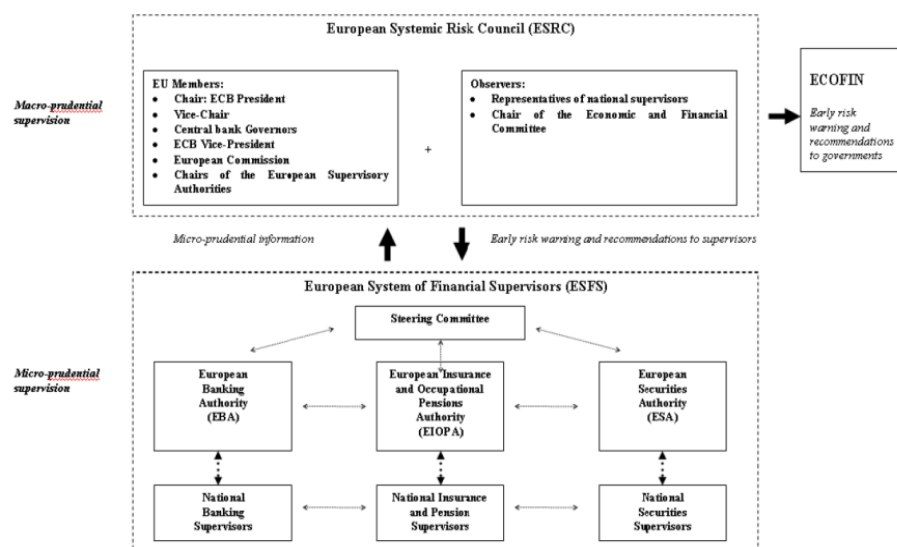
European Union central banks' governors, which is mandated to: assess systemic risks; provide financial-stability risk warnings; recommend and monitor the implementation of macro-prudential actions by the national supervisory authorities; ii) *micro-prudential supervision*: the creation of the European System of Financial Supervisors, which is composed by the following new authorities: the European Banking Authority, the European Insurance Authority and the European Securities Authority, which ensures the adequacy of national supervision and the oversight of cross-border entities, based on the agreement on "an European single rule book applicable to all financial institutions in the single market"; iii) *market reform* of OTC derivatives, which requires a higher standardization, robustness and transparency of the trading on platforms and clearing houses; iv) *raise international standards*, by regulating the alternative investment managers, by amendments to capital requirements and highly complex re-securitizations; by enhancing the disclosure of very complex securitization exposures and by bank remuneration policies⁷.

In order to address financial weaknesses, the European Commission has improved the existing micro-prudential supervision and has established a macro-prudential supervisor in order to oversee the European Union financial system.

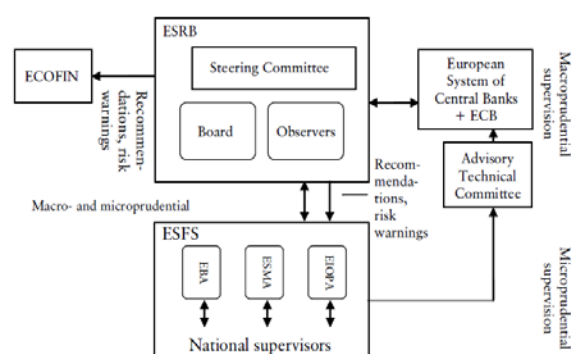
These include the following: the creation of a macro-prudential supervisor; the improvement of micro-prudential supervision of financial institutions (with great consideration to systemically important financial institutions); the regulation of OTC derivatives markets; the reforms of capital adequacy and liquidity requirements.

The new European supervision system (figures 1 and 2) has been implemented in 2010.

⁷ Garry Schinasi, *More than one step to financial stability*, Bruegel policy brief

Figure 1. The European framework for safeguarding financial stability

Source: Donato Masciandaro, Maria J. Nieto and Marc Quintyn, *Will they Sing the Same Tune? Measuring Convergence in the new European System of Financial Supervisors*, International Monetary Fund, July 2009

Figure 2. Proposed new European supervisory structure

Source: Banking and Monetary Policy Department of the National Bank of Hungary, *Report on financial stability*, Magyar Nemzeti Bank, November 2009

9. The challenges of the European cross-border financial regulation and supervision

But the new architecture is going to face difficult challenges. While the European Systemic Risk Board is responsible for the macro-prudential supervision and for the systemic risk at European level, it does not have the proper instruments in order to prevent and manage the risks. Although Once the European Systemic Risk Board identifies a risk, give signals warnings and make recommendations to country authorities, the compliance is dependent on the authorities' actions and not on the European Systemic Risk Board's actions. The recommendations of the European Systemic Risk Board are not binding, so the responsibility

of the policy actions belongs to national authorities. The European Systemic Risk Board is, therefore, just a reputational institution that will depend on its credibility of providing the proper recommendations.

The European Systemic Risk Board has also to obtain the relevant information in order to assess the systemic risk. So, institutions have the obligation to provide the needed information in order to the European Systemic Risk Board to perform its duties related to the National Central Banks, the European Supervisory Authorities and to other relevant national authorities. The proper access to information is one of the greatest challenge of the European Systemic Risk Board that will have to face in order to successfully manage the systemic risk.

The relation between financial stability and monetary stability and the implementation of monetary policies will face many challenges and questions. One policy that seeks to maintain financial stability and which is far from a Coasian equilibrium is the financial crises management framework (especially the resolution of near insolvent or insolvent financial institutions that have large cross-border exposures). From a game-theory approach, there are two main problems. First, in the case of crises (especially in those that involve large cross-border spillovers) the supervisory authorities are pressed by the situation's complexity and by the emergency of the actions. If there is no effective and timely coordination mechanism, information asymmetries will test the capacity to formulate and implement solutions during financial crises.

Second, the intervention of supervisory authorities, in the case of insolvent financial organizations, is required in order to protect the consumers and investors, concerning about contagion and systemic stability, and in order to minimize costs to taxpayers. The costs to taxpayers can create conflicts of interest and involve tradeoffs for national authorities between different solutions of protecting the national taxpayers and safeguarding the European financial stability. These conflicts are costly, since they involve the burden sharing of the resolution's costs. Thus, the intervention is necessary in the large and inter-connected cross-border financial organizations during crises, due to the fact that cooperation is difficult, considering the large costs of bargaining and communication, the asymmetric information problems and the conflicting preferences.

10. Policy issues and concerns

At the European level, the channels of financial instability are classified into three categories: institutions, markets, and infrastructures⁸, which together with the legal arrangements, the monetary arrangements, the codes of conduct and the business practices define the concept of “financial system”. Cross-border connections between institutions, markets, and infrastructures are the channels through which the problems of one national financial system are transmitted to other national financial systems. Beside these financial channels, the world economy is the most important cross-border transmitter of both economic and financial weaknesses. Table 5 illustrates the public-policy issues and concerns regarding the policy framework.

Table 5. Public policy issues and concerns

Policy domain of cross-border systemic concern			
Policy issues and concerns	Cross-border institutions	Global (FX) markets	Unregulated activities
Investors protection/market integrity?	Investor protection	Market integrity	No; possibly for retail investors
Moral hazard from safety net?	Yes; and home/host burden sharing issues	Possibly for G-3 central bank liquidity	No
Cross-border and systemic risks?	Maybe; depends on size, complexity etc.	Yes; via OTC markets and infrastructure linkages	Yes? via opacity, complexity, institutions and markets

Source: Garry J. Schinasi, *Defining financial stability and a framework for safeguarding it*, Central Bank of Chile, 2009

11. Policy framework

One important aspect is the manner through which financial policies address risks and public policy concerns, and to what extent are used these tools of financial policies in order to address these concerns Table 6 illustrates some answers.

⁸ Garry J. Schinasi, *Defining financial stability and a framework for safeguarding it*, Central Bank of Chile, 2009

Table 6. Oversight regimes

Policy domain of cross-border systemic concern			
Lines of defense	Cross-border institutions	Global (FX) markets	Unregulated activities
Market discipline	Partial	Primarily	Exclusively
Market and banking regulation	National with cooperation	Not really; OTC transactions	No
Prudential supervision	National and home/host issues	n.a.	No
Market surveillance	Indirect, as participant	Direct; national and international	Indirect, as participant

Source: Garry J. Schinasi, *Defining financial stability and a framework for safeguarding it*, Central Bank of Chile, 2009

12. Recommendations

Taking into consideration the European approach, there may be made some recommendations, which can be organized along two dimensions: the “policy dimension” (macro-prudential, macroeconomic - fiscal and monetary - and resolution policies) and the “decision level” (national, European and global): i) “applying macro-prudential tools to prevent bubbles; ii) monitoring the national application of macro-prudential tools, exposure to cross-border banks and overall exposures of European banking system; iii) risk-weights for sovereign debt; iv) mark-to-market rules to avoid mispricing of assets; v) eliminating tax-deductibility of debt; vi) bankruptcy regime for countries; vii) standing foreign exchange swap facilities; viii) compatible bank resolution regimes including contingent capital; ix) European-level deposit insurance and bank resolution framework; x) resolution framework on bank group level with ex ante burden-sharing agreements”⁹.

13. Convergence in supervisory governance

Regarding the independence of the central bank and its monetary policy, the economic literature argues that for the central banks with supervisory functions, the independence of monetary policy was transferred also to the supervisory functions. The governance arrangements for supervisors are necessary, since the supervisors have to change

⁹ Centre for Economic Policy Research, *Cross-Border Banking in Europe: Implications for Financial Stability and Macroeconomic Policies*, 2011

profoundly in order to respond to the financial sectors' liberalization. Prudential supervisors have "governance supervisors" functions that monitor the quality of the supervised institutions' governance arrangements¹⁰. Solid governance arrangements for financial supervisors which involve for accountability, independence, integrity and transparency arrangements, are necessary for an effective supervision.

Accountability arrangements of financial supervisors should be more complex than those of the monetary policy authorities, because of: (i) their multiple difficulties of measuring objectives; (ii) multiple principals environment; (iii) the large legal powers that are combined with their legal immunity. From a social welfare point of view, independence and accountability should be considered as complementary, since proper accountability arrangements buttress the agency independence.

13.1. Measuring independence

The independence criteria are grouped into three dimensions: i) institutional; ii) regulatory and supervisory; iii) budgetary independence. Regulatory and supervisory independence are the core of the independence, while institutional and budgetary independence are crucial in supporting the implementation of the core functions. Independence may also be categorized in two main types: institutional independence and budgetary independence.

13.2. Measuring accountability

The accountability criteria are grouped into three dimensions: i) political accountability; ii) judiciary accountability; iii) transparency.

13.3. Is there governance convergence within the European Union?

Governance arrangements aim to: i) "craft order, internally in the agency, and *between* the agency and its stakeholders which include the new European setting, the other national agencies and the European-level agencies; (ii) mitigate conflict between the agencies and their stakeholders; (iii) assist in realizing neutral gains for all stakeholders (assuring that

¹⁰ Donato Masciandaro, Maria J. Nieto and Marc Quintyn, *Will they Sing the Same Tune? Measuring Convergence in the new European System of Financial Supervisors*, International Monetary Fund, July 2009

the division of labor and the delegation of powers to the different layers in the European System of Financial Supervisors is a socially optimal solution)”¹¹.

Thus, European System of Financial Supervisors and the individual countries are interested in harmonizing the governance arrangements in order to align the incentive structures, aiming to achieve the European Union supervisory objectives.

There is convergence between the governance arrangements across the European Union countries. Regarding the regulatory governance, European supervisors have the highest degrees of compliance in the world. In addition, governance arrangements have been improved more than in the entire rest of the world. Governance arrangements in the “old” Europe have higher degrees of compliance than the governance arrangements in the “new” Europe. But, despite the positive aspects, there are weaknesses and aspects related to the lack of convergence that remain uncertain.

In the European Union, the levels of independence and accountability are very low correlated. The degrees of supervisory independence and accountability are influenced by the various and different variables in the countries: the levels of independence are more correlated with the demonstration effect (“others have it, so we should have it too”) and with the level of democracy, while the levels of accountability are more correlated with the quality of the public sector governance and with the levels of supervisory unification. The more integrated the supervisors, the more attention to proper accountability arrangements. Thus, countries do not yet consider that accountability and independence are reciprocally reinforce institutional arrangements.

Third, differences between independence and accountability are related to the location of financial supervision. Thus, supervisors that are located inside the central bank usually have the largest degree of independence, but they also have the lowest developed accountability arrangements. Supervisors that are located outside the central bank have lower degrees of independence, but have more elaborate accountability arrangements. Supervisors that located inside the central banks have higher degrees of institutional and budgetary independence, while supervisors that are outside the central bank have higher regulatory and supervisory independence. Regarding accountability, supervisors that are located inside the central banks have higher political accountability, but lower judicial accountability and transparency (which are “new” forms of accountability; since supervision is not the main

¹¹ ibidem

mission, and due to the institutional reforms, these new forms are not (yet) influenced central banks with the same measure as new supervisory agencies).

Finally, it is necessary to analyze the overall framework beyond the levels of independence and accountability. there are some individual criteria that are essential in order to smooth the European supervisory coordination: i) “the lack of legal protection for supervisors; ii) the presence of politicians on decision-making boards; iii) the shared responsibilities regarding the right to license and withdraw licenses on the independence side; iv) weak judicial accountability mechanisms”¹². Weaknesses and high differences may compromise cooperation and coordination of the supervisory activities, undermining the national and European supervisors credibility.

Thus, an increased harmonization between governance arrangements is essential in order to remodel and correlate the incentive structures of the national supervisors within the European framework. But this analysis considers the main supervisor from each country. A broader analysis should include the governance arrangements for other supervisors, like the securities markets supervisors and the insurance sector supervisors.

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¹² ibidem

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Knowledge Management in Public Services - Lessons learned from European Experience

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***Abstract:** The age of technology where knowledge and information serve as key strategic tools in the organisational context, creates the opportunity for local government to become a of knowledge-based organisations that thrive on the competence of knowledge workers and partners in improving services for community.*

This research paper examines the question of whether the explicit implementation of a knowledge management (KM) approach in local government, the primary vehicles for the delivery of services, can enable them to meet delivery demands better. We will present the challenges local authorities must deal with in implementing the KM component in their institutions.

The second objective is about the citizen service centres as essential KM tools in delivering effective public services. We will find out their role and implication at local level, answering the question if the citizens really need that kind of facility. Our aims to present the outcomes of the process in delivering services in Northampton CSC (UK), along with the operational KM system, that can be transfer as a best practice in Romania

The value-added of this paper is to offer a practical approach of how public authorities in Romania using European experience can project an efficient contact centre that can bring citizens' full satisfaction.

1 Background Knowledge Management in Local Government

The concept of knowledge management (KM) is not new to the public sector, and whether intentionally or unintentionally, KM initiatives have always been integrated in government tasks, inseparable from strategy, planning, consultation, and implementation.

Through public policy in particular, politicians and public service workers use knowledge to shape their domestic environment and try to make a difference.¹

II Identifying knowledge management concepts

In order to set a clear image on the implications of KM in Northampton CSC, we must first identify the key-concepts used in the implementation of public services in UK. For that purpose we must make an explicit distinction between the notion of “information” and “knowledge” (see fig.1).

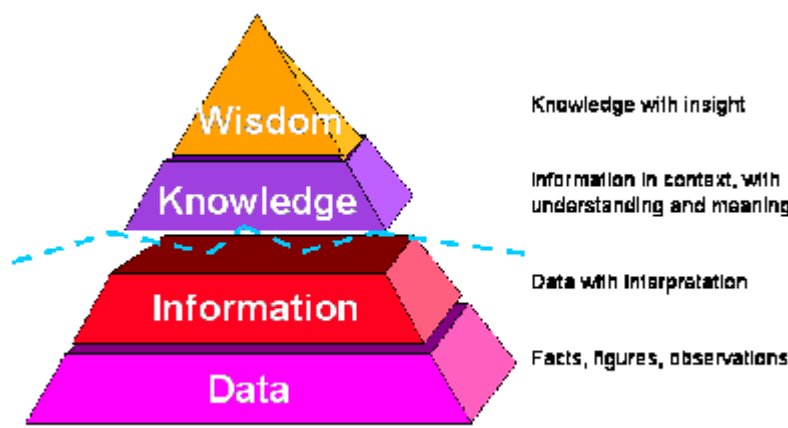


Fig.1KM Key concepts source: www.skyrme.com

There is a clear distinction between the lower two levels and the top two. The bottom two are embodied in objects, e.g. documents and databases, while the higher levels are in people's heads. This is also the distinction between explicit and tacit knowledge. Because our case study resides in the management of tangible and especially of intangible knowledge, we must refer to the concepts of information management and knowledge management.

Information Management vs Knowledge Management

Information management deals with the structuring, organizing, classifying and control of information throughout its 'life cycle'. It involves the business processes and systems used within an organization to create and apply information. It supports

¹ Bridgman, P. and Davis, G. , The Australian Policy Handbook, 3rd ed., Allen & Unwin,2004, Sydney., p.27

knowledge management by enabling people to access, share and ‘make sense’ of codified and tacit information. *The central actors in information management must be the information users themselves, working in partnership with a cast that includes information specialists and information technologists.*²

Our case study does not imply the concept of information management, but more, the knowledge management concept: the challenge of knowledge management is to determine what information within an organization qualifies as 'valuable'. All information is not knowledge, and all knowledge is not valuable. The key is to find the worthwhile knowledge within a vast sea of information.

Organizational & Social Learning

Along with the implementation of a Knowledge Management Strategy in Northampton CSC, 2 concepts came into sight. A definition of Organizational Learning would be the next: “the ability of an organization to gain insight and understanding from experience through experimentation, observation, analysis, and a willingness to examine both successes and failures”.³ In addition to that, the concept of Social Learning incorporates the previous concept because it enhances institution’s ability to reflect its own experiences and focus on allowing individuals or collective creativity to flourish.

Social Learning is less rigid than KM and its core element are the employees, as a team or the individual. The principle elements of SL that came across our case study would be: interactive learning; team building; dynamic environment; training and intercommunication.

Organizational Transformation

² Elena-Marilena Porumb, *Knowledge management – theoretical concepts and good practices in human capital development*, p. 29

³ McGill & all, 1992 (cited by Elena-Marilena Porumb, *Knowledge management – theoretical concepts and good practices in human capital development*, p. 27)

Organization Transformation (OT) is a process of fundamental changes in organizational structures - business processes and service delivery, and a culture for improving organizational results.⁴

Drivers of the OT:

- citizen satisfaction
- quality of services efficiency
- quality of work
- employee development

Principles of OT:

- an organization as a system of people, technology and processes;
- involving stakeholders at all stages and at all levels of the organization;
- defining clear and measurable vision of a future state;
- having a comprehensive program to manage the change.

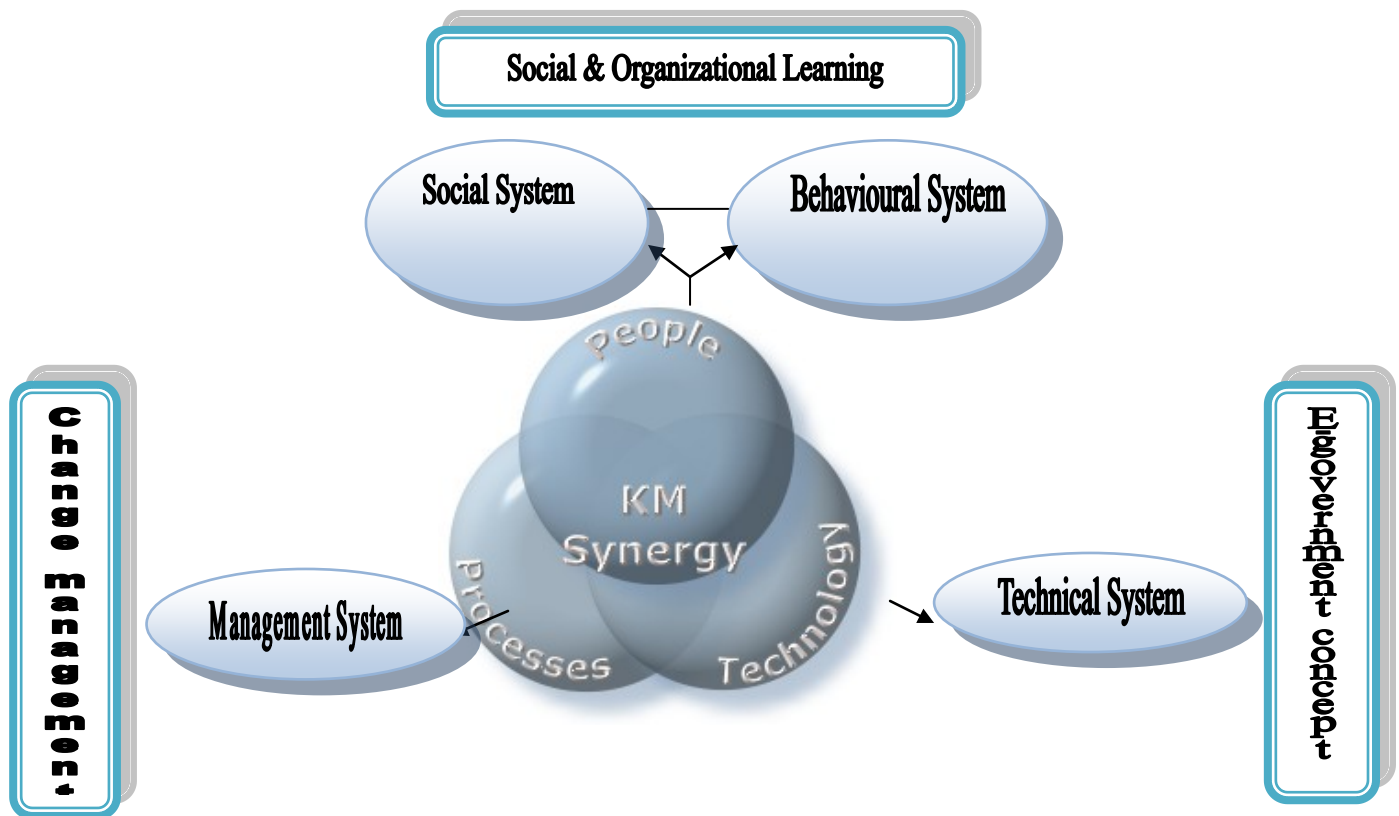


Fig.1. KM components adapted from: "Organizational

⁴ Tomasz Janowski and Adegboyega Ojo, Transforming Government through Knowledge Management and Communities of Practice, United Nation University, Beijing, 2009

- *People and organizational culture* to stimulate and nurture the sharing and use of knowledge;
- *Processes* and methods to locate, create, capture from sources and share knowledge;
- *Technology* to store in a repository and make knowledge accessible to systems and people distributed in the organization.

Knowledge management (KM) is a well-founded management approach that held significant benefits for public sector organizations. KM as a management philosophy has an impact on various components of an organization and it could therefore significantly advance organizational efficiency. *KM requires long-term commitment and dedication from all organizational members. Furthermore, there are certain knowledge management enablers in an organization that needed to be developed and that were necessary for the achievement of organizational effectiveness.*⁵ These enablers are the organizational culture, human resources, information technology, organizational structure and, the organization's strategy and leadership. This paper assesses each of these enablers and how they impact on an organization's KM efforts. Northampton Citizen Service Center was used as a case in point. We examined how local government in UK was able to effectively implement KM practices as strategic tools used to achieve service delivery and operational goals.

As we are talking about KM implemented in the public sector, we must specify the differences between this sector and the private one. The operating environments of the public and private sectors are different. Whilst the latter operates in a competitive environment with a value chain organized to provide competitively priced products and services targeted frequently at specific markets, the former operates in an overtly political environment with structures organized to provide services. If we were accustomed with the KM concept in the private environment where this tool is used to maximize innovation and successful outcomes, the distinctiveness of KM in local government must be mentioned:

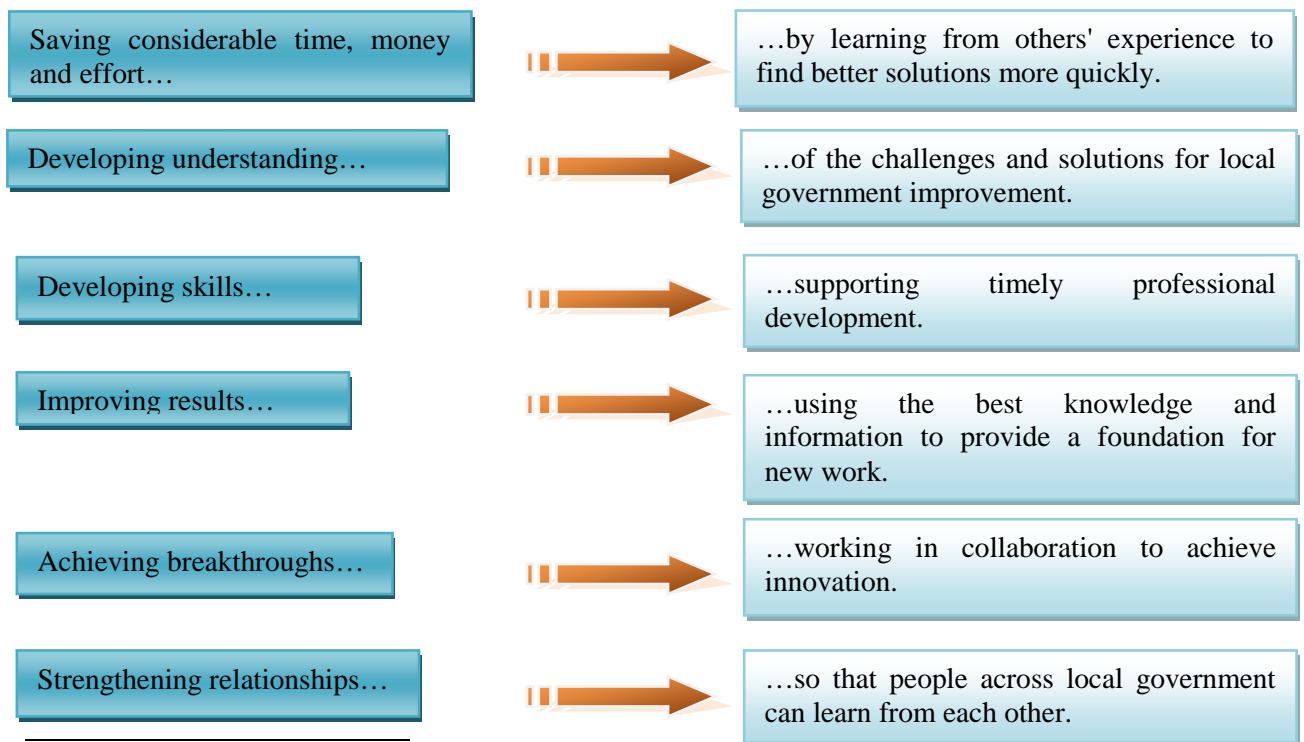
- it operates at several levels – local, regional, national and international;
- its activities cover many sectors – health, education, defence etc.;

⁵ Gaffoor, S. & Cloete, F., 2010, 'Knowledge management in local government: The case of Stellenbosch Municipality', SA Journal of Information Management 12(1), 2010

- many public sector organizations are large and have offices dispersed over a wide area;
- governments deal with large numbers of 'customers' (or citizens);
- a high degree of inter-departmental and inter-agency working (frequently characterized in the form of partnerships) is often needed to address specific policy areas or to deliver joined-up services;⁶

Implementing knowledge management (KM) is not an easy task. Like all change programs, a KM strategy will impact on the culture, processes and technologies in local authority. By recognizing the unique benefits of KM and taking advantage of the implementation support that exists, authorities can better mobilize their expertise across organizational boundaries for the benefit of the wider community.

1.2 What are KM strategy advantages? Without KM, people in organizations tend to remain fixed in silos, poorly knitted together, with little sharing of good practice and prone to duplicating work. This proves time-consuming, costly, and can lead to disappointing results. As local government strives for sustainable, sector-led improvement, KM is becoming increasingly critical. On these lines, we must indicate the benefits of knowledge



⁶ SKYRME, D., Public Sector - Public Knowledge: The KM Contribution to Better Government. Ark Group, Putney, 2003, p. 45

II Study case: KM strategy -the Citizen Service Centre in Northampton

A contact centre is the organizational unit in the municipality that serves citizens across a range of different channels (desk, telephone, paper, internet, etc.). The customer contact centre of a municipality is the place where citizens and businesses can get their questions answered. Municipalities often design their contact centers so they can answer 80% of citizens' questions at the first point of contact – without having to involve other municipal departments or other municipal staff.

Northampton's Citizen Service Centre opened in April 2004 to provide residents and visitors access to the services and information provided by Northampton City Council. According to the British authorities, they share a vision and commitment to:

- explore new ways of working
- improve services
- improve choice of how and when citizens access services⁷

The centre is staffed by a team of Citizen Service Advisers who will deal with citizen's enquiries and act on their behalf to help access the services people need. The reasons County Council authorities decided to provide a Service Centre for citizens were as follows:

- to provide locals with a clear point of contact for council services;
- to act on citizens behalf when dealing with different departments and organizations;
- to make it easier for locals to get access to the services they need.

Their aim is to be able to provide citizens with the option of contacting them face to face, by telephone, in writing, via e mail and the web.⁸

Northampton County Council's citizen service advisers needed to access information when answering calls and emails. The local authority implemented a knowledge management system (KMS) that offers advice on how to deal with enquiries and directs users to support on the council's intranet and internet. The implications of this complex process that took place in Northampton Citizen Service Center are shown in the second part of our study.

⁷ According to the official site of Northamptonshire City Council

⁸ Ibidem

II.2 How to do better local government? Stakeholders – key players in knowledge management - we must identify the key-factors which have a contribution in the implementation of KM and those who benefit from it. In public policy, stakeholders may include any person or organization whose interest may be positively or negatively affected. This includes government organizations and private businesses of all sizes, local authorities, the general community, other interested parties such as voluntary and community organizations, disadvantaged groups. **The County Council of Northamptonshire, Citizens(residents) Employees of CSC (advisers), KM Team, Internet service provider, Tourists & Visitors** There are several relevant players in our stakeholders analysis shown in the **Appendix 1**.

Appendix 1 Stakeholders	<u>Strengths</u>	<u>Weaknesses</u>	<u>Challenges</u>	<u>Goals & Interests</u>
The County Council of Northamptonshire	<ul style="list-style-type: none"> - financial resources to sustain the CSC; - political influence; - numerous partners and relations; - facilitation in identifying future sponsors; 	<ul style="list-style-type: none"> - fixed budget from the state; - sometimes, mistrust of the citizens in resolving problems; - obstacles due to bureaucracy 	<ul style="list-style-type: none"> - maintain a level of trust; - provide quality services to the citizens; - convenient contracts with internet service providers. 	<ul style="list-style-type: none"> - provide high-quality services to the citizens; - satisfaction of the citizens; -using the most advanced technologies communicating with them; - empowerment of the community.
Citizens(residents)	<ul style="list-style-type: none"> - making pressure on the authorities for their needs; 	<ul style="list-style-type: none"> - impossibility to participate in the decisional process; -conformation to authorities' decisions; -their need to appeal to authorities for problem-solving. 	<ul style="list-style-type: none"> - reliance on the CSC advisers' capabilities and knowledge 	<ul style="list-style-type: none"> - save time and effort trough CSC services; - receiving response of their problems through efficient tools and mechanisms ;

Employees of CSC (advisers)	<ul style="list-style-type: none"> - efficient software to back-up their work; - a KM strategy; - specific tools to assimilate the knowledge 	<ul style="list-style-type: none"> - possible lack of receptivity of KM strategy tools and practices 	<ul style="list-style-type: none"> - risk of misunderstandings with citizens; - risk of software system failure; -adaptation to the intranet software usage; 	<ul style="list-style-type: none"> - accomplish the citizen's expectations; - adaptation to the intranet software usage; - high standards of public service delivery
KM Team	<ul style="list-style-type: none"> - experience and high competences of its members; 	<ul style="list-style-type: none"> - their work must be approved by the County Council heads of governments 	<ul style="list-style-type: none"> - different approaches and possible conflicts; -adaptation of the KM concept to local government authorities; 	<ul style="list-style-type: none"> - elaboration and implementation of an integrated and efficient KM strategy; -motivating the work force to use KM once it is running.
Internet service provider	<ul style="list-style-type: none"> - holding high competences in the IT domain; - trained staff in Software elaboration; 	<ul style="list-style-type: none"> - contract negotiation with local authorities; - possible replacement with other company 	<ul style="list-style-type: none"> -adaptation to the intern conditions of CSC infrastructure. 	<ul style="list-style-type: none"> - provide a secure and efficient platform and intranet to the CSC
Tourists & Visitors	<ul style="list-style-type: none"> - promotion of CSC worldwide; setting a positive image for CSC 	<ul style="list-style-type: none"> - no long-term feedback; 	<ul style="list-style-type: none"> - insufficient information on the services provided by the CSC 	<ul style="list-style-type: none"> - getting the right information/response requested.

II.3 KM strategy in CSC Northampton - Situation Assessment

In Northampton Citizen Service Center, the KM strategy was based on the need of an internal system that would signpost advisers to answers quickly and accurately. For each section of the KM strategy that was built, the experts divided the information authorities needed, into three categories. These were:

- information that the advisers would require to deal with calls and emails – specifically a 'how to' system that authorities maintained;
- information that would help staff answer their own queries, for example finance and human resources (HR) information that was available on the intranet and internal staff details that were available through the email system;
- information which should be available to citizens through the official website, which authorities maintain with the web team and service area staff.

The main challenge has been not to replicate information across these channels. One solution British authorities have adopted is a 'page viewer' facility that displays a relevant webpage within the framework of their KMS. This saves time on calls by reducing the number of times advisers have to click through. It also means office advisers can be confident that information is up to date, rather than having to check the website before they update the KMS.

We have also forged strong links with the council's web team and web information owners from service areas. This ensures that our website becomes more citizen-friendly. In times of increased citizen contact, such as in the recent blizzards, we are in constant communication with the web team. This ensures that the council's web content – especially the front page – reflects citizen demand⁹. By acting on the citizen feedback, authorities receive through their website and checking whether they continue to have the same comments, they can measure the effectiveness of their website improvements.

⁹ Michelle Hodgson, Knowledge Manager Northamptonshire County Council, on-line interview published in April, 2009.

They also have a feedback system for the citizen service advisers (their employees). If an advisor discovers an error the staff will correct it quickly. It could be a wrong number, or being unable to find information they need. Alternatively, if they find a useful website authorities could link to, or have simply thought of a way of improving our KMS, this too will be acted upon.

*We recognize that our advisers are most in tune with why our citizens are contacting us, so they have a big say in changes we make to both our KM strategy and our website. Recently we changed our online citizen enquiry form after a suggestion from one of our advisers. Now we capture the information they need so they can reply swiftly without the need for further investigation.*¹⁰ Furthermore, nine of the advisers are trained to update and maintain their respective sections of the KMS. This provides a welcome variation to their working day and ensures information is kept as relevant as possible.

In a series of statistics on Citizens Services Performances from 2011, as a result of KM strategy implementation in Citizen Service Centre we can observe the improvements in the table 1 and 2:

Contact Centre Performance	Total calls received	Calls answered
July 2011 - September 2011	92943	85%

Measurement of the Performance

Table 1

Measure	
Percentage of citizens satisfied with their contact experience	90%
Percentage of enquiries resolved at the first point of contact	80%
Percentage of citizens seen within 15 minutes – OSS	90%

¹⁰ Ibidem

Measure	
Percentage of calls answered - Contact Centre	95%
Percentage of citizen feedback resolved within timescale	95%

Table 2

source: <http://www.northampton.gov.uk>

III. . What next? Visioning in wisdom management in Public services delivery

Complaints provide the council with valuable feedback in respect of the way that services are delivered. Work is in progress to develop and implement a corporate cultural change program to further improve authorities ability to manage and learn from citizen feedback. Based on the result and annual reports, CSC of Northampton envisioned further steps for the improvement of their services. The vision can be synthesized by the following figure, where the central goal of this process is the Improvement of Citizen Experience:



Fig. 3 Improvement of Citizens Experience source: smartcities.info

- training - continuous citizen service training is in place to improve the level of Citizen Service delivered to the citizens at all points of contact. The training is

delivered at all levels of the organization and has been developed with particular regard to the strengths and weaknesses of the organization;

- continuous improvement- *over the next four years we plan to build upon this progress to transform the way in which citizen access our services by creating a single one stop shop based in the Guildhall in the centre of Northampton town centre; 24 hour internet access providing a wide range of interactive, self-service and information services; a network of local access and outreach for the wider community that addresses the diverse needs of local people and other centers of population.*¹¹ This range of access channels will give citizens flexibility and choice in how they contact the council.
- quality assurance- providing excellent citizen service is the first of the councils five management aims which underpin the delivery of the corporate priorities and outcomes: provide excellent citizen services, engage in meaningful dialogue, make best use of resources, be a single effective team, work towards a better Northampton;
- development - the action plan refers to merge the KM strategy with the intranet site. This will promote the idea that staff should give the same level of citizen service expected of our contact centre advisers. *We will also be merging our KMS with a new customer relationship management application to keep in tune with our customer contact patterns. The more we can learn about how and why we are contacted, the better we can reflect the most important information on our KMS and website*

III 1.– KM strategy in CSC Northampton- Alternative generating

Along with the KM strategy established by the team experts in this domain, KM development in Northampton CSC would also be triggered by another mechanism: the Communities of Practice (CoP), knowledge-based social infrastructure able to foster learning, developing competencies and managing knowledge distributed in individuals, units, groups and external stakeholders.

¹¹ Annual Citizen Feedback Report 2008-2009, Northampton Citizen Service Centre

Communities of Practice in Local Government comprise government employees, partners, suppliers and citizens, with interests in a specific area of concern in government, e.g. accessibility or tax Reform. The goals of this specific CoP would be bringing together public employees across functional areas and levels of government, with similar interest in sharing information and building knowledge to support daily delivery or support for public services. We must mention that United Kingdom it is known for its efficient CoP for LG.

There are different modalities for operating CoPs government:

- face to face conference, in-agency coffee house, expert and panel presentation;
- online discussion, chat rooms, teleconferences, one to one interaction by email and internet.

Communities of Practice are an efficient alternative generating as the employees of Northamptonshire CSC would assimilate knowledge through other's official experience and learnings. That would lead to an advanced KM strategy with complex objectives, objectives we can see in the following figure:



Fig. 4 Five steps in generating Community of Practices

Through these 5 steps, the Community of Practice strategy would be aligned with the overall Knowledge Management policy objectives of the CSC in Northampton. As *CoP constitute specific mechanism or approach to KM practice for organizational learning and innovation*¹², incentives include: funding to support specific community actions, supporting the evolution of special interest groups, etc. Setting-up a CoP for Northampton authorities would represent a step further in the development of KM concept.

III 2 – Action planning in KM strategy in delivering Public services-CSC Northampton case

*KM strategies can focus on ensuring that staff can easily find and use existing and relevant knowledge, and that processes are in place to be able to share knowledge.*¹³ Knowledge must be available to those who need it, when they need it in doing their work. For instance, council citizen service staff can provide a more responsive and tailored service to citizens if they know about the contact history of the individual. This would include their service preferences and their previous contact with the council.

Strategies can also focus on processes for staff to create and manage knowledge in order to acquire new knowledge, which can be used to improve council performance. For example, new knowledge about the preferences and concerns of citizens can be used to prioritize which services are made available online. An action plan suitable for enhancing public services in Northampton CSC would be based on improving the KM strategy as can be seen in **Appendix 2**

Appendix 2 Strategic Plan	Goal	Activities	Responsible Person(s)
Promote knowledge about KM within the organization	Every staff member understands KM concepts	Set up a CSC KM committee - organize trainings and seminars to	CSC KM board

¹² Tomasz Janowski and Adegboyega Ojo, Transforming Government through Knowledge Management and Communities of Practice, United Nation University, Beijing, 2009

¹³ SKYRME, D., Public Sector - Public Knowledge: The KM Contribution to Better Government. Ark Group, Putney, 2003, p. 67

		provide a better understanding about KM	
Support organization knowledge processing in various aspects to enhance a faster, more efficient, and more accurate operation within the organization	Various functional units of the County Council start using KM to support their daily operations	Encourage all CSC staffs to integrate KM concepts into their daily operations	CSC KM board and all CSC staffs
Promote KM to become a part of routine operations and relevant to the CSC's KM plan	All functional units of CSC use KM to support their daily operations	Encourage all CSC staffs to integrate KM concepts into their daily operations	CSC KM board and all CSC staffs
Use information technology that enable every CSC staff to communicate, create, store, and link knowledge	All functional units of CSC have information technology to support KM activities	Develop or apply IT tools to support communication and other KM activities	CSC KM board, all CSC staffs and IT specialist
Promote supporting staffs to take part in supporting KM in the organization and making a shared learning environment happen	All CSC staffs share ideas and knowledge regularly in both formal and informal manners	Allocate appropriate budget and resources to support KM activities (i.e. coffee/tea corners)	CSC KM board and all CSC staffs
Revise KM plan according to the feedbacks from CSC staff members	CSC has an up-to date KM plan that reflects actual requirements and needs	Hold regular meetings to gain feedbacks	CSC KM board

III 3 .– CSC Northampton- Organization and implementation KM Strategy in delivering public services

In the case of Northampton Citizen Service Centre, the KM strategy was built as part of the larger project. The KM strategy was designed to support first line resolution by locating answers to queries, providing guidance in qualifying and handling queries. Knowledge management (KM) has developed a lot since it was originally built.

The KM system is fully interactive with several advisers that can add or update information. The central KM team approves any page content changes whereas news announcements and calendar additions are published automatically without being routed through us for approval. As for the technology used, we can mention MS SharePoint 'out of the box' that is used for the KM system and content management; Smartlogic Semaphore search engine – provides indexing and search for internal and external content. *All CSS advisers are expected to contribute towards KM in terms of feedback given to improve the system, and have this set as an objective. Many of the skilled advisers enjoy this additional aspect of their work. As a result, there's a real benefit in the input gained from the advisers. That helps to further develop the system.*¹⁴

An important aspect is the fact that implementation of KM strategy and all the CSC's advisors are managed by a KM Board (9 members). The KM Board operates at a strategic level, leading on the development of necessary work to ensure:

- identification of the strategic knowledge requirement for the partnership;
- establishment of data capture requirements;
- facilitation of the most effective data/intelligence gathering methods;
- bringing together of currently held data into one framework/structure;
- effective access by, and dissemination of information to, staff of partner agencies, for example by the establishment of a single point of access for information.¹⁵

The implementation of the vision is a joint effort of:

- management team (steering);
- cooperation between the program and the line management;
- involvement of employees.

¹⁴ Michelle Hodgson, Knowledge Manager Northamptonshire County Council, on-line interview published in April, 2009.

¹⁵ Official document of Northampton City Council

Key issues of the vision:

- ☐ citizen services from the citizen's perspective
- ☐ simplification and digitalization creates space for tailor-made approach.

For a clearer image on the organization and implementation of KM in Northampton Citizen Service Centre, the following figure is relevant:

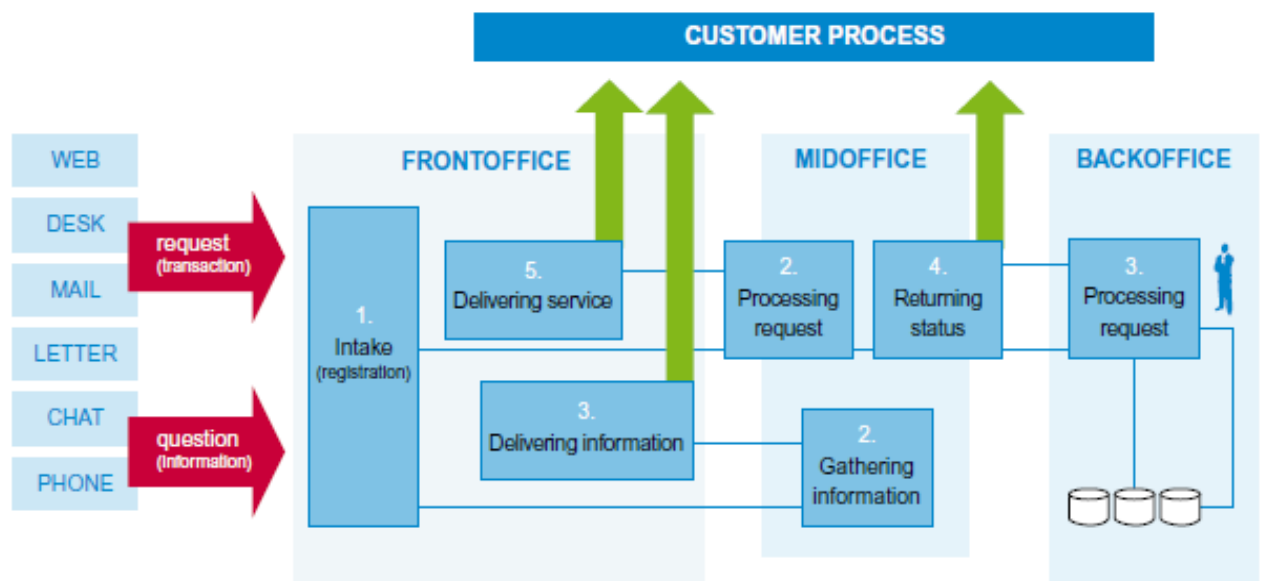


Fig. 5 KM in delivering Public Services

source: smartcities.info

III 4 CSC Northampton Evaluating and monitoring in KM strategy in public services

Providing excellent citizen service is just one way Northampton authorities ensure they deliver consistently high levels of service that citizens will appreciate. The citizen satisfaction is measured on a monthly basis and published the results in their head office and on the official website under the Performance section.

In December 2009, authorities level of Citizens Services resulted in recognition from the Cabinet Office and the achievement of the Citizens Service Excellence award. In addition to this, all staff within the service are expected to obtain a professional qualification through the Institute of Citizen Services.¹⁶ The following statement of British

¹⁶ Information on the official site: <http://www.northamptonshire.gov.uk>

authorities is relevant: *"We will ensure that full records are kept of the nature and treatment of every complaint, comment and compliment considered under this procedure. A monthly monitoring report will be sent to the Head of each Service. We will make this information available on our website. We will ask our citizens whether they have been satisfied with the way we have handled their complaint and whether as an outcome to their complaint the service has improved for the. The Council will review the Citizen Feedback Procedure annually using the feedback from our citizens and will make any necessary changes."*¹⁷

Furthermore, in the process of evaluating and monitoring, the CSC staff has set a series of "Citizen Standards" that ensure the quality of services delivered. Appendix 3 provide a list of standards

Standards	How we will make sure this happens / we deliver to the standard	What this means for our customers	Measure	Target (by March 2011 unless otherwise specified)	Monitoring
Treat you fairly, with courtesy and respect	We will make sure that all services agree to include a standard question about this in other surveys as appropriate.	We treat everyone fairly, with courtesy and respect.	1% increase on 67%, the score in the Place Survey 2009	68%	Service area survey results against this question.

¹⁷ Annual Citizen Feedback Report 2008-2009, Northampton Citizen Service Centre

Answer your enquiry straight away, or clearly explain the next steps and tell you how long it will take to give you an answer	We will make sure that we respond to requests for information and/or action.	We stop customers having to contact us unnecessarily – e.g. to chase up responses.	% of net satisfaction	We will set a target once we have established current performance – using Quarter 1 and Quarter 2 results	CSC Opinion-8 survey through telephony
Answer your 'phone call within 20 seconds, clearly giving our name and saying where we work	We will make sure we answer customer calls within 20 seconds, clearly giving our name and saying where we work.	We will answer citizen calls within 20 seconds, clearly giving our name and saying where we work.	% of calls to CSC answered within 20 seconds	80% (based on CSC service level)	CSC telephony records
Respond to your email within 3 working days. If we send you an acknowledgement we will let you know when you can expect a full reply.	We will make sure we send a reply within 3 working days and if we send an acknowledgement we will let the customer know when they can expect a full response.	We will respond to emails with in 3 working days and if we send an acknowledgement we will let the customer know when they can expect a full response.	% of emails acknowledged within 3 working days	Establish current performance based on Quarter 1 & Quarter 2 results	Compliments and complaints reports

18

Appendix 3 List of standards source: <http://www.northampton.gov.uk>

Final Conclusions

The age of technology where knowledge and information serve as key strategic tools in the organizational context, creates the opportunity for local government organizations in Romania to adopt the role of knowledge-based organizations that thrive

¹⁸ Northamptonshire Citizen Service Standards

on the competence of knowledge workers. Through the implementation of KM practices, local governments in our country are in a position to deliver the best possible services, function effectively and operate in an environment characterized by transparency and accountability.

We can state that KM in Local Government is based on 3 important elements:

- connecting people to information and knowledge: The most important aspect to building previous knowledge is improving access to any information and or knowledge that provides evidence for policy and best practice advice. Core competencies should be developed to ensure that everyone in an organisation has the ability to use IT tools for information finding and using, creating and sharing knowledge;
- connecting people to people: working collaboratively to share learning and experiences will save a lot of time and effort, and can help us avoid making mistakes that others might have made. Communities of practice (CoPs) allow people in local government to find solutions by networking with like-minded people and share their experiences, questions, solutions and ideas;
- organizational improvement: summarising lessons learned and experiences gained, then sharing them with others can help build and retain an organisation's knowledge. Developing processes to capture and share knowledge, which can then turn learning into practice, helps improve performance.

Finally, like all changing programs, a KM strategy will impact on the culture, processes and technologies in local authority in Romania, Cluj-Napoca Municipality. By recognizing the unique benefits of KM and taking advantage of the implementation support that exists, authorities can better mobilize their expertise across organizational boundaries for the benefit of the wider community. And Northampton Citizen Service Centre makes an excellent example of organizational learning where the KM integrated system generated an added value through its efficient local services.

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VERS UNE LÉGISLATION EUROPÉENNE COMMUNE EN MATIÈRE CONTRACTUELLE

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En résumé: *Etant préoccupée par l'amélioration du fonctionnement du marché intérieur, la Commission européenne a lancé par sa Communication sur le droit européen des contrats [COM (2001) 398]] de 2001, un ample processus de consultations publiques concernant le cadre juridique fragmenté du domaine du droit des contrats et de ses implications en la matière du commerce transfrontalier. On a identifié plusieurs options en ce qui est de la nature juridique, le domaine de la mise en œuvre et le contenu matériel du futur instrument de droit européen des contrats, partant d'un instrument au caractère non obligatoire, voué à améliorer la cohérence et la qualité de la législation de l'UE, à un autre au caractère obligatoire, qui constituerait une alternative à la pluralité des régimes préexistants en matière contractuelle, en offrant un seul ensemble de règles en la matière.*

Key-words: internal market, European Contract Law, Common Frame of Reference, optional instrument on European contract law, European Civil Code, Common European Sales Law.

A. Introduction.

Par le Traité sur le fonctionnement de l'Union européenne (TFUE) qui remplace l'ancien Traité sur les Communautés européennes (TCE), suite à l'adoption du Traité de Lisbonne, on institue le marché intérieur (marché de l'Union)¹, notion qui succède à la formule antérieure de « marché commun ». L'évolution de la notion de marché commun, commençant par l'Acte unique

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¹ Conformément à l'article 26 du TFUE, tel que publié dans la version consolidée dans le Journal officiel de l'Union européenne no. C 115/09.05.2008, le marché intérieur inclut un espace sans frontières intérieures, dans lequel la libre circulation des marchandises, des personnes, des services et des capitaux est assurée

européen (AUE)², vers le nouveau concept de marché intérieur est le résultat des efforts d'assimilation du marché européen à un marché national dépourvu de toutes barrières.

Une telle assimilation présentera une nouvelle configuration. En effet, jusqu'à l'Acte unique, la Communauté agira principalement en œuvrant pour la suppression des obstacles aux échanges, sous diverses formes, tandis qu'à partir de l'affirmation de cette nouvelle entité, le marché intérieur, les institutions communautaires rechercheront à soutenir et à renforcer un processus de convergence entre les ordres juridiques nationaux par la mise en place des politiques communautaires qui permettront d'achever l'intégration économique³.

On peut observer que le développement et la diversité des rapports commerciaux ont généré de nos jours de profonds changements au niveau du droit, matérialisés par exemple dans l'apparition de nouveaux types de contrats, dans la diversité des techniques d'engagement contractuel (basées sur des conditions générales, contrats d'adhésion, contrats-cadres, etc.), la simplification des méthodes de conclusion des conventions (par exemple, par des moyens électroniques) et non pas en dernier lieu la variété des gammes des clauses qui ont pour but le maintien de l'équilibre contractuel, par le détour des risques générés par les fluctuations des taux de change et celles normales. Durant cette époque de la globalisation, naturellement, les échanges transfrontaliers et internationaux se sont intensifiés, générant de nombreux rapports commerciaux entre des zones plus ou moins écartés du point de vue géographique et/ou culturel.

Le marché intérieur est fondé, donc, sur une multitude de contrats, des plus divers, gouvernés par de différentes législations nationales, le droit des contrats constituant le socle des transactions commerciales. Les disparités existantes entre les 27 ensembles de règles nationales différentes sont quand même génératrices d'effets négatifs dans la matière des échanges commerciaux et on a en considération l'attrait de dépenses supplémentaires de transaction, la création d'une source d'insécurité juridique pour les acteurs de l'activité commerciale, la réduction de la confiance des consommateurs par rapport au marché intérieur, la création des barrières commerciales.

² L'acte unique européen, signé le 28 février 1986 et entré en vigueur le 1 juillet 1987, a mis en évidence les insuffisances du marché commun et a élaboré un programme de transformation dans un marché unique jusqu'à la fin de l'année 1992. Conformément à l'article 8 a du Traité CEE (texte inséré par l'article 13 de l'Acte unique européen), « *La Communauté adoptera des mesures dans le but de la création progressive du marché intérieur jusque le 31 décembre 1992. Le marché intérieur sera formé d'un marché sans frontières intérieures sur le territoire duquel la libre circulation des biens, des personnes, des services et du capital sera assurée en conformité avec les dispositions de ce traité.* »

³ Chahira Boutayeb, *Droit matériel de l'Union européenne. Libertés de mouvement, espace de concurrence et intérêt général*, Paris, L.G.D.J., 2009, P. 21.

À cause des divergences entre les normes législatives en matière contractuelle, les entreprises sont souvent obligées d'adapter leurs clauses contractuelles. En outre, les lois nationales sont rarement disponibles en d'autres langues européennes, les barrières linguistiques obligeant les acteurs du marché de solliciter consultation juridique à un spécialiste familiarisé en législation du système juridique proposé à être choisi en tant que loi applicable. En conséquence, la réticence des entreprises est tout à fait naturelle, notamment celle des petites et moyennes (les PME), dans le cas desquelles les coûts d'accès sur plusieurs marchés étrangers sont souvent élevés par rapport à leur chiffre d'affaire, mais des consommateurs aussi, qui ont des ressources limitées, d'effectuer des transactions transfrontalières, le marché intérieur ne représentant pas encore une réalité pour ces acteurs économiques.

Dans ces circonstances, il est évident que pour le bon fonctionnement du marché intérieur il est nécessaire un ensemble cohérent de normes concernant les contrats transfrontaliers, ce qui implique une unification (harmonisation) d'ordre législatif, notamment de la matière relative aux obligations et aux contrats⁴.

Le Parlement européen et le Conseil ont souvent discuté sur la nécessité des mesures au niveau européen dans le domaine du droit contractuel, de sorte que celles-ci aient un caractère conséquent et qu'elles fonctionnent de manière appropriée sur le marché intérieur.

B. Les premières démarches des institutions communautaires

Dès 1989, le Parlement européen a publié une première *Résolution* pour demander aux organismes communautaires le commencement de travaux préparatoires d'élaboration d'un Code commun européen et de droit privé⁵, suivie par une *Résolution* relative à l'harmonisation de certains secteurs de droit privé des Etats membres (1994)⁶. *Le Conseil européen de Tampere* du

⁴ Il n'est pas dépourvu d'évidence, sans nier que la diversité législative n'est pas tout à fait bénéfique dans les échanges transfrontaliers, qu'il y a aussi d'autres facteurs générateurs d'effets négatifs dans cette matière. Par exemple, l'Union européenne s'étend sur une superficie d'environ 4.000.000 km², ayant une population de 493 millions d'habitants qui s'expriment en plus de 20 langues différentes. Dans ces circonstances, les distances géographiques et les différences linguistiques, culturelles et institutionnelles entre les Etats membres sont autant de facteurs sans doute déterminants des difficultés que soulève la conclusion de contrats transfrontaliers que la seule diversité de leurs droits des contrats respectifs.

⁵ Résolution du Parlement européen du 26 mai 1989 sur l'effort de rapprochement du droit privé des Etats membres, publié dans le Journal officiel C158/26.06.1989.

⁶ Publiée dans le Journal officiel C205/25.07.1994.

Issue no. 6/2012

15-16 octobre 1999 a sollicité à la Commission d'examiner la nécessité d'une harmonisation législative dans le domaine du droit matériel civil⁷ :

Dans ce sens il y a la *Communication de la Commission européenne au Conseil et au Parlement européen du 11 juillet 2001 sur le droit européen des contrats* [COM (2001) 398]⁸ qui est intervenue. Ce document se présente comme une plate-forme de débat et de consultation, étant le premier document publié par la Commission qui poursuit la mise en discussion publique des moyens de résolution, au niveau européen, des problèmes qui découlent des divergences existantes entre les législations nationales en vigueur dans la matière des contrats, dans l'espace de l'Union⁹.

⁷ Plus amplement sur les conclusions du Conseil européen de Tampere voir [www.europarl.europa.eu/summits/tam_fr.htm], 22.04.2012.

⁸ Publié dans le Journal officiel C255/13.09.2011. Pour une analyse du Communiqué de la Commission voir Daniel Mihail Șandru, *Evoluții recente în armonizarea dreptului european al contractelor*, dans Revista Română de Drept Comunitar nr. 3/2007, f. 60-61.

⁹ Suite à cette Communication de la Commission, le 15 novembre 2001, le Parlement européen a adopté une *Résolution sur le rapprochement du droit civil et commercial des Etats membres* (publiée dans le Journal officiel C 140/13.06.2002, p. 538). Le Parlement a invité la Commission à dépasser le droit général des contrats et d'élargir l'action au contrat de vente, aux contrats de service, aux garanties personnelles, aux obligations extracontractuelles, au transfert de la propriété des biens mobiles, aux garanties de crédit pour les biens mobiles, etc. En conséquence, le Parlement européen a rédigé un calendrier des différentes étapes qu'on devait parcourir dans cette direction. Par exemple, jusqu'en 2004, la Commission devait constituer une base de données sur les législations et les jurisprudences nationales et s'appuyant sur cette base, on devait promouvoir des études de droit comparé et des actions de coopération avec les enseignants universitaires et avec les praticiens du droit ; la publication au début de 2005 de ces études de droit comparé qui soulignent les notions et les solutions juridiques communes ; à partir de 2005, l'inclusion de ces études de droit comparé dans les programmes des facultés de droit et la mise en œuvre conséquente des notions et de la terminologie juridique commune par toutes les institutions de l'Union qui participent au procès de création et de mise en œuvre du droit ; l'adoption, après 2010, d'un ensemble de règles relatives au droit européen des contrats, en profitant des initiatives et des actions précédentes. Sans doute, le plan imposé à la Commission par le Parlement européen était un plan ambitieux, mais les termes établis n'ont pas été raisonnables, par rapport à l'ampleur des tâches de la Commission, existant le risque d'un travail scientifique superficiel. Dans la littérature juridique on a considéré qu'un programme si vaste ressemble à une marche forcée qui pourrait causer des préjudices aux objectifs poursuivis et que ce programme s'inspire, en effet, des propositions faites par les chercheurs du domaine du droit comparé, mais offre une vision caricaturale, déraisonnable. Voir Catherine Prietro, *Regards croisés sur les principes du droit européen du contrat et sur le droit français*, Marsilia, 2003, p. 57, citée par Vasile Pătulea, *Acțiunile întreprinse și perspectivele elaborării unui cod european al contractelor. Partea a treia: metodele experimentale de armonizare și integrare a sistemelor de drept naționale ale contractelor*, (Les actions entreprises et les perspectives sur l'élaboration

Issue no. 6/2012

La Commission a essayé aussi d'établir si le nouveau rapprochement d'harmonisation sectorielle du droit des contrats risque de causer des incohérences au niveau européen et au niveau national en ce qui est de la mise en œuvre des mesures de transposition, au débat ayant été invités de participer le Parlement européen, le Conseil, les entreprises, les juristes, les enseignants universitaires, les associations des consommateurs, etc. Dans la Communication de la Commission on a identifié deux sources de problèmes potentiels, à savoir : les disparités entre les législations nationales en matière de contrats (sur la conclusion, l'interprétation et la mise en œuvre des contrats transfrontaliers), qui sont susceptibles d'affecter le bon fonctionnement du marché intérieur¹⁰ et l'absence d'uniformité dans la mise en œuvre du droit communautaire, notamment l'absence de cohérence entre les différents actes législatifs de l'Union.

Dans le but de surmonter les éventuels obstacles dans le fonctionnement du marché commun, la Commission a proposé plusieurs solutions :

1. le transfert vers le marché de la responsabilité de trouver des solutions à tout problème rencontré ;
2. la promotion de l'élaboration des principes communs en matière de droit des contrats, en vue d'assurer la convergence entre les législations des Etats membres ;
3. le réexamen et l'amélioration de la législation européenne existante dans le domaine du droit des contrats, par la modernisation législative, la garantie de la cohérence terminologique, l'écart des contradictions entre les documents existants, la simplification

d'un code européen des contrats. Troisième partie : méthodes expérimentales d'harmonisation et d'intégration des systèmes de droit nationaux des contrats), Dreptul nr. 11, 2007, p. 51.

¹⁰ Partant de la prémisse que, à part la diversité législative, il y a aussi d'autres facteurs négatifs, avec une plus grande relevance, aux répercussions en matière du commerce transfrontalier, comme par exemple ceux géographiques, sociaux, culturels, linguistiques, on a apprécié que l'allégation de la Commission selon laquelle la création d'un droit européen des contrats stimulera le commerce européen transfrontalier paraît, sinon douteuse, du moins particulièrement difficile à vérifier en pratique. Ainsi, le développement des échanges transnationaux au sein du marché intérieur engendre certainement des bénéfices, le développement de la concurrence devant logiquement conduire à la baisse des prix, mais il comporte également des coûts : coût environnemental lié au transport des produits commercialisés entre deux Etats membres éloignés ; coût social lié aux disparités encore considérables entre les niveaux des prix et des salaires des divers Etats membres. De cette perspective, les divers obstacles susmentionnés, ne seront écartés comme effet de l'harmonisation du droit des contrats, dans l'espace de l'Union. Voir Chloé Adelbrecht-Vignes, Sabine Corneloup, Pascal de Vareilles-Sommières, Jeremy Heymann, Laurence Usunier, *La réponse du Réseau européen d'experts en droit, au livre vert de la Commission relatif aux actions envisageables en vue de la création d'un droit européen des contrats pour les consommateurs et les entreprises*, [http://ec.europa.eu/justice/news/consulting?public/0052/contributions/4_fr.pdf], 20.04.2012.

Issue no. 6/2012

et l'éclaircissement du contenu de la législation existante, tout cela en vue d'une meilleure cohérence ;

4. l'adoption d'une nouvelle législation complète au niveau communautaire qui contienne des dispositions sur les questions générales de droit des contrats, et aussi des questions spécifiques à chaque contrat à part¹¹.

La réaction du Conseil européen à la Communication de la Commission européenne du 11 juillet 2001 sur le droit européen des contrats a été exprimée par le truchement du *Rapport du 16 novembre 2001*¹². Par ce Rapport, le Conseil a pris acte du commencement par la Commission européenne des travaux dans le domaine du droit des contrats, en soulignant la nécessité d'une plus grande cohérence et d'une meilleure qualité de l'acquis communautaire existant. Sous cet aspect, le rapport mentionne que les résultats de l'harmonisation par l'intermédiaire des directives sont assez insuffisants, notamment à cause des divergences entre les mesures nationales de transposition. Tout comme la Commission, le Conseil a signalé l'absence des définitions uniformes et des concepts généraux du droit communautaire, ce qui peut déterminer des résultats différents, aussi bien dans l'activité commerciale que dans le plan juridique.

On a demandé à la Commission de réfléchir sur les méthodes d'approche horizontales dans l'élaboration des directives et dans la phase de leur transposition par les Etats membres, en abandonnant l'approche en pointillé poursuivie jusqu'à ce moment-là.

Il s'impose la remarque que cette minime harmonisation a créé aux Etats membres la possibilité de maintenir ou d'introduire des exigences obligatoires plus strictes que celles prévues dans l'acquis. En pratique, cette approche a conduit à des solutions divergentes dans les Etats membres, même dans les domaines qui ont été harmonisés au niveau de l'Union.

Dans ce sens, on a suggéré que les nouvelles directives aient des champs de mise en œuvre plus étendus, en ouvrant de la sorte à la Commission la voie pour l'élaboration d'une directive qui contienne les principes communs constituant le fondement du droit des contrats.

Nous remarquons, donc, que le Rapport du Conseil est favorable à une approche des législations nationales, de l'harmonisation horizontale, en poursuivant finalement la création d'un nœud commun européen en la matière du droit privé.

11 En vue d'une étude élaborée des solutions proposées par la Commission, voir Vasile Pătulea, *Acțiunile întreprinse și perspectivele elaborării unui cod european al contractelor. A doua parte: Acquis-urile comunitare. Etapa elaborărilor sectoriale*, în Dreptul nr. 10/2007, p. 17-21.

12 Pour consulter, voir [http://www.irene-eu.org/links/wehrens_fr.pdf], 22.04.2012

C. Étape des approches sectorielles.

Sur le plan européen, sous l'influence du droit de la consommation sur les techniques contractuelles, l'harmonisation s'est réalisée de manière segmentaire¹³ ; les champs de mise en œuvre des directives étant relativement restreints, visant certains contrats ou techniques spécifiques de commerce. En même temps, ayant un caractère normatif incomplet, les directives nécessitent l'intervention de l'autorité législative nationale, le choix des moyens et de la forme nécessaires à la réalisation de l'objectif établi revenant à l'appréciation souveraine de chaque État. En conséquence, au cours du temps, de cette préoccupation d'assurer « la sécurité juridique », respectivement d'éviter la création de disparités dans le cadre des systèmes juridiques nationaux, les directives sont devenues de plus en plus précises, en se rapprochant de règlements, par le degré de détailler.

Ainsi, dans le domaine des contrats conclus avec les consommateurs on a émis 8 directives, comme il s'ensuit : la Directive 1999/44/CE du Parlement européen et du Conseil le 25 mai 1999 sur certains aspects de la vente et des garanties des biens de consommation¹⁴, la Directive 93/13/CEE du Conseil du 5 avril 1993 concernant les clauses abusives dans les contrats conclus avec les consommateurs¹⁵ ; la Directive 90/314/CEE du Conseil du 13 juin 1990 concernant les voyages, vacances et circuits à forfait¹⁶ ; la Directive 85/577/CEE du Conseil du 20 décembre 1985 concernant la protection des consommateurs dans le cas des contrats négociés en dehors des établissements commerciaux¹⁷ ; la Directive 87/102/CEE du Conseil du 22 décembre 1986 relative au rapprochement des dispositions législatives, réglementaires et administratives en matière de crédit à la consommation¹⁸ modifiée par la Directive 90/88/CEE¹⁹ ; la Directive 97/7/CE du Parlement européen et du Conseil du 20 mai 1997 concernant la protection des

¹³ Plus amplement sur l'activité d'harmonisation segmentaire déroulée au niveau des institutions communautaires, voir Vasile Pătulea, Gheorghe Stancu, *Dreptul contractelor*, București, C.H. Beck, 2008, p. 367-371; Vasile Pătulea, *Acțiunile întreprinse și perspectivele elaborării unui cod european al contractelor. Integrarea în procesul construcției europene și a bazelor sale juridice* (I), în *Dreptul* nr. 9/2007, p.29-33.

¹⁴ Journal officiel L 171 du 7.07.1999.

¹⁵ Journal officiel L 95 du 21.04.1993.

¹⁶ Journal officiel L 158 du 23.06.1990.

¹⁷ Journal officiel L 372 du 31.12.1985.

¹⁸ Journal officiel L 42 du 12.2.1987.

¹⁹ Journal officiel L 61 du 10.03.1990.

Issue no. 6/2012

consommateurs en matière de contrats à distance²⁰ ; la Directive 94/47/CE du Parlement européen et du Conseil du 26 octobre 1994 concernant la protection des acquéreurs pour certains aspects des contrats portant sur l'acquisition d'un droit d'utilisation à temps partiel de biens immobiliers²¹ ; la Directive 2011/83/UE du Parlement Européen et du Conseil du 25 octobre 2011 relative aux droits des consommateurs, modifiant la Directive 93/13/CEE du Conseil et la Directive 1999/44/CE du Parlement européen et du Conseil et abrogeant la Directive 85/577/CEE du Conseil et la directive 97/7/CE du Parlement européen et du Conseil²².

En ce qui concerne le rapprochement en matière de contrats, il se réalise par le truchement de cinq directives : la Directive 85/374/CEE du Conseil du 25 juillet 1985 relative au rapprochement des dispositions législatives, réglementaires et administratives en matière de responsabilité du fait des produits défectueux²³ ; la Directive 86/CEE du Conseil du 18 décembre 1986 relative à la coordination des droits des Etats membres concernant les agents commerciaux indépendants²⁴ ; la Directive 97/5/CE du Parlement et du Conseil européen du 27 janvier 1997 concernant les virements transfrontaliers²⁵ ; la Directive 2000/31/CE du Parlement et du Conseil européen du 8 juin 2000 relative à certains aspects juridiques de la société des services de la société de l'information, et notamment du commerce électronique dans le marché intérieur²⁶ ; la Directive 2000/35/CE du Parlement et du Conseil européen du 29 juin 2000 concernant la lutte contre le retard de paiement dans les transactions commerciales²⁷.

D. Les réactions des institutions communautaires à la démarche initiée par la Commission en 2001

- Suite aux consultations engagées par la Communication du 11 juillet 2001, la Commission européenne a rendu publique un *Plan d'action en faveur d'un droit européen des contrats*, par la Communication du 12 février 2003²⁸. Ce plan maintient le caractère consultatif de la démarche initiée en 2001 et contient les propositions suivantes :

²⁰ Journal officiel L 144 du 04.06.1997.

²¹ Journal officiel L 280 du 29.10.1994.

²² Journal officiel L 304 du 22.11.2011.

²³ Journal officiel L 210 du 07.08.1985.

²⁴ Journal officiel L 383 du 31.12.1986.

²⁵ Journal officiel L 043 du 14.02.1997.

²⁶ Journal officiel L 178 du 17.07.2000.

²⁷ Journal officiel L 200 du 08.08.2000.

²⁸ Journal officiel no. 63/15.03.2003.

Issue no. 6/2012

- l'amélioration de la qualité et de la cohérence de la législation de l'UE dans le domaine du droit des contrats par l'intermédiaire d'un Cadre commun de référence (CCR)²⁹.
- la promotion de l'élaboration des clauses contractuelles standardisées applicables dans le cadre de l'Union ;
- la création d'un instrument facultatif dans le domaine du droit européen des contrats, instrument qui serait conçu comme un ensemble de normes modernes spécifiques aux contrats transfrontaliers, sur le marché intérieur. Dans ce sens, la Commission a mis en discussion publique l'opportunité de la création d'un tel instrument, la forme légale, le contenu et la base juridique pertinente qui pourrait documenter une telle initiative législative.

• En 2004 la Commission a publié une Communication [COM(2004)651] ayant pour titre "Le Droit européen des contrats et le réexamen de l'acquis. La voie à suivre"³⁰, où elle a rendu public un projet de Cadre commun de référence (CCR), document qui propose de définir clairement les termes juridiques, de formuler les principes fondamentaux et de présenter certains modèles cohérents de normes de droit en matière des contrats, inspirés de l'acquis de l'Union et des solutions préexistantes au sein des systèmes juridiques des Etats membres. La méthode proposée par la Commission européenne pour la constitution du cadre commun de référence repose sur le passage en revue de toutes les sources qui peuvent être utilisées, telles que : les systèmes juridiques nationaux, la jurisprudence des instances juridiques nationales, les pratiques contractuelles établies, l'acquis communautaire existant et les documents internationaux, tel que la Convention des Nations Unies relative aux contrats de vente internationale de marchandises.

Conformément au projet initial, le CCR doit constituer un ensemble de règles ou un manuel que la Commission et le législateur européen utilisent à l'occasion du réexamen de la législation en vigueur ou de l'élaboration de nouveaux règlements dans le domaine du droit des contrats.

²⁹ Pour une présentation plus détaillée de cette proposition, voir Vasile Pătulea, Gheorghe Stancu, *Acțiunile întreprinse în spațiul european pentru elaborarea unui drept comun (comunitar) al contractelor*, în Dreptul nr. 11/2008, p. 55-63.

³⁰ Pas encore publiée dans le Journal officiel. Pour la consulter, voir [http://eur-lex.europa.eu/Notice.do?mode=dbl&lang=ro&ihmlang=ro&lng1=ro,fr&lng2=de,fr,en_val=389826:cs&page=], 22.04.2012

Issue no. 6/2012

En lisant les communications de la Commission relatives au Cadre commun de référence³¹, on peut observer, d'une part, que ce cadre n'a pas une nature juridique définitive, dans la perspective du droit communautaire, et d'autre part, il ne constitue pas un instrument final qui matérialise la codification du droit européen des contrats, pouvant pourtant constituer le fondement d'un instrument spécifique, facultatif, spécialement adapté aux contrats transfrontaliers, auxquels les parties contractantes pourront faire appel, se libérant de sous le gouvernement des systèmes de droit nationaux.

En d'autres termes, le rôle du CCR est celui de préparer le terrain pour une future intervention législative communautaire dans le domaine du droit des contrats³².

Dans l'acception de la Commission, le CCR se présente donc comme "une boîte à outils", respectivement comme un instrument multifonctionnel aux possibles effets sur sa forme définitive qu'une future codification communautaire revêtira en matière contractuelle³³. Le projet du Cadre commun de référence a été achevé le mois de décembre 2008 et présenté à la Commission européenne³⁴. Le matériel présenté contient l'édition finale du projet du Cadre commun de

³¹ Le Rapport du 23 septembre 2005 [COM(2005)456] non publié dans le Journal officiel et le Rapport du 25 juillet 2007. [COM(2007)447], non publié aussi dans le Journal officiel. Pour consultation, voir http://europa.eu/legislation_summaries/consumers/protection_of_consumers/133158_ro.html, 25.04.2012.

³² Le Parlement a rappelé que ce projet est un document universitaire et que le choix d'une ou plusieurs de ses parties en vue de l'intégration dans un futur document de la Commission constitue un exercice politique.

³³ Vlad Constantinesco, *La codification communautaire du droit privé à l'épreuve du titre de compétence de l'Union européenne*, dans la Revue trimestrielle du droit européen, no. 4/2008, p. 713. Le Projet du CCR est structuré en 10 livres, divisés en chapitres, sections, sous-sections et articles, étant une réalisation impressionnante, qui confère des règles modèle pour des contrats en général, des contrats spécifiques, des obligations non contractuelles, trust et propriété mobilière. Aussi, le projet contient des dispositions concernant autant de contrats commerciaux que de contrats conclus avec les consommateurs. On remarque pourtant que les trois premiers livres du CCR sont consacrés au droit des obligations, de manière qu'un éventuel document facultatif basé sur ce projet visera non seulement un droit européen des contrats, mais aussi un droit européen des obligations. Pour une analyse plus ample du contenu du projet CCR, dans sa forme finale, voir Horst Eidenmuller, Florian Faust, Hans Christoph Grigoleit, Nils Jansen, Gerhard Wagner, Reinhard Zimmermann, *Le Cadre commun de référence pour le droit privé européen*, dans la Revue trimestrielle de droit européen, no. 4/2008, p. 772-807.

³⁴ La Commission a financé par un projet de recherche accordé dans le cadre du 6e Programme-cadre pour la recherche et a suivi de près l'activité d'un réseau académique international qui a effectué des recherches juridiques antérieures en vue de l'adoption du CCR ? Dans le but de la réalisation du CCR, en 2005 on a créé un Réseau commun relatif au droit privé européen, fondé par la Commission européenne. Plusieurs groupes se sont ralliés au Réseau. Il s'agit du Groupe d'étude concernant le Code civil européen (ayant pour promoteur principal Christian von Bar) et le Groupe de recherche concernant le Droit privé de la CE (Acquis

référence³⁵ avec une note explicative et de nombreux commentaires sur chaque règle modèle³⁶. Il faut souligner qu'il s'agit d'un texte uniquement académique, et non pas d'un texte autorisé du point de vue politique, représentant le résultat de dizaines d'années de recherche indépendante et de coopération avec le milieu académique³⁷ du domaine du droit privé, du droit comparé et du droit communautaire européen.

- En juillet 2010, la Commission a adopté un "*Livre vert*" portant sur les actions préconisées relatives à la création d'un droit européen des contrats pour les consommateurs et les entreprises [COM(2010)348]³⁸, marquant en même temps le lancement d'une consultation publique au sujet de ce thème³⁹

On a identifié plusieurs options en ce qui est de la nature juridique, le domaine de la mise en œuvre et le contenu matériel du futur instrument de droit européen des contrats, partant d'un instrument au caractère non obligatoire, voué à améliorer la cohérence et la qualité de la législation de l'UE, à un autre au caractère obligatoire, qui constituerait une alternative à la pluralité des régimes préexistants en matière contractuelle, en offrant un seul ensemble de règles en la matière, respectivement :

Group), leurs membres s'engageant de préparer un Projet d'un Cadre commun de référence (DCFR) académique. Plus amplement, sur la contribution du Groupe de recherche relatif au Droit privé de la CE (Acquis Group) à l'élaboration du CCR, voir Carole Aubert de Vincelles, Judith Rochefeld, *Les apports de l'acquis communautaire "au cadre commun de référence"*, dans la Revue trimestrielle de droit européen, no. 4/2008, p. 745-760.

³⁵ Principes, Définitions et Règles modèle du Droit privé européen, le projet du Cadre commun de référence, Outline Edition, préparés par le Groupe d'étude concernant le Code civil européen et le Groupe de recherche concernant le Droit privé de la CE (Acquis >Group), coordonné par Christian von Bar, Eric Clive et Hans Schultte Nolke, Sellier European Law Publishers.

³⁶ On peut consulter le projet sur [http://ec.europa.eu/justice/contract/files/european-private-law_en.pdf], 26.04.2012.

³⁷ Plus amplement sur les actions et les initiatives académiques dans le domaine du droit européen des contrats, voir Vasile Pătulea, Gheorghe Stancu, *Dreptul... oeuvre citée*, p. 375-383.

³⁸ Pas encore publiée dans le Journal officiel. Pour la consulter, voir [<http://eur-lex.europa.eu/Notice.do?mode=dbl&lang=fr&ihtmlang=fr&lng1=fr,ro,&lng2=bg,cs,da,de,el,en,es,et,fi,fr,hu,it,lt,lv,mt,nl,pl,pt,ro,sk,sl,sv,&val=518792:cs&page=>], 26.04.2012.

³⁹ La consultation s'est déroulée entre le 1 juillet 2010 et le 31 janvier 2011 et a été ouverte à toutes les parties intéressées. Les personnes physiques, les organisations et les pays qui ont eu l'intention de participer au processus de consultation étaient invités à transmettre leurs propres contributions, sous forme de réponses à toutes les questions présentées dans le document ou à une partie de celles-ci et/ou sous forme de commentaires généraux sur les problèmes abordés dans le document.

Issue no. 6/2012

- *la publication des résultats du groupe d'experts.*

Tel que la Commission reconnaît, cette solution ne remédierait pas les problèmes des obstacles sur le marché intérieur, les divergences en matière de droit des contrats, ne pouvant pas les réduire de manière significative par un texte sans autorité ou statut officiel pour les instances de jugement et le législateur.

Nous apprécions donc que cette option est dépourvue de finalité pratique, son rôle étant plutôt celui de se présenter comme un matériel utile dans l'étude du droit comparé.

-une « boîte à outils » officielle destinée au législateur (un document de la Commission concernant une « boîte à outils » ou un accord interinstitutionnel entre la Commission, le Parlement et le Conseil concernant une « boîte à outils »).

Dans le cadre de la première hypothèse, ce document (par exemple une communication ou une décision) portant sur le droit européen des contrats pourrait être utilisé comme un instrument de référence par la Commission dans le but d'assurer la cohérence et la qualité des textes normatifs⁴⁰. Ainsi, la Commission devrait utiliser « la boîte à outils » à l'élaboration des textes législatifs nouveaux ou au réexamen des mesures préexistantes. Dans l'acception de la Commission, dans le deuxième cas, cette « boîte à outils » de droit européen des contrats pourrait constituer l'objet d'un accord interinstitutionnel entre la Commission, le Parlement et le Conseil, ses dispositions servant comme référence importante dans le processus d'élaboration et de négociation des propositions législatives dans ce domaine. Cette option a à son tour des désavantages, car elle n'offre pas de bénéfices immédiats, tangibles sur le marché intérieur, pour autant que cette *boîte à outils* n'a aucun effet direct sur le droit substantiel national en matière des contrats. Cette solution ne supprime donc pas les divergences juridiques et ne conduit pas à la création d'un droit européen des contrats dans le cadre de l'Union européenne. En outre, une « boîte à outils » pour le législateur n'est pas susceptible d'assurer une application et une interprétation convergentes au niveau de l'Union en matière de droit des contrats, au niveau juridictionnel.

-une recommandation de la Commission relative au droit européen des contrats⁴¹

Cette recommandation permettrait aux Etats membres d'adopter progressivement l'instrument dans leur droit national sur une base volontaire. En ce qui est de cette solution, deux hypothèses sont envisageables : soit la recommandation pourrait inciter les Etats membres à substituer la législation nationale en la matière contractuelle par l'instrument européen en cause,

⁴⁰ Cette option correspond au projet du Cadre commun de référence auquel renvoie la Commission dans ses communiqués, commençant par le plan d'action de 2003.

⁴¹ Dans ce sens, on a offert pour exemple les Etats-Unis d'Amérique, où 50 Etats, des 51, ont adopté, volontairement, le Code commercial uniforme (excepté Louisiane).

Issue no. 6/2012

soit elle pourrait stimuler les Etats membres d'intégrer l'instrument de droit européen des contrats en tant que régime facultatif, en offrant aux parties contractuelles une alternative à la législation nationale. Dans les Etats membres qui optent pour cette méthode, l'instrument européen facultatif coexisterait avec d'autres instruments alternatifs, susceptibles d'être désignés comme la loi applicable à des contrats, tels que les principes d'UNIDROIT. Bien sûr, en essence, ni cette solution ne se trouve hors de toute appréciation critique, car une telle recommandation n'aurait pas d'effets contraignants à l'égard des Etats membres et permettrait une marge d'appréciation quant aux modalités et au calendrier d'intégration de l'instrument dans leur droit national. En conséquence, cette solution comporte le risque d'une approche incohérente et incomplète entre les Etats membres qui seraient susceptibles d'adopter la recommandation de manière divergente et selon des calendriers différents, voire de s'abstenir complètement. Il y a eu des opinions favorables dans certains Etats, comme par exemple la France, où les Barreaux français ont considéré que la recommandation pourrait être élaborée si elle est accompagnée d'un règlement qui institue un acte facultatif de droit européen des contrats (option 4)⁴². On a exprimé l'idée qu'après l'exemple de la réglementation européenne du droit de la concurrence, un règlement qui institue un document facultatif accompagné de normes cadre permettrait une meilleure prévisibilité et sécurité juridique, ce qui serait évidemment dans l'intérêt des opérateurs économiques.

-un règlement instituant un instrument facultatif de droit européen des contrats

Certainement, un instrument facultatif de droit européen favoriserait la réalisation d'un degré d'uniformité inférieur à celui déterminé par un règlement de droit européen du contrat et, *a fortiori*, par un véritable Code civil européen.

D'un autre côté, dans l'acception de la Commission, un règlement pourrait créer un instrument facultatif, qui serait conçu comme "un deuxième régime" dans chaque Etat membre, offrant ainsi aux parties une option⁴³ sur le droit applicable (celui national ou le "régime européen", intitulé "le 28e régime" ou "le deuxième régime").⁴⁴

⁴² *Livre vert relatif aux actions envisageables en vue de la création d'un droit européen des contrats pour les consommateurs et les entreprises. Position des Barreaux français* [<http://www.dbfbruxelles.eu/pdf/ReponseLivrevert2.pdf>], 20.04.2012.

⁴³ Le progrès que l'adoption d'un document optionnel de droit européen des contrats pourrait représenter est, indubitablement, considérable, car il est beaucoup plus simple de confronter deux corps de règles juridiques différentes, que vingt-sept systèmes juridiques.

⁴⁴ En ce qui concerne la dénomination du document, on a apprécié qu'il serait plus correct de le nommer « le deuxième régime », car la dénomination de « le 28e régime » peut être déroutante, parce qu'il pourrait être considéré un régime de droit « étranger » par rapport aux 27 régimes nationaux de droit des contrats ; Voir Radu Stancu, *Spre un « drept european al contractelor »*, disponible sur

Issue no. 6/2012

En conclusion, l'instrument facultatif représente un ensemble de règles offert aux parties comme alternative au régime de droit national, son applicabilité étant au choix des parties contractantes⁴⁵. Ainsi, l'instrument facultatif ne représenterait pas une intervention trop agressive pour le droit national des Etats membres, celui-ci coexistant auprès du droit européen, en matière contractuelle.

Laissant le choix aux parties de ce droit présente l'avantage qu'il n'affecte pas la culture juridique des Etats membres. Du point de vue psychologique, ce règlement se présente comme un document législatif « soft » qui permet aux Etats membres de conserver leur autonomie dans le processus législatif, dans un domaine fortement marqué par la tradition (comme c'est, par exemple, le cas de la France), en leur conférant en même temps une alternative facultative et toutefois attirante. Pour ces considérants, cette option est plus facile à accepter par les Etats membres.

Le régime européen facultatif en matière contractuelle pourra être choisi par les parties contractantes comme loi applicable au contrat, conformément à l'article 3 du Règlement 593/2008/CE du Parlement européen et du Conseil du 17 juin 2008 sur la loi applicable aux obligations contractuelles (dénommé le Règlement de Rome I)⁴⁶.

[<http://www.cartidedrept.eu/articole-drept/spre-un-drept-european-al-contractelor.html>]. Plus amplement sur l'inconséquence d'ordre terminologique, voir Gina Orga Dumitriu, Laurențiu Sorescu, Luminița Tulească, Ramona Marițiu, *Răspuns la « Cartea verde a Comisiei privind opțiunile de politică în perspectiva unui drept european al contractelor pentru consumatori și întreprinderi »*, dans Revista Română de Drept European no. 1/2011, p. 172-174.

⁴⁵ On a affirmé que le document optionnel constitue, *de iure et de facto*, une liberté offerte aux agents économiques. Dans ce sens, voir *La réponse de l'Association Henri Capitant des amis de la culture juridique française à la Commission européenne : à propos de la création d'un droit européen des contrats pour les consommateurs et les entreprises*, disponible sur [<http://www.henricapitant.org/node/182>], 26.04.2012.

⁴⁶ L'article 3 du Règlement de Rome I statue :

" (1) Le contrat est régi par la loi choisie par les parties. Le choix est exprès ou résulte de façon certaine des dispositions du contrat ou des circonstances de la cause. Par ce choix, les parties peuvent désigner la loi applicable à la totalité ou à une partie seulement de leur contrat.

(2) Les parties peuvent convenir, à tout moment, de faire réagir le contrat par une loi autre que celle qui le régissait auparavant soit en vertu d'un choix antérieur selon le présent article, soit en vertu d'autres dispositions du présent règlement. Toute modification quant à la détermination de la loi applicable, intervenue postérieurement à la conclusion du contrat, n'affecte pas la validité formelle du contrat au sens de l'article 11 et ne porte pas atteinte aux droits des tiers.

(3) Lorsque tous les autres éléments de la situation sont localisés, au moment de ce choix, dans un pays autre que celui dont la loi est choisie, le choix des parties ne porte pas atteinte à l'application des dispositions auxquelles la loi de cet autre pays ne permet pas de déroger par accord.

Issue no. 6/2012

Ainsi, le considérant 13 du préambule de la Convention Rome I énonce que « le présent règlement n'interdit pas aux parties d'intégrer par référence dans leur contrat un droit non étatique ou une convention internationale ». Et au considérant 14 on précise : « Si la Communauté adopte dans un instrument juridique spécifique des règles matérielles de droit des contrats, y compris des conditions générales et clauses types, cet instrument peut prévoir que les parties peuvent choisir d'appliquer ces règles »⁴⁷.

Bien sûr, ni cette solution n'est à l'abri de toute critique. D'une part, selon les observations de la Commission, cette option introduit une complexité supplémentaire dans les systèmes juridiques par le « surcharge du cadre légal », existant le risque de l'apparition de certaines incohérences entre les deux régimes de droit interne, en matière contractuelle⁴⁸.

D'autre part, il n'est pas exclu que l'instrument facultatif soit négligé par la pratique, soit parce que les parties contractantes lui ignorent l'existence, soit qu'elles préfèrent opter pour les normes de droit interne, traditionnelles, bien connues⁴⁹.

- *une directive relative au droit européen des contrats*

(4) Lorsque tous les autres éléments de la situation sont localisés, au moment de ce choix, dans un ou plusieurs Etats membres, le choix par les parties d'une autre loi applicable que celle d'un Etat membre ne porte pas atteinte, le cas échéant, à l'application des dispositions du droit communautaire auxquelles il n'est pas permis de déroger par accord, et telles que mises en œuvre par l'Etat membre du for.

(5) L'existence et la validité du consentement des parties quant au choix de la loi applicable sont régis par les dispositions établies aux articles 10, 11 et 13". Le Règlement Rome I a été publié dans le Journal officiel de l'Union européenne L 177/6 du 04.07.2008, disponible sur [<http://www.juridice.ro/wp-content/uploads/Règlement-2.pdf>], 25.04.2012

⁴⁷ Pour la présentation détaillée du système établi par le Règlement Rome I, voir Marcel Ionel Bocşa, *Înceierea contractelor de comerț internațional prin mijloace electronice*, București, Universul juridic, 2010, p. 45-49.

⁴⁸ Il y a aussi des opinions dans le sens que dans la mesure où il représentera une option préférable et plus adaptée aux besoins du marché intérieur, le désavantage du surcharge sera pratiquement annulé et, dans le temps, le droit national en matière s'harmonisera aux dispositions de l'instrument européen, en éliminant la dualité ainsi créée. Voir dans ce sens, Gina Orga Dumitriu, Laurențiu Sorescu, Luminița Tulească, Ramona Marițiu, *Răspuns...oeuvre citée*, p. 176.

⁴⁹ Elle est bien connue la remarque de l'Association Henri Capitant selon laquelle « les professionnels donnent plus facilement leur aval à des textes établis par leurs pairs qu'à ceux conçus par des comparatistes, si éminents soient-ils ». Dans cette perspective, la rédaction d'un instrument facultatif de droit des contrats applicable dans les relations professionnelles doit, pour réussir et donc avoir quelque effet, associer fortement en amont les professionnels eux-mêmes (qui peuvent cependant, entre eux, avoir des intérêts divergents). Voir [<http://www.henricapitant.org/node/182>], 25.04.2012

Selon la Commission, cette directive relative au droit européen des contrats pourrait harmoniser le droit national en matière de contrats sur le fondement de normes communes *a minima*. Un tel instrument de droit dérivé aurait pour effet la réduction des divergences juridiques, en atteignant un certain degré de convergence entre les législations nationales en matière contractuelle.

Les inconvénients de cette option sont inhérents au régime de toute directive européenne. Tout comme dans le cas de la recommandation, la directive permettrait la subsistance des divergences entre les législations des Etats membres, d'autant plus qu'elle représentait un instrument d'harmonisation *a minima*.

La directive n'offrirait pas un niveau suffisamment élevé de sécurité juridique pour les opérateurs économiques européens, compte tenu de différentes transpositions possibles dans les législations nationales, voire de l'absence de transposition. Par ailleurs, ce risque de divergence de transposition des règles d'un Etat membre à l'autre sera accentué au cours du temps par les divergences d'interprétation jurisprudentielle des dispositions de droit interne.

En même temps, la directive étant transposée dans le droit national des Etats membres, ne facilitera pas du tout la tâche des cocontractants qui souhaitent déterminer les règles juridiques applicables au contrat, parce que ceux-ci devront se rapporter aux normes juridiques différentes d'un système juridique à un autre.

-un règlement instituant un droit européen des contrats

Cette option a pour objet d'imposer aux Etats membres un ensemble de règles uniformes qui constituerait le seul et unique droit des contrats applicables dans l'Union européenne. Les droits internes des contrats actuellement en vigueur seraient supprimés. Les parties n'auraient d'autre choix que de se soumettre aux règles prescrites par le règlement européen.

Incontestablement, cette solution supprimerait la fragmentation des législations en matière de droit des contrats et conduirait à une application et une interprétation uniformes des dispositions du règlement.

Selon les allégations de la Commission, cette solution pourrait toutefois soulever des questions sensibles liées aux principes de subsidiarité et de proportionnalité. La substitution d'un ensemble unique de règles à la pluralité des législations nationales, notamment si les contrats internes sont également inclus, pourrait ne pas constituer une mesure proportionnée pour surmonter les obstacles aux échanges sur le marché intérieur.

En même temps, le règlement, qui par définition ne laisse pas aux Etats membres de marge de manœuvre, n'appréhende pas les répercussions des règles contractuelles nouvellement édictées sur les autres règles du droit privé (par exemple, le régime de la responsabilité délictuelle, le régime du transfert de propriété, etc.). A cet égard, l'instrument envisagé ne tient pas compte du

Issue no. 6/2012

fait que le droit civil forme un tout, au sein duquel on ne saurait traiter le droit des contrats en faisant abstraction des autres matières du droit civil⁵⁰. Cela conduirait à créer dans chacun des Etats membres un droit civil à géométrie variable qui ne serait pas cohérent.

-un règlement instituant un Code civil européen

Cette solution va plus loin encore qu'un règlement instituant un droit européen des contrats, en ce sens qu'elle couvrirait non seulement le droit des contrats mais aussi d'autres types d'obligations (par exemple, le droit de la responsabilité civile délictuelle et quasi-délictuelle ainsi que par la gestion d'affaires).

Laissant de côté la politique de petits pas, la Commission propose une solution excessive, qui entraînerait une réduction sérieuse de l'autonomie des Etats membres en matière de législation. Par ailleurs, même la Commission souligne qu'il s'impose d'établir en quelle mesure « un instrument aussi approfondi qu'un code civil européen se justifierait au regard du principe de subsidiarité ».

En ce qui nous concerne, nous apprécions que l'élaboration d'un instrument créant un Code civil dépasse ce qui est nécessaire à la réalisation des objectifs poursuivis par la Commission européenne et risquerait de susciter d'inutiles blocages.

Nous n'arrivons pas à ne pas remarquer qu'aucune de ces solutions n'est infaillible, car en les comparant nous remarquons que tandis que certaines options semblent insuffisantes, d'autres apparaissent comme excessives.

Partant de ces options, on peut apprécier qu'un instrument de droit européen des contrats devrait répondre aux problèmes relatifs aux législations divergentes en matière contractuelle, sans intégrer des tâches administratives supplémentaires ou complications pour les consommateurs ou entreprises, assurer un niveau élevé de protection des consommateurs et des petites et moyennes entreprises. Un tel instrument devrait être étendu et indépendant dans le domaine de référence auquel il est destiné, les références au droit national ou aux instruments internationaux seront réduites substantiellement.

⁵⁰ Voir *La contribution de la Fondation pour le droit continental, à la consultation publique de la Commission européenne sur le livre vert relatif aux actions envisageables en vue de la création d'un droit européen des contrats pour les consommateurs et les entreprises*, [http://www.fondation-droitcontinental.org/upload/docs/application/pdf/2011-02/fondation_pour_le_droit_continental_-_reponse_au_livre_vert_droit_des_contrats.pdf], 25.04.2012

E. La Proposition de Règlement au Parlement européen et au Conseil relative à un droit commun européen de la vente [COM(2011)635]⁵¹.

Le 11.10.2011, la Commission européenne a présenté une Proposition de Règlement au Parlement européen et au Conseil relative à un droit commun européen de la vente [COM(2011)635], l'objectif général de la proposition est d'améliorer l'institution et le fonctionnement du marché intérieur en facilitant le développement du commerce transfrontalier pour les entreprises et des achats transfrontaliers pour les consommateurs⁵².

L'instrument choisi harmonise les législations en matière contractuelle des Etats membres, non pas par l'obligation du réexamen de la législation contractuelle adoptée antérieurement, mais par l'institution dans le cadre du droit national de chaque Etat membre d'un second cadre juridique contractuel pour les contrats qui font l'objet d'application de celui-ci. Donc, le droit commun européen de la vente - ensemble unitaire et indépendant de règles de droit contractuel - a été conçu comme un second régime contractuel, venant se superposer aux droits nationaux des Etats membres. Ce cadre juridique secondaire est identique sur tout le territoire de l'Union et il existe parallèlement avec les dispositions nationales déjà adoptés dans la législation contractuelle (premier régime). Le droit commun européen de la vente s'appliquera exclusivement aux contrats transfrontaliers, seulement sur un fondement volontaire, en vertu de l'accord exprès des parties.

Le domaine d'application de la proposition se limite aux transactions où apparaissent, principalement, des problèmes relatifs au marché intérieur, à savoir, les relations entre entreprises lorsqu'au moins une des parties est une petite ou moyenne entreprise et les relations entre entreprises et consommateurs, exceptés les contrats conclus entre des particuliers et les contrats

⁵¹ Nous remarquons donc que l'instrument choisi pour cette initiative est un règlement relatif à un droit commun européen facultatif de la vente (option 4 du livre vert). On peut consulter la proposition du Règlement sur [http://www.cdep.ro/afaceri_europene/CE/2011/COM_2011_635_ro_ACTE_f_pdf], 25.04.2012. Actuellement, la proposition de la Commission doit être approuvée par les Etats membres de l'UE et par le Parlement européen, qui a exprimé déjà son aide par la votation de la proposition dans la première partie de cette année (IP/11/683).

⁵² La proposition de règlement contient trois parties principales : le règlement, l'annexe I du règlement qui contient les normes de droit des contrats (Droit commun européen de la vente) et l'annexe II qui contient le formulaire standard d'information relative au droit commun européen de la vente que le commerçant doit mettre à la disposition du consommateur avant l'accord sur l'intention de recourir au droit commun européen de la vente.

Issue no. 6/2012

conclus entre des commerçants qui ne représentent pas des PME, en estimant qu'aucune action n'est nécessaire dans le cas de ces types de contrats transfrontaliers.

Nous n'arrivons pas à ne pas remarquer le fait que le droit commun européen de la vente ne réglementera pas tous les aspects relatifs à un contrat (par exemple, l'immoralité de la cause du contrat, la cession, la compensation, la pluralité de créiteurs ou débiteurs, la nullité du contrat, la représentation), de sorte que les normes existantes dans le droit interne de l'Etat membre applicable au contrat continueront à réglementer ces aspects résiduels, ce qui crée les prémisses des possibilités de conflits dans la zone de rencontre entre la législation nationale et la législation européenne en matière de ventes.

La Proposition de Règlement soulève également un certain nombre de problèmes liés à la base juridique de l'instrument facultatif proposé par la Commission, à sa compatibilité avec le principe de subsidiarité, à la concurrence entre la Proposition de Règlement au Parlement européen et au Conseil relative à un droit commun européen de la vente et la Directive 2011/83/UE du Parlement Européen et du Conseil du 25 octobre 2011 relative aux droits des consommateurs, modifiant la Directive 93/13/CEE du Conseil et la Directive 1999/44/CE du Parlement européen et du Conseil et abrogeant la Directive 85/577/CEE du Conseil et la Directive 97/7/CE du Parlement européen et du Conseil, mais tout cela sera traité en détail dans de prochains articles.

Conclusions

L'instrument pour lequel opte la Commission dans la rédaction de la proposition de règlement consacre, donc, un deuxième régime de droit des contrats, conçu comme un ensemble unitaire et indépendant de règles de droit contractuel.

Dans la mesure où ce règlement sera adopté, comme une conséquence du principe de l'applicabilité directe, il s'imposera de manière uniforme et simultanée, aussi bien à l'ensemble des Etats membres qu'aux particuliers et aux instances nationales. Le caractère privé de l'instrument réside dans le fait que bien qu'il contienne l'acquis communautaire existant, essentiellement impératif, ses dispositions seront applicables aux rapports contractuels entre les particuliers dans la mesure où ceux-ci, à l'occasion de la conclusion du contrat, optent pour ce régime juridique.

L'actuelle démarche de la Commission comporte prudence⁵³, reconnaissant donc le droit des parties de choisir en tant que loi du contrat de vente les règles de droit européen, sans

⁵³ La perspective de la codification européenne totale ou partielle du droit civil a suscité les réactions de rejet les plus véhémentes en France, les débats visant l'intérêt et l'opportunité d'une telle démarche. Les doutes sont alimentés par la crainte de voir disparaître les codifications civiles internes, véritables symboles

substituer cet ensemble de règles avec les diverses législations nationales préexistantes. En même temps, cette inédite codification a une structure souple, harmonieuse, préoccupée à respecter les divergences nationales.

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Issue no. 6/2012

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Issue no. 6/2012

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The antinomy tradition-modernity at another level

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Abstract: *The entire European ideology of the XIXth century is built upon the antinomy tradition-modernity, according to which the great thinkers set their schools of thought. Lovinescu's synchronism brings along this antinomy, at the beginning of the XXth century, in order to later explain the development path that Romania had to follow. Nowadays, in the united Europe, the classic antinomy is surpassed, tradition and modernity co-exist and forge forms of the contemporary civilisation.*

Key words: traditional-modern dialectics, synchronism, the third speech, postmodernism.

Lovinescu's theory of synchronism, stated in the inter-war period in view of proving the need to position Romania in the European civilization, is based on many pieces of observation of the dichotomically structured reality: revolutionarism conservatorism, idealism-materialism, evolution-revolution, independence interdependence; in some cases the solutions achieves a dialectic side (this being the case of the antinomy revolutionarism-reactionism, which has as a result the Romanian modern civilization), and in the others E. Lovinescu takes stance in favor of the concepts in modernity's constellation (revolutionarism, idealism, liberalism).

This manner of explaining the world, its cognitive processes, does not represent a new method of the time; it has a deep history encouraged by the occurrence of sciences in the modernity epoch. It can be subjected to criticism, especially from the perspective of crossovers it must use, and Lovinescu's theory, as shown beforehand, has suffered such criticism as well. During the century, C.R. Motru remonstrated Lovinescu his application of Hegel inspired theories to Romanian civilization, and later Tudor Vianu placed Lovinescu among the Romanian dialectics specialists.

The „tradition-modernity” antinomy finds today not its criticism, but its historic evolution towards complementarity, towards what we called another „level”. Far from the tension that this duality released a century before, it is configured today not necessarily in a unit, but at least towards cohabitation. The perspectives in which this couple can be read tell of its history. „The first perspective considers that tradition and modernity define opposite realities, mutually incompatible.(...) The second perspective claims that tradition and modernity define realities that coexist in a given society, their relation being possible symbiotic, but definitely not an exclusive one.”¹ The example offered by Gerard Leclerc regarding the spread of religiosity in India along with digitalization is eloquent in this respect. „Contemporary Indians believe that globalization is a cultural process of „traditionalisation”. The traditionalisation of an innovation grants itself legitimacy.”² The examples in this sense are countless nowadays, which makes us objectively observe the globalization process. Another phenomenon to be taken into account is that of the „paradox of modernity”, according to which the specific rationality of modernity only develops along with the irrationality specific to tradition. „In other words, the development of rationality is not accompanied by an erosion of irrationality. The rationalization that accompanies modernity orders and provides certainties, but these certainties emerge simultaneously with the growth of uncertainty accompanying the perpetuation of novelty, another inner and fundamental dimension of modernity.”³ These complementarities between tradition and modern offered the key to success to many Romanian authors and artists who discovered this recipe. „I don’t mean the cases, few of them, of synchronism at the level of styles (Romanticism, Avant-garde etc.) but those, just as numerous, in which literature, for instance, felt the coercive external factor as a challenge. The answer was retirement, which should be considered less a „retirement from history” as, firstly, an appeal-suggested by the folkloric model-at another time, of „the priority that shall be in the world of the spirit, always ahead of the history of the Occident.”⁴ In this respect examples from the works of Mircea Eliade, Lucian Blaga and Constantin Brâncuși are offered.

¹ Dan Chiribucă, *Tranziția postcomunistă și reconstrucția modernității în România*, Ed. Dacia Eikon, Cluj-Napoca, 2004, p. 67;

² Gérard Leclerc, *Mondializarea culturală*, Ed. Știința, Chișinău, 2003, p. 250;

³ Dan Chiribucă, op.cit., pp. 71-72;

⁴ Mircea Muthu, – *Dinspre sud – est*, Ed. Libra, București, 1999 p. 20;

The bench-marks of the dialectics tradition-modernity change heavily. It is not an antinomy as it is complementarities. The mutual exclusion is replaced nowadays with the taking over of the tradition in the context of modernity, to exploit it in view of modernity's success in art. „Original creations strongly rooted in the native cultural soil”. But with a higher ratio of personality and individuality between the two tendencies („globalization” and „vernacular isolation”) many individual creation are thus possible and desirable, to offer new solution of synthesis and personality.”⁵ If we were to equalize tradition and nativity, respectively modernity and Europeanization firstly and secondly globalization, the need of the complementarities of the two hypostases offers the very solution to the universal cultural integration. „This way we reach again a modernized formula, no less typical to the third speech: being a „Romanian and European” writer simultaneously. Having therefore a double identity and dimension: local and international.”⁶ Lovinescu's simple equation of tradition and modernity is thus surpassed. Neither is there ending of tradition, nor synchronizing at any price, a paradox of our contemporary modernity. „The common division of the century between „traditionalists” and „ modernists”, unanimously accepted from Eugem Lovinescu to Zigu Ornea, or between the democrats and the Left extreme, specific to Orneas's, Volovici's and others' writings, are two carvings, among many others, that cannot seize the whole of the epoch , nor provide a global vision.”⁷

Modernity, as well as its classic opposition to tradition, is over passed nowadays, slowly by slowly-by the postmodern discourse. The so-called centers of cultural irradiation are outrun; the right to cultural creation is universalized and democratized. „For us, this is the empiric image of postmodernity, visible even to somebody who is not a specialist: a world released from direct threats, be them wars, famine or discomfort, living a prosper, tolerant and free life, with space for all styles and ideas, where art, experiment and fantasy is available to anyone.”⁸ This way, a criticism of modernity is shaped as unity of the artistic creation, spreading it throughout the world and giving the right to existence. „The postmodern criticism of rationality always brings forward the argument of the irreducible complexity of social life. This would stand against any step for totalization, or at least

⁵ Adrian Marino, *Descoperirea Europei*, Ed. Aius PrintEd, Craiova, 2006 pp. 76-77;

⁶ Ibidem, p. 78;

⁷ Sorin Alexandrescu, *Paradoxul român*, Ed. Univers, București, 1998 p. 16;

⁸ Mircea Cărtărescu, *Postmodernismul românesc*, Ed. Humanitas, București, 1999 p. 13;

Issue no. 6/2012

generalization; on the other hand, totalization and generalization would be inevitably „instrumentalization”, „disciplinary”. The solution of the postmodern criticism lies in denouncing of the rationality itself in the name of the „difference” extracted from the aesthetic experience of the world. It unbinds the man of the century from the burden of „conveyances” and claims from him a new individualization.”⁹ This decentralization, having its history, fits perfectly in nowadays postmodern discourse, supporting it this way. „ By generalizing this occurrence and later this crystallization process of the small and middle nations from the last century led to the acceptance, at least theoretically, of the European contemporary polycentrism.”¹⁰ The researched synchronism of the XIXth century no longer functions as a model therefore at the end of the XXth century and the beginning of the third millennium.

Through its motto „united in diversity”, the European Union encourages the model of the third discourse: nativity put to good use through the taking over in the modern works of art, made public to the whole world through the contemporary artistic advertising, thanks to the force and circulation speed of information. Today’s model is no longer unique, as it was a century and a half the French one; but one can observe a variety of such examples, all within their manifest right. Lovinescu’s speech is different, surpassed in its imitative dimension, but it is re-echoed in its synchronic dimension: it is only that we synchronize today through cultural creation and lining up to the rhythms of postmodernity.

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**CULTURAL DIPLOMACY AND THE REPRESENTATION OF HISTORY
IN EUROPE
STEPS TOWARDS A RESEARCH AGENDA¹**

Lucian Jora²

“The questions of what Europe can do for culture, and what culture can do for Europe are not new. But in this context they have acquired a new sense of urgency”.

José Manuel Barroso, President of the European Commission

Abstract: *Cultural diplomacy is a matter of mutual knowledge and communication which is meant to create communities of trust and understanding. It obviously contributes to predictability, an important asset in International Relations particularly in the Security area. However, the mutual knowledge of each other's culture does not, per se, create trust. The existence of trust requires at least some identification with the other. Public and cultural diplomacy paradigms involve the representation of history in a multi-perspective reconciliatory and integrator manner. Any historic fact is a complexity and the manner a historian represent it in a public work (school book, commemoration, documentary film etc.) and then presents it to the public may create bridges of communication, or grow enemies. It is a matter of skills, and specific lobbying with cultural, politic and economic implications.*

Key words: representation of history, cultural diplomacy, public diplomacy, cultural lobbyism, conflict prevention, international relations, European studies.

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As a theoretic model we rely on the concept first pioneered by Karl Deutsch and developed nowadays by Emanuel Adler: *security community*.³ Basically a *security community* is a regional system, where, through continuous dialog, diplomacy, communication, shared prosperity, common economic interests, the military means to settle an interstate dispute become unthinkable. Deutsch proposed a security community whenever states become integrated to the point that they have a sense of community, which, in turn, creates the assurance that they will settle their differences short of war. Shared values are required for communities, and communities consolidate shared values. Social learning is another precondition for a Security Community. It was described by Deutsch and its followers as a kind of active process of redefinition or reinterpretation of reality. It represents the capacity and motivation of social actors to manage and even transform reality by changing their beliefs of the material and social world and their identities. According to Deutsch, states may form a security community if the current state of the international system increases “unattractiveness and improbability of war among the political units concerned”⁴. Karl Deutsch concluded that compatibility of values was a precondition of successful security community building. Despite Deutsch’s clear conceptualization, most students of security communities restrict their analyses only to the level of elites. Taking the masses into account, their manipulation through certain representations of the historical past and or historical memory by nationalists and xenophobes (see former Yugoslavia, Caucasus etc.) had produced some often tragic results. Identities are social constructed through a certain education and historical memory (which within the modern times is reinforced through political discourses, school books, commemorations, TV documentaries). After the end of the Cold War, the concept of *security community* was adapted by constructivist scholars. A major impetus was the book *Security Communities* (1998) edited by Emanuel Adler and Michael Barnett.⁵ They

³ Emanuel Adler, Michael N Barnett 1998 (editors), “Security communities”, Cambridge, UK; New York : Cambridge University Press.

⁴ Karl Deutch W. et al. (1957). “Political community and the North Atlantic area; international organization in the light of historical experience”. Princeton: Princeton University Press, p. 67.

⁵ Emanuel Adler and Michael Barnett, op. cit., xiii, 462 p.

redefined the security community by “shared identities”⁶, values, and meanings, many-sided direct interactions, and reciprocal long-term interest.

I will debate in this article the role of *History Education* in creating these „shared identities”, Emanuel Adler and Michael Barnett considered as one of the main precondition for a *Security Community*.

The European Community as such was designed as a *Security Community*. It started as a way to prevent a further war between France and Germany through common economic interests, mutual control over the strategic industries and regional integration. In parallel with the economic integrated measures there was involved a serious reconciliatory effort to attenuate historical animosities. New history school books were written. A French German Historical Commission founded in mid-30's was reactivated, with a generous budget and with a serious political mission apart from the academically one. Achieving reconciliation by reaching a common point of view regarding the most controversial aspects of the Franco German History was an important aspect not only in the European project but also in the specific Cold War conditions. In parallel a de-nazification process took place in Germany consisting mostly in an emphasis in the education for tolerance. Several programs involving promotion of dialogue, exchanges of journalists, students and youth have contributed to a visible change of attitudes and mentalities within a generation. Here the role of renouncing to the *patriotard*, unidirectional way of representing the historical past have had a major role to play. Teaching own national history in a multiperspectival manner can be a tool for encouraging students to be critical, and think about how they can tolerate a plurality of views about what is right and what is wrong. This is essential in creating security communities at the grass roots level.⁷

The success of EC as a model of regional integration and *security community* determined leading scholars to examine security communities in various historical and regional contexts: in places where they exist, where they are emerging, and where they are

⁶ *Shared Identity* is when any one person has many defining characteristics and qualities. It is more than likely that the person will have the same characteristics as one or more other people. So when people have a characteristic in common its known as a shared identity.

⁷ *ibidem*

hardly detectable.⁸ This research model is based on the constructivist theory, an approach to international relations, security and development studies emphasizing the importance of communication and mutual knowledge in many respects opposite to the most *on vogue* (at the time) Hans Morgenthau's *Realist* approach. By promoting mutual knowledge and dialogue the Constructivism is considered more suitable to the 21th century's international system.

Within the study the terms *memory* and *historical memory* are used interchangeably to mean the manner in which the past is socially interpreted. Such *memories* are communicated via all manner of cultural products, including programmatic political statements, popular journalism, film, literature, high art, as well as historiography itself. Ultimately, they contribute to the self-identification of individuals, together or as separate groups.

What is Representation of History as a paradigm?

A representation is a depiction of the past created visually or in words. It is designed to create an image of things in the past – an event, a movement, the role of an individual and so on. In our case the Historians create representations of history when they write about the past in a certain manner. For instance the term *Representation of History* is understood as the way we use to construct a historical discourse or interpretation and then to valorize the products of historical research to the general or a specific category of public. For this target public an image is created of what historians or ideologists (instrumentalizing History) consider a certain event occurred, why people acted as they did, what were the consequences, why and who was responsible for the events.

Often the image of the past is not the creation of professional historians who tend to isolate themselves in the academic „ivory tower”, but rather propagandists, politicians, novelists, filmmakers and cartoonists also give us an image of past in a pleasant attractive and understandable manner. The debate went even further into the domain of the medium of representations, considering the informational revolutions (the internet, Specialized Satellite TV Channels). Since several decades already, film and television have been

⁸ Emanuel Adler and Michael Barnett, (1998) “Security communities”, Cambridge, UK; New York: Cambridge University Press, XIII, pp.1-2.

accepted as having a pervasive influence on how people understand the world. An important aspect of this is the relationship of history and film. The different views of the past created by film, television, and video are attracting closer attention from historians, cultural critics, and filmmakers for good reasons.⁹

In each case, the way they choose to portray – that is to show – their subject creates a representation of it.

Representation of History as a cultural and social construct is a matter of skills, and specific lobbying with cultural, political and economic implications. Any historic fact is a complexity and the manner a historian represent it to the public may create *bridges* of communication, or grow enemies. As a known example, the events of World War II continue to divide many parts of the world, because each country memorializes the period differently. These contrasting ways of remembering can be observed in museums, schoolbooks etc. Would be useful to assemble data on how war and peace museums and history school books in key representative countries for a particular regional system – have chosen to portray this controversial period and to compare them with the data in key European countries. The European achieved experience may be used to reveal the way in which zones of fracture and conflicts can be presented not only in their often-dramatic version, but also in terms of their contributions to the cultural unity of different nations.¹⁰

The key method to transform representation of history in a reconciliatory constructivist tool is *Multiperspectivity*.

What is *Multiperspectivity*? It is the art or skill of viewing a historical event from many different perspectives. Robert Stradling considers *Multiperspectivity* a term more often used than defined.¹¹ Nevertheless, there have been some attempts to describe its main characteristics. K. Peter Fritzsche has emphasized that it is a process, “*a strategy of understanding*”, in which we take into account another’s perspective (or others’ perspectives) in addition to our own.¹² That process entails understanding that we too

⁹ Tony Barta (1998), “Screening the past- Film and the Representation of History”, Praeger London.

¹⁰ Interarts and EFAH “Study on Cultural Cooperation in Europe” — June 2003. See also: -“Report on cultural cooperation in the European Union” (2000/2323 – INI-), Committee on Culture, Youth, Education, the Media and Sport, Rapporteur: Giorgio Ruffolo, 2001.

¹¹ Robert Stradling (2003), “Multiperspectivity in History Teaching a Guide for History Teachers”, Council of Europe, p 13.

¹² Idem pp. 13-21

have a perspective which has been filtered through our own cultural context, reflects our own standpoint and interpretation of what has happened and why, our own view of what is and is not relevant, and may also reflect other prejudices and biases. In this respect, multiperspectivity is not just a process or strategy, it is also a predisposition, “*it means to be able and willing to regard a situation from different perspectives*”.¹³ The preconditions for this are a willingness to accept that there are other possible ways of viewing the world than one’s own and that these may be equally valid and equally partial; and, second, a willingness to put oneself in someone else’s shoes and try and see the world as they see it, that is, to exercise empathy.

Multiperspectivity in history and history education has been described by Ann Low-Beer as the process of “*viewing historical events from several perspectives*”¹⁴. Elsewhere, in her historical review of the work of the Council of Europe on school history, she has also asserted that “multiperspectivity” is firmly rooted in scholarly historical method: „Essentially it stems from the basic discipline of history and the need to assess historical events from different perspectives. All historians do this. In history, multiple perspectives are usual and have to be tested against evidence, and accounted for in judgments and conclusions”.¹⁵ Gita Steiner-Khamsi, whilst also associating multiperspectivity with historical method, does not seem to be quite as convinced as Ann Low-Beer that all historians necessarily or usually do this. She reminds us that history as practiced and taught is often „mono-cultural, ethnocentric, universalistic rather than pluralist, and exclusive rather than inclusive.”¹⁶ It is a big challenge for a historian to impose a multiperspectival work methodology and also to keep the coherence of discourse or narrative. However it’s even more difficult to make yourself accepted or understood by the public you are addressing. The last two decades attempts to teach History in a multiperspectival way in Romania have caused an on-going storm because of the doubts this kind of approach have raised concerning

¹³ K. Peter Fritzsche, „Unable to be tolerant?” In Farnen, R. et al (2001), „Tolerance in Transition”, Oldenburg, p. 59.

¹⁴ Ann Low-Beer, (1997), *The Council of Europe and School History*, Strasbourg, Council of Europe, pp. 54-55.

¹⁵ Gita Steiner-Khamsi, (1994) “History, democratic values and tolerance in Europe: the experience of countries in democratic transition”, Council of Europe Symposium, Sofia, CC-ED/HIST (94) 1, Sofia, p.20.

¹⁶ Gita Steiner-Khamsi quoted in D. Harkness, (1994), “Symposium on “History teaching and European awareness”, Delphi, Greece, 11-14 May 1994: report, Strasbourg, Council of Europe, p. 41.

traditional national narratives, and even more, because of their implicit or explicit moral critique concerning past deeds; whether actions committed in the course of the 1848 Revolution, WWI or WWII, or events connected with the origins of the Romanians, the Latinity the Jewish, Roma Holocaust, aspects related with the National character of the Romanian state after 1918. Under these circumstances, no wonder that public opinion, and even more so, politicians in decision-making posts, have adopted a growing mistrust towards academic historians, a mistrust which is often translated into budgetary cuts, and at times, into a more stringent supervision of history text-books for high-schools. In some cases such mistrust led various politicians to claim *more* emphasis on national history in high-school curricula in order to “immune” students from the “subversive” currents in the scholarly world, or a new type of indoctrination.

In some countries practicing and popularizing multiperspectivity in approaching historical sensitive events may be even dangerous. Even today proposing a multiperspectival approach towards the Armenian Genocide debate in countries like Turkey may trigger accusations of national treason.

We can note that History has always been more than just the past. “It involves a relationship between past and present, perceived, on the one hand, as a temporal chain of events and, on the other, symbolically as an interpretation that gives meaning to these events through varying cultural orientations, charging it with norms and values, hopes and fears. And it is memory that links the present to the past and therefore has to be seen as the most fundamental procedure of the human mind that constitutes history: memory and historical thinking are the door of the human mind to experience. At the same time, it transforms the past into a meaningful and sense bearing part of the present and beyond”.¹⁷ While for decades the thinks were rather clear in the eyes and minds of the public opinion, who were more or less convinced (even if this meant indoctrination) about who they are, and where they are coming from. The new trends of research concerning the relationship between “history” and “memory” introduced doubts in all these national certitudes. And the doubts regarding national identity especially in places like Central and Eastern Europe, are not welcomed by the public opinion. The “new historians” have increasingly doubt regarding the conventional ideas and History school books, collective memories or

¹⁷ Jorn Rüsen, (2006), “Meaning and representation in history” vol 7 “Making ssense of History”, Berghahn Books, p. 3.

Issue no. 6/2012

“myths”, which have served as the basis for these national identities, calling them “imagined communities” based on “invented traditions”. It is unclear how “invented” national identities really are or if they were really as invented. Often “myth breaking” has been transformed in a new kind of ideology for a new kind of propaganda especially among the young History graduates. Indeed, historians are moving nowadays away, from *national* histories, with a growing interest in *universal* history and the place of own national history as a part of it.

There are some societal changes we should take into account nowadays. Any cultural presence involves a certain representation of national history or historical heritage. But in Europe (and not only), the cultural presence with a display of nationality as a label is no longer the exclusive precinct of national governments and their agencies. The representation of historical heritage as cultural presence occurs widely, driven by all types of transnational interests, emanating from politics, economy, education, science, culture and civil society, in a diversity of exchanges and collaborative forms. For instance, the state has no longer the monopoly of representation of history. Nowadays it is rather a facilitator and a controller who can stimulate certain direction through various programs and incentives. The European Commission is doing the same with its programs.

Representation of History is also a tool in the panoply of Public and Cultural Diplomacy techniques and strategies. The idea of cultural diplomacy is generally referred to as “international cultural policy” or “foreign cultural policy.” Diplomatic historian Frank Ninkovich observed that public diplomacy is “the promotion or communication between peoples as opposed to governments...” and is designed to “build agreement based on common values.”¹⁸ The aim of genuine cultural diplomacy efforts would be to present own country’s story to the world in a reconciliatory manner. It involves multiperspectivity and receptivity towards others point of view simply because cultural diplomacy is a two-way communication process that includes both efforts to project a nation’s image and values to other countries and people as well as to receive information and try to understand the culture, values and images of other countries and their peoples.

¹⁸ Frank Ninkovich quoted by Margaret J. Wyszomirsky, Christopher Burgess, Catherine Peila in, *International Cultural Relations, A Multicountry Comparison*, Arts Policy and Administration Program, The Ohio State University-2003, p. 1, available at <http://www.culturalpolicy.org/pdf/MJWpaper.pdf>.

Within the same field of diplomatic instruments we can nominate a “Cultural and educational diplomacy through representation of history”, which emphasizes exchanges of persons and ideas within the field of educators and opinion leaders. In fact most cultural diplomacy actions involve directly a relatively small number of people (almost always the same), and is a solid counter argument questioning the efficiency of classical approach to public diplomacy. Those people who are attending the public/cultural diplomacy events usually know well the culture and issues which are going to be expressed within that particular event. Their presence is more motivated by maintaining relationships, or by the desire to participate at a fashionable event. The message supposed to be transmitted by this kind of events often does not reach its target audience and often it's a regrettable waste of precious funds.

Representation of History in a certain complex and conciliatory manner as a cultural diplomacy strategy involves mutual knowledge achievable through genuine communication. In general only genuine communication (which avoids façade actions and discourses) succeeds to create communities of trust and understanding. It contributes to predictability, an important asset in International Relations particularly in the Security area and the main ingredient for a Security Community. This general Deutschian emphasis on communication networks, leading to trust, social learning, and institution building as paths to security communities have been adopted by constructivist scholars. They see the creation of security communities as the formation of "cognitive regions" whose borders are defined by the intensity of shared understandings and common identities.

The analysis becomes even more complex when we realize that mutual knowledge of each other's culture does not, *per se*, create trust. The existence of trust requires at least some identification with the other because without it, actors would be self-contained and devoid of any common basis.¹⁹ Communities can even be "virtual", linked by communication media (see the relationships between UK and New Zealand), but usually they are attached to a particular locale.

We came to the conclusion that the glue holding the communities together is the collective identity formation and, more specifically shared values, identities and meanings. Collective identity establishes patterns of diffuse reciprocity manifested in the mutual

¹⁹ Ideas developed in a short article in 2000 by Raimo Väyrynen, *Stable peace through security communities? Steps towards theory-building*, available at: http://kroc.nd.edu/ocpapers/op_18_3.pdf

responsiveness among the members of the community.²⁰ States as social actors tend to behave according to the international norms that the shared values and identities have constituted.²¹

Settling old disputes among neighbors (often historical enemies) promoting reconciliatory and conflict prevention actions were an integral part for the preconditions for the integration into the Euro-Atlantic Structures, for the former Communist Countries from Central and Eastern Europe (see the Romanian–Hungarian case). For instance we may say that International normative expectations shape domestic interests policies, and thus the identities of the national actors. And here the way this national actors represent their identities to fit international membership requirements is reflected in the way they represent their historical past. And of course often this “History” means “common history” which is a subject of debates and negotiations among experts and politicians. This is more or less the job of several Historical commissions, including the Romanian–Hungarian one. In 2004, an agreement between The Hungarian and Romanian Academies negotiated by the minister of external affairs at the time Mihai Răzvan Ungureanu (a respectable historian itself) proposed to achieve for the first time an integrated History of Transylvania. Although there is no sign of progress for this particular work even the idea of an integrated Romanian Hungarian History of Transylvania is a significant step further.

Domestic politics within the field of education through a certain representation of national history made by national actors have an impact on international structures. The effort to explicitly bridge the domestic and international systems is perhaps the main merit of the constructivist approach. Just like any other theoretical construct the constructivist approach has its limits when confronted with reality. International politics just like the life itself is too complex to be framed or analyzed by any theoretical model. It may be true that collective identity formation and, more specifically shared values and identities are a precondition for trust and a Security Community. However, there are also several exceptions affecting the “beauty” of the constructivist model. Talking about “exceptions”

²⁰ Emanuel Adler, (1997), “Imagined (Security) Communities: Cognitive Regions in International Relations.” *Millennium: Journal of International Studies* 26, no. 2 (Summer 1997): 249-277; Williams, Michael C (1997), "The Institutions of Security. Elements of a Theory of Security Organizations." *Cooperation and Conflict* 32, no. 3 (September 1997): 287-307.

²¹ Emanuel Adler, and Michael Barnett (1998), "A Framework for the Study of Security Communities." Pp. 29-65. In *Security Communities*, edited by. Cambridge: Cambridge University Press.

Issue no. 6/2012

we have noticed that the harshest conflicts are the fratricide ones, among people sharing the same culture (identities), values and often language (see the Irish and English, North and South Koreans, the Spanish Civil war and the civil wars in general).

Also we have emphasized the importance of education, communication about each other in particular for cultures which are in conflict (real or perceived, natural or artificially created or maintained). But for the Occident – Islam conflict the last decade experience shows that the standard profile of the terrorist is not the illiterate Arabian *felleah* but rather the western university graduated Muslims who is well acquainted with the West European culture, values and norms.

The Deutschian and the constructivist approaches although highly theoretic acknowledging their limits is still useful to explain, design and build genuine security communities. Promoting mutual knowledge and dialog based on identities is useful today to design a functional cultural policy. For example, in Central and Eastern Europe through a certain representation of history the people may acknowledge that apart from different languages they share more or less the same cultural background (music, food, customs, traditions, events). In this part of the world the national histories designed in the XIX century were focused to underline differences and to individualize a certain nation in order to build or to preserve a national state. The post national political realities corroborated with the XX century painful experiences, the effects of globalization were convincing enough to change the type of discourse within the historical writing and the public educational policies. A new approach both based on political rationalities and also scholarly work is meant to show that neighboring nations across their historical evolution would find more things to share in terms of cultural identities and various interests than things which would separate them. And this is not propaganda but an attempt to describe the contemporary cultural realities as well as their history in all their complexity. “Complexity” is a good neighbor for “diversity” a diversity naturally grown in the mind and consciences of the people and not imposed (as it was the case of various imperial or totalitarian ideologies)²².

²² See the case of “proletarian nation”, or “Soviet nation”, or any Imperial attempt to impose an identity by surprising national, regional or local identities. By contrast the European identity is based on a *de facto* identity of its component nations, and a continuous attention to preserve and encourage the diversity of its nations and in particular local and regional identities (in some cases suppressed by national states).

Issue no. 6/2012

Since nineteenth century, countries like France and Germany regard their culture and language as a valuable public good. As conceptions of national security have expanded to include economic competitiveness, cultural diplomacy in many countries has acquired trade-related aspects adapting the traditional reliance on cultural diplomacy as a platform for projecting a positive image to the development of markets and trade opportunities in general. This is branding. Since the advance of globalization, national image and reputation have become more important with bigger economic repercussions directly felt by ordinary citizens. The generalization of overseas travel for tourism or work opportunities means that more and more people are capable to travel overseas, however travelling is a matter of visas, finding work and overseas treatment is directly depending on the country of origins perception and prestige. The same logic is applicable to business relations too, with rocketing implications within the globalization of trade and investment relations. Here we would agree with S. Anholt's invitation to compare the experiences of a Swedish and an Iranian manager on the international job market, or the struggles of an exporter from Bangladesh with one from Canada or to compare the way consumers in Europe or America will willingly pay more for an unknown "Japanese" product than for an identical "Korean" product that was probably made in the same Chinese factory²³. Countries' image matters and a solid chunk of this image is built through cultural diplomacy techniques. Attempts to enhance these assets are sometimes pursued by governments under the name of 'nation branding' – often a naive, ineffectual and wasteful application of commercial marketing techniques – and sometimes in a narrow and primitive form of public diplomacy. However, new forms of cultural diplomacy, including here the representation of history, and a more sophisticated approach to nation branding or competitive identity can work together to help create prosperity and improve international relations.²⁴

Building security communities and promoting international reconciliation through the representation of history is a work in progress. We will present in the following part of this article what we consider the main initiatives in the last two decades.

²³ Simon Anholt, "The Importance of National Reputation" (2008), in *Engagement – Public Diplomacy in a Globalised World*, published by the Foreign and Commonwealth Office, London, pp. 30-40.

²⁴ *ibidem*

As general research themes the Council of Europe proposes the following: The Process of Reconciliation: From Diplomatic to Educational Initiatives; The challenges to teach tolerance towards historical enemies; The Impact of Democratic Development on Contested History.²⁵

Having in mind the European approach we propose questions like: What constitutes the basis for a plural reading of the city and its history in the European case?

Which are the suitable techniques dedicated to bring the historic heritage and experience of a particular country to the world? What is the place represented by academia as source of public policy initiative involving the representation of history?

The link between culture (in this case, representation of history) and development is not yet properly studied. Finding ways to integrate the academic approach of historians with the contemporary approach of cultural industries and public policies would be a challenging but useful attempt to bridge the gap between the “World of Academia” and the “World of practitioners”. The convergence of culture and trade interests is leading to new relationships between cultural institutes and the private sector.²⁶ This is a positive

²⁵ Related research projects active at the present or recently finished:

-Carnegie Council on Ethics and International Affairs: “The History and the Politics of Reconciliation Program”.

-Laura Hein and Mark Selden, “In Censoring History: Citizenship and Memory in Japan, Germany and the United States” (M.E. Sharpe 2000).

-Takashi Yoshida (Western Michigan University) “History Education and Reconciliation: The Choice between Examining Japanese Wartime Aggression and Revitalizing Nationalism.”; “Remembering the Pacific War WWII Museums in China, Japan, South Korea, and Taiwan”.

-Roland Bleiker, University of Queensland, and Yong-ju Hoang, Pusan University of Foreign Studies: “From Confrontation to Cooperation in the Two Koreas, The Role of History Education in Promoting Reconciliation”.

-Carolyn Kissane, Columbia University, “Lessons from the Classrooms of Kazakhstan: Teaching Reconciliation and Understanding In a Time of Transition”.

-Alison Kitson, University of Warwick, “History Textbooks in Northern Ireland”.

-Thomas D. Sherlock, United States Military Academy, “Secondary School History Texts: The Case of Russia”.

²⁶ MKW Wirtschaftsforschung GmbH, “Exploitation and development of the job potential in the cultural sector in the age of digitalization” (Brussels: Directorate-General for Employment and Social Affairs CE European Commission, 2001). For the entire problematic see also: -European Parliament, opinion on the

evolution as the historiography's discourse like any cultural discourse must connect somehow with economic, political and media discourses, otherwise it would be ignored by the decision-makers.

Representation of History as a tool to acknowledge the cultural links among the nations in Europe is promoted also through various double aimed programs (economic and cultural). Perhaps the best known and consistent are the integrated programs and initiatives like the *European cross-border cultural routes* or the *European Landscape Convention*. This kind of programs contributed to a fundamental change of behavior regarding European cooperation in the cultural heritage sector. It contributed to enforce the links between experts, practitioners, businesses, tour operators. Managing cultural heritage is not only about culture but also about efficiency and cutting costs. The perspective is now less and less to cooperate within the same fields or the same categories of monuments (exchange of knowledge about archaeological sites, monuments, materials etc.) but to work on territorial or urban heritage *ensembles* across Europe based on specific fields of expertise. Italians are specialized on stone restoration, Estonians on timber, French and the Dutch on old glass or metal crafts and so on. The themes and collaboration projects are growing and they are more ambitious as they are continuously encouraged by EU funding (who usually sets as eligibility condition at least five partners for five different EU countries). Desirable projects to be financed by EU are aiming sustainable development, environment protection, reestablishing links between communities that were separated by borders or wars, in a word, at working on a common heritage. Large European themes – from the Baroque to trans-border cultural landscapes, from European citizenship to rural heritage – provide the opportunity for enlarged frameworks of implementation.

Often we do not have to “reinvent the wheel”. Often old cultural agreements across Europe are a good infrastructure for newer approaches. Most European governments are bound to each other by a web of bilateral cultural agreements, some of which date as far back as the 1930s. The Council of Europe has identified over 300 bilateral cultural agreements valid today amongst 31 countries under scrutiny. Some of them have been inherited by newly created states (for instance, those of former Czechoslovakia adapted to Czech and Slovak treaties). In other cases, agreements between some of the European

communication from the Commission entitled *Cohesion policy and culture: a contribution to employment*', rapporteur. L. Vecchio, p.8, PE, 222.345.

Issue no. 6/2012

democracies in the 1930s were suspended due to regime changes and loss of independence and reinstated in the 1990s (for instance the Estonia/Finland "Spiritual cooperation agreement"). The contents of those agreements tend to follow a common standard of general mutual commitment and they are used primarily as a box where to place cooperation ventures which emerge at any point in the course of diplomatic relations. Most agreements that result in projects appear to be between immediate neighborhood countries and often the projects are driven by the need to demonstrate the agreement itself. Those agreements therefore do not carry specific purpose-oriented content but serve as a diplomatic and bureaucratic framework, often necessary in order to reserve and make available the necessary means from a variety of earmarked budgets.

Council of Europe, as well as the European Commission, is continuously emphasizing the need for a new educational approach towards the history as a discipline. Ideally it would involve the application of a comparative, multi-perspective method, the focus on economic, social and cultural history and the development of students' analytical and interpretative skills to enable them to evaluate the information they receive. The insistence for a Comparative history aims to acquaint students with both differences and similarities in short a multiperspectival approach. The multiperspectival approach involves also negotiation, dialogue and compromise all essential ingredients for reconciliation between former Historical enemies but also to achieve historical scholarly. Is difficult to abolish the dogmatic teaching of the "objective" history of the one and only "truth" which is comfortable to teach, comfortable to represent and transmit to the own people, it does not involve changes, self-reflection or even critics. But it would exclude the dialogue, the scientifically debates, and for sure would be closer to ideology and propaganda than to "History as a science". Also we can notice a move from political and military history towards economic, social and cultural history meant to teach historical experiences which are more familiar and interesting to students and de-emphasize war as an element of historical evolution, especially in terms of the relations with neighboring states. It also aims at teaching conflicts from a new perspective, in terms of both content and method. Finally, the development of critical thinking is the main purpose of historical teaching so that future citizens will be more immune to attempts to manipulate them. The ultimate goal of this concept of writing and teaching history is to promote mutual tolerance and understanding. Yet what "kind of history" would promote tolerance? A history that

emphasizes “similarities” in the abstract, or one which does not conceal the differences? We usually think that tolerance towards “the other”, “the different”, must come from the acknowledgement of our similarities. It does not mean to create an aseptic version of History or a new sterile ideology.

The “new history” approach, whilst not denying the importance of chronology and historical knowledge, aims to establish a better balance within history teaching between teaching students about the past and providing them with the means to think historically about it. Consequently, there was a greater emphasis in the history classroom on students learning how to analyze, interpret and synthesize evidence obtained from a variety of primary and secondary sources.²⁷ History education has too often been taught from a perspective that was mono-cultural, ethnocentric, exclusive rather than inclusive and based on the assumption that the national narrative coincided with the history of the largest national grouping and dominant linguistic and cultural community²⁸. Presented in this way, multiperspectivity, multiculturalism and pluralist approaches to history representation and teaching constitute a significant challenge to the *status quo* in most European countries. As Robert Phillips has pointed out, to argue for the inclusion of a plurality of voices and viewpoints in the national historical narrative usually leads to political controversy²⁹. In his book, he documents the fierce debates amongst politicians, the mass media, historians, educationalists and history teachers when it was proposed in the 1990s to introduce a more multicultural approach to history into the National Curriculum for England and Wales.³⁰ Useless to remember the huge scandal triggered in 1999 in Romania by the publication of an alternative History school book. For the first time in Romania the traditional narrative approach based on chronology and political history was changed for a multicultural, civilizational approach. In a domain anyone feels as a specialist fully entitled to talk, the reaction on this issue came mainly from politicians and the mass media. A

²⁷ Dr Robert Stradling (2003) “Multiperspectivity in history teaching: a guide for teachers”, Council of Europe Publications, Strasbourg, p. 10.

²⁸ Robert Stradling (2003), “Multiperspectivity in History Teaching a Guide for History Teachers”, Council of Europe, p. 26.

²⁹ Robert Phillips and James Arthur, editors (2000), “Issues in History Teaching Issues in History Teaching”, London: Routledge, p. 243.

³⁰ Robert Phillips (1998), “History Teaching, Nationhood and the State: A Study in Educational Politics”, London, p. 51.

tentative to replace a traditional approach and narrative with something else (regardless the best intentions) is not necessarily a recipe for immediate success. Changes must be well motivated, well documented and implemented gradually and with great care.

Terms like “multiperspectivity” and other concepts often associated with it, such as “multiculturalism”, can mean very different things to different people and are frequently subjected to redefinition in order to fit particular political and ideological positions. In history, multiple perspectives are usual and have to be tested against evidence, and accounted for in judgments and conclusions. We can view historical events and developments from a multiplicity of points of view.³¹ To do this, we need to understand the motives underpinning these various points of view. Broadly speaking, there are three constituent elements to this process. First, it involves trying to understand the logic behind the view being expressed. Why would they think this? On what grounds have they based this view? Why might they have believed some bits of information and not others? Why did they see some information as relevant and discard the rest? What options were opened to them? What led them to choose this particular course of action out of all the possibilities opened to them?³² Second, it involves de-constructing the language of the text (differentiating, for example, between veritable facts, expert opinion, unsubstantiated opinion and hearsay, noting what is omitted from the account, noting the use of emotive language, the use of false analogies and stereotypes).³³ The same process of de-construction applies as much to other sources, such as oral testimony, photographs, posters and cartoons as it does to documents. Third, it also involves collating and analyzing contextual information about each source since this enables us to understand more fully where the person stating a point of view “is coming from”, their background, their

³¹ The Historian E.H. Carr considers in his essay “What is history” (unpublished) that: “The historian starts with a provisional selection of facts, and a provisional interpretation in the light of which that selection has been made - by others as well as by himself. As he works, both the interpretation and the selection and ordering of facts undergo subtle and perhaps partly unconscious changes, through the reciprocal action of one or the other. And this reciprocal action also involves reciprocity between present and past, since the historian is part of the present and the facts belong to the past.”

³² Robert Stradling (2003) “Multiperspectivity in history teaching: a guide for teachers”, Council of Europe Publications, Strasbourg, p. 18.

³³ Robert Stradling (2000), “Teaching 20th Century European history”, Strasbourg, Council of Europe Publishing. Especially Chapters 8, 10, 15, 16 and 17.

Issue no. 6/2012

associates, allegiances and affiliations. Robert Stradling reminds us that multiperspectivity adds another complication. The more layers and perspectives are introduced into the historical account, the more complex and difficult it becomes for the student to make judgments and draw conclusions, particularly when they are dealing with divergent and contrasting perspectives, interpretations and conclusions. It becomes even more difficult if they are also trying to unravel the various ways in which the different perspectives respond to and interact with each other. Students will find it much easier to compare and contrast the perspectives in different sources if they are used to applying a framework of analytical questions to every source they encounter, whether these are a book, or a documentary film. Robert Stradling has outlined a variety of ways of helping students to learn how to analyze different kinds of source material. Fundamental to that approach are a series of questions that could be grouped into five broad analytical processes: “What kind of source is it? Who produced it? What was the producer’s involvement in the events (participant, eye-witness, reporter, commentator, official etc.)? When was it produced? How soon after the event was this? Does it tell us who the intended audience/recipient was? Does it tell us what the intended purpose was? What does it tell us/show us about a particular historical event or development? Interpretation: If we do not know who the producer was, can we infer anything about him or her from the source itself (level of involvement, closeness to events, standpoint, contacts, role, etc.)? Are there any clues as to how the producer obtained the information? Are there any clues to the reliability of the information? Can we differentiate between verifiable facts, expert opinion and personal opinion? Can we detect a pattern in the source’s perspective (e.g. support for a particular position, prejudice against another position, etc.)? Does the producer offer any conclusions? Are they backed up with evidence or opinion?”³⁴

While the political implications and usefulness of History representation as a reconciliation and *détente* tool are well acknowledged, if in theory solutions are available and their improvement and application can be debated, when to apply these solutions in practice we notice a major contradiction. A contradiction between the big expectations and pressures toward History as a discipline taught in schools and the continuous reduction of hours affected to this discipline, particularly in Northern Europe. Also, how can we

³⁴ Robert Stradling (2003), “Multiperspectivity in history teaching: a guide for teachers”, Council of Europe Publications, Strasbourg, pp. 14-15.

Issue no. 6/2012

compromise from one side with the complexity requested by a multiperspective approach and from the other side with the needs to insure an easy to understand, to digest, and to enjoy pedagogically historical discourse? So far we found no suitable answer to this dilemma. A part of the informative package regarding History as discipline was taken from the schools curricula to alternative mediums like: specialized TV programs (Discovery History, History, National Geographic), Internet sites, memorials, festivals, commemorations, temporary exhibitions, informative materials on the streets, historical buildings etc. This is an unavoidable evolution and the historians and History teachers have to accept it and to adapt to the challenges of the new mediums of representation. Anyone can notice that most people are getting their history education, (or what they think is history education), from the movies or at best TV documentaries these days than from the standard history books. Just as in the case of history books the narrative or the representation can be academically done respecting the rigorousness of presenting various sources and points of view in order to illustrate the complexity of any historical event. It is a matter of quality, implication and a genuine desire to sacrifice the spectacular or the commercial for the intent to get as close as possible to the „truth”, the facts as they „truly occurred”. History is not just about our past, it is about our present – history is happening now, and history represented through Visual Media (TV Documentaries, or specialized Internet sites) is perhaps a vivid way to start a journey into a particular age or historical event to change the general mood of the people, to reflect about the past in order to build a better future. From this perspective the new media is well suited for the purpose of promoting the reconciliation and tolerance through the representation of history.

Deliberative Democracy: A theory for the future or a luxury of the present

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Abstract: *Deliberative democracy as a working concept is still to this day a sort of “ideal” in the European Union, an ideal continuously chased and sought after in practical terms. However, one cannot but wonder whether or not the theoretical concept of deliberative democracy is indeed a solid, well-fortified and thought through approach with regard to practical political decision making, or just a well-minded but eventually naïve intellectual treasury, some sort of fashionable political luxury void of any practical utility? Basically what this paper sets out to investigate is the actual validity of deliberative democracy in times of severe political struggle and contestation, focusing on its self-defensive mechanisms and its capacity to withstand the temptation of temporarily abandoning its very core principles in contexts which are not “ideal”.*

Key words: deliberative democracy, political theory; participation;

Introduction

After the fall of communism at the end of the 20th century, democracy had the world at its feet. People and scholars alike embraced it and agreed that it was the most viable, the most functional and by all means the best type of government available to mankind. Francis Fukuyama even announced the “end of history”, predicting mass democratizations all over the world, brought about by the fact that democracy was then left without a potent adversary capable of mounting any viable alternatives (Fukuyama, 1992).

However, when faced with such enthusiasm it is always useful to remember the words of Karl Popper. He clearly explained long before Fukuyama that the question mankind should pose is not “what is the best type of government”?, because there is no such thing. The question people should ask is the following: “what is the type of

government less likely to give rise to political evil” (Popper, 1971)? In this sense, he too subscribed to the “fairness” and validity of democracy, but in the long run he was right to uphold a reserved position. I say this having in mind the last two decades, two decades in which scholars, politicians and people have all witnessed and pointed out the “evil” in democracy. Naturally, this evil has taken many forms, ranging from inequality and exploitation to lack of representation and participation. Yet, the biggest problem of democracy today seems to be its lack of fulfillment in practice (Creighton, 2005: 1).

As such, different approaches were conceived in order to correct this drawback, thus transforming democracy into a highly controversial concept, filled with a multitude of meanings. According to Greenwood and Levin, the term may evoke egalitarianism (Greenwood; Levin, 2006: 10). Others regard it as involving participation. For others it conjures decision making by consensus, and for still others, decisions by majority rule. In addition, for some, democracy implies a homogenous community and for others, arenas for lively debate (ibid: 10-11).

Finally, a new and quite popular approach nowadays equates democracy with deliberation. The practice is called deliberative democracy and refers to “a conception of democratic government that secures a central place for reasoned discussion in political life” (Cooke, 2000: 947). The starting point of deliberative democracy is that decisions have to be not only justified, explained and shared with the citizens, but the citizens themselves have to be involved in the political process (Hartz-Karp; Briand, 2009: 127). For deliberative democracy theorists, people should not be treated as “mere objects of legislation, as passive subjects to be ruled, but as agents who take part in the governance, directly or through their representatives, by presenting and responding to reasons that would justify the laws under which they must live together” (Gutmann; Thompson, 2004: 58). The aim is thus to establish a two-way communication and interaction between the people who make a decision and the people who are affected by it (Creighton, 2005: 102). As a result, it is often argued that deliberative democracy builds consensus, improves the quality of decisions, increases the ease of implementation and maintains credibility and legitimacy (Creighton, 2005: 18-19)

Of course, if we look at these arguments on paper, deliberative democracy seems flawless. But, as it has been discussed above, when it comes to its practical fulfillment things become a bit shabby. As, Ryfe notes, “the literature on deliberative practice is still

in its infancy” and its empirical enactment is inconclusive (Ryfe, 2005: 50) Thus, the purpose of this paper is to add to this practical experience and test the strength, viability and functionality of deliberative democracy within the real political environment, not just in ideal situations, under ideal conditions. By doing so, we shall be able to distinguish more clearly whether deliberative democracy is indeed a sound and solid approach to political decision making or just a pretentious mirage with little practical utility whatsoever.

Historical roots

Initially, as has been briefly announced above, deliberative democracy came up as an embedded part of normative democracy theories. In the light of the candle-revolutions in Eastern Europe, the latter started to dominate the field of political theory at the end of the seventies of the twentieth century, giving thus an impetus to peaceful modes of democratic deployment. The normative concept of deliberative democracy itself began to boom within the nineties, expressing the postmodern credo of the new social movements: *autonomy instead of participation*. The concept conceived of itself as a critique of the liberal economic model and its instrumental reason (v. Beyme 2000: 255-256).

A first rough delineation can be made of two general types of deliberation. The weak interpretation of deliberative democracy puts emphasis on a more flexible form of discourse and stresses to overcome ‘real world’ constraints by realizing normative ideals. This type aims at improving decision-making in procedural respects, making use of various forms of communication, such as rhetoric or story-telling as an alternative to purely rational discourse (Bächtiger et al. 2010: 33).

The strong type of deliberative democracy as a theoretical concept is often based on Jürgen Habermas’ discourse theory, which points at a moral improvement based on public deliberation. Basically, the *forum* fronts the *market* and the political process is no longer understood as being instrumental. Political decisions are no longer seen as private Rational Choice-approaches but as public endorsements and egoism seems to be impossible because deliberation serves the common welfare (v. Beyme 2000: 256).). Of course, it can be argued that a realistic theory of deliberative democracy should concentrate pragmatically on constitutional and legal conditions of democratic decisions,

simply because time constraints make these ideal conditions of a philosophical discourse in politics impossible. Therefore, later parts of the paper will draw considerable attention to this aspect. But for the present the theoretical framework of Habermas is needed, in order to define what deliberation is. This will be compared to a seemingly deliberative approach by John Rawls, which however does not stand closer scrutiny of a deliberative magnifying glass.

Habermas and deliberative democracy

Philosophically, Habermas traces his conception of deliberative democracy back to his view on modernity, which he perceives as an unfinished project. Within a cultural conception, all subjects or actors who act communicatively adopt such a behavior on the basis of common background convictions, referred to as the lifeworld (*Lebenswelt*). This lifeworld offers to all a minimally shared experience of certain horizons of meaning, although the modern life is highly fragmented and complex. But cultural patterns of evaluation, expression and interpretations contribute to the possibility of mutual understanding among participants who try to negotiate a common definition of a situation in order to arrive at a consensus regarding something in the world (Vitale 2006: 741). The *lifeworld* is situated in coexistence with the governmental- and market-system. The systems and the *lifeworld* are meant to play essential and equal roles in contemporary societies. However, the logic and structure of the capitalist system and the modern state are overdeveloped to an extent that the *Lebenswelt* becomes blurred (ibid: 742). The imminent imbalanced rationalization, through the features of the capitalist economy and the modern administration, suffocates the moral-practical and expressive forms of rationality of the *lifeworld*. The actors need to betake themselves to the strengthening of communicative rationality and communicative action. These can enable the *lifeworld* to resist systemic colonization. This way, democratization gains momentum: individuals see the common space from an inter-subjective rather than from an individual perspective and act communicatively. The more communicative reason is generated, the better democracy is installed (ibid: 743). How the agenda of procedural deliberation looks like according to Habermas, is going to be presented below:

Habermas' normative approach combines negotiations and pragmatic deliberation, including ethical and moral discourses. These conditions allow for procedural correct outcomes, elaborated through independent public forums (the lifeworld) that are distinct from the economic and the governmental system. These forums are constituted by voluntary associations, social movements, the media and other hallmarks of the civil society. Via delegating political power, including several stakeholders in the decision-seeking deliberation, the culturally and politically mobilized public enables itself to democratic self-government and eventually political autonomy. Finally, Habermas takes the provisionary aspect into account by stating that the constitution is seen as a project, never completed and always subject to the ongoing exercise of political autonomy, since political climate can shift due to historical circumstances (McCarthy 1994: 49). Mistakes are natural ingredients of collective action and thus of high importance is acknowledging them and having the ability and willingness to correct them through common action (Gutmann; Thompson 2004: 11).

Rawls' public reason

Despite of the different denomination it holds, Rawls claims his concept of public reason to subscribe to the deliberative ideal (Cooke 2000: 958). Rawls develops the concept of public reason in his opus *Political Liberalism*. It is associated with the practice of reasonability as the duty of civility. That is simply the task to be reasonable within the context of constitutional democracy. Therefore, public reason can be said to provide substantive public reasons for thought and action, thus framing the practice of reasonability. The addressed duty of civility comprises the disposition to listen to others and a fair-mindedness in the decision-taking process when views are about to get reasonably modified. Although public reason is substantive, a procedural element can be identified: expecting citizens to govern themselves in ways each of them thinks the others might reasonably accept. Therefore, reasonability is supposed by public reason to function as a procedural foundation (Rasmussen 2004: 534).

A decisive distinction is made by Rawls on "public" and "non-public" uses of reason. Public is meant to be governmental and quasi-governmental venues and functions, such as parliamentary debates or administrative act and pronouncements, the working of

Issue no. 6/2012

the legal system and the whole arena of political campaigns, bargaining, party politics and elections including voting. On the contrary, non-public reason is related to non-governmental institutions, like churches, universities, and voluntary associations in civil society. However, these unofficial networks among private people are not to be confused with the idea of private reason. The nature of the non-public scenery is social and can even deal with the very same topics that bother the public sphere. But, where Rawls shapes the boundaries of non-public reason, Habermas sets precisely the nervous system of the political public sphere (McCarthy 1994: 50). Picking up this point, the following and concluding part of the conceptual contribution to this paper will try to gain an overlook of the key differences between the two presented approaches to deliberative democracy and to demarcate deliberation from its 'relatives'.

Conceptual ambiguity

As can be derived from the so far presented, democracy and deliberation can go hand in hand but definitively do not have to. Democracy is certainly a precondition for dialogical approaches to political principles and institutions. However, as Sherry Arnstein's *ladder of citizen participation*¹ reveals, not all forms of dialogue or participation can be labeled deliberative. Some even argue that Rawls cannot be called a deliberative democrat at all (Saward 2002: 1).

Maeve Cooke deals in his elaboration on deliberative democracy with five adherent principles, also widely discussed in this paper so far. He certainly assigns importance to the arguments of educative power through deliberation, its community-generating possibilities, the expected improvement of fair democratic outcomes and the herewith associated practical rationality (Cooke 2000: 948 pp). Cooke, however, reckons another argument to be most decisive for defining deliberative democracy. That is an anti-foundationalist and contextualist strategy towards democracy, disputing timeless authorities and objective truths, acknowledging the contextualization of reason and validity and recognizing the fallibility of all claims to knowledge. This approach, Cooke senses, is most fundamental to an ideal of democracy in a way it was developed in modern Western societies (Cooke 2000: 954). Following this strategy, he elicits principles of Rawls'

¹ Cp. <http://www.tomwolff.com/ladder.jpg>

approach to deliberative democracy, grading them as less convincing compared to Habermas' arguments and even denying their deliberative character. Cooke argues that the normative conception of deliberation is not central in Rawls' approach, because public reason is not a dynamic process of reasoning, generating normative agreement, but an idea of imposing a constraint on publicly acceptable principles (Cooke 2000: 958). Furthermore, the distinction between public and non-public use of reason is contested, since peoples' points of view as citizens should not vary so dramatically from the respective ones as members of families and other associations (Cooke 2000: 960). Correspondingly, Rawls admits political autonomy to the citizens, while he rejects that on a personal level, for to admit it would undermine the constraint of reciprocity (Cooke 2000: 963). Hence, the proposed normative conception of political autonomy is too limited as to pass for a deliberative ideal of democracy (Cooke 2000: 957).

A more pragmatic approach

As we can see, at a theoretical level, deliberative democracy is a highly controversial concept, the subject of ongoing debate. Even though regarded as the ultimate driving force of modern day democracy, its theoretical ambiguity proves that even on a more abstract, ideal note, if you will, deliberative democracy is having severe shortages as a concept, as a vision about how political actors should act and interact. What's more, establishing the strengths and viability of such a theory cannot be done only in abstract terms, on an ideal terrain. The supreme test is a practical one which entails a more pragmatic outlook on the issue. As such, it has always been a challenge for deliberative democracy to prove its actual functionality. Moreover, it has even been an uphill struggle to determine and show how deliberative democracy can work outside its theoretical fortress, outside the ideal situation in which all actors are open to discussion and search for common good. Therefore, following up on our initial question, I consider that it would be extremely appropriate to investigate what happens with deliberative democracy in an unfriendly political environment? How does it handle passionate behaviors such as those that demand actions not discussions, or results rather than promises? Moreover, how does deliberative democracy resolve conflicts of interest?

These are highly important questions for deliberative democracy, questions which should reveal its true strengths. Consequently, if we are to give credit to the theory, the simplest answer would be that deliberative democracy is not appropriate for each and every situation in each and every place. As Gutmann and Thompson put it, “deliberative democracy does not require that all political activities in all places at all times be deliberative”. It does however demand that they should be assessed at some time by deliberative principles” (Gutman, Thompson, 2004: 56); and this is because “deliberation is generally the best way to arrive at just decisions, or, more accurately, the least unsatisfactory”. In this respect, it would seem that the key here is justification, since it is the one who makes actions legitimate (Gutman, Thompson, 2004: 41-43).

In spite of this, we have to acknowledge that there are cases when a certain justification or certain reasons are not accepted by everyone; and yet a decision has to be made. Then, theorists admit that “if a non-deliberative process offers the only way, limitations to deliberation may be justified” (Gutman, Thompson, 2004: 142). To my mind this seems to be the first sign of weakness on behalf of the deliberative democratic theory. It clearly shows (as it has been discussed earlier) that deliberative democracy needs certain preconditions in order to work and cannot be applied in all contexts. Connected to this is the ideal and somewhat naive view that even if it may not be feasible all the time, nothing bad can happen once you employ it. Indeed, in a theoretical world solving problems through deliberation is as good as it gets. However, reality is a little bit harsher. It is more about power, money and interests rather than mutual respect and communication. In reality, decisions are more about efficiency, effectiveness and profit, than about common good, representation or justice (Creighton, 2005: 2). Not seldom do external actors and institutional contexts impose severe limitations on the reach of deliberative decisions and action. It is often the case that powerful participants use deliberative institutions only when it is in their advantage (Fung, Wright, in Fung, Wright, 2003: 33). It is also the case that gifted speakers may influence the deliberative process into adopting decisions that would be in their benefit. Basically, in their hands deliberation becomes an instrument for control (Cook, Kothari, 2001: 104). These are just a few examples of how deliberative democracy can go wrong.

In spite of this fact, the theory remains highly attractive. Unfortunately, this is not because of its usefulness and functionality, but because of its appealing outlook. To put it

bluntly, deliberative democracy or better yet deliberation has become a sort of trend, a sure way of legitimizing action. Consequently, deliberation is quite commonly used for reputation building, for creating a positive image or in order to avoid criticism. Sadly, most of the times, this is just a façade, a way of masking other, more devious interests (Cook, Kothari, 2001:, 28). In this respect, deliberative democracy may not be more than a luxury, a sort of Barbie doll of political theories.

Cohen and Rogers

Still, it would be hazardous to draw such a conclusion without looking at things from all angles. In this respect, a very important perspective is that presented by Cohen and Rogers. They approach deliberative democracy from a very pragmatic point of view, arguing that the theory may be not only successful in practice but also successful in cases where the context is not necessarily ideal beforehand. Basically, instead of pointing out the negative side, Cohen and Rogers invite us to get acquainted with the positives of deliberative democracy. According to them, it cannot be denied that, “across radically different circumstances, we see new forms of participation, all devised for attractively mundane purposes: making sure that schools work, that roads and water pipes get built where people need them, that jobs and endangered species both get protected, and that public safety improves in dangerous places”. And what is more encouraging is the fact that more and more attempts of this kind come from the people, who have begun to understand the power that they have to change and the wonderful things they can accomplish if they work together. Naturally, besides good will, there are also interests, external factors or constraints, but as Cohen and Rogers argue this is not necessarily a bad thing, or at least it need not be. Nothing is done just for the sake of it; therefore it is compulsory to think about costs, about time, about efficiency and effectiveness; but doing so, does not necessarily entail giving up on common good, fairness or equitable distribution of resources. (Cohen, Rogers in Fung, Wright, 2003: 239 - 240).

Moreover, Cohen and Rogers suggest that deliberative approaches to politics may just be what is needed to revitalize the eking democracy that we live in today. In this respect, they are not the only ones who admit that what used to be the most potent political symbol in the world is now slowly crumbling. Economic crises, rigid institutions and lack

Issue no. 6/2012

of solution for the world's ongoing problems have furthered people from democracy and made them realize that democracy has also furthered away from them (Fung, Wright, in Fung and Wright, 2003: 39). Greenwood and Levin offer an explanation to why this might have happened. They argue that democracy as a majority rule (which has been the dominant approach in recent decades) "rests on the oppressive actions of welfare state capitalism, to reduce social justice to a limited redistribution of goods to those defined as disadvantaged. That view of democracy neither respects diversity nor seeks to enhance the capacity of the disenfranchised to act on their own behalf"(Greenwood, Levin, 2006: 10). Thus, according to numerous theorists, including Cohen and Rogers, deliberation would be a viable and trustworthy way of bringing democracy back to the people and people back to democracy by involving them in the process.

However, a big challenge for deliberative democracy theorists still remains: how valid is their approach when the background conditions are not ideal? Many have stressed that "deliberation cannot work unless a substantial background equality of position is already assured. Thus, under conditions of substantial inequality of power, requirement of presenting reasons is unlikely to limit or neutralize power". Cohen and Rogers attempt to break down this myth by explaining that such criticism is not actually directed towards deliberative democracy as a process, but rather towards its preconditions. According to them, a harsh background does not necessarily "lessen the attraction of the deliberative ideal; it simply states a condition of its reasonable pursuit" (Cohen, Rogers in Fung, Wright, 2003: 248-249). Moreover, the authors even suggest that a harsh environment, dominated by uncertainty and instability may be more likely to bring about deliberative solutions. The logic is as follows: even though powerful, an agent is always in need of new information, information which weaker agents hold and which may be to his own protection and advantage. "But then, suppose that the environment is not very stable and that information relevant to advancing interests changes rapidly. Then, apparently more powerful agents will have strong incentives to elicit the willing cooperation of apparently less powerful agents, so that the latter reveal the information they have that bears on the interests of the more powerful" (Cohen and Rogers in Fung, Wright, 2003: 252). As such, deliberation turns into a necessity.

The argument provided is quite interesting, but to my mind it has one important flaw: that deliberation as a necessity goes against one of the basic principles of deliberative

democracy, namely mutual respect. In Cohen and Rogers's view, this mutual respect is transformed into mutual dependence and this implicitly turns reason and justification based dialogue into a distant exchange of information.

Practical Insights

However, even though more pragmatic, more anchored in reality, Cohen and Rogers' approach still does not solve the problem of functionality, of the concrete success or failure on behalf of deliberative democracy. For such an answer we are in need of empirical examples. In this respect, the general idea is that empirical literature on deliberation is thin and not very promising in observed effects (Cohen, Rogers in Fung, Wright, 2003: 239). When it comes to public policy and governance things are indeed quite pessimistic in the sense that not many authorities have the courage to engage themselves in large-scale deliberative ventures. Still, I have managed to find very intriguing examples which I find to be self-explanatory when it comes to assessing the usefulness of widely applied deliberative democracy.

The first example is the making of Brazil's seventh constitution in the year 1988. Almost 2 million people were invited to participate and express their opinion with regard to how the future constitution should look like. As one NGO member present at the drafting noted, "this part of the text on children and adolescents had really involved people in ways that no one would have imagined possible". Naturally, elite groups and political parties also had a say, but they nonetheless motivated their preferences in an attempt to make the process as democratic as possible. They probably even succeeded in this sense, but the long term outcome is not as positive as maybe expected. In this respect, 15 years later, in 2003, only 35% of Brazilians felt that democracy was preferable to any other form of government, remaining less committed to democracy than the citizens of any other Latin American democracy except Guatemala (Skach, 2005: 161-162).

A more or less similar example can be found in South Africa. The constitution making process (after the fall of the apartheid) here is considered one of the most "popular" in history. It first started with gathering views from ordinary people in hundreds of meetings all over the country. Then authorities decided to make all the proceedings of the Constitutional Assembly open to the public: maybe more than two million people have

Issue no. 6/2012

participated all round. The only downturn, if we can call it like that, was the fact that the final say with regard to the constitution was solely attributed to the South African Constitutional Court. Of course, the resulting democracy was not perfect and it still is quite shaky, but considering the regime under which South Africans lived before, one may regard the outcome as a success. Yet from an economic point of view we now see South Africa turn from one of the growing economies of the world into “just another African” economy (Jones, 2002). Therefore, it seems that democracy through deliberation came at a price.

Still, if we compare the two examples with the United States or Germany (who adopted their constitutions in a very un-deliberative manner, but are currently two of the best working democracies) we realize that the key for success does not necessarily lie in deliberation and participation. (Skach, 2005: 162-167)

Concluding remarks

Therefore, by looking at these two examples and based on everything discussed so far, it would seem that deliberative democracy is rather unconvincing when it comes to public policy. As a procedure, it is undoubtedly successful. It brings democracy back to the people, transforming decision-making into a “popular” process aimed at including as many voices as possible. This of course enhances the population’s sense of belonging and contribution, making them part of the final result. Still, quite often, this final outcome is neither as successful (especially in the long run) nor as “democratic” (in our case) as the process itself. This maybe proves two things: the first, that deliberative democracy is not a luxury or a sunshine theory that is applicable only to some and under certain conditions; it is not only an ideal which looks good on paper, but also a viable theory, relevant in various situations. The second thing worth mentioning is that although useful, deliberative democracy is by no means special. The outcomes it produces can be better, as good, or even worse than non-deliberative procedures. Its only advantage is that it involves people. But what good does that do if the result is not satisfactory?

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Issue no. 6/2012

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IMPROVING PROCESSES CONTROLLING CAPABILITIES

Tünde Szabó, Partenie Dumbravă, Laura Bogdán

Abstract: *This work analyzes the importance of improving the Szekely National Museum's quality management system's processes, as effect of implementing the quality management system. The effects of implementing a quality management system are many, among which we can remember: increase customers' satisfaction, improving processes' controlling capabilities, improving the funds' management capacity, improving personnel's satisfaction and its level of training, ongoing improvement of quality and lasting performance.*

Undoubtedly, a first effect of implementing such a quality management system is increasing the customers' satisfaction by offering them services in compliance with their requirements and, implicitly, increasing the number of customers, respectively, visitors. But, for this, it is important also to analyze the processes with the help of which customers' satisfaction can be reached, thus, the research's main aim is to highlight the effects of introducing the quality management system on the organization, management and improvement of processes within the institution.

Key Words: public administration, quality management, process, process capability, renewal's rate, quality's costs

1. Introduction

When the organizations choose to implement a quality management system, they do it in the hope that they will obtain some positive results improve the organization's entire activity, and their final aim is to reach excellence. In this way, organizations are awaiting for the effects of the implementations, a measurable effect confirming the fact that the entire activity tends toward excellence. Surely these awaited effects depend also on each organization's profile and, even though we are speaking of organizations of the same kind, there are differences between their basic/ main activities and their secondary activities.

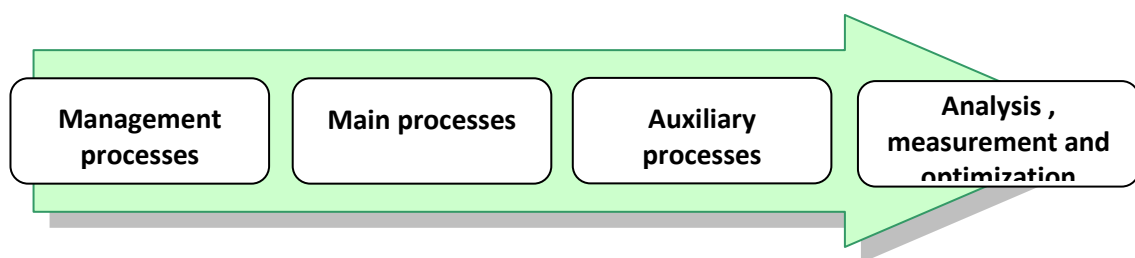
Given the fact that this research it is necessary to show the modalities to approach them.

In a systemic approach, an organization like public administration can show a complex system in which the **income dimensions**, like: human resources, financial resources, goods, information, public relations with citizens and organizations, and its **outcomes' dimensions**, with other words, the product of the local administration institution, respectively: public services, decisions by the local council, leadership's decisions, audit reports. The ISO 9001 standard promotes adopting an approach based on elaborating, implementing and improving the quality management system's efficiency.

By process, we understand an activity, or a succession of interdependent activities using resources, transforming the incoming data in outgoing data. With other words, the processes are those adding value by transforming or transporting resources.

In order for the organization to function efficiently, they must identify and manage the many processes correlated and which interact among themselves. Often, the process' outcomes will directly constitute incomes for the following process. The systematic identification and management used within an organization and, more especially, the interaction between these processes are called "process' based approach". The previously reminded standard's intent is to encourage the adoption of an approach based on the process in the aim of leading an organization.

The categories of processes which can be identified in an organization are:



Picture 1. - Categories of processes identified within the organizations

(Source: adapted according to Olaru, M., Quality Management, Editura Economică, 1999)

The approaching modality for each identified process within an organization in compliance with the requirements of ISO 9001 is related to delimiting the process within which the starting and ending activities are established as well as:

- ↳ naming the process;
- ↳ the process' requirements;
- ↳ the aim of the process;
- ↳ entrance data;
- ↳ their supplier;
- ↳ exit data;
- ↳ the process' beneficiary.

The process' owner establishes, after that, together with the Chief of the Quality Department

- ↳ the documents to be elaborated in relation to the process;
- ↳ assure the liaison between the upstream and downstream processes and checks the harmonization of the processes' aims with the quality-related ones.

For each separate compartment, all of the processes active within the respective department shall be described and the documents associated to each of them shall be established.

After identification, a manager is chosen for each separate process/ owner of the process. He has the responsibility of assuring the management for the respective process, more precisely:

- ↳ describing it in the best form;
- ↳ establishing check points;
- ↳ establishing the time period during which the measurement of the process' parameters is made;
- ↳ establishing the measurable aims for the respective process;
- ↳ monitoring the implementation of the objectives;
- ↳ analyze the causes which have caused the non-implementation of some of the objectives aimed.

After the identification of all the processes, they are classified in the four categories of processes mentioned before.

2. Methods

Steps for implementing the processes

As it was mentioned before the implementation of the processes is a vital/key element in the organization's systemic approach. For the system to be functional, its implementation steps must be followed carefully, more precisely:

A. Analysis of the processes

First of all, the actual situation of the process identified is established. It is necessary to show the logical steps within the process as panoramic view and to show also a path of the process. All of the barriers, difficulties, weak points, and activities which do not create value and do not allow a good mastering of the process. Their identification and elimination is done through teams working within the process, eventually in a larger degree and with the help of other teams.

B. Directing and controlling the processes

The evaluation of each process is done through measurements. The following shall be established within the process:

- ↳ what's measured;
- ↳ with what it's measured;
- ↳ measurement frequency.

C. Continuous improvement of the processes

In the aim of continuously improving the activity of some organizations, all the processes shall be applied a methodology known as Plan - Realize - Check - Act (PRVA). PRVA can be, briefly, described in this way:

- ↳ *Plan* – establishes the aims and the processes required in order to obtain the results in compliance with the customer's requests and with the policies of the organization;
- ↳ *Realize* – implements the processes;
- ↳ *Check* – monitors and measures the process and the product in relation to the policies, the aims and the requirements for the product and reports the results;
- ↳ *Act* – takes actions aimed at continuously improving the processes' performances.

In this way, various methods can be used aimed at solving the problems identified, in order to definitely eliminate non-compliances. Of the solutions proposed, the most proper is chosen. The measures applied will be checked from the point of view of obtaining the optimization aimed. In the case in which the aim was not reached, another solution shall be chosen.

D. Evaluation processes from within the quality management system.

When quality management systems are evaluated, there are four fundamental questions which should be asked in relation to each relevant process:

- a) Is the process correspondingly evaluated and defined?
- b) Are the responsibilities established?
- c) Are the procedures implemented and maintained?
- d) Is the process efficient in order to obtain the results required?

The overall of the responses to the above-mentioned questions can determine the result of the evaluation. Evaluating a quality management system can vary as field of application and can contain a series of activities, like auditing and analyzing the quality management system as well as, also, self-evaluations.

3. Results and discussions

3.1. Improving the capacity to keep the processes under control

A first, essential, step in improving the processes is to benefit of the supervising by the organization's higher management. This coordination shall be assumed decisively and it shall create a favorable opinion and aptitude in relation to the improvement activities.

Improving a process implies a series of ordered activities but the starting point must be, all the time, the evaluation of the processes' performances. In order to evaluate the processes' performances within the Szekely National Museum, certain base indicators must be established, like:

- ↳ *the processes' capability;*
- ↳ *deviation in implementing the processes;*
- ↳ *renewal rate;*
- ↳ *costs related to quality*

and **the effects of implementing** an integrated system would be the increase of these indicators' degree of implementation .

A. The process' concept of capability

An overall including concept in projecting the processes/services is the one of "process' capability". All the processes have an inherent capacity of leading to quality products. It can be evaluated by collecting and analyzing the data. Later, the evaluation of results becomes a valuable help in projecting the process, by directing the implementation.

The process' capacity in implementing quality products has two sides:

↳ the process' capacity of reaching the aims related to the quality of service, which can be named "*reaching the aim*";

↳ the inherent capacity of constantly repeating the results to which, generally, the reference is made by using the phrase "*process' capability*".

The main method for evaluating the processes is the analysis of the data collected under working conditions. The expression "under working conditions", means:

↳ The process exists already.

↳ The operations are implemented under "normal" conditions, not in "laboratory" conditions.

↳ The personnel executing the operations during the collection of the data is the implementing one, normally used.

The capability of an already existing process can be evaluated by collecting the data related to the process' quality characteristics or to the quality characteristics of the product resulted after the implementation of the process.

The results of the process represent what a process *really does*. The process' capability represents what *could a process do* if we remove the important causes for the weak performances.

3.2. Evaluation of the process' capabilities based on the working data

In order to highlight the method's peculiarities, we shall take as example a quality management key process, more precisely "*Assuring the resources*". The process' aim is to identify and allocate the resources for the functioning and improvement of the quality management system, in order to increase the satisfaction of the customers and of the other interested parties. THE SUPPLIERS' PROCES (upstream): *the establishing the policy and the aims in the field of quality*, the analysis made by the management, and the CUSTOMER PROCESS (downstream) all of the system's processes.

The main **input data** are: short term action plans, requirements for improving the museum's performances, resources' requirements resulted after the analysis done by the management. The main **output data** are: the income and expenses budget (financial resources required in order to implement and maintain an efficient and effective quality management system and to implement the organization's objectives); a sufficient number of competent personnel; the infrastructure required to implement the services; a proper work environment which would motivate, satisfy and increase personnel performances; information required for the ongoing development of knowledge related to the museum; the natural resources required for the organization's functioning.

Steps for implementing the processes:

- ↳ identifying the required resources;
- ↳ planning the resources;
- ↳ allocating the resources;
- ↳ verification of the way in which they have been allocated.

In this way, it's seen that the process is done by more officials, more precisely six public officials from within the Szekely National Museum.

Following the analysis made by observation, it's been seen that the main mistakes which can appear are related to the following: *non-compliant identification of the resources required* (financial, material and human resources); *evaluation, selection and monitoring of the resources*; *elaboration and analysis of the orders/products specifications*; *selection of suppliers*; *non-compliant action plans over short term*; *management analysis done with mistakes*; *wrong auctions*; *acquisitions made at a bigger price than the market one*; *verification of the way in which they were allocated* (table 1). During one year (12 months) 82 mistakes are reported, as seen also in the following table. These 82 mistakes represent **the process' results** – what really resulted out of the process. Not the same thing can be said in relation to the process' capability - what the process could do. But the process' capability can be evaluated from the analysis of the data.

Evaluation of the "assuring resources" process' capability

Table 1

Type of mistake	Officer						TOTAL
	A	B	C	D	E	F	

Issue no. 6/2012

1. Non-compliant identification of the material resources acquired	0	0	1	1	0	1	3
2. Non-compliant budget allocated for research activity	0	0	0	0	0	0	0
3. Non-examination of the equipment acquired	1	3	1	4	5	4	18
4. Erroneous elaboration of a specification	0	0	0	0	1	0	1
5. Acquisition of a material at a bigger price than the market price	0	1	4	3	0	2	10
6. Selection of suppliers without a previous research	0	1	1	0	3	1	6
7. Non-compliant organization of an action because of lack of corresponding personnel	1	0	1	0	0	0	2
8. Non-compliance to action plan	4	4	1	6	0	6	21
9. New objects inserted without auction	0	0	0	2	1	1	4
10. Incorrect drafting of the record of goods	1	2	0	2	4	1	10
11. Products with defects caused by transportation	0	0	0	0	0	1	1
12. Non-compliant evaluation of resources	2	1	1	0	0	2	6
TOTAL	9	12	10	18	14	19	82

(Source: according to research done during the doctorate T. Szabó)

When the total of 82 mistakes is divided by the number of officers, an average of 13,66 mistakes/ officer results. But they represent a very different risk of making mistakes. Three of them were clearly below average, having 9, 12, 10 mistakes. An officer was almost at the same average level or over the average, having 14 mistakes. In the case of officer D, a total of 18 mistakes is made of 6, respectively 4 mistakes of the same type and following the observation, it has been seen that the officer has mistakenly understood part of the procedure. His result is given by the 19 mistakes, while the capability is represented by the 8 mistakes. Unlike officer A, officer F, which a lot over the average, made 19 mistakes but, practically, they were of all kinds, this representing really officer F risk error for what's related to this type of activity.

Another important phenomenon is the 21 type 8 mistakes and the 18 type 3 mistakes. Each officer has made one or more mistakes of the same type.

In order to reach the process' capability, it's necessary to exclude the abnormal results: type 3 and 8 mistakes; officer F's and officer D's mistakes. It results that the four officers remained have 4, 5, 8, respectively 9 mistakes. In this way, the average becomes

6,5 and each is near the average. The process' capability shall be established based on the mistakes' differences in relation to the average, added and divided by the number of officers remained. In this case, the differences compared to the average are: 2,5; 1,5; 1,5; respectively 2,5. Added up, the value will be equal to 6. This number, divided by the 4 officers, is 2. Therefore, the number 2 represents the most exact evaluation of the process' capability.

The use of this method is proposed for the Szekely National Museum, after the identification of the critical processes which influence importantly the services' quality level, obtaining, in this way, the elimination of the eventual factors which influence negatively the entire management system. We can, in this way, reach a "quality" process with the ability of reproducing the keeping under control of the process' flux. The process' quality refers to the degree in which an acceptable process, including quality measurements and criteria, have been implemented and are compliant with the established standards, in order to produce artifacts. The process' quality is measured not only by the degree in which the process is compliant with a higher quality, but also by the quality degree of the products resulted from the process. At the evaluation of the process' quality, the process actual status of implementation is taken into consideration, compared to the planned implementation. The concept of the process' quality is applied, also, to the development, production planning, management, administration, and acquisition processes.

B. Rate of renewal

Innovations influence decisively, in many cases, an organization's market position. In this way, in the condition of the actual technological development rhythm, renewal becomes a critical element in any organization's activity. The ISO 9000 international standards place a special accent on the ongoing improvement of the organization's activities, the which is possible by developing its renewal capacities. The starting point in this way is represented by the establishment of proper strategies in the field of renovation. It can be seen that the interaction between the customers' new requests and the renewal process, at the level of the development, production and marketing departments. In this way, starting with the customers' requirements, new ideas are generated, which materialize

in the organization's higher performances. They bring benefits both to the organization as well as to the customer.

Most of the times, the success of the innovations is related to the personnel's qualification and to the management's availability to evaluate the employees' innovative potential. A lot of ideas come directly from the customers.

The performance indicator reflecting an enterprise's capacity to face changes is the less used among all of the indicators referring to an organization's processes. In the case of the Szekely National Museum the "renewal rate" indicator is not used. The causes for the poor consideration regarding performance indicators related to renewal are found in the non-implementation of a quality management system. The fact that the determination of the renewal rate does not represent a preoccupation for the museum may have repercussions on its capacity of assimilating the fast technological and administrative changes taking place in the world economy.

In the questionnaire about the employees aptitudes in relation to certain aspects related to the Szekely National Museum's activity, there was a question regarding the evaluation system.

For what's related to the existence of indicators for the evaluation of performance, we can assure with a 95% probability, at the overall population's level, that the average of the evaluation through indicators is in the interval [2,85; 3,65]. The sampling error is $\pm 0,201$. In the opinion of the answerers, the system of indicators aimed at evaluating the organization's performances is a poor one, an average of 3,25 points being obtained, on a scale from -3 to +3 (table 2).

Descriptive statistics aimed at evaluating the performance and applying the evaluation

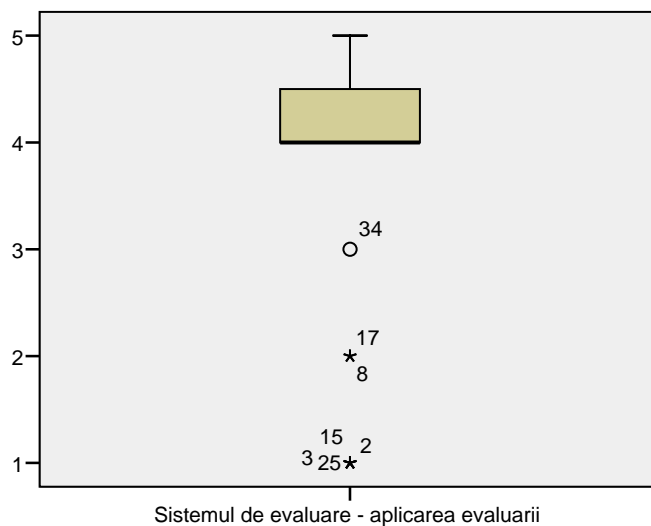
Table 2

			Statistics	Standard deviat. from samples' average
Performance evaluation indicators	Average		3.25	.201
	95% reliability level for the average	Lower limit	2.85	
		Higher limit	3.65	
	5% Trimmed Mean		3.25	

	Median		4.00	
	Variant		1,936	
	Standard deviation		1,391	
	Skewness Index		-.717	.343
	Kurtosis Index		-.785	.674
Application evaluation of	Average		3.90	.158
	95% reliability level for the average	Lower limit	3.58	
		Higher limit	4.21	
	5% Trimmed Mean		4.00	
	Median		4.00	
	Variant		1,202	
	Standard deviation		1,096	
	Skewness Index		-1.606	.343
	Kurtosis Index		2.250	.674

(Source: according to research done during the doctorate T. Szabó)

A number of 48 valid answers existed to this question. The next graphics' thick line, which appears at point number four in the box, represents the mean's value. The box's length is nothing else other than the interquartile distance. The box extends between the value of 4 and 4,5, and the interquartile value is 4.



Picture 2 – Evaluation system

(Source: according to research done during the doctorate T. Szabó)

The values located in the box's extension have as minimal extreme the value of 1, the maximum extreme being 5. At the box's lower limit, the values are considered as being extreme values, being graphically represented through a point/ or more points in this case. The answerers have specified answers located on positions 34, 8, 17, 15, 25, 2, and, respectively, 3. This means that, in the opinion of these people, the application of performance evaluation indicators is good. But, the average at the population's level is of 3.90 points, with a 0.158 points standard deviation from the sample's average.

C. Costs related to quality

Quality costs and this is an undeniable fact. But, it's also clear as well, that non-quality is even more expensive. The frequent idea according to which quality is more expensive is caused by not measuring the price of non-quality.

A key term on which Univ. Prof. George Moldovanu, PhD, places an accent in defining the concept of quality and non-quality costs is "the errors' factory". This expression refers also to the means and efforts used in an organization, but which do not bring any added value to its activity and which, as a consequence, mean a cost. Some of the consequences caused by this errors' factory are:

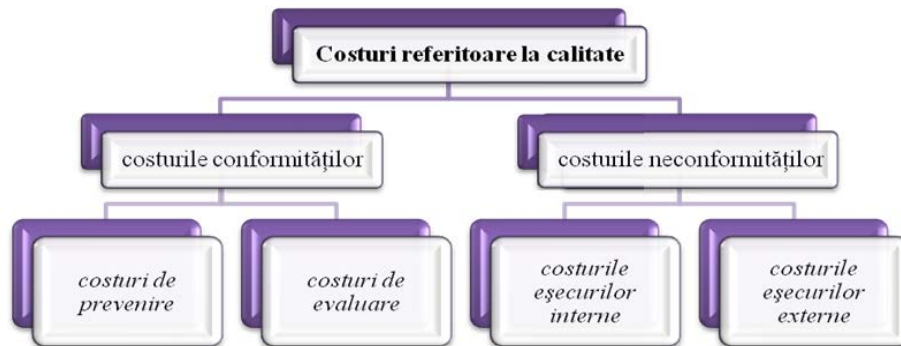
- ↳ doubling some processes;
- ↳ repeating the works;
- ↳ correcting the errors;
- ↳ supporting the costs of claims related to badly implemented works and services;

Categories of costs referring to quality

The Public Administration Management needs the calculation of the costs in order for the real consumptions of goods and services to be recorded. At the same time, it's sure that the development of costs accounting is difficult within the public administration because of the method applied to develop budgetary accounting. Costs are a measure of the efficiency with which an organization uses its own resources. From this it appears the budget must be based on costs, not on the expenses' historical values.

It's important to notice that the enterprise's organization, its culture, influence a lot the cost. As a result, speaking about the costs of quality means grouping the costs while aiming them toward quality. This form of grouping can be very easy or it can adapt itself very well within the Public Administration.

There are four types of costs associated to quality and non-quality, as it can also be seen from the picture below.



Picture 3 - Costs associated to quality and to non-quality

(Source: Moldovanu, G., Dobrin, C., Management of quality in public sector)

Prevention costs – they are the costs of the activities aimed at preventing the appearance of errors or, otherwise said, they are the costs of all the activities by which the elimination is attempted, with anticipation, of the causes which can determine the lack of quality. All of the measures required in order to prevent the errors are included in these costs.

Evaluation costs – they are the result of the evaluation of the finished product or the service, after having been implemented. Otherwise said, they represent everything that was spent in order to see if the result of a process corresponds to the standard, if it's compliant with the quality specified. The motivation for which these evaluation activities are implemented is that the respective organization is not sure that what has been invested in prevention was totally efficient.

Conclusions

The introduction of a Total Quality Management system must be the consequence of a decision taken by the higher management. In Public Administration this is a decision that has to be taken by politicians. This decision is, usually, the consequence of the proposals made by a group from within the organization. The arguments sustaining the idea of introducing a quality management system are based on:

1. *Reducing the expenses.* As to repeat a work is less necessary and less time is used in serving the customers, the use of resources is optimized and it will be more possible to use the surplus in other aims.

2. *Increasing incomes.* Satisfied customers will tend more to use the service or the product offered.

3. *Improving the image.* As the service gets better, the image will improve. There will be a tendency to increase the number of transactions or use the ones offered by the Public Administration without using the alternative services or processes.

4. *Increasing competitiveness.* A better image and some decreases in costs cause the increase in competitiveness. The society benefits from this effect in its overall. As examples can be mentioned: postal services, health, education, social insurance, police; even more, a public service (like the ones mentioned above) is totally or partially replaced by private enterprises which, in many cases, are contracted by persons or entities which create public service very inefficiently or inadequately.

5. *Improving the environment* where the officers implement their activity. The application of the total quality concept makes it possible for the implementation of a better service in Public Administration to be considered a common aim. The ongoing implementation is obtained only through personnel collaboration and training. The identification of the workplaces is done while taking into account the most recent knowledge related to motivation and leadership qualities.

The introduction of a quality management system does not mean the same thing as separating from the scheme of a new structure and training, a radical change increasing the efficiency and improving the organization's image. On the other side, it means to put into discussion the existence of a, separated but accessible excellence, and the steps which have to be taken in order to reach excellence are those proposed by the model management's basic theories. Even in the same organism, there can be important non-compliances related to the degree in which excellence was obtained between its departments and sections. The essence is that any situation can be improved and that all efforts must be analyzed in order to obtain improvements.

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